
(2011) 11 AP CK 0149
In the Andhra Pradesh High Court
Case No : Criminal Petition No. 8851 of 2008

P. Hari Krishna

APPELLANT

Vs

State of A.P. and Karumanchi Rama Prasad Rao

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138, 92, 93, 94

Citation : (2011) 11 AP CK 0149

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Parsaananth Nageswar Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu

1. The petitioner is accused of offence punishable u/s 138 of the Negotiable Instruments Act (in short, the Act). The only contention addressed by the petitioner's counsel in this petition is that there is no valid service of notice u/s 138(b) of the Act. In the complaint, it is stated that the complainant got issued statutory notice to the accused under the Act on 27.03.2006 for payment of dishonoured cheque amount and that the accused having received copy of notice which was sent under certificate of posting and known the contents of registered cover, got returned the registered cover with false endorsement. It is stated by the petitioner's counsel that even the notice of the criminal case sent through Court to that address of the accused was returned with endorsement that there is no such person in that address and door number. From return endorsement on the notice cover, one cannot presume that the address was wrongly stated. There is an averment in the complaint that notice sent under certificate of posting was received by the accused.

2. Placing reliance on Jai Durga Enterprises Vs. State of U.P. and Indo

Automobiles, of the Allahabad High Court, it is contended by the petitioner's counsel. that service of notice by certificate of posting and similar allegations made in the complaint therein, were not accepted by the Allahabad High Court and consequently quashed the complaint on the ground that there was no valid service of" statutory notice u/s 138(b) of the Act.

3. The Allahabad High Court referred to Section 27 of the General Clauses Act, 1897 for finding whether service of notice by certificate of posting was proper service or not. Section 27 of the General Clauses Act, 1897 reads as follows:

Meaning of service by post.- Where any (Central Act) or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "service" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

The said provision deals with meaning of service by post. Whereas, Section 138(b) which prescribes a precondition on the complainant by way of service of notice, reads as follows:

138. Dishonour of cheque for insufficiency, etc., of funds in the account:- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(b). the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

Section 138(b) of the Act contemplates giving of a notice in writing to the drawer of the cheque. It does not further prescribe any mode of service of the said notice in writing. It is conspicuously absent in the said provision to the effect that giving of a notice in writing should be by post or by registered post. It follows that giving of notice u/s 138(b) of the Act can be by any method and not necessarily by post or by registered post.

4. It is contended by the petitioner's counsel that Section 94 of the Act deals with the mode in which notice may be given. Section 94 of the Act does not relate to giving notice u/s 138(b) of the Act. Section 94 prescribes mode of giving notice for the purpose of Sections 92 and 93 of the Act. Sections 92 and 93 of the Act read as follows:

92. Dishonour by non-payment - A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. By and to whom notice should be given -When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory notes or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Under Section 93 of the Act, notice is contemplated to be issued by the holder of instrument in case of dishonour by non-payment to all the parties whom the holder of the instrument seeks to make severally liable thereon and to some one of the several parties whom he seeks to make jointly liable thereon. Section 93 deals with civil remedy which a holder of the instrument intends to enforce against the persons either jointly or severally. Notice contemplated u/s 93 of the Act is not a notice for the purpose of mulcting a person with criminal liability for the offence u/s 138 of the Act. Therefore, mode of service u/s 94 of the Act cannot be imported into Section 138(b) of the Act.

5. Since Section 27 of the General Clauses Act, 1897 deals with meaning of service "by post". Since Section 138(b) of the Act does not prescribe mode of service of notice "by post", with due respect, I am of the opinion that the Allahabad High Court in Jai Durga Enterprises (supra) had inappropriately applied Section 27 of the General Clause Act to Section 138(b) of the Act.

6. Since it is averred in the complaint that the accused received copy of notice sent by certificate of posting it cannot be said that the complaint is bad in law for non service of notice u/s 138(b) of the Act. Hence, this Criminal Petition fails.

7. Accordingly, the Criminal Petition is dismissed.