

(2011) 11 AP CK 0109

In the Andhra Pradesh High Court

Case No : Criminal P. No's. 2304, 2305, 2306, 2681, 2682, 2683, 2684, 2685 and 2686 of 2008

Patibandla Satyanarayana and others

APPELLANT

Vs

Kalluri Murali Mohan and others

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 138(1), 141, 141(1), 141(2)

Citation : (2012) 2 ALT(Cri) 5

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Advocate : K.V. Bhanu Prasad, for the Appellant; R. Raghunandan, for the Respondent

Judgement

Honorable Sri Justice G. Krishna Mohan Reddy

1. Crl. P. Nos. 2304 to 2306 of 2008, Crl.P. Nos. 2681 to 2683 of 2008 and Crl.P. Nos. 2684 to 2686 of 2008 are filed u/s 482 Cr.P.C. to quash proceedings against the petitioners therein i.e., A-1, A-4, A-5, A-6 and A-2 in C.C. Nos. 2181 to 2183 of 2007, on the file of the Court of III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, registered for offence punishable u/s 138 of the Negotiable Instruments Act (for short "the Act"), respectively.

2. The 1st respondent in all these criminal petitions is the complainant in all the same calendar cases. For the sake of convenience, the parties herein after are referred to as they are arrayed in the calendar cases.

3. In all the calendar cases, the main allegations made against A-1 to A-6 are that A-1 is a registered company and A-2 to A-6 are its directors, and in connection with legally enforceable debts due in favour of the complainant, A-2 issued cheques bearing Nos. 448467, 448466 and 448465, respectively, having signed them on behalf of A-1 and when they were presented before concerned

forum, they were dishonored and in spite of issuing subsequent notice as contemplated under Sections 138 of the Act, all the accused failed to comply with their requirement.

4. In fact, at the time of arguments, it is conceded by the learned defense counsel that so far as A-1 and A-2 in all the calendar cases are concerned, there is material to the effect that A-2 issued the cheques on behalf of A-1 and they were dishonored when they were presented before the concerned forum. Hence, the same assertion is taken as admitted and there is no need to discuss about the same. Further, it is contended by him that in fact, it is only noted in the complaint that A-3 to A-6 in all the cases were the directors of the company and no allegation is made against them that they actively participated in the business of the company and they were responsible for the issuance of the cheques and by virtue of Section 138 read with Sections 141 and 142 of the Act, they should have been in fact responsible for the issuance of the cheques in one way or the other and therefore, they cannot be prosecuted for the offence punishable u/s 138 of the Act and accordingly, the proceedings are to be quashed so far as they are concerned, placing reliance upon the decisions reported in *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, and *National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another*,

5. On the other hand, it is the contention of Learned Counsel for the complainant that notices were issued to A-1 to A-6, in that context, and A-2 to A-6 gave replies claiming that false notices were issued and the cheques were signed by one of the Directors of the company only and hence, they were not valid for presenting them for necessary encashment, and so on, which was done only for the purpose of defeating the dues payable to the complainant, and in fact in connivance or consent with A-2, the dues were not honored, which circumstances are sufficient to fasten the liability against A-3 to A-6 also u/s 138 read with Section 141(2) of the Act. It is also contended by him that in the notices, it is clearly mentioned that A-3 to A-6 also actively participated in the business of the company and they were also responsible for the issuance of the cheques, which circumstances are also sufficient to fasten them the criminal liability. He has placed reliance in support of his claim, upon the decision reported in *K.K. Ahuja Vs. V.K. Vora and Another*,

6. The point for consideration is whether there are sufficient grounds to quash the proceedings so far as A-1, A-2 and A-4 to A-6 are concerned in all the calendar cases.

7. It is necessary to examine the ambit of Sections 138, 141 and 142 of the Act in this regard. Section 138 of the Act reads:

Dishonor 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 honor 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

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(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; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation.-For the purposes of this section, " debt or other liability" means a legally enforceable debt or other liability.

Section 141 of the Act reads:

(1) Offences by companies. If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence Was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly, Explanation.-For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Section 142 of the Act reads:

Cognizance of offences. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no court shall take cognizance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable u/s 138.]

8. In S.M.S. Pharmaceuticals Ltd's case, (1 supra), it is observed under similar circumstances that necessary averments are to be made in the complaint and u/s 141 of the Act, the Director of the company does not automatically become vicariously liable for the offence committed by the company while asserting that, it has to be specifically averred in the complaint that the person proceeded against him was in-charge of, and responsible to the company for the conduct of its business and the said requirements as laid down in Section 141 of the Act, have to be read conjointly and not disjunctively. In K.K. Ahuja's case (3 supra), also similar observations were made under similar circumstances.

9. In National Small Industries Corporation's case (2 supra), under similar circumstances itself, it is observed by the Apex Court that the complaint should specifically spell out how and in what manner the director of the company was in-charge or was responsible to the Company for the conduct of its business, to hold him guilty of the offence.

10. Therefore, by virtue of the principles laid down by the Apex Court, there should be clear averment in the complaints to the effect that A-4 to A-6 in all the cases were actually responsible for the issuance of the cheques concerned either as the active participants of the daily business of the company or otherwise as the case may be. Therefore, the absence of the same averment in the complaint is to be very much reckoned with.

11. With regards to the application of sub clause (2) of Section 141 of the Act, it clearly enjoins that notwithstanding any thing contained in sub section (1) of Section 141 of the Act, where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. So it is to be considered whether what is claimed in the reply notices that the cheques and the notices were not tenable because the cheques were issued only by A-2 i.e. one of the directors of the company would amount to committing the

offence in connivance or consent with A-2.

12. The main body of Section 138 of the Act clearly contemplates that the moment such dishonor of the cheque has taken place, the person who issued the cheque should be deemed to have committed the offence subject to the formalities to be complied with as per the proviso incorporated there under.

13. Pertinently this Section refers to only the drawer of such cheque but not any other. In other words, the other directors of the company cannot be brought within the spear of this provision unless they can be brought within the spear of Section 141(2) of the Act. So if A-4 to A-6 involved in deliberate non-compliance of the formalities to be sorted out on behalf of the company under the proviso of Section 138 of the Act in connivance or consent with A-2, they also fall within the compass of Section 138 of the Act.

14. But there is absolutely no basis that A-4 to A-6 in all the cases were responsible for the non-performance of the formalities required apart from the fact that there is no basis here to show that they were responsible for the issuance of cheques. There should be nexus between the inaction or non-performance of A-2 and the conduct of A-3 to A-6. Merely because they stated in the reply notices that because only one of the directors signed the cheques, they were not valid and consequently the notices issued were also not valid and hence, the complainant got no locus stand to claim the amounts covered by the cheques, it does not mean that they were responsible for the non-performance of the formalities.

15. Eventually, the prosecution of A-4 to A-6, in all the cases, is untenable and the proceedings against them are to be quashed, and they are to be discharged from the charges.

16. In the result, Crl.P. Nos. 2684 to 2686 of 2008, so far as A-1 and A-2 in all the calendar cases are concerned, are dismissed and Crl.P. Nos. 2304 to 2306 and 2681 to 2683 of 2008, so far as A-3 to A-6 in all the calendar cases are concerned, are allowed, quashing the proceedings against A-4 to A-6 in all the calendar cases.