
(2012) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5315 of 2010

Patri Mahesh

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 4(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 147

Citation : (2012) 2 ALD(Cri) 803 : (2013) 1 ALT(Cri) 9

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This Criminal Petition has been taken out u/s 482 Cr.P.C. by the accused in C.C.No.100 of 2008 on the file of Judicial First Magistrate of First Class, Ichapuram to quash the order dated 28.4.2010 passed in CrI.M.P.No.48 of 2010. Facts, in brief, are:-

The 2nd respondent is the complainant in C.C.No.100 of 2008 on the file of Judicial Magistrate of First Class, Ichapuram. The petitioner approached the complainant for financial assistance for purchase of consumer articles. The complainant provided financial assistance to the accused as per the terms and conditions of the loan agreement. The petitioner issued cheque bearing No. 482865, dt.07.01.2008 drawn on State Bank of India, Ichapuram for Rs. 3,031/- towards part payment of the loan amount. The complainant presented the said cheque before Andhra Bank, Ichapuram for collection. The Andhra Bank, Ichapuram sent the said cheque for collection to State Bank of India, Ichapuram. The cheque came to be dishonoured on 15.5.2007. The complainant issued a statutory notice to the petitioner/accused calling upon him to make good the amount covered under the cheque in question. The petitioner received the notice on 22.5.2008. He neither issued a reply nor paid the amount covered under the

cheque in question. Therefore, the complainant filed a complaint against the petitioner for the offence u/s 138 r/w. 142 of the Negotiable Instruments Act ("the Act", in short). The learned Judicial Magistrate of First Class took the complaint on file as C.C.No.100 of 2008. The petitioner/accused entered appearance and moved Crl.M.P.No.48 of 2010 seeking the following relief:-

It is therefore necessary in the interest of justice, that the Hon"ble Court may be pleased to pass appropriate orders in receiving of the disputed cheque amount of Rs. 3,031/- from accused to the Respondent/Complainant without prejudice to the rights of the Petitioner/Accused, or else to permit the Petitioner/Accused to deposit the same in Hon"ble Court concerned account as per norms and withdraw the case against the accused otherwise, the Petitioner/Accused will be put into serious loss.

2. The complainant filed counter resisting the said petition. The learned Judicial First Class Magistrate, on considering the material brought on record and on hearing the counsel appearing for the parties, while permitting the petitioner to pay the cheque amount refused to grant the relief of withdrawing the case, by order dated 28.4.2010. Hence this petition by the petitioner/ accused to quash the order to the extent of refusing for withdrawing the case against him.

3. Heard learned counsel appearing for the petitioner and learned counsel appearing for the 2nd respondent-complainant.

4. It is contended by the learned counsel appearing for the petitioner that u/s 147 of the Act, every offence punishable under the Act shall be compoundable and therefore, once the petitioner/accused expressed his willingness to deposit the cheque amount, the case against him shall be withdrawn irrespective of the fact whether the complainant consented for it or not. In a way, his contention is that consent of the complainant is irrelevant for compounding the offence as soon as the petitioner/accused is prepared to deposit the cheque amount. It is also contended by him that the procedure contemplated u/s 320 of Criminal Procedure Code for compounding offences cannot be adopted to the offences punishable u/s 138 of the Act. In support of his contentions, reliance has been placed on the judgment of Supreme Court in Damodar S. Prabhu Vs. Sayed Babalal H., Supreme Court Cases 663 Much emphasis has been laid on paragraphs (10) to (12) of the cited judgment and they are thus:-

10. At present, we are of course concerned with Section 147 of the Act, which reads as follows:-

147. Offences to be compoundable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

At this point, it would be apt to clarify that in view of the non-obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the

Code of Criminal Procedure [hereinafter "CrPC"] will not be applicable in the strict sense since the latter is meant for the specified offences under the Indian Penal Code, 1860.

11. So far as the CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences, which are compoundable without the leave of the Court, while sub-section (2) of the said section specifies the offences which are compoundable with the leave of the Court.

12. Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 of the CrPC which states that "No offence shall be compounded except as provided by this Section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Indian Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) of the CrPC, especially keeping in mind that Section 147 carries a non-obstante clause.

5. Per contra; learned counsel appearing for the 2nd respondent-complainant submits that the consent of the 2nd respondent-complainant is essential for compounding the offence u/s 147 of the Act and therefore, the trial Court is justified in dismissing the application filed by the petitioner/ accused to the extent of withdrawing the complaint against him. It is also contended by him that Section 147 does not contemplate the procedure for compounding offences and therefore, the procedure contemplated u/s 320 Cr.P.C is required to be adopted. In support of his submissions, reliance has been placed on the judgment of Supreme Court in JIK Industries Limited and Others Vs. Amarlal V. Jumanani and Another,

6. The issue whether the consent of the complainant is required for compounding the offence u/s 138 of the Negotiable Instruments Act fell for consideration in JIK Industries Ltd. (2nd supra). The Supreme Court has also considered the earlier decision reported in Damodar S. Prabhu's case (1 supra). The Supreme Court held that in view of Section 4(2) of the Code, the basic procedure of compounding an offence laid down in Section 320 of the Code would apply to compounding of an offence under N.I. Act. For better appreciation, I may refer paragraphs (76) and (82) of the cited judgment and they read thus:-

(76) Both these aforesaid decisions were referred to and approved in Damodar (supra). The decision in Damodar (supra) was rendered by referring to Article 142 of the Constitution insofar as guidelines were framed in relation to compounding for reducing pendency of 138 cases. In doing so the Court held that attempts should be made for compounding the offence early. Therefore, the

observations made in paragraph 24 of Damodar (supra), that the scheme contemplated u/s 320 of the Code cannot be followed "in the strict sense" does not and cannot mean that the fundamental provisions of compounding u/s 320 of the Code stand obliterated by a side wind, as it were.

(82) A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the N.I. Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the N.I. Act, in that case the compounding of offence under N.I. Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under N.I. Act. Therefore, Section 147 of the N.I. Act must be reasonably construed to mean that as a result of the said Section the offences under N.I. Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be whisked away nor can the same be substituted by virtue of Section 147 of N.I. Act.

In view of the settled proposition of law that consent of the complainant is essential for compounding the offence u/s 138 of Negotiable Instruments Act and as the 2nd respondent-complainant is not consenting for withdrawal, the trial Court is justified in dismissing the application. There is no flaw in the order passed by the trial Court warranting interference of this Court in exercise of power u/s 482 Cr.P.C. Accordingly, the Criminal Petition is dismissed. As a sequel, interim stay granted on 22.06.2010 shall stand vacated.