(2006) 02 AP CK 0115

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 133 of 2003

Pidikiti Anand Raju Mohan and Another — APPELLANT

Vs

State of A.P. and Another — RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 2 ALD(Cri) 122 : (2006) 1 ALT(Cri) 483 : (2006) CriLJ 1800

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Chaitanya, for the Appellant; Public Prosecutor (for No. 1) and C. Kodandaram, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard both the Counsel.

2. The petitioners are accused Nos. 6 and 8 in C.C. No. 1394/2001 on the file of V. Metropolitan Magistrate, Hyderabad.

3. The complaint was filed u/s 138 of the Negotiable Instruments, Act, 1881 in short hereinafter referred to as Act" for the purpose of convenience.

4. Sri K. Chaitanya, the learned Counsel representing the petitioners raised two contentions, one relating to maintainability of the complaint by a power of attorney and yet another ground that these petitioners/ A-6 and A-8 were not the Directors on the date of issuance of the cheques but were inducted as Directors on a subsequent date and hence they cannot be fastened with liability. The learned Counsel In all fairness would contend that he is not seriously canvassing the first contention relating to the maintainability of the complaint by a power of attorney, but however would maintain that on the second ground inasmuch as the petitioners cannot be fastened with the liability since they became the Directors at a subsequent point of time, the proceedings may have

to be quashed.

5. Per contra, Sri Gunaranjan, the learned Counsel representing the 2nd respondent would maintain that inasmuch as on the date the cheques were dishonoured, the petitioners/A-6 and A-8 also were the Directors at the relevant point of time, they are liable to pay the amount and the date of dishonour of the cheques may have to be taken into consideration.

6. The learned Additional Public Prosecutor Sri Dhanamjaya however would contend that even otherwise there is a specific averment made that the petitioners/A-6 and A-8 also are responsible to the day to day affairs of the Company and whether the subsequent induction of these petitioners/A-6 and A-8 would alter the situation in any way in fastening the liability may have to be decided at the appropriate stage and this is not a fit case to be interfered with u/s 482 of the Code of Criminal Procedure.

7. On a careful consideration of several facts which had been averred in paras 3 and 4 of the complaint and also in the light of the submissions made by the counsel on record, this Court is thoroughly satisfied that these are all factual controversies which may have to be decided at the appropriate stage. It is needless to say that the question whether the petitioners/A-6 and A-8 also can be found guilty of an offence u/s 138 of the Act inasmuch as they were not the Directors at the time of issuance of cheques but were inducted as Directors subsequent thereto but they were Directors on the date when the cheques were dishonoured, also may have to be gone into only on adduction of evidence by the parties at the appropriate stage. In Ravi Kumar v. Ananth 2006 (1) KLJ 581 : 2006 (2) AIR Kar R 284 the learned Judge of Karnataka High Court while dealing with the scope and ambit of Section 482 of the Code of Criminal Procedure held that Section 482 of the Code aforesaid the Court cannot decide upon the truth or falsity of the case that is pending before the Magistrate and it is for the trial Court to examine all these aspects and since the case on hand does not fall within the circumstances under which the Court can exercise its inherent powers, this is not a fit case to exercise the said power to quash the complaint or the proceedings pending before the Magistrate or for that matter, the order passed by the learned Sessions Judge. In State of Punjab Vs. Kasturi Lal and Others, , para 10 it was observed by the Apex Court:

Exercise of power u/s 482 of the Code is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitia to do real and substantial justice for the administration of which alone

Courts exist.

Hence, this Court is not inclined to interfere at this stage and accordingly the Criminal Petition shall stand dismissed. It is needless to say that the petitioners are at liberty to urge all the grounds inclusive of the grounds which had been referred to supra before the trial Court.

8. It is brought to the notice of this Court that certain of the accused are abroad and the petitioners/A-6 and A-8 are available in India,

9. In view of the peculiar facts, the learned Magistrate is at liberty to consider the splitting up of the case and to proceed further with the further proceedings as against the petitioners/A-6 and A-8

