

(2005) 07 AP CK 0034

In the Andhra Pradesh High Court

Case No : Criminal P. No. 1746 of 2005

Rohit Parushram and Others

APPELLANT

Vs

Dhiraj Rawal and Another

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2005) 2 ALD(Cri) 446 : (2006) 1 ALT(Cri) 264 : (2006) 4 BC 572 :
(2006) 1 CivCC 353 : (2005) CriLJ 4209 : (2006) 1 RCR(Criminal) 358

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : G.V. Raghava Reddy, for the Appellant; Komireddy Krishna Vijay Azad, (for No. 1) and Public Prosecutor (for No. 2), for the Respondent

Judgement

C.Y. Somayajulu, J.—First respondent filed a complaint u/s 138 of the Negotiable Instruments Act (for short "the Act") against petitioners in C.C. No. 350 of 2004 alleging that in pursuance of a compromise entered between him and the petitioners 1 to 3 before the Court, petitioners owed him Rs. 15,30,000/- and that they paid cash of Rs. 2,00,000/- on 29-01-2004, and had issued cheques bearing No. 104684, dated 9-3-2003 for Rs. 1,30,000/- Nos. 104685 and 104686, dated 15-03-2003 for Rs. 6,00,000/-each, and when he presented those three cheques for payment, they were returned with an endorsement of "INSUFFICIENT FUNDS", and that in spite of his issuing a notice of dishonour with a demand for payment, petitioner failed to make the payment. This petition is filed to quash the proceedings in the said C.C. No. 350 of 2004.

2. The main contention of the learned counsel for the petitioners is that since the amount due and payable to the first respondent as per the compromise was already paid, petitioners cannot be said to have committed the offence u/s 138 of the Act and contends that in any event since the dishonoured cheques were drawn, for and on behalf of a proprietary firm, which is not made an accused, proceedings against the petitioner are liable to be quashed. He placed a strong

reliance on *Praveenkumar & Industry v. Balaji Onion Company*, 2005 (1) ALD (CrI) 803 : 2005 Cri LJ 11, *S. Sultan and Co., Hyderabad v. Cement Corporation of India Ltd., Hyderabad*, 2005 (1) ALD (CrI) 647 : 2005 Cri LJ 1134 (AP) and *Dr. V. Balaraju v. Pashak Feeds (P) Ltd., R.R. District*, 2005 (1) ALD (CrI) 651 : 2005 Cri LJ 1129 (AP) and contended that petitioners 2 and 3 in any event cannot be made liable u/s 138 of the N.I. Act.

3. The contention of the learned counsel for the first respondent is that since petitioners, who admittedly have to pay Rs. 15,30,000/- had paid only Rs. 2,00,000/- on 29-1 -2004 and since the allegation in this petition is that they paid the amount long prior to the date of compromise, question of quashing the proceedings against the petitioners does not arise, more so, because petitioners 2 and 3 are also parties to the compromise before the Court and since first petitioner issued cheques on behalf of all three petitioners, petitioners 2 and 3 are also liable u/s 138 of the Act.

4. Drawing of the cheques by the first petitioner and their being dishonoured is not denied or disputed by the petitioners. Question whether those cheques were issued in discharge of an existing liability or not, is a matter to be decided during the course of trial and that fact cannot be decided at this stage because it is well known that this Court while deciding a petition u/s 482, Cr. P.C., would not go into the defence of the accused, but would only consider the allegations in the complaint, to find out if they make out the offence alleged or not. Since the allegations in the complaint disclose the necessary ingredients for an offence u/s 138 of the Act, question of quashing the proceedings on the ground that they were not issued towards discharge of a liability does not arise. I am unable to agree with the contention of the learned counsel for the first respondent that since petitioners 2 and 3 admitted their liability before the Court at the time of compromise and since the bounced cheques were issued by first petitioner on behalf of the petitioners 2 and 3 also, proceedings against the petitioners 2 and 3 cannot be quashed, because they are not the drawers of the dishonoured cheques and since the cheques were not drawn on any account held by them in any Bank and since it is not the case of the first respondent that all the petitioners have a common account and that on that account first petitioner with authority had drawn the dishonoured cheques on behalf of all the petitioner. Since the bounced cheques, admittedly were not drawn by or on behalf of a company or firm, question of roping in petitioners 2 and 3 by talking the aid of Section 141 of the Act does not arise since there cannot be any vicarious liability for criminal acts and since it is not even the case of first respondent that petitioners 1 to 3 constitute an association of persons, and since the allegation in the complaint do not disclose how petitioners 2 and 3 can be made liable for the dishonour of a cheque drawn by first petitioner, and since Section 138 of the Act cannot be invoked to make all the joint debtors liable for the dishonour of a cheque drawn by one of the joint debtor when they are no director of a company or partner of a firm, as contemplated by Section 141 of the Act, continuance of proceedings against petitioners 2 and 3 would be an abuse of process of law and

so the proceedings against them are liable to be quashed.

5. First petitioner admittedly has drawn the dishonoured cheques. Those cheques were drawn by him as the proprietor of a proprietary concern. The fact that the concern of which first petitioner is the proprietor is not made an accused, is not much of consequence because the liability of the proprietary concern and the proprietor is joint and several. So, merely because the proprietary concern is not made an accused, the proprietor who acts on its behalf is not entitled to seek relief u/s 482, Cr. P.C. So, first petitioner has to take trial.

6. In the result, petition of the first petitioner is dismissed. Proceedings in C.C. No. 350 of 2004 on the file of XV Metropolitan Magistrate, Hyderabad against petitioners 2 and 3 are quashed.

7. Accordingly, the petition is partly allowed.