(2002) 03 AP CK 0110

In the Andhra Pradesh High Court

Case No : Criminal Petition No''s. 3091 to 3097 and 3437 of 2001

Shridi Sai Steel Balu Complex and Others — APPELLANT

Vs

State of A.P. and Another — RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2002) 1 ALD(Cri) 630 : (2002) CriLJ 3193

Hon'ble Judges : Dalava Subrahmanyam, J

Bench : Single Bench

Advocate : Vedula Srinivas, for the Appellant; Public Prosecutor for the Respondent No. 1 and E. Ella Reddy, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Dalava Subrahmanyam, J.—The petitioners/accused filed the above criminal petitions u/s 482, Cr.P.C. to quash the criminal proceedings against them pending on the file of VI Metropolitan Magistrate, Visakhapatnam.

2. The petitioners/accused are concerned in several criminal cases and all of them raised common question of law and fact and, therefore, the above petitions are clubbed and common order is passed.

3. The brief facts leading to the filing of the petitions are as follows :

The Karur Vysya Bank Limited, Shivajipalem Branch, Visakhapainam, the 2nd respondent in all the above petitions is the complainant and the complaints were filed against the petitioners/accused for the offences under Sections 138 and 142 of the Negotiable Instruments Act. It is contended that the 4th accused on behalf of the 3rd accused issued cheques in favour of the 1st accused drawn on the Vysya Bank Limited, Gajuwaka Branch, Visakhapatnam and the said cheques were discounted by the accused 1 and 2 with the complainant at Shivajipalem

Branch and received the amounts covered under the cheques. The complainant effected payments in due course. The complainant is the holder of the negotiable instruments in due course. The 5th accused in Crl.P. No. 3095 of 2001 and 7th accused in Crl.P. Nos. 3096 and 3497 of 2001 on behalf of the 4th accused issued cheques in favour of A.1 and A.1 to A.3 respectively who discounted the cheques with the complainant. However, when the cheques were negotiated by the complainant with the Vysya Bank Limited, Gajuwaka Branch, the cheques in question were dishonoured and returned with the endorsement ''account closed''. All the accused were aware that the complainant is the holder in due course and the dishonour of cheques with the endorsement that the account closed presupposes that there were no funds in the account and the cheques were dishonoured with the consent and connivance of all the accused. After issuing legal notices to the accused demanding to pay the amount received under the cheques which were bounced and since the accused failed to comply with the demand, the complainant filed the criminal cases against the petitioners/accused and when the said cases were taken on file and summons were issued, the petitioners concerned in those criminal cases filed the above petitions to quash the proceedings u/s 482, Cr.P.C.

4. The petitioners/accused filed the above petitions u/s 482, Cr.P.C. contending that the complainant has not made out any prima facie case so as to attract the ingredient of Section 138 of the Negotiable Instruments Act against the accused. The petitioners 3 and 4 in some cases and petitioners 4 and 5 and 4 to 7 in other cases are the drawers of cheques and the petitioners 1 and 2 and 1 to 3 are the payees in those cases. The petitioners 3 and 4 or 4 to 7 as in some cases did not issue cheques in favour of the complainant Bank and there was absolutely no legally enforceable debt between the complainant and the petitioners/ accused and therefore the prosecution against them cannot be sustained. The petitioners 1 and 2 or 1 to 3 are the drawers of the cheques and they only got them discounted. Merely because the petitioners got the cheques discounted and received the amounts from the complainant Bank, they cannot be made liable for the offences u/s 138 of the Negotiable Instruments Act. A holder in due course of a negotiable instrument cannot maintain a complaint u/s 138 of the Negotiable Instruments Act in the absence of a legally enforceable debt between the parties and hence the proceedings may be quashed.

5. Heard the learned Counsel for the petitioners, learned Public Prosecutor for the respondent No. 1 and the learned Advocate appearing for the respondent No. 2.

6. The learned Advocate appearing for the petitioners submitted at the Bar that a holder in due course of a negotiable instrument cannot maintain a complaint u/s 138 of the Negotiable Instruments Act since there is no legally enforceable debt between the parties and thereby, the criminal proceedings are liable to be quashed. The learned Advocate appearing for the petitioners relied on a decision of this Court in K. Seetharam Reddy v. K. Radhika Rani 2 (2001) BC 429 : 2001

(1) ALT 175 (A.P.), wherein it was held as under

"The Act has not envisaged any penal consequences for the conspiracy, abetment and attempt to commit the said offence. The expressions used in Section 138 viz., ''by a person'', ''on an account maintained by him'', and ''such person'' make it manifest that the person who has drawn the cheque on an account maintained by him alone is liable.

The invariable conclusion that emerges from the above discussion is that the Act has not envisaged any vicarious liability. In the event of the drawer of the cheque being a juristic person, the juristic person as well as the persons in-charge of are responsible to the juristic person for the conduct of the business are liable."

7. The learned Counsel for the petitioners further relied on the decisions of this Court in Smt. K. Janaki Manoharan and Another Vs. Gayatri Sugar Complex Limited and Another, and in Vempati Balaji and others Vs. D. Vijaya Gopala Reddi and another, , wherein the same proposition of law, as extracted above, is enunciated.

8. Now the question that arises for consideration is whether the holder in due course can maintain a complaint u/s 138 of the Negotiable Instruments Act ?

9. Admittedly, the 4th accused on behalf of the 3rd accused in some cases and 5th accused on behalf of the 4th accused and 7th accused on behalf of 4th accused in other cases issued cheques in favour of the 1 st accused and that the accused 1 and 2 in some cases and A. 1 to A.3 in other cases discounted the cheques with the complainant Bank and when the cheques were negotiated they were dishonoured and returned with the endorsement account closed. As per the allegations contained in the complaint, there is no legally enforceable debt between the complainant and the accused. In fact, A.3 and A.4 or A.4 to A.7 did not issue cheques in favour of the complainant. Cheques were issued in favour of A.1 and A.1 and A.2 or A.1 to A.3 discounted the cheques with the complainant. The cheques were drawn on Vysya Bank Limited, Gajuwaka. The facts on record would disclose that the cheques were not issued for any legally enforceable debt and therefore the complainant cannot maintain the complaint u/s 138 of the Negotiable Instruments Act. To attract the ingredients of Section 138 of the Negotiable Instruments Act, the complainant must prove that there was a legally enforceable debt between the complainant and the accused. In the present set of facts, it would disclose that there was no legally enforceable debt between the accused and the complainant. It is purely a commercial transaction between the complainant and the accused. The complainant is only a holder in due course and he cannot maintain a complaint u/s 138 of the Negotiable Instruments Act. From a true and fair construction of the language of Section 138 of the Negotiable Instruments Act, it is clear that the Act has not envisaged any vicarious liability and therefore the prosecution against the petitioners is not maintainable. For the above said reasons, it is held that a holder in due course of a negotiable instrument cannot maintain a complaint u/s 138 of the Negotiable Instruments

Act and therefore the prosecution against the petitioners/accused is liable to be quashed.

10. In the result, the above criminal petitions are allowed and the prosecution insofar as the petitioners are concerned in C.C. Nos. 237 of 1998,232 of 1998,233 of 1998,238 of 1998, 236 of 1998, 103 of 1999, 231 of 1998 and 103 of 1999 respectively quashed.

