
(2006) 06 AP CK 0079

In the Andhra Pradesh High Court

Case No : Criminal.P. No. 1365 of 2004

S.L. Constructions and Another

APPELLANT

Vs

Alapati Srinivasa Rao and Another

RESPONDENT

Date of Decision : 07-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 200
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2006) 2 ALD(Cri) 130 : (2006) 3 ALT(Cri) 163 : (2007) 2 BC 712

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : B. Chinnappa Reddy, for the Appellant; Naresh Byrapaneni and Public Prosecutor for Respondent No. 2/State, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This criminal petition has been filed by the petitioners who are A-1 and A-2 in C.C. No. 99 of 2004 to quash the proceedings on the file of the IV Additional Munsif-Magistrate, Guntur.

2. The 1st petitioner is proprietary concern and 2nd petitioner is the proprietor of it. A complaint came to be filed by the 1st respondent before the IV Additional Munsif Magistrate, Guntur alleging that the 2nd petitioner as proprietor of the 1st petitioner concerned issued a cheque for Rs. 2,00,000/- towards discharge of legally enforceable liability on 22.6.2003. On presentation of the said cheque, it came to be dishonoured and, thereafter, a statutory notice came to be issued on 17.12.2003. In-spite of the petitioners being in receipt of statutory notice failed to make good the amount covered under the cheque in question and thus the 1st respondent-complainant initiated proceedings by filing complaint under Sections 190 and 200, Cr.P.C., for the offences under Sections 138 and 142 of Negotiable Instruments Act, 1881 (for short "the Act"). Para IV (c) and (d) of the complaint reads us under:

The complainant finally presented the said cheque for collection in his Bank

"Andhra Bank, Patnam Bazaar, Guntur" on 11.12.2003, within the statutory period, The complainant's Bank informed him on 16.12.2003 by serving a notice dated 15.12.2003 and returned the unpaid cheque along with intimation dated 12.12.2003 from the first accused Bank, stating that the cheque issued by 1st accused was dishonoured on the ground that "payment stopped by the drawer". The 2nd accused being the proprietor of the 1st accused firm and carried on its business activities, he is personally liable for the acts of 1st accused, (d) The complainant got issued a statutory registered notice dated 17.12.2003 through his advocate to the accused 1 and 2 demanding payment of the amount covered by the dishonoured cheque within 15 days from the date of receipt of the said notice. Both the accused received the registered notices on 24.12.2003 and got issued a reply registered notice dated 10.1.2004 through their Advocate, with false and untenable contentions only with a view to escape liability both civil and criminal though admitted to some extent.

3. Learned Counsel for the petitioners submits that the 1st respondent-complainant issued notices to the petitioner on 8.7.2003 and 9.9.2003 for which the petitioners issued a reply on 19.9.2003 and. therefore, the cause of action arose to the 1st respondent to file a complaint in the month of September, 2003 itself and since the 1st respondent did not choose to initiate proceedings basing on the notice dated 9.9.2003, he cannot be permitted to issue second notice and taking it as cause of action for initiating proceedings against the petitioner for the offence u/s 138 read with Section 142 of the Act. In nutshell his submission is that once a cause of action arose on notice dated 9.9.2003, the 1st respondent cannot invent another cause of action by issuing a 2nd notice to initiate proceedings under the provisions of Section 142 of the Act.

4. The learned Counsel appearing for the 1st respondent submits that the petitioners replied to the notice dated 9.9.2003 wherein they took stand that statutory notice has been wrongly addressed which necessitated the 1st respondent-complainant to issue fresh notice to the correct address and thus it is the notice dated 17.12.2003 which is to be taken into consideration for deciding the cause of action for filing the complaint. It is not in dispute that the 1st respondent-complainant issued notice dated 9.9.2003. The notice has been addressed to the 2nd petitioner describing him as proprietor of S.L. Structures and Engineers. The petitioners stated in the reply that the 2nd petitioner is not concerned with the S.L. Structures and Engineers, but he is concerned with S.L. Constructions. I deem it appropriate to refer the relevant portion of the reply notice by the petitioners on 19.9.2003.

It is true that S.L. Constructions the heavy electrical Towers at Hanuman Junction and its surroundings. It is also true that your client supplied the stone chips of 20 mm size to S.L. Constructions for the said work. However it is denied that your client supplied 40 lorries of the said 20 mm stone chips to my client S.L. Structures and Engineers. It is submitted that your client supplied 25 lorries of stone chips of 20 mm size and about 5 lorries of stone chips of 40 mm size to

S.L. Constructions at Hanuman Junction and its surrounding areas and not S.L. Structures and Engineers. The rate of Rs. 5,000/- per lorry is also denied. The rate was agreed to be with S.L. Constructions at Rs. 3,200/- per lorry for 20 mm size stone chips and Rs. 2,700/- per lorry for 40 mm size stone chips. It is absolutely false and hence denied that an amount of Rs. 2,00,000/- became due to my client M/s. S.L. Structures and Engineers against the supply of said material as alleged. At this point it is submitted that an amount of Rs. 93,500/- only became due to S.L. Constructions towards the supply of said material. It is denied that after settling the account for the said amount of Rs. 2,00,000/- my above client S.L. Structures and Engineers issued a cheque bearing No. 264861 dated 22.6.2003 drawn on Andhra Bank, Hannavaram Branch, Krishna District for Rs. 2,00,000/- as alleged. At this point it is submitted that S.L. Constructions kept the said cheque with you by way of security and was agreed to return after settlement of accounts. That S.L. Constructions has various times asked your client to supply the bills for the material supplied along with the royalty receipts. However till this date your client did not supplied the bills and royalty receipts of M/s. S.L. Constructions and settled the account. That since your client did not settled the account, S.L. Constructions informed its Banker to stop the payment of the said cheque of Rs. 2,00,000/- which is kept with your client by way of security.

Now your client instead of settling the account by sending the bills and royalty receipts, misusing the said cheque. The other contents of the notice are denied.

That instead of sending the notice to S.L. Constructions you send the notice to my client Shri K.P. Raja, Proprietor of S.L. Structures and Engineers, Nagpur which is illegal. That by issuing such wrong and illegal notice your client lower down the status of my client in the eyes of general people and Bankers and for which my client instructed me to take the appropriate action either Civil or Criminal in the Court of Law against your client.

5. It is explicit from the reply notice that the petitioners have taken specific stand that the notice has been wrongly sent to S.L. Structures and Engineers instead of S.L. Constructions. The 1st respondent-complainant, on receipt of reply notice issued a fresh notice to the S.L. Constructions, represented by the 2nd petitioner.

6. The question that called for consideration is:

Whether the petitioners made out valid grounds to quash the proceedings in CC No. 99/2004, on the file of IV Additional Munsif Magistrate, Guntur in exercise of powers u/s 482 of Criminal Procedure Code ?

7. At this juncture, I deem it appropriate to refer Sections 138 and 142 of the Act and they read as follows:

138. Dishonour 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 honour 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 142 of the Negotiable Instruments Act reads as follows:

142. 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. Learned Counsel appearing for the petitioners has vehemently contended that once cause of action has arisen by issuing notice dated 9-9-2003, the 1st respondent-complainant has to file a complaint within one month from the date on which the cause of action arise under Clause (c) of Proviso to Section 138 of the Act. In support of his submission, reliance has been placed on the decision of this Court in Sunrise Oleo Chemicals Ltd. Vs. K.M. Enterprises, and decision of

the Supreme Court in Prem Chand Vijay Kumar Vs. Yashpal Singh and Another, and Sadanandan Bhadrans Vs. Madhavan Sunil Kumar, . There cannot be any quarrel with the proposition laid down in the aforesaid decision. It is pertinent to note that when statutory notice has been sent to the 2nd petitioner as proprietor of S.L. Structures and Engineers, he replied that he is not concerned with S.L. Structures and Engineers and he is concerned with the S.L. Constructions. The stand taken by the 2nd petitioner made the 1st respondent-complainant to issue fresh notice to the 2nd petitioner as proprietor of S.L. Constructions. In the facts and circumstances, the notice dated 17.12.2003 is to be construed as the first notice insofar as the S.L. Constructions, represented by the petitioner No. 2 is concerned and that is the cause of action for filing the complaint. Therefore, the contention of the learned Counsel for the petitioners that the notice dated 17.12.2003 cannot be taken as cause of action for filing of the complaint has no merit.

9. In the result, the criminal petition is dismissed.