
(2010) 10 AP CK 0064

In the Andhra Pradesh High Court

Case No : Criminal Petition No: 2852 of 2009

Sri Gayatri Devi Traders

APPELLANT

Vs

The State of A.P. and Teegala Satyanarayana Setty

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 200
Negotiable Instruments Act, 1881 (NI) — Section 138, 145, 145(1)

Citation : (2010) 4 APLJ 174 : (2011) 1 Crimes 554

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : G. Rama Gopal, for the Appellant; Public Prosecutor for Respondent No. 1 and B. Devanand, for the Respondent

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—The Petitioners 1 and 2/A-1 and A/2 are accused of offence punishable u/s 138 of the Negotiable Instruments Act (in short, the Act) in C.C. No. 471 of 2007 on the file of II Additional Chief Metropolitan Magistrate, Visakhapatnam. The only point raised in this petition is with regard to procedure adopted by the lower Court before taking cognizance of the case for the above offence by way of receipt of evidence affidavit of the complainant/2nd Respondent instead of recording sworn statement of the complainant by the Court and obtaining signature of the complainant therein. This Court previously held in A.V.R. Murthy V. Nunna Venkata Ravanamma. 2010(1) ALD 990 (AP) that such procedure adopted by the Magistrate before taking cognizance of the case for offence punishable u/s 138 of the Act is valid and legal in view of specific provision by way of Section 145 contained in the Act. The Petitioners' counsel contended that the above decision rendered by this Court is liable to be reconsidered by this Court in view of prior pronouncements of the Supreme Court.

2. Sheet anchor of the Petitioners' contention is National Small Industries

Corporation Ltd. Vs. State (NCT of Delhi) and Others, The question decided by the Apex Court therein was not pre-cognizance enquiry or pre-summons enquiry in a case relating to offence punishable u/s 138 of the Act. The question decided therein was that where a incorporeal body is the payee and the employee who represents such an incorporeal body in the complaint is a public servant, he being the defacto-complainant, Clause (a) of the proviso to Section 200 Code of Criminal Procedure will be attracted and consequently the Magistrate need not examine the complainant and the witnesses (see para 20 of the report). While deciding that question, the Supreme Court made references to not only provisions of the Act, but also the Code of Criminal Procedure relating to procedure to be adopted by the criminal Court before taking cognizance of a case for offence punishable u/s 138 of the Act in case the complaint is presented by a Government servant representing an incorporeal body. The Supreme Court had no occasion either in National Small Industries Corporation Limited (1 supra) or in any other reported decision to consider effect of Section 145 of the Act on Section 200 Code of Criminal Procedure.

3. Section 200 Code of Criminal Procedure reads as follows :

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192 :

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Thus, a Magistrate under general law, for taking cognizance of an offence on complaint, has to examine the complainant and witnesses present if any on oath and reduce substance of such examination to writing and has to obtain signatures of the complainant and the witnesses and thereafter has to certify the same by the Magistrate. But, special provision contained in Section 145(1) of the Act reads as follows :

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code

4. Placing reliance on Pankajbhai Nagjibhai Patel v. State of Gujarat (2001)2 Supreme Court Cases 595 of the Supreme Court and Maharaja Developers and Another Vs. Udaysingh Pratapsinghrao Bhonsle and Another, of the Bombay High Court, it is

contended by the Petitioners' counsel that non-obstante clause contained in Section 145(1) of the Act can be made applicable only in respect of specific situations contained therein and that it cannot be read as excluding entire provisions of the Code of Criminal Procedure relating to other fact situations also. This Court never intended to exclude other provisions of the Code of Criminal Procedure, 1973 while taking cognizance of offence punishable u/s 138 of the Act. This Court is of the opinion that the above procedure prescribed u/s 200 Code of Criminal Procedure for taking cognizance of a case under general criminal law cannot be made applicable to taking cognizance of an offence punishable u/s 138 of the Act, having regard to special provision contained u/s 145 of the Act. Section 145 of the Act provides for taking evidence of the complainant on affidavit and subject to all just exceptions be read in evidence in any inquiry, trial or other proceeding under the Code of Criminal Procedure.

5. Section 2(g) Code of Criminal Procedure defines "inquiry" as follows :

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court

Not only from 2(g) Code of Criminal Procedure, but also from language employed in Section 145 of the Act which makes the said provision applicable to enquiries as well as trials, it follows that evidence of the complainant may be given by him on affidavit and it can be read as such during any enquiry including pre-cognizance or pre-summons enquiry conducted as per Section 200 Code of Criminal Procedure in lieu of recording statement of the complainant on oath (sworn statement) and obtaining signature of the complainant therein and the Magistrate certifying the same. The fact that oath has to be administered to the complainant and substance of statement of the complainant has to be recorded by the Magistrate into writing and signature of the complainant has to be obtained in that statement recorded on oath and the Magistrate has to certify the same at the end, denotes that the entire procedure contemplated u/s 200 Code of Criminal Procedure is nothing but recording evidence of the complainant at the time of taking cognizance and in the absence of the accused before the Court; the only exception being that since (sic) he accused will not be present before the Court at that stage, he may not have right to cross-examine the complainant at that stage. In the opinion of this Court, the said exercise expected to be done by the Magistrate at the stage of Section 200 Code of Criminal Procedure, is nothing short of recording evidence by way of sworn statement of the complainant. Section 145 of the Act provides for taking evidence of the complainant not only during trial of the case but also during any enquiry which may include pre-cognizance enquiry or pre-summons enquiry u/s 200 Code of Criminal Procedure. This Court finds that Section 145 of the Act is an exception to mode of recording

sworn statement of the complainant by the Magistrate at the stage of Section 200 Code of Criminal Procedure In that view of the matter, this Court finds that decision of this Court rendered in A.V.R. Murthy (1 supra) does not require re-consideration.

6. In the result, the Criminal Petition is dismissed.