

(1997) 08 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5741 of 1996

Suraj Theatre and Others

APPELLANT

Vs

Kakarla Bhorathe and Another

RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 141, 142

Citation : (1997) 5 ALD 778 : (1997) 2 ALD(Cri) 610 : (1997) 2 ALT(Cri) 738 :
(1998) 2 CivCC 214 : (1998) 94 CompCas 590 : (1998) CriLJ 43 : (1998) 3
RCR(Criminal) 344

Hon'ble Judges : T. Ranga Rao, J

Bench : Single Bench

Advocate : K. Sesharajyam, for the Appellant; M. Subba Rao, Public Prosecutor,
for the Respondent

Judgement

1. This petition is filed u/s 482, Cr.P.C. to quash the proceedings in CC No. 220/95 on the file of the III Metropolitan Magistrate, Vijayawada.

2. The facts in giving rise to the filing of this petition are briefly as follows :

The first respondent represented by the General Power of Attorney Holder, filed a complaint against the petitioners under sections 138 and 142 of the Negotiable Instruments Act alleging that A-1 is a partnership firm with its office at Vuyyuru, Krishna District. A-2 is the Managing partner and A-2 to A-5 are the partners of the said firm. It is further stated that A-2 to A-5 as partners of the A-1 firm, are incharge and responsible and playing active role in the management and in day to day conduct of business of A-1 firm. It is further alleged that A-1 borrowed Rs. 30,000/-, Rs. 21,000/- and Rs. 30,000/- on 28-11-1988, 7-12-1989 and 28-9-1994 respectively and executed promissory notes promising to pay interest at 30% per annum and issued cheque dt. 25-5-1992 for Rs. 1,50,000/- in favour of the complainant drawn on Indian Bank, Vuyyuru and the same was presented for collection at Andhra Bank, Vijayawada but it was returned on 7-6-1995 due to

insufficiency of funds. The complainant got issued notice to the accused No. 1 and the accused failed to pay the amount. It is further alleged that the offence was committed with the active connivance and negligence of all the accused and hence, they are liable for punishment.

3. Now the petitioners filed this petition to quash the proceedings.

4. The learned counsel for the petitioner submitted that the cheque was issued by A-2 on behalf of A-1 firm and the fifth petitioner is a woman and it is absurd to contend that she is also looking after the business of the firm and the partnership deed clearly shows that A-2, the Managing partner, is looking after the affairs of the theatre and others are no way responsible for the management and the affairs of the firm and hence the complaint is not maintainable against A-3 to A-5.

5. But the learned counsel for the respondent submitted that the other partners are also looking after the business of the first petitioner firm and it is specifically mentioned in para 5 of the complaint that the petitioners 3 to 5 are partners of the firm, incharge and responsible for conduct of the business and also playing active role in the management and affairs of A-1 firm, therefore, in view of the said allegation it cannot be said that the complaint is not maintainable against them, in view of Section 141 of the Negotiable Instruments Act.

6. It is useful to extract Section 141 of the Negotiable Instruments Act to appreciate the rival contentions of both parties and reads as follows :

"..... (1) If the person committing and offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other Officer of the company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :- For the purpose of this Section :

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm, means a partner in the firm.

7. Thus it is clear from the perusal of the above provision that every person who at the time of commission of offence was incharge and responsible for the conduct of the business of the company or firm, as well as the company or firm shall be deemed to be guilty of the offence and shall be liable to be proceeded against them. But the said person can be exonerated if he proves that the said offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the said offence. Sub-section (2) further provides that if it is proved that the offence was committed with the consent or connivance of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the offence and shall be proceeded against them. The respondent-complainant specifically alleged that the petitioners 3 to 5 are partners of the firm and are incharge and responsible for day today conduct of the business and playing active role in the management and affairs of the firm. The contention of the petitioner is that the petitioners 3 to 5 are sleeping partners and the 5th petitioner is a woman and it is absurd to contend that she was also looking after the business of the firm, but when there is specific denial with regard to the said allegations of the complaint and it is question of fact whether petitioners 3 to 5 are sleeping partners or responsible for day today conduct of business and can be decided only during the trial of the case after adducing necessary evidence by both the parties.

8. The learned counsel for the petitioners submitted that the cheque was issued for Rs. 1,50,000/- and the suit was filed for lesser amount of Rs. 59,128/- and thus there is no legally enforceable debt. But the learned counsel for the respondent submitted that u/s 139 of the Negotiable Instruments Act there is a presumption that the holder of the cheque received the said cheque of the nature referred to u/s 138 of the Act, for the discharge in whole or in part, of any debt or other liability until the contrary is proved. He further submitted that some payments are mentioned in the plaint and those aspects can be decided only during the trial of the case and cannot be decided in a proceedings u/s 482, Cr.P.C.

9. It appears that there is considerable force in the contention of the learned counsel for the respondent. Admittedly the cheque was issued by A2 on behalf of A1 firm, the respondent/complainant filed a suit for recovery of some amount. It appears from the plaint copy filed in this Court that some payments were said to have been made and the said amounts were deducted and filed the suit for the balance of the amount and therefore it cannot be said that there is one legally enforceable debt, even otherwise it is a question of fact to be decided during the trial of the case and cannot be decided in proceedings u/s 482, Cr.P.C. There is also presumption u/s 139 of the N.I. Act that the holder of the cheque received the said cheque of the nature referred to u/s 138 of the N.I. Act for the discharge. It is settled principle of law that questions of fact cannot be decided in

a proceedings u/s 482, Cr.P.C.

10. The learned counsel for the petitioners further submitted that no notice was issued to the petitioners 3 to 5 as provided u/s 138(b) of the Act and in that view of the matter also the complaint is not maintainable.

11. But the learned counsel for the respondent submitted that the cheque was issued on behalf of the first petitioner firm by the second petitioner and the cheque was dishonoured and notice as contemplated u/s 138(b) of the Act was issued to the first petitioner firm, the drawer of the cheque and thus there is sufficient compliance of Section 138(b) of the Act. He further submitted that it is not provided in Section 141 of Negotiable Instruments Act that notice need be issued to every person who is responsible and incharge of the affairs of the company before filing the complaint.

12. Therefore, it appears that on a combined reading of Sections 138 and 141 of the Act that if the offence is committed by a company, every person, who at the time of commission of the offence, was incharge of and was responsible for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be proceeded with and punish accordingly. Thus the liability of the persons incharge of the company with regard to the dishonour of the cheque issued on behalf of the company is fastened by virtue of Section 141 of the Act. The notice contemplated u/s 138(b) is the notice to be issued to the drawer of the cheque only but not to others.

13. It is significant to note that Section 141 of the Negotiable Instruments Act does not prescribe that notice need be given to the persons who are incharge and responsible for the conduct of the business with regard to the dishonour of the cheque issued on behalf of the company before filing of the complaint, in view of the fact as they were incharge of the day today business of the firm, as the notice was received on behalf of the firm or the company with regard to the issuance and dishonour of the cheque and also demanding the payment of the said amount payable under the cheque and necessarily follows that they are fully aware and must have knowledge of the said aspects and hence, deemed to be guilty of the said offence and liable to be proceeded against and punished accordingly. Therefore, in the aforesaid circumstances, the Legislature in its wisdom has not prescribed the issuance of individual notice to all the partners or the persons who are incharge of the day today conduct of the business of the firm or company, as the case may be, before filing the complaint as provided u/s 138 of the Negotiable Instruments Act relating to issue of notice to the drawer of the cheque. I think it is difficult to accept the contention of the learned counsel for the petitioner that complaint is not maintainable as no individual notices were issued to the partners or persons incharge and responsible for the conduct of the day today business of the company or the firm. The explanation appended to Section 141 of the Act clearly shows that the company means any body corporate and includes a firm or other association of individuals and a "Director" in relation to a firm means a partner in the firm. Therefore, it follows, in view of

the foregoing discussion that no individual notices need be given to all the partners who are incharge and responsible for the conduct of the day today business of the firm before filing a complaint with regard to the dishonour of cheque issued on behalf of the firm particularly when a notice contemplated u/s 138(b) of the Act was complied with. The same view was taken by the Delhi High Court in a decision *Smt. Renu Vohra v. Shreyans Paper Mills Limited* 1993 (2) Crimes 1145 and also by the Punjab and Haryana High Court in a decision *Anita v. Anilk Mehra* 1996 (1) Crimes 412.

14. Therefore, in the light of the foregoing discussion, it emerges that the liability of the petitioners 3 to 5 depends upon whether they are incharge and responsible for the conduct of the day today business of the first petitioner firm and no notice need be issued to each of the partners before filing the complaint for the dishonour of the cheque issued on behalf of the first petitioner firm. The petitioners are not entitled to the relief sought for.

15. In the result, the petition fails and is accordingly dismissed.

16. Petition dismissed.