(2000) 10 KAR CK 0023

In the Karnataka High Court

Case No : Criminal Petition No. 291 of 1998

Tiruchandoor Muruhan Spinning Mills (Private) Limited and Others — APPELLANT

Vs

Madanlal Ramkumar Cotton and General Merchants — RESPONDENT

Date of Decision : 09-10-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 219
Negotiable Instruments Act, 1881 (NI) — Section 138, 138 (b), 141

Citation : (2000) ILR (Kar) 5000 : (2001) 1 KarLJ 360 : (2001) 1 RCR(Criminal) 592

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : Sri S.S. Guttal, Sri G. Nagaraj, for the Appellant; Sri Praveen Kumar Raikote, for the Respondent

Judgement

1. The respondent herein initiated criminal action for the offences punishable u/s 138 of the Negotiable Instruments Act against the petitioners who are the Chairman and Managing Director and Directors by presenting a complaint u/s 200 of the Cr. P.C. alleging that the petitioners purchased cotton from him and issued 10 cheques for different amounts drawn on Indian Overseas Bank, N. Paraipatti Post, Dindigul. On presentation, the cheques were returned with an endorsement ''insufficient funds in the drawer''s account''. The complainant thereafter got issued a legal notice to the accused persons calling upon them to pay the cheque amount which they failed within the time stipulated therein. He therefore filed this complaint in respect of 10 cheques. The learned Magistrate before whom the complaint was filed, took cognizance of the offence alleged and ordered issue of summons to the accused petitioners as in his opinion, there was sufficient material for proceeding against the accused. The order of the learned Magistrate is challenged on the following grounds.-

Even though there are two causes of action, the complainant has filed a single complaint. Notices were served in respect of 5 cheques on one day and in respect of another 5 cheques on other day and therefore a single complaint, filed by the complainant in respect of all the cheques is not sustainable in view of the provisions of Section 219 of the Cr. P.C. It is further contended that the Advocate for the complainant has participated in the proceedings and hence the proceedings is in the contravention of the ratio laid down by the Division Bench of this Court in the case of Naganagouda Veeranagouda Patil and another Vs. Malatesh H. Kulkarni, .

2. I have heard the learned Counsel on both sides and perused the records. The learned Counsel for the respondent-complainant has justified the presentation of the complaint insofar as the cheques are concerned which give raise to a single cause of action and contended that the provisions of Section 219 of the Cr. P.C. are not applicable to the facts of this case. Learned Counsel for the petitioners however contended that different causes of action arise in this case and the facts are governed by the provisions of Section 219 of the Cr. P.C. He further submitted that the allegations made in the complaint and the sworn statement do not disclose active participation of petitioners 2 to 4 who are the Directors and therefore there is no strict compliance of Section 141 of the Negotiable Instruments Act and the cognizance taken against them is not justifiable and is an abuse of process of Court which is liable to be set aside.

3. Insofar as this contention is concerned, learned Counsel for the respondent has not much to say as the complaint allegations and the sworn statement do not satisfy the provisions of Section 141 of the Negotiable Instruments Act where a Company is prosecuted for the offence represented by the Managing Director and other Directors, it is for the complainant to aver in the complaint and place in on record that 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 all due diligence to prevent the commission of such offence.

4. In the absence of any allegation of the participation of the Directors in the transactions concerned, they have not committed the offence u/s 138 of the Negotiable Instruments Act. The cheques are signed by the Chairman and the Managing Director viz., the 1st petitioner and therefore the cognizance taken against petitioners 2 to 4 is liable to be quashed.

5. That leaves us two more questions for consideration. Insofar as the last ground urged in the petition that the learned Advocate for the complainant participated in the examination-in-chief of the complainant at the time of recording the sworn statement is not supported by any material on record. The petitioners have not produced the copy of the sworn statement recorded by the learned Magistrate and therefore there is nothing on record to show that the

Advocate virtually participated in the proceedings at that stage of recording the sworn statement of the complainant. Therefore this contention is rejected.

6. Insofar as the important question raised for consideration in this petition that the provisions of Section 219 of the Cr. P.C. is attracted to the facts of the case is concerned, it is contended that cause of action for the complainant arose only after service of notice to the accused. It is pointed out that the complainant has issued a single notice calling upon the accused by way of demand to pay the cheque amount within 15 days from the date of service of notice and the accused failed to pay the cheque amount within the time stipulated u/s 138(b) of the Act and therefore the complainant filed a complaint within one month from the date of service of notice which is well within time. There is no bar for lodging a complaint for initiation of action u/s 138 of the Negotiable Instruments Act as the accused committed the offence punishable u/s 138 of the Negotiable Instruments Act. In fact it is not to his disadvantage but it is an advantage that a single complaint is lodged against the accused by the complainant. The cause of action giving raise to a complaint is upon the service of notice contemplated u/s 138(b) of the Negotiable Instruments Act and not upon the dishonour of the cheques and therefore the contention canvassed by the learned Counsel for the respondent that the provisions of Section 219 of the Cr. P.C. are not applicable to the proceeding u/s 138 of the Negotiable Instruments Act has to be accepted.

7. In the result, this petition is allowed in part. The filing of the complaint and cognizance taken against petitioners 2 to 4 are quashed. However, the petition filed by the 1st petitioner viz., the Chairman and Managing Director of the Company is dismissed.

