(2002) 02 AP CK 0121

In the Andhra Pradesh High Court

Case No : Criminal Petition No''s. 558 and 662 of 2001

V. Srinivas Prasad and Others — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161
Negotiable Instruments Act, 1881 (NI) — Section 138
Partnership Act, 1932 — Section 10
Penal Code, 1860 (IPC) — Section 109, 120

Citation : (2002) CriLJ 3318

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K. Suresh Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Criminal Petition No.558 of2001 is filed by A1 to A3 and criminal Petition No.662 of 2001 is filed by A4 to A6 in C.C.No.21 of 2001 on the file of the Court of the VII Additional Munsif Magistrate, Guntur to quash the proceedings in the said C.C.

2. Since both the petitions arise out of the same C.C., they are being disposed of by this common order.

3. The case of the prosecution is that A1 is the son and A2 is the daughter of A3. A3 and A4 are co-employees. A5 is the wife of A4 and A6 is the father of A5. One V.Lakshmi Narasamma, N.Lakshmi Raja Kumari (defacto complainant) and A1 and A2 became partners and started finance business under the name and style of Messrs. Jaya Lakshmi Financiers at Guntur with its office in the house of A1 and A3. Though A3 was not a partner in the firm, he used to look after the business of the said firm. The partners of the firm i.e., A1, A2, defacto complainant and V.Lakshmi Narasamma, who is the grand-mother of A1 and A2,

with an intention to start a branch at Tenali, took a building bearing door No.6-2-39 for rent in May, 1996 and started business there, placing A1 as incharge of the branch at Tenali with the defacto complainant as the Managing Partner. As Managing Partner, the defacto complainant opened a current account No.891 in the Syndicate Bank, Tenali, keeping the cheque power with her. The said bank issued a cheque book bearing Nos.45 4126 to 50 to the defacto complainant on 16-5-1996. Reposing full confidence and in good faith, the defacto complainant after having signed all the cheques in the cheque book, entrusted the same to A1 to be used by him in connection with the business. The fixed deposit receipt Books of the firm were also entrusted to A1. Disputes cropped up between A1 to A3 and defacto complainant during 1998.

4. Therefore, A1 stopped business at Tenali, and taking advantage of the fact that he continued to be in possession of the cheque book containing the signatures of the defacto complainant and also the book containing the fixed deposit receipts, hatched a plan, in conspiracy with the other accused, to cheat the defacto complainant and issued forged fixed deposit receipts for Rs.30,000/- and Rs.20,000/- dated 10-10-1996 bearing Nos.12 and 13 respectively to A4 and A5, as if they made a deposit of Rs.30,000/- and Rs.20,000/- with the firm, with a view to cheat the defacto complainant. Ostensibly to meet the demand for repayment of the amount covered by the fixed deposit receipts, a cheque for Rs.83,000/- was issued by A1, to A4 and A5 making use of the blank cheque signed by the defacto complainant, on 10-7-1999. A4 and A5, who have a joint account in Union Bank of India seem to have deposited the cheque for Rs.83,000/- in their account in Union Bank of India, Laxmipuram Branch, Guntur. When the cheque was presented to the Syndicate Bank, the same was returned to A4 on 16-7-1999. Subsequent presentation also met with the same fate. Therefore, with a view to harass the defacto complainant, in conspiracy with A1 to A3 and A6; A4 and A5 launched a criminal prosecution u/s 138 of Negotiable Instruments Act against the defacto complainant in C.C.No.17 of 2000. Similarly A6 also filed C.C.No.253 of 1999 against the defacto complainant even without presenting the fixed deposit receipt on the basis that he made a fixed deposit with the firm and that the cheque given to him in discharge of the amount due to him under that fixed deposit receipt was dishonoured. Contending that the fixed deposit receipts issued in favour of A4 to A6 are not genuine and are forged, and that the accused are guilty of criminal breach of trust, the defacto complainant filed a private complaint before the IV Additional Munsif Magistrate, Guntur, who sent the same to police for investigation, u/s 156(3) Cr. P.C. The police took up investigation and found that the signatures of the defacto complainant in the fixed deposit receipts issued to A4 and A5 are forged, and hence filed a charge sheet for offences under Sections 406, 120-B read with Sections 468, 471 and 109 I.P.C. against A1; for offences under Sections 109, 120-B read with Sections 406, 468, 471 against A2; for an offence under Sections 109 and 120-B read with Sections 406, 468, 471 I.P.C. against A3; for offences under Sections 120-B, 468, 471 and 195 I.P.C. against A4 and A5 and Section 120-B read with Sections

406 and 471 against A6.

5. The contention of Sri Bal Reddy, learned Senior Counsel appearing for the petitioners in the petitions is that since the transaction between the parties and the defacto complainant was in connection with the activities of the firm, the question of conspiracy or forgery does not arise, and the dispute between the parties is purely is of a civil nature. After having taken me through the various provisions of the Partnership Act he contended that relationship between the partners inter se is that of principal-agent and since any act done by the partner would be binding on the other partner, and since as per Section 10 of the Partnership Act every partner has to indemnify the firm for any loss caused to it by his fraud or conduct of the business of the firm, even if the defacto complainant had suffered any loss, the remedy open to her is to file a suit, but criminal proceedings are not sustainable. It is his contention that in any event there is no material on record to show that A2, A3 and A6 have any role to play in the alleged offences, since admittedly it is the A1 only that was managing the affairs at Tenali branch, the complaint against A2, A3 and A6 is wholly unsustainable.

6. The contention of the learned Public Prosecutor is that a complaint read as a whole prima facie discloses commission of offences alleged against the accused and so there are no grounds to quash the complaint.

7. Since A1 is said to be in charge of the business of the firm at Tenali, and since the fixed deposit receipts issued in the name of A4 and A5, as seen from the charge sheet, as per the opinion of the expert are said to have been forged, and are not signed by the defacto complainant, there is prima facie case against A1, A4 and A5. Similarly since it is the case of A6 that he also made a fixed deposit and filed a complaint on the basis that the cheque issued in discharge of the liability due to him by the firm had bounced, and has not produced the fixed deposit receipt, and since it is the case of the defacto complainant that no amount was deposited by A6, there is also prima facie case against A6 also. It is no doubt true that Section 10 of the Partnership Act lays down that every partner has to indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm, the said Section is only an enabling provision made for the benefit of defrauded partners to claim reimbursement from the partner at fault. It does not mean that criminal proceedings cannot be launched against the partner in case if he commits any offence punishable under Indian Penal Code. So, the fact that the defacto complainant has a civil remedy, by itself, is not, and cannot be, a ground for quashing the complaint. Therefore, I find no grounds to quash the complaint against A1, A4 to A6.

8. Regarding involvement of A2 and A3 in the commission of offences alleged against them, since charges have to be framed basing on the material available on record i.e., after going through statements u/s 161 Cr. P.C. and other material available on record A2 and A3, at the time of framing of the charges by the learned Magistrate, can bring to the notice of the learned Magistrate that there is

no material against them and plead for a discharge before the learned Magistrate. Merely on the basis of the allegations in the petition, it can be held that there is no case against A2 and A3, because statements u/s 161 Cr. P.C. recorded by the police are not produced before me. Therefore, giving a liberty to A2 and A3 to raise the plea that there is no prima facie case against them before the learned Magistrate at the time of framing of charges, both the petitions are dismissed.