(1999) 08 AP CK 0029

In the Andhra Pradesh High Court

Case No : Criminal P. No. 1329 of 1999

V. Sudheer Reddy APPELLANT

Vs

State of Andhra Pradesh and others RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

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

Citation : (1999) 5 ALD 761 : (1999) 2 ALT(Cri) 414 : (2000) 99 CompCas 107

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. J.C. Francis, for the Appellant; Public Prosecutor and Mr. R. Raghunandan, for the Respondent

Judgement

1. This petition u/s 482 of Cr. PC has been filed for quashing the proceedings in CC No.995 of 1997 on the file of the IV Metropolitan Magistrate, Hyderabad by accused No.2 in the said CC. The petitioner along with other accused faces a charge u/s 138 of the Negotiable Instruments Act.

2. The bare facts necessary for the purpose of this petition may be stated as follows:

Respondent No.2 is the complainant Company.

According the complainant, accused No. 1 Company owed some amounts to them and for discharging those liabilities three cheques were issued drawn on various banks. The complainant duly presented those cheques for realisation through their Banker which were returned unpaid with an endorsement indicating insufficiency of funds to the credit of A1. The complainant got served a notice as required u/s 138 of Negotiable Instruments Act calling upon the accused to pay the amounts covered by those cheques within a period of 15 days from the date of receipt of a copy of the said notice. The notice was not complied with and no payments were arranged on behalf of the accused. Thereafter, a complaint has been filed in CC No.995 of 1997.

3. The learned Counsel for the petitioner seeks quashing of the proceedings as far as the petitioner (A2) is concerned mainly on the ground that though he is a Director of Accused No.1 Company, but he is not associated with the management of day to day affairs and he is not even aware of the transaction between Al and the complainant and about the issue of cheque on behalf of Accused No.1 for discharging any liability in favour of the complainant. The contention is that the complaint does not contain the necessary averments as contemplated u/s 141 of the Negotiable Instruments Act rendering accused No.2 liable for criminal action.

4. Section 141 of the Negotiable Instruments Act reads as follows:

"141. Offences by companies :--(1) If the person committing an 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 he 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.

(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."

The learned Counsel for the petitioner contends that inasmuch as in this case the cheques have been issued on behalf of accused No.1, if the Directors of the Company are sought to be made liable, then there must be a specific averment in the complaint that the accused who are sought to be made liable were at the time of the offence "in-charge of, and responsible to the Company for the conduct of the business of the Company". The learned Counsel for the petitioner points out that nowhere in the complaint there is an averment that the petitioner was in-charge and was responsible for the conduct of its affairs and a such prosecution against the petitioner for an offence u/s 138 of the Negotiable Instruments Act cannot stand.

5. The learned Counsel for the respondent on the other hand contends that there are sufficient averments in the complaint making it clear that the petitioner actively participated in the affairs of the Company and had the knowledge of the issue of the cheque in favour of the complainant.

6. In support of his contention, the learned Counsel for the petitioner relies on a decision of our High Court in the case of Secunderabad Health Care v. Secunderabad Hospitals, 1998 (2) ALD (Crl) 206 (AP). The facts of the case relied on by the learned Counsel for the petitioner disclose that there was absolutely no averment as to participation of the petitioner therein in the affairs of the Company except a statement that the accused 3 to 7 are the directors of Company.

7. The purpose of Section 141 of the Negotiable Instruments Act would appear to be that a person on the basis of merely being a Director of the Company cannot be fastened with criminal liability for an offence u/s 138 of the Negotiable Instruments Act unless it is shown that he was involved in the day to day affairs of the Company and was responsible to the Company. This does not mean that the exact words used in Section 141 of the Negotiable Instruments Act are required to be re-produced in the complaint for satisfying the requirement of the section, In this case, there are various averments in the complaint which do go to show that the petitioner was sought to be made liable not merely on the ground that he was a Director but on the basis of his active involvement in the running of the Company. In para 1 of the complaint, it is stated that "in the normal course of business, the accused 2 and 3 representing accused No.1 approached the complainant in the month of September, 1995 and requested for loan to the tune of Rs.5 lakhs for the purpose of running the unit floated by them....."

Para 2 of the complaint mentions that the complainant Company advanced money to accused No.3 on behalf of accused No.1 mpany because of the close acquaintance of accused No.2 (petitioner herein) with the complainant''s Director.

8. Again Para 7 of the complaint, has the following statement which appears significant:

"The complainant did not take any action at this stage as the accused Nos.2 and 3 expressed their extreme difficulty and promised to make arrangements for the encashment of the said cheques in a short time."

In Para 9, it is stated that A2 having mortgaged the properties in favour of the complainant, sold the same to accused No.1 under a registered sale deed for valuable consideration during the subsistance of the mortgage in favour of the complainant, and that this act of accused No.2 amounts to cheating and criminal breach of trust committed by him with the active connivance of accused No.3.

9. In Para 11 of the complaint it is stated that further accused Nos.2, 3 and 4 are actively representing A1 and as such they too are personally responsible for the liability of A1 to be cleared.

10. These averments in the complaint go to show that it is alleged that the petitioner herein had actively participated in arranging the loan for Al from the complainant Company. It also shows that the petitioner herein took an active

part in persuading the complainant Company in granting time for re-payment.

11. These circumstances go to show that though the words used in Section 141 of the Negotiable Instruments Act as to the petitioner being in-charge of the Company and being responsible to the Company the not re-produced, but there are indications that he was actively participating in the affairs of the Company and was representing the Company.

12. In a petition u/s 482 of Cr. PC, this Court is not expected to meticulously scrutinize and interpret every word in the complaint to ascertain whether the ingredients of the offence have been made out or not. If there are broad allegations indicating compliance with the statutory requirements for constituting an offence, the Court must not hasten to abort the proceedings whether the averments made in the complaint in the light of the evidence produced before the trial Court satisfy the requirements of Section 141 of the Negotiable Instruments Act are questions of fact which have to be decided during the trial. Considering these circumstances, I am not inclined to hold that this is a case where the discretion of the Court to quash the proceedings u/s 482 of Cr. PC can be invoked.

13. It may be mentioned here that the observations made herein as to the role of the petitioner are meant strictly for the purpose of deciding the petition and the trial Court shall not feel fettered by these observations in coming to its own conclusions as to whether the requirements u/s 141 of the Negotiable Instruments Act are satisfied or not in the light of the evidence that may be produced during the trial of the case.

14. With these observations, the petition is dismissed.