
(2000) 06 AP CK 0083

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 3015, 3093, 3094, 3095 and 3096 of 1999

V.V. Circuits Limited and Others

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 07-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142, 142(6)

Citation : (2000) 2 ALD(Cri) 18 : (2001) CriLJ 1552 : (2000) 3 RCR(Criminal) 607

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : S.G. Dhananraj, V.V.N. Narayan Rao, G.D. Shashidhar, for the Appellant; K. Raghavacharyulu, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—All these applications may be disposed of by a common order. The parties to the proceedings are the same. These petitions are filed u/s 482 of the Code of Criminal Procedure, 1973 to quash the proceedings in C.C.Nos. 259, 256, 257, 266 and 267 of 1999 respectively on the file of the learned XI Metropolitan Magistrate. Secunderabad filed by the second respondent against the petitioners u/s 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1981 (for short "the Act").

2. For the purpose of disposal, the facts in Criminal Petition No. 3015 of 1999 are taken into consideration. The 2nd respondent has filed a complaint against the petitioners inter alia stating that it is engaged in lending and financing activities and in the regular course of its business, the petitioners herein approached the 2nd respondent for financial assistance by way of loan and the 2nd respondent has advanced a sum of Rs. 17,00,000/- on various dates to the 1st petitioner. The 2nd respondent is alleged to have demanded for repayment and the petitioners herein issued a cheque bearing No. 005576 for Rs. 2,00,000/- dated

10-6-1998 drawn on Central Bank of India, Fatehmaldan Branch, Hyderabad and when the cheque was presented on 11-11-1998, the said cheque was dishonoured for the reason of insufficient funds. The cheque was returned by a memo dated 12-11-1998 issued by the Central Bank of India. In the complaint it is further alleged that a notice was issued on 18-11-1998 by registered post requiring the petitioners to pay the amount but the petitioners herein avoided the said notice and did not receive the same. It is under those circumstances, the 2nd respondent herein filed the complaint.

3. It is the case of the petitioners that the 2nd respondent herein presented the cheque issued by the petitioners on 18-8-1998. The cheque was dishonoured. The 2nd respondent got a notice dated 29-8-1998 issued by an advocate on its behalf requiring the petitioners to pay the amount. The petitioners herein having received the said notice replied the same through the reply notice dated 14-9-1998. The petitioners however denied their liability in the matter. The Court in the instant applications filed by the petitioners is not concerned with the various pleas taken by the petitioners altogether denying their liability in the matter. But the fact remains that there is no dispute that the 2nd respondent got a legal notice dated 29-8-1998 issued through its lawyer to the petitioners requiring them to pay the amount and the same has been replied to by the petitioners through the reply notice dated 14-9-1998.

4. It is evident from the record about which there is no dispute that the 2nd respondent having received the notice failed to initiate any proceedings whatsoever against the petitioners u/s 138 read with Sections 141 and 142 of the Act. However, five different notices dated 18-11-1998 for the very same amounts in respect of which notices dated 29-8-1998 were got. issued by the 2nd respondent herein, were once again got issued by the 2nd respondent requiring the petitioners to pay the amount. This notice is based on the allegation that the cheque issued by the petitioners was presented on 11-9-1998 and the bankers refused to honour the same and returned the same on 12-9-1998 on the very same ground of insufficient funds. It is an admitted fact that the said notices were not received and acknowledged by the petitioners. Since the petitioners failed to comply with payment and requirement of the 2nd respondent, the 2nd respondent filed the complaint on 28-12-1998.

5. Sri G. Dhananjai, learned counsel for the petitioners strenuously contends that the proceedings initiated against the petitioners herein are liable to be quashed as the prosecution initiated against the petitioners herein for an offence u/s 138 of the Act is not maintainable in law. It is contended by the learned counsel for the petitioners that a payee or holder of a cheque can initiate prosecution for an offence u/s 138 of the Act for its dishonour immediately upon arising of cause of action. It is submitted that the cause of action arises only once. It is further submitted that no prosecution can be initiated u/s 138 of the Act for the dishonour of the cheque for the second time if the payee had not initiated such prosecution on the earlier cause of action. It is also the submission of the learned

counsel for the petitioner that the 2nd respondent could have initiated prosecution against the petitioners if at all after receiving the reply notice dated 14-9-1998 from the petitioners. The prosecution which is now initiated against the petitioners herein based on the legal notice dated 18-11-1998 is not maintainable, is the submission made by the learned counsel for the petitioners.

6. The question that arises for consideration is not *res integra* but squarely covered by an authoritative pronouncement of the apex Court in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, . The apex Court after referring to divergent opinions of different. High Courts held "a cheque may be presented any number of times during the period of its validity". There is no dispute about the same. Having said so, the apex Court comes to Section 142 of the Act to decide the meaning and content of expression "cause of action" used in sub-section (6) of Section 142 of the Act. The apex Court held thus (at pages 4069-4070; of Cri LJ) :

If we were to proceed on the basis of the generic meaning of the term "cause of action" certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (c) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint u/s 142 is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises and can arise -- only once.

Besides the language of Sections 138 and 142 which clearly postulates only one cause of action there are other formidable impediment which negates the concept of successive causes of action. One of them is that for dishonour of one cheque there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with clause (b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour the drawer cannot be liable for any offence nor can the first offence be treated as *non est* so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again.

The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under clause (c) of Section 142 otiose, for, a payee who failed to file his complaint within one month and thereby

forfeited his right to prosecute the drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes the Court always presumes that the Legislature inserted every part thereof for a purpose and the legislative intention is that the every part should have effect the above conclusion cannot be drawn for, that will make the provision for limiting the period of making the complaint nugatory.

Now, the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonour, and that too within one month from the date the cause of action arises, can be reconciled. Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with the interpretation that on each presentation of the cheque and its dishonour afresh right -- and not cause of action -- accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under clause (b) of Section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer, expires.

7. There is absolutely no doubt whatsoever that the judgment of the apex Court clearly applies to the facts on hand. There is no dispute whatsoever that the 2nd respondent got notice dated 29-8-1998 issued to the petitioners requiring them to pay the amounts by duly intimating them that the cheques given by them were dishonoured by the Bank. The petitioners herein got issued reply notice dated 14-9-1999. The matter ended there. Admittedly, the 2nd respondent failed to initiate any prosecution against the petitioners u/s 138 read with Sections 141 and 142 of the Act though the " cause of action had arisen for initiating prosecution against the petitioners. The complaint is filed only on 28-12-1998 basing upon subsequent legal notice dated 18-11-1998 got issued by the 2nd respondent to the petitioners. It is true that the cheques were once again presented by the 2nd respondent herein on 11-9-1998 and were returned by the Bankers for want of sufficient funds on 12-9-1998. That may not be of any consequence. As observed by the Apex Court cheques within the stipulated time can be presented on any number of occasions. There is no prohibition in law. But the cause of action arises once a notice is issued demanding the payment of money after the dishonour of the cheques by the Bank. That is the cause of action that gives rise to cause for initiating prosecution and if no prosecution is initiated within the prescribed time after the cause of action had arisen, the holder of the cheque cannot issue another notice demanding payment on the

pain of initiating prosecution.

8. For all the aforesaid reasons, the further proceedings against the petitioners if allowed to go on is contrary to the law declared by the apex Court. It would result in miscarriage of justice. No proceedings on the file of any Court can be allowed to go on contrary to the law declared by the apex Court. "

9. In view of the above, the proceedings in C.C.Nos. 259, 256, 257, 2.66 and 267 of 1999 on the file of the learned Metropolitan Magistrate, Secunderabad are quashed. The petitions are accordingly allowed.

10. However, this order shall not preclude the 2nd respondent from availing such remedies as may be available to it in law for recovery of the amounts alleged to have been paid to the petitioners.