

(1999) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 1212 and 1269 of 1999

Y. Srinivasa Reddy and Smt. K.V.M. Hymavathi

APPELLANT

Vs

A.V. Arunadevi and Another

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1999) 1 ALD(Cri) 757 : (1999) 1 ALT(Cri) 581 : (1999) 2 CivCC 465 : (1999) 97 CompCas 246 : (1999) CriLJ 3644 : (1999) 3 RCR(Criminal) 135

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : P. Veera Reddy, for the Appellant; B. Venkata Rama Rao and Public Prosecutor, for the Respondent

Judgement

Bilal Nazki, J.—Heard learned counsel for the parties. Both the petitions are inter-connected, therefore, they are decided by this common order.

2. A complaint has been filed against the petitioner u/s 138 of the Negotiable Instruments Act, 1881, which is sought to be quashed in these petitions. Two grounds have been agitated before this court. One ground is that, no notice was received by the petitioner demanding payment of the money after the alleged dishonour of the cheque by the bank. The second ground which is agitated before this court is that, blank cheques had been given and even, according to the complainant, these cheques were given by way of security and were post-dated, these cheques were given in the year 1997 and, admittedly, these cheques were presented to the bank after the statutory period of six months. Therefore, the complaint is not maintainable.

3. Coming to the first argument; it has been stated by the complainant that notice has been sent through registered post as well as through certificate of posting and the notice sent through certificate of posting was received by the petitioner. This is a question of fact whether the notice has been received by the petitioner or not. On this ground the complaint cannot be quashed. There is no

mode prescribed u/s 138 of the Negotiable Instruments Act for serving the notice, it is sufficient that the notice is served on the accused. In the present case, whether the notice was sent or not is purely a question of fact which can be gone into during the trial.

4. Coming to the second question that admittedly the cheques were postdated, therefore, no offence could be attributed to the petitioner, it is necessary to reproduce the relevant paragraph from the complaint. Paragraph 1 reads as under :

"1. That the accused borrowed from the complainant a sum of Rs. 3 lakhs (rupees three lakhs only) in all in the year 1997 as hand-loan with a promise to repay the same on demand. While taking the loan the accused issued post-dated cheques each for Rs. 75,000 (vide cheque No. 681685, dated July 31, 1998 ; cheque No. 681686, dated August 6, 1998 ; cheque No. 681687, dated August 14, 1998, and cheque No. 681688, dated August 20, 1998) as security for repayment of the said amount and also in discharge of the said debt. All the above cheques are to be drawn on the State Bank of India, Amberpet Branch, Hyderabad."

5. While going through this para., it becomes clear that the cheques were issued in the year 1997, but the complainant states that they were postdated. A cheque is merely a piece of paper till the date which is given on it. It becomes a bill of exchange on the date it bears on it. Section 138 of the Negotiable Instruments Act mandates that the cheque should be presented to the bank within a period of six months from the date on which it is drawn or within its period of validity, whichever is earlier. A post-dated cheque becomes a cheque under the Negotiable Instruments Act on the date which is written on the said cheque and necessarily the six month period has to be reckoned for the purpose of Section 138 of the Negotiable Instruments Act from the said date. A cheque becomes due on presentation only on the date or after the date which is written on it. A cheque does not become operative on demand if it is presented before the date written on it. I am fortified in my view by the judgment of the Supreme Court in *Anil Kumar Sawhney v. Gulshan Rai* 1994 79 Comp Cas 150. In the said judgment, the Supreme Court held (page 157) :

"For an offence to be made out under the substantive provisions of Section 138 of the Act, it is mandatory that the cheque is presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. It is the cheque drawn which has to be presented to the bank within the periods specified therein, When a post dated cheque is written or drawn it is only a bill of exchange and as such the provisions of Section 138(a) are not applicable to the said instrument. The post-dated cheque becomes a cheque under the Act on the date which is written on the said cheque and the six-month period has to be reckoned for the purposes of Section 138(a) from the said date. One of the main ingredients of the offence u/s 138 of the Act is, the return of the cheque by the bank unpaid. Till the time the cheque is

returned by the bank unpaid, no offence u/s 138 is made out. A post-dated cheque cannot be presented before the bank and as such the question of its return would not arise. It is only when the postdated cheque becomes a "cheque", with effect from the date shown on the face of the said cheque, the provisions of Section 138 come into play. The net result is that a post-dated cheque remains a bill of exchange till the date written on it. With effect from the date shown on the face of the said cheque it becomes a "cheque" under the Act and the provisions of Section 138(a) would squarely be attracted. In the present case, the post-dated cheques were drawn in March, 1990, but they became "cheques" in the year 1991 on the dates shown therein. The period of six months, therefore, has to be reckoned from the dates mentioned on the face of the cheques."

6. Admittedly, the cheques bear the date within six months prior to their presentation before the bank, therefore, in view of the judgment of the Supreme Court the cheques in the present case have been presented to the bank within time.

7. For these reasons, I do not find any merit in these petitions which are accordingly dismissed.