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**Ram Kumar Soni and anr. Vs. G. Ravindranath and anr.**

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**SooperKanoon Citation** : sooperkanoon.com/426102

**Court** : Andhra Pradesh

**Decided On :** Dec-05-1991

**Reported in** : 1992(2)ALT658; [1993]77CompCas44(AP)

**Judge** : D.J. Jagannadha Raju, J.

**Acts** : Negotiable Instruments Act, 1881 - Sections 138; Indian Penal Code (IPC), 1860 - Sections 415 and 420

**Appeal No.** : Criminal Petition No. 1391 of 1991

**Appellant** : Ram Kumar Soni and anr.

**Respondent** : G. Ravindranath and anr.

**Advocate for Def.** : B. Veerabhadra Rao, Adv. and ;Public Prosecutor

**Advocate for Pet/Ap.** : A. Gopal Reddy, Adv.

**Judgement** :

**Jagannadha Raju, J.**

1. This batch of petitions is filed under section 482, Criminal Procedure Code, 1973, for quashing the proceedings pending in the Courts of the IV Metropolitan Magistrate and the XII Metropolitan Magistrate, Hyderabad. The short question that has to be considered in these petitions is whether on the facts of the case and

on the basis of the notices exchanged between the parties, any offences are made out under section 138 of the Negotiable Instruments Act and under section 420 of the Indian Penal Code.

2. The facts are similar in all the cases and, briefly stated, they are as follows :

3. In 1981-82, the complainants entered into agreements with the present petitioner for purchase of flats at the rate of Rs. 212 per sq. ft. The construction was not made in time. It prolonged for six or seven years and subsequently when these people insisted upon registering the flats charging the rate at the old agreed rate of Rs. 212 per sq. ft., the builder-present revision petitioner, claimed the escalated price. In that connection some mediation took place and the builder said that he is not prepared to sell at the old rate and he is prepared to return the monies paid to him with interest at 2 per cent. per month. In that connection the parties first agreed to take return of the money and then the petitioner issued cheques. These cheques were dishonoured. Then notices were given by the complainants and subsequently the complaints were filed for offences under section 138 of the Negotiable Instruments Act and section 420 of the Indian Penal Code.

4. Sri Gopal Reddy contends that the ingredients of an offence under section 138 of the Negotiable Instruments Act are not satisfied in this case. When they gave a notice after the cheques were dishonoured, they only wanted that the flats should be registered in their names at the original contract rate. No demand was made for paying the amount covered by the cheques. There is no allegation to indicate that clauses (b) and (c) of section 138 are satisfied. He also contends that an offence under section 420 of the Indian Penal Code is not made out because there is no question of deceiving or cheating. The original contract was entered into in 1981-82 and monies were paid long prior to the issue of cheques and there is no question of the complainants parting with any property as a result of any promise or inducement given by the petitioner.

5. Sri B. Veerabhadra Rao, appearing for the contesting respondents, said that the facts clearly indicate that the accused-petitioner acted in a dishonest manner and he evaded the responsibility of registering the flats at the contracted rate. He

issued cheques agreeing to repay the amounts, but those cheques were dishonoured. He neither registered the flats nor did he pay the amounts covered by the cheques. Hence, he is certainly liable for prosecution for offences under section 138 of the Negotiable Instruments Act and section 420 of the Indian Penal Code.

6. It should be remembered that section 138 of the Negotiable Instruments Act was introduced with effect from April 1, 1989, and in cases where a cheque is dishonoured a prosecution is maintainable only when all the ingredients of section 138 are satisfied. In the present batch of cases, soon after the cheques were dishonoured, notices were issued on March 18, 1991. A reading of the notice clearly indicates that after mentioning that the cheques were dishonoured, the respondents only claimed that they wanted vacant possession of the flats and that he should register the flats taking the balance of consideration at the old rate of Rs. 212 per sq. ft. which was agreed to between the parties. They did not make any demand for payment of the amount covered by the cheques as contemplated by clause (b) of section 138 of the Negotiable Instruments Act. There is also no allegation that when they called upon him to pay the amount, he failed to pay the amount within 15 days. The ingredients of clauses (b) and (c) of section 138 of the Negotiable Instruments Act are not satisfied. The prosecution, so far as it relates to section 138 of the Negotiable Instruments Act, fails.

7. As regards the offence under section 420, Indian Penal Code, I find that the case is fully covered by the earlier judgment of this court in P. Eswara Reddy v. State of A.P. [1985] 3 APLJ 43. As pointed out in that decision admittedly on the date when the accused gave a cheque to the complainant no goods or other securities were received by the accused from the complainant. The receipt of the money happened much earlier and it was as a result of the original contract entered into in the year 1981-82.

8. The ingredients of section 415, Indian Penal Code, are not satisfied. The cheque was given as a result of settlement of a dispute towards return of the amount. No further amounts were paid by the complainants at the time of issue of the cheques. There is no inducement nor is there any element of dishonest action

or cheating. The complainants are certainly entitled to proceed against the petitioner under the civil law and try to enforce the agreements they entered into with the petitioner. The ingredients of an offence under section 420 of the Indian Penal Code are not satisfied in this case.

9. In the result this batch of petitions is allowed and the proceedings in these cases are quashed.

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