

Spring Fields Financial Services Ltd. Vs. the State of A.P. and anr.

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Court : Andhra Pradesh

Decided On : Feb-20-2006

Reported in : 2006(1)ALD(Cri)712; I(2007)BC218; [2007]139CompCas410(AP); 2006CriLJ2090

Judge : M.E.N. Patrudu, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 87, 138 and 142; Negotiable Instruments Amendment and Miscellaneous Provisions Act, 2002; [Indian Contract Act, 1872](#) - Sections 23; Companies Act - Sections 77(1) and 77(4); Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

Appeal No. : Cri. Appeal No. 1147 of 1999

Appellant : Spring Fields Financial Services Ltd.

Respondent : The State of A.P. and anr.

Advocate for Def. : Public Prosecutor (for No. 1) and ;K.V. Satyanarayana, Adv. (for No. 2)

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

M.E.N. Patrudu, J.

1. Aggrieved by the judgment of III Additional Metropolitan Sessions Judge, Hyderabad, in Cri. Appeal No. 415 of 1997 the present appeal is preferred.
2. The appellant is the complainant in C.C. No. 124 of 1996 on the file of the V Metropolitan Magistrate, Hyderabad. The 2nd respondent is the accused.
3. The trial Court convicted the accused for an offence under Section 138 of [Negotiable Instruments Act, 1881](#) (for short 'the Act').
4. Aggrieved by the same, the accused preferred an appeal before the III Metropolitan Sessions Judge, Hyderabad the learned Judge acquitted the accused by reason of the impugned judgment.
5. The facts leading to the case are that the appellant is a financial company and provided finances to the accused to an extent of Rs. 31,50,000/- and the accused-company has issued three post-dated cheques for a total amount of Rs. 34,65,000/- which includes interest on Rs. 31,50,000/-.
6. The contents of the complaint also disclose that the accused-company has issued 3,15,000 equity shares worth Rs. 10/- each to the appellant-company by way of additional security and the accused-company has agreed to buy back those equity shares at the rate of Rs. 12.40 and Rs. 13.20 per share by 10-2-1995 and 18-3-1996 respectively. It is also stated that out of the amount covered by three cheques the accused-company paid an amount of Rs. 11,00,000/- covering one cheque. While so the other two cheques were dishonoured when they were presented to the accused-banker for want of sufficient funds and also as the drawer directed the banker to stop payment. Soon after the dishonour, the statutory notice was issued on 20-10-1995 which was received by the accused on 22-12-1995 and the accused issued a reply on 2-1-1996 and the litigation ultimately has landed in the Criminal Court by way of filing a complaint under Section 138 of the Act by the appellant herein against the accused.
7. P.Ws. 1 to 3 were examined and Exs. P. 1 to P. 16 were marked. D.W.-1 was examined and Exs. D-1 to D-3 were marked on behalf of the defence.

8. Heard the arguments of the learned Counsel appearing for both sides.

9. The judgment of the learned Additional Metropolitan Sessions Judge is attacked on the ground that the observations of the learned Judge to the effect that the transaction is illegal is not correct. It is contended that the only question to be considered by the Court whether the cheques have been issued in discharge of a debt and not whether the transaction is legal or illegal. It is also contended that the transaction between both the parties is a loan transaction and the shares were given as security for the loan and the cheques were also issued for recovering the loan in case of default. Hence, the first appellate Court ought not to have gone into the details of shares and legalities of the transaction. The learned Counsel for the respondent-accused contended that there is no legally enforceable debt and in the non-existence of such requirement the appellant cannot invoke the provisions of Section 138 of the Act.

10. The point before me is whether the accused has committed an offence under Section 138 of the Act?

POINT

Section 138 of the Act is as follows :-

Dishonour of cheque for insufficiency etc., of funds in the account : Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless :-

- (a) the cheque has been 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;
- (b) the payee or the holder in due course of the cheque, as the case may be makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money, to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation : For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.

11. To invoke the provisions of Section 138 of the Act, the complainant must establish that the debt or other liability is a legally enforceable debt or other legally enforceable liability.

12. The scope of Section 138 of the Act deals with the dishonour of cheques for insufficiency of funds in the account by virtue of Negotiable Instruments Amendment and Miscellaneous Provisions Act, 2002 Section 138 of the Act is amended. Where the allegations in the complaint shows that the provisions of Sections 138 and 142 of the Act have been complied with, the Court can take cognizance of the offence.

13. In the instant case, the main defence of the accused is that there is no legally enforceable debt or legally enforceable liability between the parties. In order to attract this, the debt or liability towards which the cheque is issued should be legally enforceable debt or liability and this would have reference to the debt or liability.

14. In the judgment of the learned III Additional Metropolitan Sessions Judge at para-6 the facts and evidence in the case is discussed in detail.

15. The contents of the complaint disclose that the initial understanding between the appellant and the accused is about the investment of the amount by the appellant and it should be returned to him and in view of the said investment the accused-company had issued three post-dated cheques.

16. The complaint is also silent with regard to the fact that how much amount was financed by the appellant to the accused-company or the date of loan or mode of payment to the accused.

17. Whereas at the stage of evidence a different story was given. There is no consistency between the averments of the complaint and the evidence of the appellant and he has introduced a new theory.

18. There are terms and conditions with regard to contract between the appellant and the accused and accordingly the shares allotted to the appellant should become locked in by SEBI, then the post-dated cheques in question become enforceable. It is Ex.P.10. The condition No. 1 is issuance of post-dated cheques to the extent of 34,70,500/- in case the transferable shares allotted to the accused become locked in SEBI. The evidence of P.W.-1 discloses that their shares have not been locked in by SEBI but still the cheques have been presented. Therefore, I have no hesitation to hold that the postdated cheques cannot make any enforceable debt and there is no liability between the appellant and the accused by the relevant date.

19. After verifying the evidence of P.W. 1 and the contents of Ex.P-1, I do not find any reason to disagree with the conclusion of the learned III Additional Metropolitan Sessions Judge.

20. Further, the legality of the agreement Ex. P-10 which is the basis for entire transaction is attracting the provisions of Indian Contract Act and also Regulations of SEBI and the Companies Act and the Court below has come to a definite conclusion that the provisions makes it clear that the very purchase (sic) difference of shares of the appellant-company is in contravention of the regulations and they are hit by Section 23 of the Indian Contract Act.

Explanation to Section 138 of the Act is as follows :-

For the purposes of this Section, 'debt or other liability' means a legally enforceable debt or other liability.

21. The words any debt or liability would undoubtedly include a cheque drawn by any person towards a legally enforceable debt or liability of another person. The explanation makes it very clear that the debt or liability towards which the cheque is issued should be a legally enforceable debt or liability. This would have reference to the nature of the debt or liability and not to the person against whom the debt or liability could be enforced.

22. As per the condition of MoU, Ex. P. 10, the shares, which are allotted, should become locked in by SEBI and in the instant case SEBI has not locked in the shares. Consequently, the post-dated cheques issued by the accused are not enforceable under the law.

23. The agreement Ex.P.10 is itself void under Section 23 of the Indian Contract Act. The understanding between both the parties that repurchase of its own shares from the complainant by the accused failing which three post-dated cheques are liable to be encashed. This understanding popularly known as buy back shares in the transaction is against the provisions of Clause (2) of the Regulation No. 20 of SEBI (Merchant Bankers) Regulations, 1992, because the admitted fact as per the evidence of P.Ws. 1 and 2 is that the agreement to buy back shares is in respect of non-transferable shares, whereas the shares purchased by the complainant-company from the accused-company are transferable shares.

24. The purchase of shares of the accused-company by the complainant-company is in contravention of the above regulations and, therefore, they are hit by the provisions of Section 23 of the Indian Contract Act and, therefore, the entire transaction is void and the debt is unenforceable.

25. Section 77(1), Companies Act prohibits the purchase of its own shares unless certain conditions mentioned therein are complied with and its violations is made punishable under Sub-section (4) of Section 77 of the Companies Act and since

there are no conditions mentioned the said transaction is void under Section 23 of the Indian Contract Act.

26. So, I hold that a party to an illegal contract cannot invoke the aid of the Court to have such a contract carried into effect.

27. Further, there is an unexplained material alteration in respect of the month on Ex. P-3 cheque in question and that the glaring defect of alteration of the month is fatal to the complaint. The alteration in respect of the month is a material alteration and as per Section 87 of the Act Ex.P-3 would become void.

28. For all the foregoing reasons, I hold that the appeal is devoid of merits.

29. In the result, the Criminal Appeal is dismissed.

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