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**Court :** Andhra Pradesh

**Decided On :** Mar-08-2002

**Reported in :** [2003]113CompCas363(AP)

**Judge :** C.Y. Somayajulu, J.

**Acts :** Negotiable Instruments Act - Sections 138, 139 and 141; Evidence Act

**Appeal No. :** Criminal Petition No. 876 of 2002

**Appellant :** K. Bhoopal

**Respondent :** State of A.P.

**Advocate for Def. :** Public Prosecutor

**Advocate for Pet/Ap. :** Ch. Ramesh Babu, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**C.Y. Somayajulu, J.**

1. This petition is filed to quash the complaint in C.C.No.494 of 1999 on the file of the Court of the III Additional Judicial First Class Magistrate, Rajahmandry, registered on a private complaint filed under Section 138 of the Negotiable

Instruments Act (for short the Act) by the 1st respondent in connection with dishonour of a cheque for Rs.1,00,000/-.

2. The contention of the learned counsel for the petitioner is that since the petitioner resigned as the Director of the Leafin India Limited, (the Company) on whose behalf the cheque in question was issued, and since the Certificate issued by the Registrar of Companies shows that he ceased to be the Director of the company from 6-3-1999, and since the offence of dishonour of cheque was not completed by 6-3-1999 the proceedings against him are liable to be quashed, more so because the company is not made an accused to the proceedings. It is his contention that as per Section 141 of the Act, the Directors of a Company cannot be made liable for an offence under Section 138 of the Act in respect of the cheques issued for and on behalf of the company, unless the Company also is shown as an accused.

3. It is his contention that since the cheque that was dishonoured was issued as security, but not in discharge of a legally enforceable debt on liability, no offence under Section 138 of the Act is not made out. The averments in the complaint disclose that petitioner and another are the whole time Directors and authorised signatories of the Company which was receiving deposits from public, and that on 18-7-1998 the 1st respondent (complainant) made a deposit of Rs.1,00,000/- for six months on 18-7-1998, for which a post-dated cheque dated 17-1-1999 drawn by the petitioner and another was issued to her, as security for the due payment of the amount deposited by her on the maturity date, and that after the due date, she presented the said cheque for payment on 9-2-1999 for collection and that the Bank, after having received Rs.243/- as collection charges from her, informed her that the said cheque was dishonoured, and so she sent a statutory notice on 22-2-1999 to the petitioner and the other accused demanding payment of the amount covered by the cheque, bringing to their notice about the dishonour of the cheque, and that the petitioner and another and after having received the notice on 24-2-1999, they did not either send a reply or pay the amount due and hence have committed an offence under Section 138 of the Act.

4. Letter dated 6-3-1999 i.e., about 10 days after the petitioner received the notice of dishonour sent by the 1st respondent said to have been addressed by the petitioner to the Managing Director of the Company filed by the petitioner along with the petition reads as under-'I am surprised to notice that the cheques issued by the Company which has signed by me as 2nd signatory are reported to have been dishonoured.

5. This is an absurd situation. The Company is making profit, you are fully incharge of the day-to-day affairs of the Company. I am no way connected to the Management of the Finances or the day-to-day working of the Company. Though you are promising that situation will be rectified by you in few days and all dishonoured cheques will paid in full, I see no improvement.

6. I have already stopped signing the cheques as the 2nd signatory. I do not wish to associate with you or with the Board of Directors any more as Director of the Company. I am therefore resigning as Director or Whole-time Director of the Company Leafin India Ltd.

Please do the needful accordingly'.

7. Since the letter of resignation of the petitioner was sent on 6-3-1999 i.e., after receipt of notice of dishonour the cheque drawn by the petitioner and another demand for payment by the 1st respondent, though the Certificate issued by the Registrar of Companies shows that the petitioner resigned as Director of the Company with effect from 6-3-1999, it cannot be said that the liability of the petitioner has come to an end after he tendered his resignation. A Director of a company cannot escape his liability under Section 138 of the Act, when the cheque drawn by him for and on behalf of the said company was dishonoured, by tendering his resignation after receiving the statutory notice of dishonour and demand for payment issued by the payee or holder in due course of the cheque. The resignation has to be accepted by the Board of Directors.

8. When that meeting of the Board of Directors is a matter of evidence, in the circumstances the fact that the resignation after its acceptance by the Board of Directors relates back to the date of resignation, can have no relevance.

9. If a Director of a Company who drew the cheque on behalf of that company thinks it fit to tender resignation after having received the notice of dishonour and demand for payment of the cheque drawn by him, can avoid criminal liability under Section 138 of the Act it may result in incongruous situations. The Director appointed in his place subsequently can plead that he was not in-charge of the affairs that company when the cheque was drawn and so he cannot be made liable.

10. In the circumstances like this, though the offence under Section 138 of the Act becomes complete only if payment is not made within 15 days of receipt of the statutory notice, since the director that tendered the resignation could pay the amount covered by the dishonoured cheque and then resign, he cannot escape his liability under Section 138 of the Act by tendering resignation after receipt of statutory notice of dishonour without making the payment demanded. Since in this case the notice of dishonour was received by the petitioner on 24-2-1999 and he seems to have submitted his resignation thereafter without complying with the demand of 1st respondent for payment of the amount covered by the dishonoured cheque, petitioner cannot escape his liability under Section 138 of the Act. So merely because the Registers maintained by the Registrar of Companies, which are public documents within the meaning of the Evidence Act, show that the petitioner ceased to be a Director of the company with effect from 6-3-1999, petitioner cannot escape his liability under Section 138 of the Act, for the reasons mentioned above.

11. I am unable to agree with the contention of the learned counsel for the petitioner that the complaint against the petitioner is not maintainable because the company is not made a party to the proceedings. Section 141 of the Act, strongly relied on by the learned counsel for the petitioner, lays that the person who has drawn the cheque and as well as the company will be liable for the offence under Section 138 of the Act.

12. Therefore from Section 141 of the Act it is clear that apart from the company, the person who has drawn the cheque also is liable for punishment under Section 138 of the Act.

13. So merely because the company in which the petitioner was a Director is not shown as an accused in the complaint, it cannot be said that the complaint against the petitioner is not maintainable.

14. I see no force in the contention of the learned counsel for the petitioner that since the cheque was issued as security for payment but not in discharge of a legally enforceable debt proceedings under Section 138 of the Act are not maintainable. In view of Section 139 of the Act, the presumption is that the cheque issued in favour of the 1st respondent was in discharge of a legally enforceable liability. Since the phrase used in Section 139 of the Act is 'shall presume', the burden of proof is on the petitioner to establish that the cheque was not issued in discharge of a legally enforceable debt or liability. The averments in the complaint, prima facie, disclose that the 1st respondent had deposited Rs.1,00,000/- with the company and the cheque drawn by the petitioner and another was issued towards payment of the said amount.

15. It is for the petitioner to establish that the cheque for Rs.1,00,000/-, which was dishonoured, was not in fact issued towards the discharge of the legally enforceable debt or liability due to the 1st respondent. The question as to whether there is a legally enforceable debt or liability to 1st respondent or not can be decided only after the parties adduce evidence during the trial, but not at this stage. In view of the above, I find no merits in this petition and hence the petition is dismissed. However, the learned Magistrate is directed to dispose of the case as early as possible, at any rate before the end of August, 2002, uninfluenced by the observations made in the order.

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