

Mandadi Ram Reddy and anr. Vs. State of A.P. and anr.

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Court : Andhra Pradesh

Decided On : Jan-24-2003

Reported in : 2003(1)ALD(Cri)764; 2003(2)ALT(Cri)202; III(2003)BC438; [2004]120CompCas201(AP); 2003CriLJ3647

Judge : T. Ch. Surya Rao, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 139; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 258

Appeal No. : Cr.R.C. No. 1011 of 2002

Appellant : Mandadi Ram Reddy and anr.

Respondent : State of A.P. and anr.

Advocate for Def. : Public Prosecutor for Respondent No. 1 and ;A. Pulla Reddy, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Venugopala Rao Pasnooru, Adv.

Disposition : Revision case dismissed

Judgement :

ORDER

T. Ch. Suray Rao., J.

1. This revision petition is directed against the order dated 27.6.2002 passed by the learned Judicial Magistrate of First Class, Miryalguda in CrI.M.P. No. 2650 of 2002 in C.C. No. 667 of 1998.

2. The petitioners are the accused in C.C. No. 667 of 1998 filed by the 2nd respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act. They filed CrI.M.P. No. 2650 of 2002 under Section 258 of Code of Criminal Procedure to stop further proceedings in the case and to discharge them. That application having been dismissed under the impugned order, they are now assailing the same.

3. It is averred inter alia in the petition filed by them that the 2nd respondent and one Kandula Venkat Reddy sold the land covered by Sy. Nos. 704, 706, 800, 804, 797, 798, 710 and 711 situate at Damaracharla village measuring Ac.0-15 guntas at the rate of Rs. 3,75,000/-per acre and executed an agreement of sale dated 10.11.1997 and received on various occasions the amounts towards part payment aggregating to Rs. 10,00,000/-. When the 2nd respondent and the said Kandula Venkata Reddy were insisting the petitioners for payment of the balance, the petitioners issued four cheques each dated 15.7.1998 for a total amount of Rs. 6,67,000/- drawn on Syndicate Bank, Miryalguda Branch. The petitioners, on verification by obtaining a certified copy of the Pahani Patrika from the revenue department, came to know that the 2nd respondent and the said Kandula Venkata Reddy had no title over the land sought to be sold under the agreement referred to above. Having realised that the 2nd respondent and another had no title, they immediately issued a letter to the Branch Manager, Syndicate Bank requesting him to stop payments under the four cheques issued by them. The petitioners also filed a complaint before the Court of the Judicial Magistrate of First Class, Miryalguda against the 2nd respondent and Kandula Venkat Reddy for the offence of cheating and the same having been forwarded to the Station House Officer Miryalguda, he registered the crime, investigated into it and eventually filed a final report stating that the matter was of civil nature. The petitioners, therefore, filed a private complaint under Section 420 of the Indian Penal Code against the 2nd respondent and another. Under the above circumstances the 2nd respondent and another were not entitled to question the act of the petitioners and demand

payment of money towards the balance sale consideration.

4. It is their further case that the cheques issued by the petitioners were presented for encashment with Nagarjuna Grameena Bank, Damaracharla Branch. They were received by the Syndicate Bank for collection on 19.9.1998. On the same day, they were dishonoured pursuant to the request of stop payment by the petitioners. When the cheques were received by the Syndicate Bank within one day for collection from Nagarjuna Grameena Bank, the dishonoured cheques must have been received back on 20.9.1998 positively. Even by giving 10 days time the intimation of returning the cheques must have been received by the Bank as well as the 2nd respondent at the latest by 30.9.1998. However, on 19.9.1998 itself, the 2nd respondent received the intimation about the dishonour of the cheques. But he in collusion with the Bank officials created the record to show that the returned notice was received by him on 13.10.1998. Suppressing the returned memo from the Bank, the 2nd respondent filed the administrative letter addressed by the Nagarjuna Grameena Bank, Miryalguda Branch to Nagarjuna Grameena Bank, Damaracharla dated 13.10.1998. In that view of the matter, the notice requisite was not issued by the 2nd respondent within 15 days from the date of receipt of the intimation about the dishonour of the cheques and, therefore, the complaint is barred by limitation.

5. The 2nd respondent and another resisted the said petition by filing a counter mainly on the premise that the earlier application filed by the petitioners in CrI.M.P. No. 2844 of 1999 on the same premise as in the present case was dismissed and the Revision Petition No. 92 of 1999 filed as against the said order before the Principal Sessions Judge, Nalgonda was also dismissed and further the Criminal Petition No. 3407 of 2000 filed by the petitioners in the High Court of Andhra Pradesh to quash the proceedings was also dismissed, and, therefore, the present petition filed on the same grounds cannot be maintained.

6. The contention of the petitioners seems to be two fold, viz., that they need not pay the balance sale consideration to the 2nd respondent and another having regard to the fact that they had no title and possession over the land sought to be sold and, therefore, there has been no debt or other liability; and that the

mandatory notice requisite under Section 138 of the Negotiable Instruments Act was not issued within 15 days from the date of intimation about the dishonour of the cheques and, therefore, the complaint cannot be maintained.

7. The petitioners seek to explain about the earlier proceedings initiated by them on the premise that due to over-sight they did not lake this plea of want of title. The fact remains that they had filed an application for discharge, which culminated in dismissal. Even the quash petition filed by them later ended in dismissal before this Court. Therefore, it is the second attempt on the part of the petitioners in having filed the petition seeking discharge. Such an attempt on the part of the petitioners may be on the premise that there have been changed circumstances cannot be encouraged for the simple reason that it is open to the petitioners to raise all these contentions before the Court below during the process of trial. Such an attempt on the part or the petitioners cannot help their case, except to procrastinate the trial in the criminal case in C.C. No. 667 of 1998. In that view of the matter, it is expedient to dissuade the petitioners from resorting to multiplicity of proceedings so as to ultimately delay the disposal or the main case.

8. Nonetheless, the two grounds set-forth by them while seeking discharge also cannot at this stage be considered by this Court in an application filed seeking discharge from the case. The reasons are not far to seek. It has now been well settled that at the stage of considering the application filed seeking discharge by the accused, the Criminal Court is not expected to conduct a detailed enquiry as in the case or a trial except to see the existence or not or a prima facie case. At this juncture, the learned Counsel for the petitioners seeks to contend that having regard to the fact that the four cheques were issued towards payment of balance sale consideration it is not a case or debt, particularly when the 2nd respondent and another had neither title nor possession over the land in question.

9. A perusal of Section 138 of the Negotiable Instruments Act shows that when the cheque issued by the accused is dishonoured he is deemed to have committed an offence. Such an offence becomes complete when the cheque issued is presented to the Bank within the period of six months or within the period of its validity whichever is earlier; the payee of the cheque makes demand for the payment of

the amount covered by the dishonoured cheque within 15 days of the receipt of the information by him from the Bank about such return of the cheque and if the accused fails to make the payment within 15 days of the receipt of the said notice. Therefore, those three conditions must be fulfilled to make the offence complete. However, under the explanation appended to Section 138 of the Negotiable Instruments Act, it is sought to be elucidated that for the purpose of the said section the debt or other liability means a legally enforceable debt or other liability. Invoking this explanation, it is now sought to be contended before me that there has been no debt or other liability much less the legally enforceable debt or other liability. Such a contention at this stage cannot be adverted to and decided, as it requires a detailed enquiry and determination of the same basing upon the evidence adduced on either side. Whether the 2nd respondent and another have the necessary title and possession of the land sought to be sold to the petitioners or not has to be considered only upon the evidence. Even assuming for a moment that the balance sale consideration to be paid under the agreement cannot squarely be construed as a 'debt', it cannot escape the consideration under the expression 'other liability'. The parliament in its wisdom used the expression 'debt or other liability' in the explanation appended to Section 138 of the Negotiable Instruments Act so as to bring within its ambit not only the debt, may the other liabilities. The contention of the petitioners that the 2nd respondent and another had no title over the land to be sold to them and, therefore, the petitioners need not pay the amount apart, pursuant to the terms of the contract in between the parties inter se obviously the petitioners are obliged to pay the balance sale consideration as stipulated therein inter alia. Once they are obliged to pay the amount on a particular date, it automatically becomes the other liability. Having regard to the provisions of Section 138 of the Negotiable Instruments Act, which engrafts a presumption that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved, it becomes obligatory on the part of the petitioners to prove the contrary so as to rebut the presumption. The presumption can be rebutted only by adducing necessary evidence at the time of trial. Therefore, I am afraid that the petitioners cannot validly take the plea of non-existence of the debt or liability and non-enforceability thereof legally at this stage, except at the stage of trial where both the parties are expected to adduce

evidence, particularly the petitioners so as to rebut the presumption under Section 139 of the Negotiable Instruments Act.

10. The legal position is no more *res integra* and is squarely covered by the judgments of the Apex Court in *M.M.T.C. Ltd. v. Medchal Chemicals & Pharma (P) Ltd.*, : 2002 CriLJ266 and *A.V. Murthy v. B.S. Nagabasavanna*, : 2002 CriLJ1479 . In the former judgment, the Apex Court held that there was no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability and the burden of proof that there was no existing debt or liability was on the accused and had to discharge the same in the trial. The Court further held that even if the cheque was dishonoured by reason of stop payment instructions by virtue of Section 139 of the Negotiable Instruments Act, the Court had to presume that the cheque was received by the holder for the discharge in whole or any part of any debt or liability till the accused was able to show that in his account there was sufficient funds to pay the amount of cheque at the time of presentation of the cheque for encashment at the drawer Bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of the cheque for encashment and then only the offence under Section 138 of the Negotiable Instruments Act would not be made out. The main plea of the petitioners that having come to know about the want of title and possession of the 2nd respondent and another over the land sought to be sold under an agreement of sale, they issued instructions to their Banker to stop payment and, therefore, it was not a case of return of cheque for want of sufficient funds or funds exceeding the arrangement shall have to be determined only at the culmination of the trial when both the parties adduce their respective evidence.

In the latter case the Apex Court held in para 6 thus :

'This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case of that type. But

we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous'.

In ICDS Ltd. v. Beena Shabeer and Anr., III (2002) CCR 139 (SC)=IV (2002) SLT 201=2002 SCC (CrI.) 1342, in para 10 the Apex Court held thus :

'The language, however, has been rather specific as regards the intent of the Legislature. The commencement of the section stands with the words 'Where any cheque'. The above noted three words are of extreme significance, in particular, by reason of the use of the word 'any'--the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The Legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment'.

11. In view of this clear law enunciated by the Apex Court, the judgment of the Madhya Pradesh High Court sought to be relied upon by the learned Counsel for the petitioners in Jitendra Singh Flora v. Ravikant Talwar, 2001(1) ALD(CrI.)767 (MP), is not germane for consideration.

12. Apropos the point of limitation, it may be mentioned at the outset that it was not the case of the petitioners that the complaint was barred by limitation in having not filed the same within 30 days from the date of the cause of action. Therefore, strictly speaking the point of limitation is not germane for consideration in this case, inasmuch as the case of the complaint was that the requisite notice had not been issued within 15 days from the date of receipt of limitation from the Bank about the dishonour of the cheque. Even otherwise it was not clear on the face of the complaint that the requisite notice was not issued within 15 days from the date of notice. It was the plea of the petitioners that the complainant in collusion with

the Bank Officials prepared the records so as to appear that the intimation was sent at a later point of time by means of a memo, although, they received the limitation from the drawee Bank even earlier thereto. Having regard to the said plea, it is obvious that it is a matter to be determined only at the time of trial. As things stand the memo informing about the dishonour of cheque was received by the complainant from his Bank only on the alleged date as mentioned in the complaint from which date obviously the notice requisite was issued within 15 days. Therefore, even the second contention at this stage, merits no consideration. Even otherwise as held by the Apex Court in A.V. Murthy 's case referred to supra, the plea that the complaint was barred by limitation, is a matter to be agitated before the Magistrate by way of defence. Therefore, both the pleas taken by the petitioners are now not available at this stage. They can validly put forth those contentions before the Trial Court at the time of trial.

13. For the foregoing reasons, the Criminal Revision Case fails and the same is accordingly dismissed.

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