

**Asith Kumar Mukherjee and ors. Vs. T.T.K. Pharma Ltd. and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/441943](http://sooperkanoon.com/441943)

**Court :** Andhra Pradesh

**Decided On :** Mar-22-2000

**Reported in :** 2000(1)ALD(Cri)891; 2000(2)ALD(Cri)198; 2001CriLJ1586

**Judge :** Vaman Rao, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138 and 141

**Appeal No. :** Cr. P. No. 4946 of 1999

**Appellant :** Asith Kumar Mukherjee and ors.

**Respondent :** T.T.K. Pharma Ltd. and anr.

**Advocate for Def. :** B.H. Ravi Kumar, Adv. and ;Public Prosecutor

**Advocate for Pet/Ap. :** M. Sreeramulu Reddy, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Vaman Rao , J.**

1. This petition under Section 482 of the Criminal Procedure Code, 1973, seeks quashing of proceedings in C.C. No. 992 of 1998, on the file of the 17th Metropolitan Magistrate, Hyderabad, in which the petitioners as A-4, A-5 and A-6 along with other accused are sought to be prosecuted for an offence under

Section 138 of the [Negotiable Instruments Act, 1881](#) (hereinafter called 'the Act').

2. It appears that in connection with supply of pharmaceutical products between the complainant, T.T.K. Pharma Limited and M/s. Targos Pure Drugs Limited certain amount became due and payable by A-1 company. On behalf of the said company a cheque for Rs. 3,06,218.20 was drawn and issued to the complainant, which on presentation was returned on the ground of insufficiency of funds in the account of A-1 company. After issuing the requisite statutory notice as contemplated under the Act, this complaint has been filed.

3. Learned Counsel for the petitioners in this case seeks quashing of the proceedings as far as the petitioners are concerned on the ground that the petitioners are merely directors of A-1 company. The contention is that A-1 company has a regular chairman A-2 and managing director A-3 and in view of this the question of petitioners (A-4, A-5 and A-6) being liable for the dishonour of cheque issued on behalf of A-1 company does not arise. Where a company is prosecuted for an offence under Section 138 of the Act, persons other than the company would also be liable along with the company if they are in charge of and responsible to the company for the affairs of the company. The contention appears to be that the requirement of Section 141 of the Act has not been specified in this case. This again appears to be on the ground that the petitioners A-4, A-5, A-6 are only directors and not managing directors. For liability of a person for an offence under Section 138 of the Act along with the company, it is not necessary that the person concerned should hold a particular position in a company. What Section 141 of the Act contemplates is that the person sought to be proceeded against must have been, at the time of the offence, in charge of and responsible to the company for the conduct of the business of the company. Whether a particular person proceeded against was in charge of and was responsible to the company for the conduct of its business is a question of fact which is obviously required to be decided during the trial.

4. In this case, there is a specific averment in para 2 of the complaint indicating that the petitioners along with other accused are associated with the affairs of the company. The relevant averment reads as follows :

'That accused Nos. 2 to 5 are chairman, managing director and directors of accused No. 1 company, who are actively involved in day-to-day proceedings of accused No. 1-company and also aware of the transaction with the complainant-company.'

5. Again, in para No.7 of the complaint, the following allegation is found :

'Accused Nos. 1, 2 and 3 issued the cheque with active connivance of accused Nos. 4, 5 and 6 knowing fully well that there are no sufficient funds in the account and subsequently failed to arrange the cheque amount even after receipt of statutory notice and thereby committed an offence under Section 138 of the Negotiable Instruments Act and as such they are liable for punishment.'

6. The plea on behalf of the petitioners appears to be that the necessary averment as contemplated under Section 141 of the Act is lacking in the complaint. It is true that the exact words used in Section 141 of the Act do not find place in the complaint stating that the petitioners herein were in charge of and were responsible to the company for the business affairs of the company. The lack of the exact words used in Section 141 of the Act does not appear to be significant. At this stage what is relevant is whether there are sufficient allegations indicating that the petitioners were involved with the management and conduct of the affairs of the company. The above referred allegations in the complaint, though not in the words used in Section 141 of the Act, are sufficiently indicative of the fact that the petitioners were associated with the day-to-day management of the company. Learned Counsel for the respondents further points out that a memorandum of understanding, which was executed on behalf of A-1 company, was signed by these petitioners also. This memorandum of understanding also goes to further support the plea that the petitioners were involved in the management and affairs of the company. Whether such a memorandum was executed or not, however, is a fact which again has to be gone into during the trial. Taking any view of the matter, this does not appear to be a case where on the bare reading of the contents of the complaint it can be inferred that no case has been made out against the petitioners.

In the result, this petition is dismissed.

