

Dev (A-4) Vs. State of A.P. and anr.

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Court : Andhra Pradesh

Decided On : Nov-09-2001

Reported in : [2002]108CompCas607(AP); 2002CriLJ4770

Judge : V. Eswaraiah, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 141(2)

Appeal No. : Crl. Petn. No. 3473 of 2001

Appellant : Dev (A-4)

Respondent : State of A.P. and anr.

Advocate for Def. : Public Prosecutor and ;P. Girish Kumar, Adv.

Advocate for Pet/Ap. : P.V. Sanjeeva Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Eswaraiah, J.

1. These criminal petitions have been filed by the same person Mr. Dev, who is A-4 in C.C. Nos. 475,544 and 476 of 1999 on the file of the XVII Metropolitan Magistrate, City Criminal Court, Hyderabad, to quash the proceedings in the said

C.Cs.

2. On the complaints filed by the 2nd respondent herein (complainant) under Sections 138 and 142 of the Negotiable Instruments Act (for short 'the Act') against respondents 3 to 5 (A-1 to A-3) and the petitioner herein (A-4), the charge against the accused under Sections 138 and 142 of the Act has been taken into cognizance and the C.Cs. are pending for enquiry.

3. It is the case of the petitioner (A-4) that he is only the Accountant of the 3rd respondent-Company (A-4); and respondents 4 and 5 (A-2 and A-3) are Managing Director and Director of the 3rd respondent-Company respectively; and cheques have been signed by the 4th respondent (A-2) in his capacity as the Managing Director of the 3rd respondent-Company; and there is no specific allegation made by the complainant against the petitioner (A-4) and, therefore, the complaints filed by the complainant do not satisfy the requirements of Sections 138 and 142 of the Act; and the complaints filed against the petitioner are not maintainable; and the proceedings in the C.Cs. are liable to be quashed.

4. A perusal of the complaints reveals that A-1 is a Private Limited Company engaged in the business of real estate; A-2 is the Managing Director; A-3 is the Director and father of A-2; and A-4 is the Accountant of A-1 Company. A-2 to A-4 are looking after the day-to-day business affairs of A-1 Company. In discharge of the outstanding amount payable by A-1 Company, cheques were issued and the same were presented in the Bank, which were dishonoured and returned by the Bank memos with endorsements 'funds insufficient'; and accordingly, the complainant got issued statutory legal notices in terms of Section 138 of the Act calling upon the accused to make payments of the dishonoured cheque amounts; and except A-3, all other accused including the Accountant (A-4) having received the notices, have neither paid the amount nor replied. It is further stated that the accused have issued the cheques without sufficient funds in their Bank account, and therefore, the accused have committed the offence under Section 138 of the Act and they are liable to be punished.

5. The learned Counsel for the petitioners submits that the petitioner herein has nothing to do with the issuance of the cheques; and he is neither a Director nor

incharge of nor was responsible to the company for the conduct of the business of the company; and, therefore, it cannot be said that the petitioner has committed an offence under Section 138 of the Act.

6. Section 138 of the Act contemplates that if a cheque drawn by a person for payment of money to another from out of the account maintained in the Bank by the person, who has issued the cheque, is returned by the Bank unpaid or dishonoured for insufficient funds, such person shall be deemed to have committed an offence.

7. In respect of the offences committed by the company, if the person committing an offence under Section 138 of the Act is a company, every person who at the time the offence was committed was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, under Section 141(1) of the Act.

8. Under Section 141(2) of the Act, where any offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager or Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

9. 'The person' as contemplated under Section 138 read with Section 141 of the Act in case of a company includes 'every person who was incharge of and was responsible to the company for the conduct of the business of the company and shall also be deemed to have been guilty of the offence, apart from the company, in addition to the persons mentioned in Section 141(2).

10. In the instant case, the petitioner (A-4) is an Accountant; and there is a specific allegation that he is also looking after the affairs of the business of A-1 company; and the accused have issued the cheques without sufficient funds in the Bank account of the company and, therefore, all the accused are deemed to have committed the offence under Section 138 of the Act.

11. The learned Counsel for the petitioner submits that no doubt the Accountant is a person as contemplated under Section 141(1) of the Act; but that person is defined under Section 141(2) by clarifying 'other officer of the Company' and, therefore, the Accountant cannot be held liable for the offence committed by the Company. The person as contemplated under Section 141(1) is totally different from the persons as contemplated under Section 141(2).

12.1 cannot accept the contention of the learned Counsel for the petitioner that merely because the petitioner is the Accountant of the company, he cannot be held liable for the offence under Section 138 of the Act, Under Section 138 read with Section 141 of the Act, every person in charge of and was responsible to the company for the conduct of the business of the company shall also be liable for the punishment under Section 138 of the Act. In the case of a company, a person, who is in charge of and was responsible to the company for the conduct of the business of the Company, need not be a Director, Manager, Secretary or other officer of the company for committing an offence under Section 138 of the Act, I, therefore, do not see for any merits in the contention of the learned Counsel for the petitioner. The criminal petitions are accordingly dismissed.

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