

Renewable Energy Systems Ltd. and ors. Vs. State and anr.

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Court : Andhra Pradesh

Decided On : Sep-26-2001

Reported in : 2000(2)ALD(Cri)596; 2001(2)ALD(Cri)701;
[2002]111CompCas786(AP)

Judge : T. Ch. Surya Rao, J.

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

Appeal No. : Cr. P. Nos. 3451 to 3457 of 2001

Appellant : Renewable Energy Systems Ltd. and ors.

Respondent : State and anr.

Advocate for Def. : Public Prosecutor and ;C. Kodandaram, Adv.

Advocate for Pet/Ap. : K. Srinivasa Reddy, Adv.

Disposition : Petition dismissed

Judgement :

T.Ch. Surya Rao, J.

1. Since common questions of law and facts are involved and also as the parties are same all these cases can be disposed of together.

2. The petitioners seek to quash the proceedings initiated against them under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') on various complaints in CC No. 344/200. CC No. 105/97, CC No. 1059/98, CC No. 1058/98, CC No. 749/97, CC No. 354/97, CC No. 977/97 respectively on the file of the IV Metropolitan Magistrate, Hyderabad and the grounds mentioned, inter alia, in the petitions are two-fold. Firstly that there has been no specific allegation against the petitioners 2 and 3, who are obviously not signatories of the cheques issued in favour of the complainant, that, at the time of commission of the offence, they are in charge of conduct of the business of the company and were responsible for the conduct of the administration of the company or that the offence was committed by the company with the consent or connivance or on account of negligence attributable to them. Secondly that after the institution of the criminal prosecution against the petitioners there had been a settlement between the parties, pursuant to which a memorandum of understanding was entered into and therefore that memorandum of understanding, superseded the cheques issued earlier and these prosecutions are not maintainable under the circumstances.

3. It is needless to go into the specifics of the case inasmuch as these petitions can be disposed of on the question of law raised. Admittedly the cheques in these cases were issued by the Finance Controller of the first accused company who is not before the Court. The first petitioner is the company and the petitioners 2 and 3 are its Managing Director and Director respectively. It is alleged in the complaint that the accused have issued the cheques with the intention of cheating the complainant knowing fully well that they do not have sufficient amounts in their account with the Bank to make payment for the said cheques. Evidently no specific averment to the effect that petitioners 2 and 3 were in charge of the company and were responsible to the company for the conduct of its business has been made in the complaint. Equally no allegation that the petitioner-company committed the offence with the consent or connivance of the petitioners 2 and 3 or on account of the negligence attributable to them has been made. The question that is germane for consideration at this stage is whether, in the absence of such averments in the complaints, the complaints as against the petitioners 2 and 3, who are accused 2 and 3 in the cases, are sustainable or not.

4. Much law has been developed on the point. The learned Counsel for the petitioners seeks to place reliance upon a judgment of this Court in *Secunderabad Health Care v. Secunderabad Hospitals*, IV (1998) CCR 419=11 (1998) BC 277=1998 (2) ALD (Cri.) 206, wherein it has been held by this Court as follows :

'The requirement in law is that there must be clear, unambiguous and specific allegations against the persons who are impleaded as accused that they were in-charge of and responsible to the company in the conduct of its business at the material time when the offence was committed by the company. It cannot be left to the wild imagination of the complainant. There must be specific accusation against each of the persons impleaded that such person was incharge and responsible for the conduct of the business of the company at the relevant time when the offence was committed by the company'.

5. It is appropriate to have a fresh look at Section 141 of the Act which is germane in the context for consideration. Section 141 reads as under :

'Offences by companies: (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in-charge 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 :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other Officer of the company, such Director, Manager, 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.

Explanation : For the purpose of this section,--

(a) 'Company' means any body corporate and includes a firm or other association of individuals; and

(b) 'Director' in relation to a firm, means a partner in the firm'.

6. It is obvious from a glance at the said section that three categories of persons are responsible namely, (1) the company itself which is a juristic person; (2) every person who was incharge of and was responsible for the company for the conduct of business of the company at the time of commission of the offence; and (3) any other person who is a Director, or a Manager or a Secretary or Officer of the Company with whose consent or connivance the offence was committed or on account of negligence attributable to him, the offence was committed by the company. In respect of the second category of persons, a defence is allowed under the proviso to Section 141. According to this proviso it can be proved by the second category of persons by taking a defence that the offence was committed without their knowledge or despite due diligence exercised by them to prevent the commission of offence. No such defence is permissible in respect of third category of persons. Obviously, therefore, the liability on the second and third categories of persons had been created by fiction of law under Section 141 of the Act, when the promisor of the cheque which has been bounced later and thereby committed an offence under Section 138 of the Act, is said to have been committed is a juristic person. The Act has not envisaged any vicarious liability. On the other hand, it is so specific that the promisor of the cheque which bounced later alone is liable. However, a deemed liability has been fastened under Section 141 when the promisor happens to be a juristic person like a company, firm or other association of individuals. Directors, Managers or other officers of the company or the firm come under this category as can be seen from Section 141.

7. Is it necessary to articulate the phraseology engrafted in the section so as to proceed against those persons other than the promisor of the cheque. Neither the articulation of such phraseology incorporating verbatim in the language engrafted in the section in a pedantic manner will have a significance nor the absence thereof. To illustrate that so as to rope in as many as are possible in the offence

the complaint can be drafted in an artistic way by incorporating the language employed in the section. May be also a case that on account of inartistic expressions and inadvertent omissions the complaint is so drafted without articulating the legal terminology employed in the section. Either way it cannot tilt the scales. On the other hand what is germane for consideration by the Courts is whether there has been a foundation laid in the complaint so as to take cognizance against those persons other than the promisor of the cheque when the prime accused happens to be a juristic person. The Apex Court in *Rajesh Bajaj v. State NCT of Delhi*, : 1999 CriLJ1833 , held as follows:

'It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelt out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence'.

8. Following the said judgment, in *S.M. Datta v. State of Gujarat*, I (2001) CCR 425=2001 AIR SCW 3133, the Apex Court in Para 8 has extracted the relevant observations of the former judgment of the Apex Court, thereby reiterating the same position. Even earlier to these judgments the Apex Court in *K.P.G. Nair v. Jindal Menthol India Ltd.*, IV (2000) CCR 100 (SC)=I (2000) BC 243=2000(6) Scale 578, held that the words of Section 141(1) need not be incorporated in a complaint as magic words.

9. In *Avon Industries Limited, Hyderabad v. Integrated Finance Company Limited, Secunderabad*, 2001(1) ALD (CrL.) 461, it has been held in para 19 at Page 471 thus :

'However in this judgment we are not concerned with the degree of proof that is required and what we are concerned is as to when all or anyone of the three categories of persons can be arrayed as the accused. As discussed supra, before arraying them as accused there must be perceivable accusation against them symbolizing the part played by them, which attracts the offence alleged. When such accusation is discernible then arises the question of proof in accordance with the principles of evidence. Before considering the accusation levelled against those persons the allowance should always be given to ill-drafting and inartistic articulations. It is imperative on the part of the Court to look into the averments made in the complaint as a whole and the quintessence of the same to see whether such requirement is discernible from those averments albeit they have been so expressly articulated by incorporating the language employed in the statute. Justice shall not suffer on account of ill-drafting or inartistic expression made in the complaint when the requirements of law are otherwise discernible from the facts alleged in the complaint. That is the reason why pedantic approach to the problem or viewing the contents in the complaint in a strait-jacket formula is not expected of. Each case has to be considered with reference to the set of facts and circumstances in it, which are peculiar to that case'.

10. In this connection, it is apt to look at the definition of 'complaint' as given in Section 2(d) of Cr.PC, which reads as under--

'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation : A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant'.

11. A perusal of the said provision shows that there must be a reasonable accusation against a person in writing so as to enable the Court to take cognizance. That is how the complaint has been defined under the said provision. Therefore, what is germane for consideration is whether there is such an

accusation in the complaint which enables the Court to take cognizance of the offence or not. Such accusation can be articulated in the complaint in an artistic manner, by employing the language used in the section of law. Such an accusation can manifest itself from the averments made in the complaint, albeit, the complaint has been drafted in an inartistic manner with inadvertent omissions. In such circumstances, it is not expedient to ignore the patent.

12. In Para 3 of the complaint it has been mentioned that the accused have issued the cheques with an intention to cheat the complainant knowing fully well that they do not have sufficient amounts in their account with the Bank to make the payment for the said cheques. Although the quintessence of the said accusation has not been so couched in the language more or less nearer to the language employed in Section 141 of the Act attracting the latter part of Sub-section (1) or Sub-section (2) thereof, but, in my considered view that lays necessary foundation from which it can be discerned that the offence has been committed with the knowledge of the petitioners 2 and 3. As aforesaid the petitioners 2 and 3 are Managing Director and Director of the 1st petitioner company. Under the circumstances, it cannot be heard to say that they have nothing to do with the conduct of the business of the company.

13. It appears that there has been a first round of litigation where the petitioners filed similar such petitions seeking to quash the proceedings against them on the premise that Section 22 of the Sick Industries Act is a bar. When they lost the first round of litigation, now they instituted the second round of litigation seeking to quash the proceedings against them on the premise that there has been no mention in the complaint attracting the essential ingredients of Sections 138 and 141 of the Act. Such an attitude on the part of the petitioners cannot be encouraged.

14. With reference to the second contention, the learned Counsel for the petitioners seeks to place reliance on a judgment in *Voruganti Chinna Gopaiah v. Godavari Fertilisers and Chemicals*, 1999(1) ALD (Cri.) 23, wherein it has been held that on account of the agreement entered into between the parties one day prior to the filing of the complaint, the cheques in question have been replaced by

that agreement and therefore the complaint is not maintainable. The said judgment is not applicable to the facts of the present case. In this case, no doubt, there has been a memorandum of understanding entered into between the parties subsequent to the filing of the cases. Once an offence is said to have been perpetrated, by looking at the provisions of Sections 138 and 141 of the Act, the contention that those cheques have been replaced by the subsequent memorandum of understanding cannot be countenanced. Therefore, the second contention is not tenable and merits no consideration.

15. For the foregoing reasons these petitions fail and are dismissed.

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