

(2000) 03 AP CK 0004

Andhra Pradesh High Court

Case No: Criminal P. No. 3898 of 1999

Manjeet Singh

APPELLANT

Vs

Nirdosh Finance Investment and
Chit Funds Co., (P) Ltd., Hyd. and
another

RESPONDENT

Date of Decision: March 31, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Evidence Act, 1872 - Section 58
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2000) 4 ALD 544 : (2000) 1 ALD(Cri) 755

Hon'ble Judges: Vaman Rao, J

Bench: Single Bench

Advocate: Mr. S. Harvinder Singh, for the Appellant; Mr. T.V. Rajeevan and Public
Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition u/s 482 of Cr.PC seeks quashing of the order dated 21-6-1999 of the learned I Additional Metropolitan Sessions Judge, Hyderabad passed in CrI.RP No.16 of 1999 preferred against the order of the XXII Metropolitan Magistrate, Hyderabad dated 5-10-1998 in MP No.350 of 1998 in CC No.82 of 1998 under which the learned Magistrate has received certain documents said to have been filed on behalf of the complainant.

2. The relevant facts in nutshell are as follows:

The respondent No.I filed a complaint against the petitioner alleging offence u/s 138 of the Negotiable Instruments Act. While the trial was in progress and on the date the case was posted for further examination in chief of the complainant, this

petition for receiving the document was filed. The documents in question are said to be the certificate of incorporation of the complainant company and a certified copy of the resolution passed by the Directors to authorise the complainant to represent before the Court. This petition was opposed stating that the petition was filed at belated stage and that the application was not accompanied by an affidavit and no reasons for the delay in filing the document has been shown and that the document in question was not referred in the complaint nor was it mentioned by PW1 during his examination.

3. The learned Magistrate allowed this petition. Firstly, he pointed out that the case was posted for further examination of the complainant as PW1 inasmuch as examination in chief was deferred on the previous date of hearing. As to the objection that no affidavit was filed in support of the petitioner, the learned Magistrate observed that it may be an irregularity and does not vitiate the proceedings. A further contention appears to have been raised before the learned Magistrate that the documents in question do not pertain to the case and as such they are liable to be rejected. The learned Magistrate observed that it is a question of fact which has to be decided in the trial not in the petition. In regard to the delay in filing the documents, the learned Magistrate rejected the contention stating that the documents can be received at any stage and that it will not cause any prejudice inasmuch as the accused will have ample opportunity to cross-examine the witnesses with reference to those documents.

4. With regard to the objection that these documents are not mentioned in the complaint, the learned Magistrate observed that the complainant has already filed the authorisation letter for filing the complaint and as to the certificate of incorporation, the learned Magistrate observed and held that mere non-mention of it does not preclude the complainant from filing it during the trial.

5. This order was challenged in revision before the learned Sessions Judge who dismissed the revision.

6. The learned Counsel for the petitioner contends that the order of the learned Magistrate and that of the learned Sessions Judge approving it suffer from illegality and have to be quashed.

7. The first contention of the learned Counsel for the petitioner is that the order of the learned Magistrate discloses that the question whether the document is relevant and necessary for the disposal of the case was not decided and the learned Magistrate observed that this can be decided during the trial.

8. It is true that while considering the question of receiving certain documents at a belated stage, the principal question for consideration would be whether those documents are relevant and or necessary for just decision of the case. The observation of the Magistrate referred to above cannot be held justified but this in itself cannot be a reason for quashing the order of the learned Magistrate, if on

examination, it is apparent that the document in question has significant bearing on the matter required to be decided by the learned Magistrate during the trial. One of the documents is said to be the letter of authorisation under which the person who filed the complaint has been authorised by the firm to file it.

9. The learned Counsel for the petitioner relies on a judgment of this Court in the case of *Satish and Company v. S.K. Traders* 1997 (1) ALD (CrL.) 745 (AP). What has been held in that case was that if any legal proceedings whether criminal or civil were filed by a person who was not properly authorised, the proceedings would not be maintainable as on the date of its filing and subsequent ratification will be of no avail.

10. In this case, it is not the case of the petitioner that the authorisation was given subsequent to the date of filing of the complaint. The only objection is that it was not filed earlier. As observed by the learned Magistrate, a copy of this letter, is said to have been filed earlier also. At any rate, mere omission to file a document under which the complainant has been authorised to file the complaint does not preclude its filing subsequently. The real question is whether on the date of filing of the complaint, the complainant was authorised to file the complaint or not.

11. In regard to the other document, the learned Counsel for the petitioner strenuously contends that this document brings forth a case which is contrary to the version as given in the complaint itself. The learned Counsel for the petitioner points out that in the complaint, the complainant has been described as a partnership firm. He refers to Para 1 of the complaint which reads as follows:

"The complainant is M/s. Nirdosh Finance Investments and Chit Funds (P) Limited, which is a partnership firm represented by its Foreman whose address for service of summons, notices etc., is the same as shown in the cause title".

On this basis, it is contended that attempt to file a certificate of incorporation of the complainant company as the one registered under the Companies Act goes contrary to the averment in the complaint.

12. It is further contended that u/s 58 of the Evidence Act, admissions in pleadings or judicial admissions made by the parties or their agents at or before the hearing of the case stand on a higher footing than evidentiary admissions and former class of admissions are fully binding and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties.

13. The learned Counsel for the petitioner seeks sustenance for this proposition from the judgment of the Supreme Court in the case of [Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others](#), . There can be no dispute that as held by the Supreme Court in the above case, admissions in pleadings or judicial admissions stand on a higher footing and may amount to waiver of evidence to prove the facts evident from those admissions.

14. In this case, the question is whether there was really any such admission. The description of the company itself in the cause title as well as in Para 1 of the complaint, which is relied upon by the learned Counsel for the petitioner, shows that the complainant has been described as "M/s. Nirdosh Finance Investment and Chit Funds Company (P) Limited". Mere mention by the complainant that it is a partnership firm does not change the nature of the constitution of the firm. The dictum laid down by the Supreme Court in the referred case would apply if admissions are true and clear. Where what was relied upon by a party to a proceedings as an admission by the opposite side is apparently a mistaken description, it cannot be relied upon as an admission.

15. When that very supposed admission contains intrinsic material to show that a mistake has been committed in the description of the state of affairs. In this case, about the status of the firm it cannot be said to satisfy the requirement as postulated in the second cited judgment of the Supreme Court that the admission must be true and clear.

16. In the same judgment, the following observations are relevant.

"Admissions, if true and clear, are by far the best proof of the facts admitted".

17. Thus, one of the conditions for the applicability of the binding nature of the admissions in pleadings or judicial proceedings is that admissions must be "true and clear". In this case, the document sought to be produced in the Court, prima facie, shows that the complainant firm is a company incorporated under the Companies Act. When the Court has means to know the real facts as they are, it need not fall back on admissions. After all admissions are one of the modes of proof of fact in dispute, when the fact itself is obvious and apparent known or can be ascertained by the document sought to be proved and the fact as known or as appearing from the document sought to be proved is contrary to the so-called admission, the question of admission of a fact standing on a higher pedestal taking precedence in the realm of proof over the facts apparent from incontrovertible record does not arise.

18. In this case, firstly admission cannot be said to be clear inasmuch as the very description of the company as a Private Limited Company goes contrary to the statement in the complaint that it is a partnership firm. As to the truth of admission, the document now sought to be admitted in the evidence, prima facie, discloses that the complainant is a Private Limited Company incorporated under the Companies Act. It would be travesty of justice, if the Court were to reject this document (certificate of incorporation of the company) on the ground that it is a contrary to the alleged admission and then to proceed to hold that in view of the admission, the complainant must be held to be a partnership firm.

19. Under these circumstances, no illegality can be attributed to the order of the learned Magistrate receiving these documents and the order of the learned

Sessions Judge who upheld the said order.

20. In view of this, this petition is fit to be and is hereby dismissed.