

(2002) 12 AP CK 0005

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 1854 of 2002 and Criminal Revision Petition No. 1851
of 2002

United Phosphorus Ltd.

APPELLANT

Vs

Sri Saiteja Fertilizers and
Pesticides and Others

RESPONDENT

Date of Decision: Dec. 17, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190, 200
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141, 142

Citation: (2003) 1 ALD(Cri) 290 : (2003) 1 APLJ 489 : (2003) 3 BC 130 : (2003) 114 CompCas 587 : (2004) 4 RCR(Criminal) 312

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: S. Niranjan Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

The petitioner has filed a complaint in C. C. No. 175 of 2002 on the file of the Judicial First Class Magistrate for Excise, Guntur, u/s 190 read with Section 200 of the Criminal Procedure Code, against the respondents herein alleging that they have committed offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short "the Act"). The trial court, through orders dated October 1, 2002, dismissed the complaint against A-3, respondent No. 3 herein. The petitioner challenges the same.

2. Heard learned counsel for the petitioner and the learned public prosecutor.

3. Sri S. Niranjan Reddy, learned counsel for the petitioner, submits that though the cheque was issued by respondent No. 2, the business was being undertaken by respondents Nos. 2 and 3 in partnership and, as such, there was no justification for

the trial court in dismissing the complaint against respondent No. 3. He further states that whatever may be the merits of the case, there was no justification for the trial court to dismiss the complaint against the third respondent in the absence of any application in that regard.

4. The learned public prosecutor submits that when the petitioner has described the first respondent as a proprietary concern and impleaded the proprietor as the second respondent, the question of there existing any partner, be it the third respondent or anybody else, does not arise. He submits that it was competent for the trial court to dismiss the application against the third respondent even in the absence of an application.

5. In the body of the complaint as well as in the cause title, the petitioner had described the first respondent as proprietary concern, viz., M/s. Sri Saiteja Fertilizers and Pesticides, represented by its proprietor Mr. Narra Guruva Reddy. The proprietor of the firm is impleaded as respondent No. 2. That being the situation, the third respondent is impleaded as "de facto partner". It is a matter of common knowledge as well as settled principle of law that a proprietary concern does not have any partners. The partnership and proprietary concern do not go together and they are rather mutually exclusive.

6. The contention of learned counsel for the petitioner that respondents Nos. 2 and 3 were doing business in partnership cannot be accepted. In the complaint, it is stated, *inter alia*, as under :

"While so, the second accused, who is the proprietor of first accused-firm approached the complainant and sought for supply of pesticides on credit. Having considered the representation made by the second accused on behalf of the first accused, the complainant herein started despatching pesticides to the accused on credit by opening a khata with the complainant. While so, the third accused who is a de facto partner with the second accused and who has been actively engaged in day-to-day administration of the business is also vested interest in the first accused firm."

7. A cursory look at the said portion in the complaint reveals that it was the second respondent who approached the petitioner for supply of fertilizers and it was he who has given the cheque in question. That being the situation, there was no justification to include the third respondent in the complaint.

8. The allegation that the third respondent is actively engaged in the day-to-day business of the second respondent cannot constitute any basis to hold the third respondent liable. Learned counsel for the petitioner places reliance upon Section 141 of the Act, particularly, Explanation (a) in support of his contention that apart from the companies incorporated under the Companies Act and partnerships constituted under the Partnership Act, association of individuals also come within the definition of "company" and that being the situation, every person who, at the

time of offence, was in-charge of and was responsible to the company for conduct of the business, shall be deemed to be guilty of the offence. Section 141 of the Act reads as under :

"141. Offences by companies.--(1) If the person committing an offence u/s 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 :

9. 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 purposes 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."

10. A reading of Explanation (a) indicates that the expression "company" shall mean a body corporate and includes a firm or other association of individuals. The term "other association of individuals" cannot be understood to refer even to informal understandings between individuals. It has to be understood in the context of body corporate and partnership firms. The principle of ejusdem generis gets attracted in such a case. The "association of individuals" should be of similar nature as companies and partnership firms.

11. Apart from companies and partnership firms, the law provides for registration of "association of individuals" such as those under the Societies Registration Act. The reference can be only to such "association of individuals" and not any other loosely knitted, uncertain and amoebic gatherings. In fact, to hold an individual responsible in the absence of such a process of registration or incorporation would just be next to impossibility. Conversely, if such a procedure is permitted, even third parties can be held liable though they do not have any legal or other relationships with such unincorporated and unregistered agencies.

12. In that view of the matter, no exception can be taken to the order under revision. The criminal revision case is accordingly dismissed.