(2004) 10 AP CK 0008

Andhra Pradesh High Court

Case No: Criminal Petition No''s. 6048, 6049 and 6050 of 2003

Chairman, Jawahar Co-op. Urban Bank Ltd. and Others	APPELLANT
Vs	
Sri Ramanjaneya Enterprises and Others	RESPONDENT

Date of Decision: Oct. 1, 2004

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 72

Citation: (2005) 1 ALD 634 : (2005) 1 ALD(Cri) 634 : (2005) 2 ALT 118

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: Minnikanti Laxmiprasad, for the Appellant; K.V. Bhanu Prasad and Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.
Inasmuch as common questions of fact and law are involved and as the parties well nigh are the same, these three criminal petitions can be disposed of together.

2. Three complaints were filed against the Chairman, Vice-Chairman and some of the Directors of the Jawahar Co-operative Urban Bank Limited u/s 138 of the Negotiable Instruments Act by M/s. Ramanjaneya Enterprises in C.C. No. 74 of 2002, M/s. Sri Venkateswara Finance in C.C. No. 75 of 2002, and Mrs. K. Rukmini in C.C. No. 76 of 2002, on the file of the XV Metropolitan Magistrate, Hyderabad.

3. Several gullible villagers invested their hard earned monies under various fixed deposit receipts with the Jawahar Cooperative Urban Bank Limited, Dilsukhnagar, Rangareddy

District, the accused. All of them instructed the Bank to remit the accrued monthly interest to M/s. Ramanjaneya Enterprises, the complainant in C.C. No. 74 of 2002. In discharge of that liability, it is said that the accused-bank issued four banker cheques each for Rs. 50,606/- dated 05-01-2001, 05-02-2001, 05-03-2001 and 05-04-2001. The Managing Partner of the complainant presented three out of four banker cheques with his Banker, State Bank of India, Bazarghat Branch, Hyderabad on 05-04-2001. They were returned with the endorsement "present again on 09-04-2001". The Manager of the accused-Bank also wrote a letter to the complainant requesting him inter alia to present the cheques later on 09-04-2001. The complainant presented all the four banker cheques on 07-05-2001 in State Bank of India, Bazarghat Branch, Hyderabad again. However, all the four cheques were returned with the endorsement "not a clearing member". He, therefore, got a legal notice dated 11-05-2001 issued to the Chairman, Vice-Chairman and Directors of the accused-Bank demanding payment of the amounts covered by those cheques to the tune of Rs. 2,02,424/- within 15 days from the date of receipt of the said notices. All of them, having received the said notices under various acknowledgments, even after lapse of 15 days therefrom, failed to pay the amounts covered by the four banker cheques. They did not even give any reply to the legal notices got issued by the complainant.

4. The Managing Director of M/s. Sri Venkateswara Finance, the complainant in C.C. No. 75 of 2002, invested an amount of Rs. 5,00,000/- under a fixed deposit receipt dated 23-06-2000 with the Jawahar Cooperative Urban Bank Limited and the amount carries an interest at the rate of 18% per annum. Towards the payment of the interest accrued thereon the accused-bank issued a banker cheque bearing No. 006255, dated 05-04-2001. When the complainant presented the said cheque with the State Bank of India, Bazarghat Branch, Hyderabad on 07-05-2001, the Bank returned it with the endorsement to the effect "not a clearing member". Therefore, a legal notice dated 11-05-2001 was got issued by the complainant to all the Directors, Chairman and Vice-Chairman of the accused-bank demanding them to repay the amount of Rs. 7,500/- covered by the banker cheque within 15 days from the date of receipt of the said notice. Having received the notices under various acknowledgments, all of them failed to pay the amount nor did they get any reply issued to the legal notices issued by the complainant.

5. One Mrs. K. Rukmini, wife of the Managing Partner of M/s. Sri Venkateswara Finance obtained seven banker cheques for a total sum of Rs. 2,80,000/- at the rate of Rs. 40,000/- each from the accused-Bank in her name for the purpose of furnishing them as security in a business deal with a third party. But, the purpose was not served and as there was no occasion to utilize the said cheques, she approached the accused-Bank and requested them to cancel the said cheques and pay back her amount. After having postponed the payment for sometime, finally the Bank asked her to present the banker cheques in her account. Accordingly, the complainant presented the said seven cheques in her bank account with State Bank of India, Bazarghat Branch, Hyderabad. The Bank returned all the seven cheques with the endorsement to the effect "not a clearing member". The complainant got a legal notice dated 11-05-2001 issued to all the Directors

of the accused Bank calling them upon to pay the amounts covered by the cheques in all a sum of Rs. 2,80,000/- within 15 days from the date of receipt of the said notices. Having received the said notices under various acknowledgments, they failed to pay the amount even after the period of 15 days was elapsed nor did they care even to send a reply to the said notices.

6. Thus, as aforesaid, three complaints have been filed against the Chairman, Vice-Chairman and some of the Directors of the accused-Bank. Having received the summonses from the Court, all the accused filed these petitions seeking to quash the criminal proceedings launched against them.

7. The ground taken inter alia in the petitions was that the proceedings launched against the accused are without jurisdiction and it would not attract the provisions of Section 138 of the Negotiable Instruments Act inasmuch as the banker cheques were not dishonoured on any of the grounds mentioned inter alia in Section 138 of the Negotiable Instruments Act and on the other hand, they were returned as Jawahar Cooperative Urban Bank Limited was not a clearing member with the collecting bank.

8. The facts are obvious. Various banker cheques were issued by the Manager, Jawahar Co-operative Urban Bank Limited one of the accused in these complaints to the complainants. The said cheques were presented with the banker of the complainants, namely, State Bank of India, Bazarghat Branch, Hyderabad. All of them were returned with an endorsement that Jawahar Co-operative Urban Bank Limited is not a clearing member. The requirement u/s 138 of the Negotiable Instruments Act was complied with by the complainants by getting the legal notices issued calling upon the accused to pay the amounts covered by the banker cheques by informing them about the non-payment of amounts covered thereunder. The complainants'' grievance appears to be that having received the legal notice got issued by them under various acknowledgments, even after the lapse of 15 days therefrom, the accused neither paid the amounts nor did send any reply to the said notices. In the perception of the complainants, therefore, the accused committed the offence punishable u/s 138 of the Negotiable Instruments Act. As against this case, the stand taken by the accused appears to be that no co-operative urban bank can be a clearing member to the Reserve Bank of India directly and such cooperative urban bank should take sub-membership with any one of the nationalized banks and that, therefore, the Jawahar Cooperative Urban Bank Limited had taken sub-membership with Union Bank of India and on a letter given by Union Bank of India, the Reserve Bank of India cancelled the clearing facility of the sub-member namely the Jawahar Co-operative Urban Bank Limited and, therefore, it is not a case of violation of the provisions of Section 138 of the Negotiable Instruments Act.

9. The moot question, therefore, that arises for determination in these cases is ''As to whether having regard to the endorsement to the effect ''not a clearing member'' the offence punishable u/s 138 of the Negotiable Instruments Act is attracted or not?''

10. The learned counsel appearing for the petitioners seeks to contend that the cheques shall be presented to the bank on which it has been drawn and in the event of dishonour by that bank alone the offence u/s 138 of the Negotiable Instruments Act is attracted. To drive home the said point, he seeks to place reliance upon the Judgment of the Apex Court in Shri Ishar Alloys Steels Ltd. v. Jayaswals Neco Ltd. 2001 Crl.L.J. 1250. In the case before the Apex Court a cheque dated 21-07-1997 for an amount of Rs. 10,00,000/- was drawn on the State Bank of Indore, in favour of Jayaswals NECO Limited, the respondent therein. When that cheque was presented on 26-09-1997, it was returned unpaid. Again on 20-01-1998 it was presented by the respondent before the State Bank of India, Raipur branch. That cheque having not been sent for collection by Raipur branch to Indore branch so soon it reached the latter branch on 24-01-1998, by which time, six months period was elapsed. The cheque was returned unpaid by that bank on 03-02-1998. After issuing notice demanding payment, eventually complaint was lodged by the respondent against Shri Ishar Alloys Steels Limited for the dishonour of the cheque. The appellant carried the matter in revision to the Sessions Judge, Raipur contending that since the cheque was presented for payment beyond the period of six months, as enjoined under proviso (a) to Section 138 of the Negotiable Instruments Act, no offence was made out. The Sessions Court allowed the revision. The respondent filed revision petition before the High Court which was allowed holding that the cheque could be presented within the stipulated period before the drawer or it could be presented before the drawer as well as the payee''s bank. Having regard to Section 72 of the Negotiable Instruments Act, the Apex Court drawing a distinction between "a bank" and "the bank" held that cheque shall be presented at the bank on which it has been drawn if the drawer was to be held criminally responsible. Section 72 of the Negotiable Instruments Act is germane to be considered in the context. It reads as under:

"72. Presentment of cheque to charge drawer:- Subject to the provisions of Section 84 a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer".

11. A perusal of the said provision shows that the cheque shall be presented at the bank upon which it is drawn so as to alter the position in between the drawer and his banker to the prejudice of the former. The Apex Court in, paragraph 9 of its Judgment held thus:

"A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable."

12. In view of the fact that the point involved therein inter alia was as to whether the cheque was presented within the stipulated period of six months, the Apex Court held further that such presentation must necessarily be made within six months at the bank on which the cheque Was drawn. At the beginning of the Judgment the Apex Court formulated three points for determination namely:-

"(a) What is meant by, "the bank" as mentioned in Clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881?

(b) Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the payee of the cheque?

(c) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the Act?"

Point (c) has been ultimately answered by the Apex Court as excerpted herein above. To attract the provisions of Section 138 of the Negotiable Instruments Act, obviously, the cheque shall be presented with "the bank" on which it is drawn as mandated by Section 72 of the said Act.

13. In the instant case, because of the fact that the Jawahar Co-operative Urban Bank Limited is not a clearing member of Reserve Bank of India, the latter bank returned the cheques. It cannot, therefore, be held that the cheques have been returned for want of sufficiency of the funds or for exceeding the arrangements made or for any other reason. Obviously the cheques in question were not presented at the Bank on which they had been drawn earlier. When there has been no valid presentation of the cheques in accordance with the provisions contained in Section 72 of the Negotiable Instruments Act with "the Bank" on which they have been drawn, the drawer of those cheques, namely, the petitioners herein cannot be held criminally liable. For the foregoing reasons, the complaint cases must fail.

14. In the result, the Criminal Petitions are allowed. The complaints in C.C. Nos. 74 of 2002, 75 of 2002 and 76 of 2002 are hereby-quashed.