

(2001) 11 AP CK 0013

Andhra Pradesh High Court

Case No: Criminal Petition No. 3224 of 1999

VIF Airways Ltd. and Another

APPELLANT

Vs

Aishu Finance Ltd. and Another

RESPONDENT

Date of Decision: Nov. 9, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- General Clauses Act, 1897 - Section 27
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2001) 2 ALD(Cri) 941 : (2002) 1 ALT(Cri) 102

Hon'ble Judges: Tamada Gopala Krishna, J

Bench: Single Bench

Advocate: P. Veera Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Tamada Gopala Krishna, J.

This is a petition u/s 482 of the Cr.P.C. filed by the petitioner (A-2) to quash the proceedings in C.C. No. 72 of 1997 on the file of the XV Metropolitan Magistrate, City Criminal Courts at Hyderabad.

2. According to the complaint filed by the 1st respondent herein, the 1st respondent is finance company. A-1 is a registered company incorporated under the Companies Act of which A-2 i.e., the petitioner herein is the Chairman and Managing Director and A-3 to A-9 are the business Directors. They have regular business transactions.

3. While so, as on 12.6.1996, A-1-company was due an amount of about Rs. 32 lakhs and in discharge of that liability, it issued three cheques bearing Nos. 024725 dated 27.6.1996 for an amount of Rs. 12,37,7567/-, 024726 dated 1.8.1996 for an amount of Rs. 10 lakhs and 024727 dated 1.9.1996 for an amount of Rs. 10 lakhs. When the cheque bearing No. 024725 dated 27.6.1996 was presented by the 1st

respondent-company through its Bankers, it was informed on 12.11.1996 that it was dishonoured with an endorsement "insufficiency of funds". Subsequently, after following the procedure as contemplated u/s 138 of the Negotiable Instruments Act, the 1st respondent filed the present complaint, which was taken cognizance of by the learned Magistrate.

4. Mr. K. Muralikrishna, learned Counsel appearing for Mr. P. Veera Reddy, learned Counsel for the petitioners, vehemently contended that the complaint insofar as the 2nd petitioner is concerned, who is arrayed as A-2, is not maintainable as the statutory notice to be issued u/s 138 of the Negotiable Instruments Act was never served upon him and as such the proceedings are liable to be quashed. He has drawn my attention to paragraph 7 of the complaint, wherein it is stated that the notices served on A-4, A-5, A-6 and A-7 were received and A-9 refused to receive the notice. Similarly, the notice served on A-3 and A-8 were returned on the ground that they were continuously absent for seven days. Insofar as A-1 company and the petitioner herein (A-2) are concerned, the statutory notices were returned with the endorsement that "party is not available."

5. Heard the learned Public Prosecutor.

6. The simple ground that the notice was not served on the petitioner with an endorsement that "party is not available" would not absolve him of the liability and it cannot be contended that the proceeding, insofar as the petitioner herein is concerned, is an abuse of the process of the Court. It is not in dispute that the notice sent by Registered Post of the petitioner herein has been sent to the correct address and according to the postal endorsement on the said cover, the petitioner was not available at the said address. In my considered view, it is a fit case to presume the due service of the said notice and that the petitioner has deliberately evaded to receive the said notice to escape from the liability to pay the amount of the dishonoured cheque. Furthermore, when once it is not disputed that the address of all the Directors are correct and when the notices were served on all other accused i.e., A-4 to A-7, it is surprising to note that the petitioner who is the Managing Director of A-1 Company is not available at the address given therein. Further, according to Section 138 of the Negotiable Instruments Act, the statutory notice is to be served within a period of 15 days from the date of the knowledge and in the instant case, the 1st respondent has performed its part by sending the notice within the period of 15 days and when once it is returned with the endorsement that the party is not available, it shall be deemed, in view of Section 27 of the General Clauses Act, 1897, that it is served on the 2nd petitioner. Section 27 of the General Clauses Act reads as under:

"27. Meaning of service by post: Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service

shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

7. For the foregoing reasons, I have no hesitation to hold that the petitioner, who has intentionally avoided the receipt of the notice to avoid the penal liability u/s 138 of the Negotiable Instruments Act, cannot turn around and say that the statutory notice is not served upon him.

8. In the result, the criminal petition is dismissed.