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M/s. Videocon International Ltd. Vs M/s. Innovations and 3 State of A.P.

Court: Andhra Pradesh High Court

Date of Decision: Aug. 4, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 200
Negotiable Instruments Act, 1881 (NI) â€" Section 118, 131, 138, 139, 142

Hon'ble Judges: Samudrala Govindarajulu, J

Bench: Single Bench

Advocate: S. Niranjan Reddy, for the Appellant;

Final Decision: Allowed

Judgement

Hon"ble Sri Justice Samudrala Govindarajulu

1. This batch of nine Criminal Appeals are filed by the Complainant M/s. Videocon International Limited, Represented by its Accounts Officer,

Khem Chand Khatri. The Respondents 1 and 2 are the Accused 1 and 2/A-1 and A-2. They are M/s. Innovations, Represented by its Proprietor

Anjan Kumar and also Anjan Kumar in his personal capacity. The complainant filed 9 private complainants against A-1 and A-2 in the Court of IV

Metropolitan Magistrate, Hyderabad alleging the offences u/s 138 of the Negotiable Instruments Act, 1881. In C.C. No. 114 of 2000, the subject

matter is three cheques of the value of Rs. 40,000/- each. In C.C. No. 120 of 2000, the subject matter is three cheques of the value of Rs.

40,000/- each. In C.C. No. 122 of 2000, the subject matter is three cheques of the value of Rs. 35,000/- each. In C.C. No. 118 of 2000, the

subject matter is three cheques of the value of Rs. 40,000/- each. In C.C. No. 115 of 2000, the subject matter is three cheques of the value of Rs.

40,000/-, Rs. 42,475/- and Rs. 42,475/- respectively. In C.C. No. 119 of 2000, the subject matter is three cheques of the value of Rs. 40,000/-

each. In C.C. No. 121 of 2000, the subject matter is three cheques of the value of Rs. 40,000/-, Rs. 45,000/- and Rs. 45,000/- respectively. In

C.C. No. 113 of 2000, the subject matter is three cheques of the value of Rs. 40,000/- each. In C.C. No. 123 of 2000, the subject matter is three

cheques of the value of Rs. 40,000/- each. When the complainant presented all the above 27 cheques for encashment, the banker of the accused

dishonoured those cheques for want of sufficient funds as per cheque return memos dated 22-12-1998 respectively. Thereupon the complainant

got issued legal notices to A-1 and A-2 on 30-12-1998 in accordance with Section 138(b) of the Negotiable Instruments Act, 1881 (In short,

''the Act''). A-1 and A-2 received the said notices on 06-01-1999. But A-1 and A-2 did not choose to give any reply to those notices. The

complainant filed all the relevant documents in the lower Court in all the cases, like cheques, dishonour memos, legal notices, the postal receipts

and postal acknowledgments of the accused. After trial in which PW.1 was examined on behalf of the complainant in all the cases, and all the

documents were marked on behalf of the complainant, the lower Court found A-1 and A-2 guilty of the offences u/s 138 of the Act and

accordingly convicted them and sentenced A-1 to fine of Rs. 5,000/- in each case and A-2 to simple imprisonment for three months and fine of

Rs. 5,000/- in each case.

2. Questioning the said convictions and sentences passed by the IV Metropolitan Magistrate, Hyderabad, A-1 and A-2 filed Criminal Appeals

before the VII Additional Metropolitan Sessions Judge, Hyderabad in Criminal Appeal Nos. 2370 of 2004, 2372 of 2004, 2375 of 2004, 2377

of 2004, 2378 of 2004, 2379 of 2004, 2380 of 2004, 2381 of 2004 and 2382 of 2004. The VII Additional Metropolitan Sessions Judge, by the

impugned judgments dated 23-07-2004 allowed all the Appeals setting aside the convictions and sentences passed by the trial Court against A-1

and A-2. Aggrieved by the same, the complainant filed this batch of Appeals against the acquittals recorded by the lower Appellate Court.

3. Originally the complaints were presented before the Magistrate by the complainant company represented by its Officer, Srinivas Shukla. After

the Magistrate took cognizance of the said offences and issued summonses to the accused in all the cases, the complainant came forward with a

petition in the lower Court to permit Khem Chand Khatri (PW.1) to represent the company in all the complaints in the place of Srinivas Shukla.

The trial Court permitted the same and allowed PW.1 to represent the complainant-company in all the cases. During trial before the Magistrate,

the said Khem Chand Khatri was examined as PW.1 on behalf of the complainant in all the cases and marked the relevant documents Exs.P-1 to

P-13 in each case. On behalf of the accused, no oral evidence was let in and no documents were marked.

4. The lower appellate Court found fault with the complaints on the ground that the complainant did not sign the complaints and they were signed

by the power of attorney holder of the complainant. The lower appellate Court further observed that though one Officer Srinivas Shukla presented

the complaints on behalf of the complainant, the complainant did not produce any power of attorney in favour of the said Srinivas Shukla and did

not prove any such power of attorney in his favour and that therefore taking cognizance of the complaint filed by Srinivas Shukla representing the

complainant company is bad in law I do not agree with the said reasoning of the lower appellate Court. In K.S. Ramachander Rao Vs. State of

A.P. and Another, Full Bench of this Court found favour with the presentation of complaint by power of attorney holder of a juristic person like a

company and held that it is valid in law. The Full Bench also overruled previous contra decision on this aspect. The Full Bench further held that

there is nothing wrong in power of attorney holder of a complainant signing the complaint on behalf of the complainant and presenting the same

before the Criminal Court. The Full Bench observed:

14. ""Complainant"" is not defined either in the Code of Criminal Procedure or in the General Clauses Act. Therefore, for the purpose of Section

200 Code of Criminal Procedure ''Complainant'' should be taken to mean a person who presents the complaint to the Court or who makes the

complaint to the Court. That that should be so would be clear from the fact that if a company or other juristic person gives the complaint, it cannot

be examined. Somebody on its behalf who can speak about the facts of the case would be examined when he presents the complaint on behalf of

a juristic person. The same analogy applies to a power of attorney also. If the complainant himself is able to come to Court and present the

complaint in person, why should be or where is the need or necessity for him to file the complaint through his power of attorney? In fact, in

Nirmaljit Singh v. State of West Bengal (1973) 2 SCSR 66, it is held that the object of examination of the complainant u/s 200 Code of Criminal

Procedure is to ascertain if there is prima facie case and sufficient grounds for proceeding against the accused. So, the power of attorney who

presented the complaint on behalf of the ''payee'' or the ''holder in due course'' of a dishonoured cheque can be examined on behalf of the

complainant to find out if there is prima face case against the accused.

5. Section 142 of the Act has no bearing on the aspect of deciding whether a power attorney holder is competent in law to present the complaint

on behalf of a company. Section 142 of the Act deals with the case of a ""payee""/Accused and not a case of the ""Drawer""/Complainant. The lower

Court erred in adverting to Section 142 of the Act on this aspect of the matter.

6. It is contended that the complainant did not mark and prove power of attorney executed by the complainant company in favour of Srinivas

Shukla. In the trial Court, the complainant filed Ex.P-1 copy of certificate of incorporation of the complainant company and Ex.P-2 copy of

general power of attorney executed in favour of PW.1 namely Khem Chand Khatri who was running the litigation in Courts on behalf of the

complainant company after substituting himself in the place of Srinivas Shukla. It is for the Magistrate to satisfy himself before taking cognizance of

the offence whether the complaint was properly prepared and was properly presented and was properly signed by the proper person. Along with

the complaints, copies of general power of attorney executed by the complainant company in favour of Srinivas Shukla were filed. It is only after

satisfying itself about the authority in favour of Srinivas Shukla, the Magistrate/trial Court took cognizance of the complaints for the respective

offences after making required enquiry u/s 200 Code of Criminal Procedure After trial, and after decision of the trial Court, in the appeal the lower

appellate Court should not have gone into the question as to presentation of the complaint before the Magistrate. The lower appellate Court should

have noticed that the Magistrate after satisfying himself about the validity and propriety of the power in favour of Srinivas Shukla, issued

summonses to A-1 and A-2 in the respective cases. Therefore, there cannot be any doubt of the fact that taking cognizance of the cases for the

respective offences by the Magistrate is valid and legal.

7. The lower appellate Court observed that the complainant did not produce any evidence to show that the respective dishonoured cheques were

supported by legally enforceable debt. The lower Court further observed that suggestion given by the defence counsel to PW.1 that the

complainant used to dump goods with the accused and used to obtain blank cheques from the accused, cannot be taken as admission on the part

of the accused with regard to the existence of legally enforceable liability. It is contended by the Respondents" counsel that the initial burden is on

the complainant to prove that the dishonoured cheques were supported by legally enforceable liability and that the complainant did not produce its

account books much less any vouchers with the signatures of the accused. The complainant filed Ex.P-3 statements of accounts of the accused

maintained by the complainant. Statements of accounts cannot be pieces of legal and admissible evidence in Court as per the provisions of the

Indian Evidence Act, 1872. The complainant is not a Banking company governed by the provisions of the Bankers Book of Evidence Act, 1891

which enables a banking company to file certified extracts of its accounts on proper certification, in case the books are required for day-to-day

maintenance by the Bank. Ex.P-3 statements of accounts have no value in the eye of law. But, even if Ex.P-3 is excluded from evidence, it has to

be seen whether the dishonoured cheques are supported by legally enforceable liability.

8. Section 139 of the Act raises a presumption in favour of the holder to the effect that the holder of a cheque received the cheque of the nature

referred in Section 138 for the discharge of any debt or other liability, in whole or in part. No doubt, the said presumption u/s 139 of the Act is

rebuttable presumption. Opening words of Section 131 reads, ""It shall be presumed unless the contrary is proved"". In that view of the matter it is

not for the complainant initially to prove existence of any legally enforceable debt or other liability for the cheques involved in these cases. The

initial burden is on the accused to prove that the dishonoured cheques were not supported by any legally enforceable debt or other liability. In

K.N. Beena Vs. Muniyappan and Another, the supreme Court observed:

6. In our view the impugned judgment cannot be sustained at all. The judgment erroneously proceeds on the basis that the burden of proving

consideration for a dishonoured cheuqe is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the

Negotiable Instruments Act. u/s 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had

been made or drawn for consideration. u/s 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received

the cheque for discharge, in whole or in part of a debt or liability. Thus, in complaints u/s 138, the Court has to presume that the cheuqe had been

issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or

liability is on the accused. This Court in the case of Hiten P. Dalal Vs. Bratindranath Banerjee, has also taken an identical view.

9. The Supreme Court further observed that the accused has to prove in the trial by leading cogent evidence that there was no debt or liability. On

facts, the Supreme Court observed that the accused not having lead any evidence could not be said to have discharged the burden cast on him and

that the accused not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by

the Magistrate was correct.

10. The lower appellate Court committed similar mistake in the impugned Judgments. Even if Ex. P-3 statements of accounts are of no value, since

the burden is not on the complainant to prove existence of legally enforceable debt or liability, it is for the accused to prove otherwise. The accused

did not lead any evidence at all. Neither he examined himself as a witness to rebut the presumption u/s 139 of the Act nor he examined any

witnesses nor marked any documents in respect of his case. PW. 1 being an Accounts Officer of the complainant company gave evidence on the

basis of records even though he has no personal knowledge about those records. The accused having received legal notices u/s 138(b) of the Act,

did not choose to give any reply notice putting forward any contentions either with regard to the cheques or with regard to the liability under those

cheques. In those circumstances, the lower appellate Court should have held though the accused could not rebut the presumption u/s 139 of the

Act of existence of debt or liability I am of the view that the impugned judgments of the lower Court are not sustainable either on facts or in law.

11. In the result, all nine Appeals in this batch are allowed setting aside the judgments passed by the lower appellate Court and restoring

convictions and sentences passed by the trial Court against Respondents 1 and 2/A-1 and A-2. Sentences of imprisonment in all nine cases shall

run concurrently.