

(2006) 11 AP CK 0025

Andhra Pradesh High Court

Case No: Criminal Petition No. 1379 of 2006

Chinthala Cheruvu and Another

APPELLANT

Vs

State of Andhra Pradesh and
Another

RESPONDENT

Date of Decision: Nov. 21, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142, 20
- Penal Code, 1860 (IPC) - Section 34, 420, 468, 471, 506

Citation: (2008) 1 CivCC 401 : (2007) 5 RCR(Civil) 676 : (2008) 1 RCR(Criminal) 412

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

Bench: Single Bench

Advocate: Prabhakar Reddy, for the Appellant; A. Rajasekhar Reddy, for the Respondent
No. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.

A1 and A2 in the crime seek to invoke the extraordinary jurisdiction of this Court u/s 482 of the Criminal Procedure Code to quash the criminal proceedings pending against them in C.C.No.2055/2005 on the file of the Additional Judicial Magistrate of 1st Class, Kothagudem.

2. On a private compliant filed by the second respondent herein, the same has been forwarded to the police for investigation,. Eventually, at the culmination of investigation, a charge-sheet was filed against the petitioners alleging inter alia the offences punishable under Sections 420,468,471,506 read with 34 of Indian Penal Code. Cognizance of the offence was taken by the Court for the said offences.

3. It was alleged inter alia in the charge-sheet that A2 is the wife of A1 and both of them together have been running business as partners under the name and style of Venkata Durga Fertilisers at Paloncha. The de facto-complainant, G. Chenna Reddy mediated between the accused-petitioners and the ryots for supply of pesticides and fertilizers to the ryots and as a security, he handed over four blank cheques bearing Nos.027448 to 027450 containing his signatures drawn on Co-operative Bank, Paloncha under account No.3251 and also promissory notes to the accused-petitioners. For the crop season 1999-2000, pesticides worth Rs.3,50,000/- and fertilizers worth Rs.5,00,000/- in all Rs.8,50,000/-, were supplied by the accused-petitioners on credit basis to the fanners L.Ws.2 to 36. The fanners after reaping the crop, paid in kind of 1400 quintals of cotton at the rate of Rs. 2000/- per quintal worth Rs.26,00,000/- on credit to their account with the accused. For the crop season 2000-2001 the complainant purchased pesticides and fertilizers worth Rs. 10,26,000/- (Rs.3,26,000/- + Rs.7,00,000/- respectively) and after getting the yield, the farmers supplied 1000 quintals of cotton in ten lorries worth Rs. 16,00,000/- on credit to their account. Similarly, for the crop season 2001-2002, the farmers were given pesticides and fertilizers worth in all Rs. 15,00,000/- (Rs.6,00,000/- + Rs.9,00,000/- respectively) and the farmers after harvest supplied 1200 quintals of cotton in 12 lorries worth Rs. 15,00,000/- and 390 bags of paddy at Rs.400/- per bag worth Rs. 1,56,000/- and dried chillies 40 quintals at Rs.2,500/- worth Rs. 1,00,000/- Thus, for all the three seasons, L.W.1 purchased pesticides and fertilizers for the benefit of L.Ws.2 to 36 from the petitioners worth in all Rs.33,76,000/- and supplied the commodities worth Rs.59,56,000/- on credit. On proper accounting, the accused shall pay an amount of Rs.25,80,000/- to the farmers. However, when the fanners refused to purchase the pesticides and fertilizers for the season 2002-03 and asked the accused to settle their account and to pay back whatever amount due to them, the accused paid deaf ears and intimidated the farmers to away with their lives. On the other hand, the accused presented one of the four cheques bearing No.027448 by forgoing and fabricating the same for an amount of Rs.8,25,000/- with the date 18.12.2002 and when the cheque was bounced, they filed a compliant under Sections 138 and 142 of the Negotiable Instruments Act (for short "the Act") against the de facto-complainant falsely and the same is pending trial. Thus, both the accused resorted to the offence of fabrication and forgery and got the cheque dishonoured so as to file a compliant against the de facto-complainant and thereby committed the offences as stated hereinabove.

4. As aforesaid, the petitioners who are the accused therein filed instant application on the premise that it is nothing but a counter-blast to the private compliant filed by them u/s 138 of the Act.

5. The question, therefore, that falls for determination is, whether it was a case of abuse of process of the Court as alleged?

6. The offences alleged are punishable under Sections 420, 468, 471 and 506 r/w 34 of Indian Penal Code. The main allegation seems to be that pursuant to the understanding between the accused and the farmers, as a measure of security when four blank cheques were given containing the signatures of the de facto-complainant, the accused got one of the cheques fabricated and forged, and presented before the Bank and got it dishonoured and filed a case by means of a private complaint u/s 138 of the Act. Admittedly, a blank cheque was said to have been handed over by the de facto-complainant to the accused containing his signature thereon. If the cheque, for any reason, is filled up, by mentioning the necessary date and the amount in words and figures, the question that remains for consideration is whether it would amount to fabrication or forgery.

7. Section 20 of the Act is germane in his contest, it reads as under:

Section 20: Inchoate Slumped instruments:

"When one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon in a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

8. A perusal of the said provision shows that it is neither a case of material alteration of the cheque nor fabrication or forgery. An implied authority is given to the holder of the cheque, at the time of entrusting a blank cheque containing the signature of the drawer of the cheque alone, to fill the columns therein. Pursuant to the implied authority, if the columns are filled up mentioning the date and amount by words and figures, it will not amount to any offence much less the offence punishable under Sections 468 and 471 of the Indian Penal Code. Oblivious of the provisions of Section 20 of the Act, it is alleged that it was a case of forgery and fabrication.

9. Having regard to the clear provisions of Section 20 of the Act, I am of the considered view that the offences punishable u/s 468 and 471 of IPC are not all attracted having regard to the matrix of the case.

10. Insofar as the second petitioner is concerned, it is alleged that she is the partner of the firm. There has been no whisper whatsoever against her either in the statement recorded by the Investigating Officer or in the charge-sheet filed against the accused. Merely on the ground that she is a partner of the firm, she has been sought to be added. Obviously, the understanding was in between the first petitioner and the de facto-complainant, who represents A1 and the other farmers

cited as witnesses in the charge-sheet. Therefore, there has been no allegation whatsoever qua the second petitioner attracting any other offences mentioned in the charge-sheet. The case against the second petitioner shall have to be quashed.

11. For the above reasons, the criminal petition* is allowed in part and the case against the 2nd petitioners quashed.

12. In so far as the offences under Sections 468 and 471 IPC are concerned, the case against the 1st petitioner is quashed. However, in so far as the offences under Sections 420 and 506 IPC are concerned, the case against the 1st petitioner cannot be quashed.

13. Accordingly, this criminal petition is allowed in part.