

(2000) 10 AP CK 0006

Andhra Pradesh High Court

Case No: Criminal Petition No's. 3279 and 3280 of 2000

Nayagam Lourd Prakash

APPELLANT

Vs

Standard Chartered Bank and
Another

RESPONDENT

Date of Decision: Oct. 24, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 250, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Citation: (2000) 2 ALD(Cri) 731 : (2001) 1 ALT(Cri) 97 : (2003) 115 CompCas 161 : (2001) 1 RCR(Criminal) 822

Hon'ble Judges: Vaman Rao, J

Bench: Single Bench

Advocate: G.M. Vijaya Kumar, for the Appellant; C.S.N. Raju, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Heard both sides.

4. These petitions u/s 482 of CrPC seek quashing of proceedings in CC Nos. 1552 and 1289 of 1998 on the file of the X Metropolitan Magistrate, Secunderabad, in which the petitioners are facing charges for offence u/s 138 of the Negotiable Instruments Act on the ground that the complainant is not properly authorized person on behalf of the company on whose behalf the complaints are said to have been filed.

5. As similar questions arise in both the criminal petitions, they are clubbed together and are being disposed of by a common order.

6. In the above cases, complaints for the offences under Sections 138 of the Negotiable Instruments act have been filed on behalf of the Bankcard Customer

Service Centre by one Mr. Vijaya Bhaskar Reddy described as Assistant Manager, Collections. As per the complaints, the complainant is a multi national bank incorporated in England with limited liability by Royal Charter 1853 with its principal office at London. It has several branch offices in India including the one at Madras. The relevant service center of the said Bank is situated at Secunderabad. The said Vijaya Bhaskar Reddy is stated to be the authorized representative to prosecute the complaint on behalf of the complainant bank. The complainant relies on a power of Attorney, a Photostat copy of which is filed, as the source of the authority for filing the complaint.

7. The proceedings in these complaints are sought to be challenged on the ground that the said Vijaya Bhaskar Reddy who signed and filed the complaint cannot be considered as having proper authority to file the complaint on behalf of the complainant Bank and on this ground, the proceedings in the said CC are sought to be quashed.

8. The contention of the learned counsel for the petitioner in both the petitions is that there is no material placed before the court, which has taken cognizance of the offence to show that Mr. Vijaya Bhaskar Reddy said to be the Manager of the company had the proper authority on behalf of the Bank to file the complaint. It is pointed out that the deed of power of Attorney which has been filed along with the complaint as the source of such authority does not confer proper authority on the said Mr. Vijaya Bhaskar Reddy.

9. A perusal of the deed of power of attorney, a copy of which has been filed in this petition, would indicate that it has been executed by one Mr. F.D. Irani, who has been described as Head, Bankcards, India. There is no material before the court to show that the said Irani himself was properly authorized by the resolution of the Board of Directors or under the Memorandum of Association or the Rules governing the Bank to confer the powers of instituting criminal prosecution against any one on behalf of the company. No material has been placed before the court to show the source of the authority of the said Mr. Irani to confer such powers on Mr. Vijaya Bhaskar Reddy. It is pertinent to mention here that no material is placed before this court in spite of the matter having undergone several adjournments. Thus, there is no material to show that Mr. Vijaya Bhaskar Reddy who has filed the complaint on behalf of the Standard Chartered Bank was properly authorized to do so.

10. Conferment of proper authority on the person, who instituted criminal proceedings on behalf of a company is essential inasmuch as lack of such authority has certain consequences affecting the accused. For instance, where a complaint has been dismissed and the accused have been acquitted and the Magistrate is of the opinion that there were no reasonable grounds for making accusation against the accused, the Magistrate may by his order of acquittal direct payment of compensation to the accused u/s 250 of CrPC. If a complaint is filed on behalf of the company by a person who is not properly authorised to do so, the company may

claim that it was not bound to carry out the directions of the court on the ground that the complainant was not authorized. Similarly in cases, where accused having been acquitted, seek to proceed against the complainant company for compensation for malicious prosecution, the company may come forward with a defence that it is not liable to pay any compensation on the ground that the person who filed complaint was not authorized to do so.

11. Normally, the Board of Directors of a company is vested with all the powers of governance of the company. A person who institutes criminal proceedings on behalf of the company, must have that power conferred by the Board of Directors or in a given case, the Articles of Association or the Rules governing the Management of the company may make a specific provision authorizing certain officer of the company to institute the criminal proceedings against any one on behalf of the company.

12. In this case, the person who instituted the criminal proceedings, Mr. Vijaya Bhaskar reddy is said to have been authorized by one Mr. Irani to do so on behalf of the company. But, there is no material placed before the court as to what is the source of the authority of Mr. Irani to confer such powers on the said Vijayabhaskar Reddy. Under the circumstances, it appears manifest that the said Vijaya Bhaskar Reddy has no proper authority to institute the criminal proceedings on behalf of the Bank, namely, Standard Chartered Bank.

13. It is pertinent to note that u/s 142 of the Negotiable Instruments Act, the Court can take cognizance of any offence punishable u/s 138 of the Negotiable Instruments Act only upon the complaint in writing made by the payee or as the case may be the holder in due course of the cheque.

14. In this case, obviously, the Standard Chartered Bank is the payee under the cheque said to have been issued by the accused. Thus, obviously, it is the said Bank which alone can institute the criminal proceedings against the accused for an offence u/s 138 of the Negotiable Instruments Act. Obviously, a company of necessity would function through some individual. The complaint has to be filed by some person on behalf of the company. Such person to meet the requirement of Section 142 of the Negotiable Instruments Act would have to be one who is properly authorized by the company to institute the proceedings. In this case, as seen above, no material has been placed before the Court to show that Mr. Vijaya Bhaskar Reddy properly represents the payee of the cheque.

15. In the case of SATISH & COMPANY V. SR TRADERS AND OTHERS 1, His Lordship Hon"ble Sri Justice B.S. RAIKOTE has held that a complaint filed by the company represented by the Manager, who is not authorized to file the complaint was not maintainable. It has been observed by His Lordship that even if the company or the complainant is represented by the Manager, such Manager shall necessarily be an authorized Manager so that the Magistrate can take cognizance of the offence. I am

in respectable agreement with the view expressed by His Lordship.

16. In view of the circumstances of the case narrated above and in view of the law as laid down in the above cited decision, I have no hesitation to hold that there is no material before the court to show that Mr. Vijaya Bhaskar Reddy who instituted the criminal proceedings on behalf of the complainant company has been properly authorized to do so. The complaints under the circumstances must be held to be not maintainable.

17. Hence, these petitions are allowed and the proceedings against the petitioners in CC Nos. 1552 and 1298 of 1998 on the file of the X Metropolitan Magistrate ,Hyderabad shall stand quashed.