

**(1998) 01 AP CK 0003**

**Andhra Pradesh High Court**

**Case No:** Criminal Petition No. 2100 of 1997

M/s Kusum Ingots

APPELLANT

Vs

State of A.P.

RESPONDENT

**Date of Decision:** Jan. 19, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 139, 140, 141, 142

**Citation:** (1999) 2 CivCC 328 : (1999) 2 RCR(Criminal) 194

**Hon'ble Judges:** A. Hanumanthu, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

A. Hanumanthu, J.

This petition is filed u/s 482 Cr.P.C. to quash the proceedings in C.C.No. 196/97 on the file of XV Metropolitan Magistrate, Hyderabad.

2. The facts in brief, are as under:

The 2nd respondent (hereinafter called as respondent) filed a private complaint against the petitioner herein alleging offence u/s 138 of the Negotiable Instruments Act, (hereinafter called as Act). The 1st petitioner is an Incorporated Public Ltd. Company under the provisions of the Companies Act. The 2nd petitioner is the Chairman and Managing Director and the petitioners 3, 4 and 5 and another Bharath Kumar Modi are the Directors of the 1st accused-Company. The respondent is also a Public Limited Company. In the month of January, 1995 an agreement under the caption "Equipment Lease agreement" was entered into between the respondent and the 1st petitioner herein. The respondent purchased various plant and machinery for the expansion of the activities of the 1st Petitioner-Company by

investing a sum of Rs. 1 crores and leased out the same under Equipment Lease Agreement" on a monthly rental of Rs.3,78,350/- payable by 17th of every month. Under the said agreement, the 1st petitioner issued post-dated cheques in favour of the respondents for payment of monthly rentals. The said cheques were issued on the account of the 1st petitioner in State Bank of Hyderabad at Indore Branch. Towards the monthly rentals falling due for December, 1996 and January, 1997, the 1st petitioner issued the cheques bearing Nos.0127314, dated 1.12.1996 and 0127315, dated 1.1.1997, both drawn on State Bank of Hyderabad. Indore Branch. The respondent-complainant presented those cheques for realisation through their Bankers Bank of Baroda. Khairatabad Branch, Hyderabad. But, the cheques were dishonoured for the reason of insufficient funds". After issuing a statutory notice u/s 138 of the Act, the respondent filed the complaint against the petitioner herein for the offence punishable u/s 138 of the Act. On the basis of the complaint and after examining the complainant, the learned Magistrate had taken cognizance of the offence and registered the complaint as C.C.NO. 196/97. The petitioners have come up with this application to quash the said proceedings.

3. The learned Counsel for the petitioners raised the following contentions:

(1) The post dated cheques were issued on State Bank of Hyderabad, Indore Branch merely as security and the mutually agreed procedure relating to the payment of instalments by the petitioners-Company to the respondent-complainant is that the cheque was being issued on 15th of the every month drawn on State Bank of Hyderabad, Nariman Point, Bombay branch where sufficient arrangements were made for honouring the cheques and the cheques being realised, the complainant used to return the cheques drawn on State Bank of Hyderabad, Indore Branch and the respondent failed to follow the said procedure while presenting the post-dated cheques at State Bank of Hyderabad, Indore Branch.

(2) On behalf of the petitioners-Company, the letter dated 11.12.1996 and legal notice, dated 21.12.1996 were sent to the complainant intimating that the post-dated cheques have been cancelled and called upon the complainant to return them and also issued instructions to the concerned Bank not to honour the same and in spite of the said notice and the letter, intimating cancellation of both the cheques, the respondent-complainant presented the same and as such, the provisions u/s 138 of the Act are not applicable and no offence, muchless u/s 138 of the Act was made out against these petitioners.

(3) The averments in the compliant make out a civil dispute between the parties and as such, criminal proceedings against these petitioners are not maintainable.

4. On the other hand, the learned Counsel for the respondent refuted these contentions and contended that the petitioners are liable for offence u/s 138 of the Act.

5. In view of the rival contentions raised by the Counsel on either side, the point that arises for consideration is whether there are justifiable grounds to quash the proceedings in C.C.No. 196/97 as prayed for?

6. The issuance of the two post-dated cheques for Rs.3,78,750/- each by the 1st petitioner in favour of the respondent-complainant towards the monthly rentals falling due for the months of December, 1996 and January, 1997 is not disputed. The facts stated in the complaint show that the said two post-dated cheques were drawn on State Bank of Hyderabad, Indore Branch and when they were presented for realisation through respondent's bankers Bank of Baroda, Khairatabad branch, Hyderabad, the bankers of the 1st petitioner dishonoured the said cheques by their endorsement, dated 18.1.1997 and the said dishonour of the said two cheques were due to "insufficiency of funds", and the said dishonour of the cheques was made known to the complainant on 25.1.1997 by their banker's memo. Thus, the fact remains that the two post-dated cheques issued by the 1st petitioner were dishonoured due to "insufficient funds" in the-account of the 1st petitioner.

7. As regards the first contention raised by the learned Counsel for the 1st petitioner-Company that the respondent-complainant had deviated from the mutually agreed procedure in presenting, the post-dated cheques for realisation, it is purely a question of fact. What was the mutually agreed procedure between the parties will come to light only when the evidence is let in at the time of trial in the case and whether the respondent-complainant had deviated from the said procedure. Further, as seen from the letter dt. 11.12.1996 and the legal notice, dated 21.12.1996 issued to the complainant on behalf of the 1st petitioner-Company, there is no allegation that the complainant had made any such deviation from the mutually agreed procedure.

8. As regards the 2nd contention raised by the learned Counsel for the petitioners, it is no doubt true that the respondent-complainant was informed by the legal notice, dated 21.12.1996 that the post-dated cheques have been cancelled for the reason that they have been obtained under duress and coercion for misuse or illegal use contrary to the terms and conditions of the agreement entered into between the parties and the respondent was directed to return those two cheques. Under the letter dated 11.12.1996, the 1st petitioner informed the respondent that due to financial constrains, they are not in a position to make payment of the instalments on due dates till the financial position improves and therefore, requested the respondent not to present those cheques for realisation until further directions, admittedly, in spite of the said letter and the legal notice, the respondent-complainant presented those post-dated cheques for realisation and they were returned with an endorsement of "insufficiency of funds". The learned Counsel for the petitioners vehemently contends that inspite of the instructions of the 1st petitioner not to present those cheques for realisation, the respondent-complainant presented the cheques and therefore the provisions u/s

138 of the Act are not attracted in view of the judgments of the Supreme Court in M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, : 1996(1) Civil CC 309 (SC) :1996(1) Apex Court Journal 99 (SC) and K.K. Sidharthan Vs. T.P. Praveena Chandran and Another, . In Electronics Trade and Technology development Corporation Ltd. Secunderabad V. Indian Technologists and Engineers (Electronics (P) Ltd., 1996(2) SC 739: 1996(1) CCC 309 (SC)-1996(1) ACJ 99 (SC). the Apex Court held thus:

"The object of Section 138 is to inculcate faith in the efficacy of banking operations and credibility in transacting business on Negotiable Instruments. Despite civil remedy. Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce life payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issued the cheque dishonestly. Once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138. If. after the cheque is issued to the payee or to holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions. Section 138 does not get attracted.

This was also followed with approval in the later decision of the Supreme Court in K.K. Sidharthan Vs. T.P. Praveena Chandran and Another, Apex Court Journal 555 (SC.). In that case, the petitioners had issued two post-dated cheques each for a sum of Rs. 3,00,000/- drawn on Indian Overseas Bank. Thrissur branch. But. when the Cheques were being presented, the same were returned unpaid with the endorsement "payment countermanded by the drawer". In the complaint, it was stated that the cheques were returned unpaid for want of sufficient funds in the account. The drawer approached the High Court of Kerala for quashing the complaint, but the High Court refused to do so. Hence, the matter came up before the Supreme Court. In that case, the appellant-drawer produced the communication of the Indian Overseas Bank, Thrissur branch showing that when the cheques in question were presented, there were sufficient funds in the account of the drawer. Hence, their Lordships of the Supreme Court hold that the cheques were returned not because of insufficiency of funds as alleged in the complaint. It is further observed that presentation of the cheque even after "stop payment instruction" would not attract Section 138. In that case, the payee presented the cheques in spite of the instructions to stop payment, but the cheques were returned not for insufficiency of funds. That decision of the Supreme Court has no application to the facts in this case. In the instant case, the cheques were returned by the Bank as the

funds were not available to the account of the drawer. The Supreme Court has clearly laid down that Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly and one the cheque has been drawn and issued to the payee and the payee had presented the cheque and the same has been returned to the payee with endorsement of "insufficiency of funds" or returned on the instructions from the drawer, it amounts to dishonour of the cheque and it amounts to an offence u/s 138 of the Act. Suppose, if there is any genuine dispute with regard to the issuance of that cheque such as, the drawer had issued the cheque without any liability to pay that amount or by mistake issued the cheque and if he has got sufficient amounts to the credit of his account, then such instructions of "stop payment" hold good and presenting the cheque in spite of the said instructions or stop payment does not attract the provisions of Section 138 of the Act. But, the very purpose of introducing the provisions under Sections 138 to 142 in the act will be defeated, if it is to be held that every dishonour of cheque on instruction of "stop payment" by drawer without having sufficient amount to the credit in his account does not attract the provision of Sec. 138 of the Act. An unscrupulous drawer of a cheque may issue a cheque in discharge of a debt or liability due to the payee and subsequently, before it is being presented for realisation, the drawer may issue instructions of "stop payment" without having sufficient amounts to the credit of his account. In my opinion, the observations of the Supreme Court in the above said decisions were not meant to come to the rescue of such unscrupulous drawer of the cheques. In the instant case, as the two cheques were issued by the 1st petitioner without having sufficient amount to its account, the instruction stop payment and not to present the cheques issued to the respondent-complainant before presenting the cheques for realisation does not absolve its liability, for the offence u/s 138 of the Act. Further, the question whether the said cheques were issued with dishonest intention or not is a question of fact and it has to be decided after both parties adduced evidence by examining witnesses and producing documentary evidence. The question of fact, appreciation of evidence and admissibility and genuineness of the documents cannot be decided in a petition filed u/s 482 Cr.P.C.

9. The third contention raised by the learned Counsel for the petitioners also cannot be sustained. The cheques were issued by the 1st petitioner in discharge of a liability i.e, payment of monthly rentals and the cheques were dishonoured for want of sufficient funds, however it fully attracts the provisions u/s 138 of the Act, and the complaint cannot be thrown out on the ground that it is a civil dispute.

10. For the reasons stated above, I hold on the point that there are no justifiable grounds to quash the proceedings in C.C.NO. 196/97 on the file of the XV Metropolitan Magistrate, Hyderabad.

11. In the result, the petition is dismissed. I make it clear that I have not addressed myself on the question whether the respondent-complaint is in fact, entitled to

receive any amount from the petitioners. It is left open to the parties to urge during the course of trial.