

(1996) 11 AP CK 0010

Andhra Pradesh High Court

Case No: Criminal Appeal No. 180 of 1995

Satish and Company

APPELLANT

Vs

S.R. Traders and Others

RESPONDENT

Date of Decision: Nov. 28, 1996

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Citation: (1997) 1 ALD(Cri) 745 : (1997) 1 ALT(Cri) 696 : (1999) 95 CompCas 836 : (1998) CriLJ 419

Hon'ble Judges: B.S. Raikote, J

Bench: Single Bench

Advocate: A. Krishna Murti, for the Appellant; Mohd. Ali and Public Prosecutor, for the Respondent

Judgement

1. This appeal is preferred by the complainant by name M/s. Satish and company being aggrieved by the judgment and order dt. 31-12-1994 passed by the III Metropolitan Magistrate, Hyderabad in C.C. No. 229 of 1993. By the impugned order, the Court below acquitted the accused for the offence under S. 138 of the Negotiable Instruments Act (for short "the Act"). The learned counsel appearing for the appellant strenuously contended that the entire approach of the Court below is totally erroneous and on the basis of the material recorded an offence is constituted under S. 138 of the Act and as such, the impugned order is liable to be set aside and the accused are liable to be convicted for the offence they are charged with. The learned counsel appearing for the respondents supported the order.

2. In order to appreciate the rival contentions it is necessary for me to notice the facts of the case.

3. It is alleged by the complainant that A-1 is the firm and A-2 to A-4 are its partners. The accused were purchasing goods from the complainant on credit basis and A-1 was accordingly issuing the cheques for the goods purchased. In relation to such a

transaction, the accused issued cheque dated 9-6-1993 for an amount of Rs. 81,450/- drawn on State Bank of India, Begum Bazar Branch, marked in the case as Ex. P. 2. The accused also issued two other cheques dated 11-6-1993 for an amount of Rs. 82,700/- marked as Ex. P. 3 and the third cheque dated 10-6-1993 for an amount of Rs. 82,200/- marked as Ex. P. 4. The latter two cheques were drawn on A.P. Mahesh Co-operative Urban Bank Limited, Begum Bazar. The complainant accordingly presented the cheques to the Banks but the Banks returned Ex. P. 2 on 11-6-1993 vide bank Memo Ex. P. 5, and Ex. P. 3 was returned on 14-6-1993 under bank endorsement Ex. P. 6 and Ex. P. 4 cheque was also returned on the same day i.e. on 14-6-1993 vide bank endorsement Ex. P. 7. All these cheques were returned by the Banks on the ground of "insufficient funds and effect not cleared". Thereafter, the complainant issued a notice dated 18-3-1993 vide Ex. P. 8 and the same was received in time by the accused and accordingly the accused also gave reply to the said notice vide Ex. P. 9 dated 3-7-1993. Since the accused did not pay the amount within fifteen days as per S. 138 of the Act, the complainant filed a complaint on 20-7-1993. On the same day, after examining the complaint, the Court has taken the cognizance of the offence and proceeded with the trial of the case. On behalf of the Company, its manager by name Naresh Kumar has been examined as P.W. 1. On the appreciation of the entire material the Court below has acquitted the respondents, for the offence under S. 138 of the Act. It is in these circumstances, the complainant has come up to this Court by way of this appeal.

4. The learned counsel for the appellant contended that the entire approach of the Court below is in error. He elaborated his argument contending that the Court below was wrong in holding that the complainant was incompetent to lodge the complaint. He submitted that the complainant is M/s. Satish and Company and the complaint was filed through its Manager Sri Naresh Kumar. It is stated in the cause title of the complaint that it was filed by M/s. Satish and Company by its Manager. Therefore, the Court below is not right in holding that such a complaint was not made by a competent person. At any rate, he submitted that Ex. P. 1 though filed after one year authorising the Manager to initiate proceedings either civil or criminal, it cannot be said that the Manager was not competent to file the present complaint. On the other hand, the learned counsel for the respondents submitted that the alleged authorisation Ex. P. 1 was not filed along with the complaint but it was filled after one year of the filing of the complaint and as such the fact remains that as on the date of filing of the complaint, no such authorisation letter was filed. Therefore, the complaint, as filed on 20-7-1993 itself was not maintainable and filing such authorisation if any later, would not cure the legal infirmity. Therefore, he submitted that the Court below is correct in holding that the complaint was not competent and accordingly it has rightly acquitted the accused.

5. Having regard to this kind of controversy, the short point that arises for my consideration is whether the complaint filed by and on behalf of the company under the name and style M/s. Satish and Company was competent as on the date of filing

the same i.e. as on 20-7-1993 and what is the effect of the alleged authorisation letter, Ex. P. 1 in favour of P.W. 1 filed after one year.

6. In order to appreciate the rival contentions I have to note a few admitted facts. It is an admitted fact that the complaint in question was filed by M/s. Satish and Company represented by its Manager, Mr. N. K. Gupta. It is also an admitted fact that along with the complaint no letter or any resolution of the company was filed to show that the Manager was authorised to file the complaint. It is also not in dispute that a letter said to have been dated 17-6-1993 is filed in the case vide Ex. P-1 after one year of filing of the complaint. Now the short question, therefore would be whether the complaint was competent as on the date of filing of the complaint, i.e. as on 20-7-1993, and whether Ex. P-1 can be taken as the ratification on behalf of the Company for the action taken by the Manager P.W. 1 in filing the complaint and even if it is so, would it be a valid ratification.

7. In order to consider these points, I have to necessarily refer to some of the provisions of the N.I. Act.

Section 142(a) provides that no Court shall take cognizance of any offence punishable under S. 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque.

8. From this section, it follows that the offence under S. 138 is made non-cognizable and such an offence can be taken cognizance of only upon a complaint made by the payee or the holder in due course. According to the three cheques marked as Exs. P-2, P-3 and P-4 the payee is M/s. Satish and Company. Therefore, the complaint should have been filed by M/s. Satish and Company. Such a complaint also could be filed by a person who is a holder in due course of the cheque. The Manager cannot be construed to be a person holder in due course of the cheque in terms of the definition of "holder in due course" found under S. 9 of the Act. Therefore, it is only M/s. Satish and Company alone who is entitled to file a complaint. But the Company being a corporate body and it breathes its life only through authorised officers or agents and if that is so, any officer of the company who is duly authorised by the company to initiate proceedings can file a complaint for and on behalf of the company.

9. The learned counsel for the complainant submitted that the complaint being filed by the Manager being one of the officers of the company was competent as on the date of the filing of the complaint. But the learned counsel for the respondent submitted that a Manager can file the complaint only if he is duly authorised by the Company and for that purpose he has to produce with the complaint any authorisation letter or power of attorney and he submitted that in the instant case, the complainant did not file anything of that sort when the complaint was filed. Therefore, as on the date of the filing of the, complaint it was an incompetent complaint and not validly instituted and on the basis of such a complaint, the Court

is not entitled to take cognizance of the offence.

10. I have given a very anxious consideration to the case. The Act does not provide any mode as to how a complaint can be filed by and on behalf of the company. However, under S. 141 of the Act, if the offence is committed by a company under S. 138 of the Act, it is provided that "every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. A proviso added to S. 141(1) further states that :

"Nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence."

Sub-clause (2) of S. 141 further provides that, in case it is proved that the offence has been committed with the consent or connivance attributable to any neglect on the part of any director, manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Under the explanation "Company" has been defined as body corporate including a firm and other association of individuals" and a "Director" in relation to a firm is also defined as "a partner in the firm."

11. Thus, from the reading of S. 141 of the Act, so far as the firm or any company or a corporate body is concerned, a person who was incharge of or was responsible to the Company shall be deemed to be guilty of the offence for the purpose of S. 138 of the Act.

12. On the basis of S. 141 of the Act, though it contemplates a case in which a company is an accused, on the basis of analogy, even in case of company being the complainant it can be inferred that the person who can file a complaint on behalf of the company would be a person who is incharge of or was responsible to the company. In other words, he must be a person whose actions would be binding on the company.

13. Section 26 and 27 of the N.I. Act also deal with similar situations in relation to promissory notes, bills, cheques, etc. Under S. 26 of the Act.

"Every person capable of contracting, according to the law to which he is subject may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque."

The proviso to S. 26 of the Act further adds that :

"Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the

time being in force, they are so empowered."

14. From these sections, it is clear that such a person to bind the corporation or a company must be a person empowered by law so as to bind such corporation. For instance, in case of companies registered under the Companies Act, the memorandum of article itself may specify as to who should institute or defend proceedings for and on behalf of the company and such an authorised person can file a complaint. There may be another person who acts as an agent capable of binding himself or of being bound, as mentioned in S. 26 of the Act "duly authorised agent acting in his name". A proviso to S. 27 further provides that :

"A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal and any authority to draw bills of exchange does not of itself import an authority to indorse."

15. From this section a further principle evolves that "a duly authorised agent" can also file a complaint, suit or any legal proceedings in the competent court of law. In other words, he must be such a person that his actions would bind the company which he represents, whether he is called a Manager, Secretary or by any other designation.

16. In fact, corporations being only inanimate legal persons necessarily have to act through such authorised persons and on the basis of an authority under any law or under specific instrument such person can sign the pleadings and file or defend proceedings for and on behalf of such corporation or a company.

17. In this context Order XXIX, Rule 1 of CPC also deserves to be noted and it reads as under :

"In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the Secretary or by any director or other principal officer of the Corporation who is able to depose to the facts of the case."

18. Interpreting the import of Order XXIX of CPC in [Kalpaka Shrimp Exports, Azhikode and Others Vs. The Kerala Financial Corporation and Others](#), held that any officer generally or specially authorised by the Board in that behalf could be regarded as the "Principal Officer of the Corporation". The High Court of Delhi in [Nibro Ltd. Vs. National Insurance Co. Ltd.](#), held that for the purpose of Order XXIX, CPC unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. As held by the High Court of Punjab and Haryana in [Hindustan Petroleum Corporation Ltd. and another Vs. Sardar Chand and another](#), such authorisation could also be by way of delegation of powers to the other officers, under any statute, or rule authorising them to file a suit, appeal, etc.

19. From the above analysis of the general principles of law regarding corporations and companies it follows that under S. 142 of the Act, a complaint can be filed by the payee or by the holder in due course or by their duly authorised officer. To the same effect is also the law declared by the High Court of Madras in "M/s. Ruby Leather Exports v. K. Venu Rep. Vandana Chemicals etc. (1994) 1 Crimes 820. In this case, the High Court of Madras considered a batch of petitions filed under S. 482 of Cr. P.C. seeking quashing of the proceedings on the ground that the complaints under S. 138 of the Negotiable Instruments Act were filed by or on behalf of certain firms and companies without due authorisation. The point that was raised for consideration was as under :

"Can a power of Attorney Agent or a person authorised in writing by payee or holder in due course be competent to make a complaint in writing under S. 142(a) of the Negotiable Instruments Act to facilitate valid cognizance being taken by the Magistrate ?"

20. After considering the judgment of the Hon^{ble} Supreme Court and other High Courts the High Court of Madras held as under :

"Whenever the statute, required a particular act to be done personally, it stood so mentioned. The law laid down by Paripoornan, J. is one more indication, that when the statute, does not insist, that the complaint should be filed personally by the payee or the holder in due course, such a meaning cannot be read into it. There cannot be any dispute, that when the law specified, that an act should be done in that way, and not in any other way. Once there cannot be any doubt, that the power of Attorney agent is virtually the payee himself or the holder in due course, it cannot be construed, that the Act of filing a complaint by a power of Attorney, is done in a way not contemplated by S. 142(a) of the Act. It will not be possible to hold, on the analogy of S. 141 of the Act, which refers to offences by companies, that such of those persons contemplated therein, will also be competent to file complaints, when the statute is silent on that aspect. If a power of Attorney Agent can act instead of an individual payee or a holder in due course, it will equally be competent for a power of Attorney Agent of a company, explained under S. 141 of the Act, meaning anybody corporate including a firm or other association of individuals, to file a complaint, on behalf of the company.

The answer to the question posed, is that a Power of Attorney Agent of the payee or the holder in due course of the cheque, will be competent to make a complaint in writing under S. 142(a) of the Negotiable Instruments Act, to facilitate valid cognizance being taken by the Magistrate."

21. After enunciating the principle, as above, the High Court of Madras quashed those proceedings in which no authorisation was filed along with the complaint (and dismissed the criminal petitions in which either authorised or power of attorneys were filed for and on behalf of the payee at the time of filing of the complaint.).

22. At this stage, I may also notice the other contention of the learned counsel for the appellant herein that in the instant case, the Manager being an employee of the company is deemed to be authorised to file the complaint. But, according to me the powers of the Manager are slightly different from that of the Managing Director of a company. A Managing Director may derive his powers from the articles of association directly or for certain other acts he may be authorised to do so, but in case of a Manager such powers may be traced either to his appointment order or to specific authorisation given to him regarding a particular aspect or aspects of the business. It is quite common that there are Purchase managers, entitled to make only purchases and there are Sales managers authorised only to sell the commodities etc. Therefore, on the basis of designation that one is it cannot be inferred that he has all the powers of the firm or a company or any corporate body including the power to file the complaint. The designation "Manager" does not clothe a person with all the powers to file a suit and defend the suit or file a complaint for or on behalf of the company. In fact, dealing with a similar situation, the High Court of Madras in "Sudesh Kumar Sharma v. Selvamani" (1994) Cri LR 2374 held that a person who is competent to file a complaint under S. 138 of the Act must be a payee or a holder in due course. It further held that by no stretch of imagination, a Manager of the company can be said to be a payee or a holder in due course. Therefore, unless there is specific authorisation, a complaint filed by such manager was incompetent. However, the learned counsel for the appellant tried to distinguish that case by contending that in that case the complaint was filed by Selvamani in his individual capacity but not as a Manager though he described himself as a Manager. But, according to me, the facts of the case do not matter much for proper appreciation of the principle of law that such a Manager should be an authorised person. Even if the cause title of the complaint describes the company as the complainant through the Manager, the point for consideration would be whether such a complaint is competent without such authorisation. According to me even if the company is the complainant represented by its Manager, such Manager shall necessarily be an authorised Manager so that the Magistrate can take cognizance of the offence. Thus, in my humble opinion, the other decision of the High Court of Madras in "M/s. Gopalakrishna Trading Co. v. D. Baskaran" 1992 (1) M WN 236 : 1992 (Supp) MWN that a manager is competent to institute complaint without any authorisation by the company cannot be taken as laying down correct law.

23. The next question that arises in this case is that even in such cases where proper authorisation letter or power of attorney was not filed, along with the complaint, whether the company can ratify such actions later or whether such authorisation letter can be filed later so as to regularise the irregular proceedings.

24. The learned counsel for the appellant-complainant brought to my notice that in this case Ex. P-1, a letter, authorising the Manager to institute the proceedings was filed after one year and on that basis he submitted that the defect, if any, in filing

the complaint stands cured and therefore the complaint was properly instituted. I am afraid that this contention also cannot be accepted for more than one reason. If there was no proper authorisation as on the date of filing of the complaint, the Court could not have taken cognizance of the offence since it was not a proper complaint in terms of S. 142(a) of the Act.

25. The object of law in all such cases, that the complaint or suit shall be filed by a person duly authorised, is that, such proceedings will definitely have financial consequences on the company so as to bind the company for the actions of such persons. A company which suffered, a decree or order, at the hands of such a person, who was not duly authorised, may repudiate the order and decree of a competent Court as not binding. Even in criminal cases an aggrieved person may also file a suit for malicious prosecution in case a false complaint was filed. Even in such cases also the company may take up a plea that it was not bound by the actions of a particular officer on the ground that he was not duly authorised in that behalf. Therefore, a principle has emerged that any legal proceedings whether criminal or civil shall be instituted by the company through its authorised officers, so as to bind the company. In this view of the matter, therefore, there shall be a proper initiation of the proceedings by filing a proper complaint so that the Court may take cognizance of the same and if the complaint, as filed, was not maintainable as on the date of its filing, it was liable to be dismissed and subsequent ratification cannot revive it. For this principle, I am supported by a judgment of the High Court of Madras in "K. N. Sankaranarayanan v. Shree Consultations" (1994) 80 Comp Cas 558(Mad). In that case, one of the Directors filed a petition for prevention of oppression and mismanagement on behalf of the company without the approval of the Board of Directors and on that basis it was contended that such a suit instituted without the authority of the Board was incompetent. Negating the contention of the other side in that case, that subsequently, a letter of consent to file the petition under Ss. 397 and 398 of the Companies Act was given, the Court held that any cause instituted without the authority makes it invalid from its inception and cannot be validated by a later ratification and accordingly the proceedings initiated by one of the Directors without the resolution of the company was dismissed as not maintainable. In this context, I further make it clear that in terms of S. 142 of the Negotiable Instruments Act, another duly authorised complaint could be filed in time i.e. within one month from the date of cause of action. In this view of the matter, Ex. P-1, a letter of authorisation filed after one year cannot be taken as a proper ratification of the action initiated by P.W. 1. Because if it is taken that on the date of Ex. P-1, letter (filed after one year), a duly constituted complaint is filed, it would be barred by limitation of one month prescribed by S. 142 of the Negotiable Instruments Act. Moreover nothing prevented the complainant to withdraw the complaint himself voluntarily and file another complaint with proper authorisation within the time permitted by S. 142 of the Act.

26. For the above reasons, I do not find any illegality or infirmity in the order of the Court below and hence I pass the order as under :

27. The Criminal Appeal is dismissed.

28. Appeal dismissed.