

(2001) 12 AP CK 0025

Andhra Pradesh High Court

Case No: Criminal P. No. 2410 of 2001

Cauvery Iron and Steel Pvt. Ltd.

APPELLANT

Vs

Prakun Equipments Pvt. Ltd. and
Another

RESPONDENT

Date of Decision: Dec. 13, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141(1), 141(2), 142

Citation: (2002) 1 ALD(Cri) 220 : (2002) 1 ALT(Cri) 155

Hon'ble Judges: V. Eswaraiah, J

Bench: Single Bench

Advocate: Kishan Sharma, for the Appellant; V.S. Raju, for R-1 and Public Prosecutor for R-2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.

The petitioner herein, who is A-4 in CC.No.21 of 1999 on the file of the XXIII Metropolitan Magistrate, Hyderabad, filed this criminal petition u/s 482 Cr.P.C. to quash the proceedings in the said CC.

2. The 1st respondent herein, a private limited company, filed the complaint under Sections 138 and 142 of the Negotiable Instruments Act (for short "the Act") against four accused persons. A-1 is also a Company. A-2 is the Managing Director and A-3 is the Joint Managing Director of A-1 Company. A-4 is a different company.

3. It is stated in the complaint that A-1 Company has borrowed money under Bill Discounting Facility for a sum of Rs.10 lacs from the complainant; and A-1 has requested the complainant for discounting bills of A-4 Company for a period of 90

days, which have fallen due for payment; and A-1 Company has executed a promissory note; and the complainant paid the amount at the request of A-1 Company to A-4 Company.

4. A-1 Company issued cheques to the complainant towards repayment of the amount borrowed under the Bill Discounting Facility; and the said cheques were presented by the complainant in his bank, which were returned with a memorandum with remarks "Funds Insufficient".

5. It is alleged that A-2 to A-4 connived with each other and got issued the above cheques; and therefore, not only A-1 to A-3 but also A-4 is liable for the offence u/s 138 of the Act. Accordingly, the complainant issued statutory notice of 15 days to pay the cheque amounts. As the amounts have not been paid, the complaint has been filed.

6. The 4th accused, which is a different company from that of A-1 to A-3, filed this criminal petition to quash the said proceedings contending that u/s 138 of the Act, a person, who has drawn a cheque on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, is alone liable, if the cheque is returned unpaid for whatever reason.

7. u/s 138 of the Act, the payee or the holder in due course of the cheque shall issue a notice in writing to the drawer of the cheque within 15 days of the receipt of the information by him from his bank regarding the return of the cheque; and if the drawer of the cheque fails to make the payment of the said amount u/s 138 of the Act, then the holder in due course of the cheque is entitled to file a complaint u/s 142 of the Act within one month after expiry of 15 days notice u/s 138 of the Act.

8. The question that arises for consideration in this criminal petition is even if the contents of the complaint are admitted to be true in their entirety, whether the petitioner (A-4) is liable to be prosecuted?

9. Admittedly, A-1 is a company. A-2 is the Managing Director and A-3 is the Joint Managing Director of A-1 Company. A-4 is a different company. The cheque has been issued by A-1 Company alone and not by A-4 Company.

10. u/s 142 of the Act, if the person committing the offence u/s 138 of the Act is a company, 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.

11. Under proviso to Section 141 of the Act, if any person liable to punishment proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence, he is not liable for the punishment.

12. u/s 141(1) of the Act, all persons, who were in charge of and were responsible to the company for the conduct of the business of the company are liable for committing the offence u/s 138 of the Act.

13. The question that arises for consideration is whether A-4 Company can be said to be in charge of and responsible to A-1 Company for the conduct of the business of A-1 Company?

14. A-4 Company is not in charge of and responsible to A-1 Company for the conduct of the business of A-1 company; and therefore, the expression "every person, who is said to be in charge of and responsible" to A-1 company for the conduct of the business of A-1 company cannot be extended to a different company, which is not in charge of and responsible to A-1 Company for the conduct of the business of A-1 Company.

15. As per proviso to Section 141(1) of the Act, if any person out of the persons said to have committed the offence, who was in charge of and was responsible to the company for the conduct of its business, takes a defence that the offence was committed without his knowledge and he had exercised all due diligence to prevent the commission of such offence, then he cannot be made liable u/s 138.

16. The expression "any person" as contemplated under proviso to Section 141(1) is from out of the persons who are alleged to have committed the offence u/s 138 of the Act. Therefore, "any person" cannot be an outsider of such persons as contemplated u/s 141(1) who were in charge of and were responsible to the company for the conduct of the business of the company.

17. u/s 141(2) of the Act, where an offence u/s 138 of the Act has been committed by a company, and it has been proved that the offence has been committed with the consent or connivance of or is 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 shall also be deemed to be guilty of that offence. Therefore, Section 141(2) also has no application to implicate a different company other than the officers of the concerned company. I, therefore, hold that the prosecution of the petitioner herein (A-4) is nothing but an abuse of process of law, and to meet the ends of justice, the proceedings in CC.No.21 of 1999 on the file of the XXIII Metropolitan Magistrate, Hyderabad are liable to be quashed and accordingly they are quashed in so far as the petitioner herein (A-4) is concerned. The criminal petition is accordingly allowed.