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Date: 21/10/2025

C.E.I. Consultancy and Another Vs Modi World Infotech and Another

Criminal Pet No. 1826 of 2001

Court: Andhra Pradesh High Court

Date of Decision: Feb. 20, 2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€" Section 397(2), 397(3), 482#Evidence Act, 1872

â€" Section 114#Negotiable Instruments Act, 1881 (NI) â€" Section 138, 141(2)

Citation: (2002) 1 ALT(Cri) 517: (2002) 3 CivCC 375: (2002) CriLJ 2731: (2002) 4

RCR(Criminal) 337 : (2002) 3 RCR(Criminal) 306

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: Kameswara Rao, for the Appellant; Shyam Agarwal, for No. 1 and Public Prosecutor

for No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

This petition is filed to quash the proceedings in Criminal R.P.No. 144 of 2000 dated 22-2-2001 confirming the

order in Criminal M.P. No. 1257 of 2000 in C.C.No. 313 of 1999 on the file of the Court of the II Metropolitan Magistrate Hyderabad refusing

to discharge the petitioners.

2. 1st respondent filed C.C. No 313 of 1999 against the petitioners for an offence u/s 138 of the Negotiable Instruments Act (the Act) contending

that the first petitioner, which is a firm, is being run by C.R. Singh and C. Ramesh Singh, who are father and son and who are responsible for day-

to -day business of the said firm, have on 29-91999 and 6-10-1999 issued cheques for the amount due to it and when those cheques were

presented for payment they were dishonoured on 5-10-1999 and 13-10-1999 respectively and intimation of the dishonour of both cheques was

received on 11-10-1999 and 20-10-1999 and that it has issued a statutory notice on 22-10-1999 to the petitioners, bringing their notice to the

dishonour of cheques and demanding payment of the amounts covered by the cheques and those notices were received by them on 27-10-1999

but they have not" paid the amount till the date of filing of the complaint. The learned Magistrate took cognizance of the case and issued process to

the petitioners. Petitioners, after being served with summons, filed Crl. M.P. No. 1257 of 2000 to discharge them on the ground that the averments

in the complaint do not show any cause of action against them. The learned Magistrate dismissed that petition. Criminal R.P. No. 144 of 2000 filed

by them also met with the same fate. Hence this petition.

3. The main contention of the learned Counsel for the petitioners is that the contention of the 1st respondent that it sent legal notices to the

petitioners on 22-10-1999 is prima facie false because the postal receipts produced by the 1 st respondent into the Court, Xerox copies of which

are filed with this petition as material documents, clearly show that the notices were sent on 25-10-2000, but not on 25-10-1999 as alleged in the

petition, and so it is clear that the notices were in fact sent on 25-10-2000 but not on 25-10-1999 as alleged in the petition and since the receipt of

notice of dishonour by the drawer of the cheque is sine qua non for initiation of proceedings u/s 138 of the Act, and since there is no material on

record to show that the 1st respondent sent notices to the petitioners before filing of the complaint and it was received by them, the complaint is

not maintainable. He placed strong reliance on an unreported judgment of the Bombay High Court in Rakesh Nemkumar Porwal v. Narayan

Dhondu Joglekar, Criminal Writ Petition No. 561/1992 dt.29-7-1992 (since reported in Rakesh Nemkumar Porwal Vs. Narayan Dhondu

Joglekar, extracted in ""Cases of Dishonour of Cheques by R. Swaroop, 1994"", wherein their Lordships refused to take cognizance of the fresh

material produced before them, in support of the case of the complainant that there is a proper notice. He relied on the following observation in

para 8 of the above judgment reading:

The position, unfortunately, does not appear to be as simple as that. Undoubtedly, Mr. Jahagirdar has produced before us a certificate, which we

have no reason to doubt. However, the acknowledgments that are produced before us do not have any date on them, some degree of ambiguity

undoubtedly arises. We do not propose to enter into any controvery with regard to the date of actual service of the notice on the accused for the

reason that the law is well settled insofar as this Court will necessarily have to be circumscribed by the record that is produced before it. That

record is the record of the material that was placed before the learned Magistrate on 9-8-1991. Admittedly, the affidavit and the certificate that are

now shown to us were not before the learned Magistrate and, therefore, it would be highly improper and impermissible for us to base any decision

on such material that was not before the trial Court. It is well settled law that in proceedings u/s 482 of the Code of Criminal Procedure, no new

material can be introduced by either party in support of their contentions before the High Court. Reference may only be made to one such decision

which is reported in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and a recent decision of the Supreme Court reported in Smt.

Chand Dhavan v. Jawahar Lal 1992 (1) SVLR (CR) 270 Smt. Chand Dhawan Vs. Jawahar Lal and others, The Supreme Court in this case has

reiterated once again the well settled position that at the stage of quashing, the Court cannot rely on new material that is sought to be produced

before the High Court. This principle cannot be departed from and under these circumstances, we are required to proceed on the basis of the

original statement contained in the complaint that the service of the notice was effected on the accused on 29-7-1991. If this date were to be

accepted, there can be little dispute about the fact that the complaint presented before the trial Court was well within the time frame of 15 days as

prescribed by Section 138(c) of the Negotiable Instruments Act.

Relying on K. Seetharam Reddy v. K. Radhika Rani 2001 (1) Andh LT (Cri) 175, he contended that since the second petitioner is not the drawer

of the cheque, the complaint against the 2nd petitioner at least is liable to be quashed.

4. The learned Counsel for the 1st respondent placing strong reliance on Deepti alias Arati Rai Vs. Akhil Rai and Others, and Puran Vs. Rambilas

and Another etc. etc., , contended that since both the Magistrate and the learned Sessions Judge, by well considered orders, held against the

petitioners, petitioners cannot invoke the jurisdiction of this Court u/s 482, Cr. P.C. and raise the same contentions before this Court and seek

quashing of the proceedings when no irregularity is committed by the Courts below. It is his contention that apart from sending the notices by

Registered Post, the 1st respondent had also sent notices by Certiflcate of Posting and the office copy of the notice sent by the 1st respondent to

petitioners clearly shows that the same was sent by Registered Post Acknowledgment Due and also by Certificate of Posting, and the Certificate of

Posting issued by the Postal authorities is also filed along with the complaint, and since the postal acknowledgment received by the 1st respondent

from the Postal Department clearly shows that the notices were received by the petitioners in 1999 itself, probably the year "2000" mentioned in

the receipts given to the 1st respondent by the postal department filed into Court, may be a mistake, and contended that the fact that the postal

receipts for registered letters sent by the petitioners contain the year 2000 instead of 1999 by itself is not and cannot be a ground for quashing the

proceedings. It is also his contention that the decision in K. Seetharam Reddy (2000 Cri LT 175 relied on by the learned Counsel for the

petitioners has no application to the facts of this case, because this is a case where the cheque is issued by a firm and the averments in the

complaint clearly disclose that both the petitioners are managing the firm and since as per Section 141(2) of the Act, partnership firm also would be

deemed to be a company and the persons in management of affairs of the partnership are also liable for the offence u/s 138 of the Act. 2nd

petitioner also can be proceeded against.

5. In reply the contention of the learned Counsel for the petitioners is that since no acknowledgments would be there for letter sent by Certificate of

Posting, it is clear that the 1st respondent played fraud on the Court by producing acknowledgments in respect of letter sent by Certificate of

Posting, by placing reliance on Clause 31 in Section 1 (General) which relates to ""Inland Posf"" in the Postal Guide, in support of his contention,

which reads--

31. Object in issuing Certificates: The object in granting certificates of posting is to afford the public an assurance that letters and other articles

entrusted to servants or messengers for posting have actually been posted. The grant of a certificate will not, however, mean that the letters and

articles in respect of which the certificate is issued were fully prepaid with postage stamps, nor will it guarantee in any way the despatch of the

articles entered in the certificate on the same day, unless they are handed over well in time to catch the last despatch of mails for the day for the

particular destination concerned. It must be clearly understood that the articles in respect of which such certificates are issued are not registered

and that they are treated in exactly the same manner as if they had been posted in a letter box. in the event of loss, damage or delay, the certificates

will confer no claim for compensation, nor do they furnish any proof of the nature of the contents.

6. Since in para 5 of the complaint it is specifically averred that both C.R. Singh and C. Ramesh Singh, who are father and son, are running the first

accused firm and that both are responsible for day-to-day business affairs thereof, K. Seetharam Reddy case (2001 CriLT 175 relied on by the

learned Counsel for the petitioners, which arises out of a case filed against a proprietary concern, has no application to the facts of this case.

7. I am unable to agree with the contention of the learned Counsel for the petitioners that the 1 st respondent played fraud on the Court. The

documents produced by the 1st respondent along with the complaint include the office copy of the notice dated 20-10-1999 said to have been

issued by the 1st respondent to the petitioners and one Kishore Kathera, said to be an employee of the first petitioner, which shows that the same

was sent by Registered Post Acknowledgement Due and Certificate of Posting also. There is no bar for a person sending the notice of dishonour

both by Certificate of Posting and also by Registered Post. What all Section 138 of the Act requires is sending of notice in writing to the drawer of

the cheque demanding payment of the amount covered by the dishonoured cheque. The Section does not lay down that the notice of dishonour

should be sent by Registered Post only. in several cases drawers of the cheques, to whom statutory notices of dishonour are sent by Registered

Post, manage to evade service of the notice, by getting an endorsement made by the postman that they are not available or absent or that the door

is locked for seven days. Obviously with a view to get over of such return of notice sent by Registered Post, statutory notice would be sent by

Certificate of Posting and also by Registered Post Acknowledgment Due. Whenever a notice is sent by Certificate of Posting, a presumption u/s

114 of the Evidence Act would arise, and so it can be presumed that the letter sent under Certificate of Posting was received by the addressee. in

this case since notice of dishonour was sent by the Certificate of Posting on 25-10-1999 a presumption can be drawn that within a few days from

25-10-1999 the addressees received the said notice sent by Certificate of Posting. Clause 31 of "Postal Guide" relied on by the learned Counsel

for the pettioners, accused only states that despatch of the article entered in the Certificate may not be made on the same day, unless it was handed

over well within time to catch the last despatch of mails for the day for the particular destination concerned. Therefore, if not on 25-10-1999, the

letters sent by Certificate of Posting must have left the post office on the next day, and they can be presumed to have been received by the

addressee on the next day or two days later. Therefore, the contention of the learned Counsel for petitioners that notice of dishonour was not

served on the petitioner-accused cannot, prima facie, be accepted or believed.

8. I am also not able to agree with the contention of the learned Consel for the petitioners that the 1st respondent played fraud by producing the

postal acknowledgments in respect of letters sent by postal certificate. It is not the case of the complainant that the postal acknowledgment filed

along with the complaint relate to the letters sent under Postal Certificate. According to the complaint the postal acknowledgment relates to letter

sent by registered post. in fact the postal receipts produced by the 1st respondent into Court contain the Court seal dated 13-12-1999. It

obviously means that those receipts were produced into Court on 13-12-1999 itself. When the receipts are produced into Court on 13-12-1999

itself, the fact that they contain the date 25-10 2000 obviously means that the year "2000 mentioned therein is a mistake. It would not be possible

for any person to produce a receipt dated 25-10-2000, issued by the Postal Department, info Court on 25-12-1999, because a post-dated

receipt dated 25-10-2000 would not be issued by the Postal Department in 1999. If the Court stamp is not avail able on the postal receipts, the

contention of the learned Counsel for the petitioners that notices of dishonour were not sent by registered post in 1999 can be said to have some

force. When the postal receipts con taining the year 2000 were produced into Court in 1999 itself it is easy to see that the year was wrongly noted

as 2000, therein. Moreover, the question as to whether the postal acknowledgments produced by the 1st respondent into Court relate to the

notices sent by Registered Post to the petition ers or not has to be decided at the time of trial and not at this stage.

9. There is prima facie material on record to show that the complaint was instituted within the period of limitation after follow ing the procedural

requirement mandated by Section 138 of the Act. Therefore, I find no grounds to quash the complaint at this stage.

10. In view of my above conclusion if is really not necessary to decide the various decisions of the Supreme Court relied on by the learned

Counsel for the petitioners, but it is suffice to say that in Krishnan and another Vs. Krishnaveni and another, also the Supreme Court held that the

provisions of Section 482, Cr. P.C. cannot be used for circumventing the pro visions of Section 397(3) or 397(2) of the Code. It held that the

High Court u/s 482, Cr. P.C, has power to find out even suo motu whether the orders passed by the subordinate Courts are proper or not, in its

supervisory jurisdiction. in view thereof, it is clear that merely because the High Court, in its supervisory jurisdiction, can suo motu look into the

question whether the order passed by the subordinate Courts is proper or not, the parties who lost in two Courts can make use of the provision

contained in Section 482, Cr. P.C. as a mailer of right, and circumvent the provisions of Section 397(3) of the Code, by seeking review or review

of the order of Revisional Court. In this ease the petitioners availed the remedy of revision available to them before the Sessions Court, and had

lost the ease before the Sessions Court. Unless they are able to establish that the order passed by the Sessions Court is irregular or unsustainable,

they cannot question the order of the Sessions Court in this Court u/s 482, Cr. P.C. Nothing is brought to my notice to show that the order passed

by the learned Sessions Judge is erroneous or is unsustainable. For that reason also I find no merits in this petition, which cannot but be said to be

an abuse of process of Court.

11. In the result, the petition is dismissed.