courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(2002) 02 AP CK 0039

Andhra Pradesh High Court

Case No: Criminal Petition No. 1908 of 1998

Mrs. Asanammal Kasim and Another	APPELLANT
Vs	
Ceat Financial Services Ltd. and Another	RESPONDENT

Date of Decision: Feb. 8, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 179, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2002) 1 ALD(Cri) 700 : (2002) 112 CompCas 287

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

Bench: Single Bench

Advocate: R.N. Reddy, for the Appellant; R. Raghunandan and Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.
1st respondent initiated proceedings in C.C. No. 101 of 1998 on the file of the Court of the XV Metropolitan Magistrate, "Hyderabad, u/s 138 of the Negotiable Instruments Act (for short, "the Act") against M/s. Neo Intex Mills Limited (Company), "petitioners and five others in their capacity of Directors of the Company alleging that cheques dated 25.8.1997 and 25.9.1997, issued by A4 for and on behalf of the company, were dishonoured when presented in the Federal Bank, Lakdi-kapul, Hyderabad, and that in spite of statutory notice contemplated by Section 138 of the Act, petitioners and the other Directors of the Company or the Company did not arrange for payment of the amount covered by the dishonoured cheques.

2. Contending that the 1st petitioner had tendered resignation to the post of Director of the Company and that resignation was accepted by the Board of Directors of the Company, and that Courts at Hyderabad had no territorial jurisdiction to entertain the complaint, this petition is filed u/s 482, Cr.P.C. to quash the proceedings in the aforesaid C.C. No. 101/1998.

3. The contention of the learned Counsel for the petitioners is that since post-dated cheques drawn and issued to the 1st respondent at Chennai are the subject matter of case and since the notice of dishonour was issued from Chennai, and since in respect of some more bounced cheques proceedings u/s 138 of the Act were launched at Chennai, by 1st respondent, cause of action arose only at Chennai, but only with a view to harass the petitioners and others, this complaint, filed at Hyderabad where no cause of action arose, is not maintainable and hence is liable to be quashed. He contended that in any event since the resignation of 1st petitioner as Director was accepted by the Board of Directors of the Company, the complaint against the 1st petitioner, at least, is liable to be quashed.

4. The contention of the learned Counsel for the 1st respondent is that complaint u/s 138 of the Act can be filed at the place where the cheque was presented and since cheques were presented at Hyderabad, Courts at Hyderabad do not lack territorial jurisdiction for entertaining the complaint, by relying on K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . and contended that the question as to whether 1st respondent ceased to be a Director of the Company by the date of the commission of offence requires evidence and has to be decided at the time of trial only.

5. Though the cheques were drawn and delivered to the 1st respondent at Chennai, since it is the specific case of the 1st respondent that those cheques were presented for payment at the Federal Bank, Lakdi-ka-pul Branch, Hyderabad, it is clear that apart of the cause of action arose at Hyderabad. In K. Bhaskaran case, (supra) the learned Judges of the Supreme Court, after making a reference to Sections 177 and 179, Cr.P.C. and Section 138 of the Act, held that, (i) drawing of cheque; (ii) presentation of the cheque to the Bank; (iii) returning the cheque unpaid by the drawee of the Bank; (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and (v) failure of the drawer to make payment within 15 days of the receipt of the notice, are the five necessary ingredients for completion of the offence u/s 138 of that Act, and if all the above five ingredients are done at five different localities, any one of the Courts exercising jurisdiction in any one of the five local areas can become the place of trial for an offence u/s 138 of the Act. In view thereof since the cheques were presented for payment in Hyderabad, the Courts at Hyderabad have jurisdiction to try the case.

6. If the Court, which has taken cognizance of the case, does not have territorial jurisdiction, such lack of territorial jurisdiction by itself is not, and cannot be, a ground for* quashing the said proceedings. If it is established that the Court which took cognizance of the case does not have territorial jurisdiction to try the case, the Court has to return the

complaint or charge-sheet, for presentation before the proper Court having territorial jurisdiction. This Court in exercise of power u/s 482, Cr.P.C., cannot quash the complaint or the charge-sheet merely on the ground that it has been filed in a Court which does not have territorial jurisdiction to try the case.

7. The question as to whether the 1st petitioner tendered her resignation to the post "of Director of the Company and if it was accepted, and when it was accepted and when the said fact was notified to the Registrar of Companies, and the date from which the resignation came into operation, are all matters which are required to be established by adducing evidence. The Supreme Court in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , held that a complaint u/s 138 of the Act cannot be quashed merely on the basis of the averments in the petition, which have to be established by parties by adducing evidence before the Trial Court. Since the question as to whether the 1st petitioner ceased to be the Director of the Company, by the date of the commission of the offence or not has to be gone into and decided only on the basis of the evidence adduced. Since, the person claiming exemption from liability has to prove the necessary facts by leading evidence, petitioner has to establish that she tendered resignation and it was accepted and necessary intimations were given to the Registrar of Companies. On her assertion that she ceased to be a Director of the company, the complaint cannot be quashed.

8. For the above reasons, I find no merits in this petition. Hence, the petition is dismissed. Learned XV Metropolitan Magistrate, Hyderabad, is directed to dispose of C.C. No. 101/ 1998 as expeditiously as possible, at any rate before the end of May, 2002. Petition is accordingly dismissed.

9. Learned Counsel for the petitioners wants exemption of the presence of petitioners before the learned Magistrate. This Court while deciding a petition filed u/s 482, Cr.P.C. to quash a charge-sheet cannot act as a remote control by giving directions to the Subordinate Courts as to what they should do in respect of matters over which they have a discretion. The question whether the presence of the petitioners has to be dispensed with or not, depends on the discretion to be exercised by the Magistrate himself. Therefore, this Court cannot give a direction to the Magistrate as to what he should with regard to the presence of accused in the case. Hence, the prayer for dispensing with the personal appearance of the petitioners before the Trial Court is rejected.