

(2006) 07 AP CK 0032

Andhra Pradesh High Court

Case No: Criminal.P. No. 2166 of 2006

Chandrakala

APPELLANT

Vs

G. Sandhya Rani and Another

RESPONDENT

Date of Decision: July 19, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 207, 482
- Evidence Act, 1872 - Section 45
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2006) 2 ALD(Cri) 400 : (2007) 3 BC 394

Hon'ble Judges: G. Yethirajulu, J

Bench: Single Bench

Advocate: D. Seshadri Naidu, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

G. Yethirajulu, J.

This is a petition u/s 482, Cr.P.C. to set aside the order dated 20th April, 2006 made by the III Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Revision Petition No. 27 of 2006, confirming the order dated 14th February, 2006 made in Criminal M.P. No. 5673 of 2005 in C.C. No. 430 of 2002 on the file of the IV Additional Chief Metropolitan Magistrate, Hyderabad.

2. Petitioner is the accused in the above case for the offence punishable u/s 138 of the Negotiable Instruments Act (for short "the Act"). The cheque issued by the petitioner was presented to the Bank and it was returned with an endorsement "Account is not with us, no record". Subsequently, a legal notice was issued for which the petitioner did not give any reply and later a complaint has been filed to prosecute him for the offence punishable u/s 138 of the Act. During pendency of the case, the petitioner filed Cri. M.P. No. 5673 of 2005 u/s 45 of the Indian Evidence Act, praying the Court to send Exs. P-1 to P-3 to a Handwriting Expert for comparison

with Exs D-1 to D-6 and to ascertain age of the ink on Exs. P-1 to P-3. The Trial Court dismissed the said application by holding that though the accused was served with Ex. P-5 legal notice under Ex. P-6, but she did not issue any reply notice questioning execution of Exs. P-1 to P-3. Even after receiving copies of documents by her u/s 207, Cr.P.C. on 21.11.2002 also she did not question the execution and date of Exs. P-1 to P-3. After lapse of more than 3 years, surprisingly, the present petition has been filed seeking handwriting Expert's opinion and age of the ink on Exs. P-1 to P-3, which shows the present petition is filed only with an intention to protract the litigation. The Criminal Revision Petition No. 27 of 2006 preferred by the petitioner was also dismissed by the III Additional Metropolitan Sessions Judge, Hyderabad, dated 20th April, 2006 by confirming the order of the Trial Court.

3. Learned Counsel for the petitioner submitted that the petitioner is contending that he discharged the amount due to the complainant by way of a demand draft and the complainant also obtained his signatures on blank papers including blank cheque and, subsequently, the complainant filled up the cheque and presented it to the Bank, therefore, the prosecution cannot be maintained. He further pleaded that the debt relates to the year 1994 and the blank cheque was issued duly signed by him in 1994 and the complainant presented the cheque in 2001 and it was returned with an endorsement "Account is not with us, no record". The prayer of the application discloses that the petitioner prayed for sending the documents to the expert for comparison of handwriting and for comparison of the ink. So far as comparison of the ink, learned Counsel for the petitioner concedes that it is very difficult to find the age of the ink unless there is a long gap during which some chemical changes are likely to occur. So far as the comparison of handwriting is concerned it is the specific contention of the petitioner that he gave blank cheque in 1994 and the complainant filled up the body of the cheque and presented to the Bank for encashment. Immediately, after dishonour of the cheque the complainant issued a legal notice, but the petitioner did not choose to give any reply having received the same. Subsequently, the complaint was filed in 2002 and he did not raise any objection for a period of 3 years as rightly pointed out by the lower Court.

4. It is an established proposition that when once the signature on the cheque is admitted by the person who issued the cheque, it is immaterial whether the body is in the handwriting of the third party; whether he issued blank cheque; whether there is any legally enforceable debt on the date of issuing of the cheque; whether the complainant subsequently filled the body of the cheque, and all these questions have to be decided during the course of trial before the Court. Learned Counsel for the petitioner also relied on a judgment of this Court in Avon Organics Ltd., Hyderabad v. Pioneer Products Ltd., New Delhi and Ors. 2003(2) DCR 273. wherein the Court observed that subsequent filling of the figures and words amounts to material alteration and when it does not constitute cheque and the same is filled up and presented to the Bank, it cannot be said that the accused has committed an offence. The person who accepts the blank cheque is certainly has to take it along

with the reasons to be faced under law. It is not open to him to complain subsequently when the amount has been not realized. The above judgment was rendered in a case where it is an admitted case that the body of the cheque was filled subsequently, but in the present case it is the assertion of the complainant that the accused issued the cheque and it was dishonoured when presented to the Bank. The petitioner's Counsel further submitted that during the course of cross-examination of the complainant he did not assert that the petitioner issued the cheque duly filled, but in the light of the petitioner keeping quiet for a considerable period, I do not find any ground to interfere with the order of the lower Court.

5. The criminal petition is accordingly dismissed.