

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA
PRADESH
AT HYDERABAD**

TUESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND TEN

PRESENT
**THE HON'BLE SRI JUSTICE SAMUDRALA
GOVINDARAJULU**

CRIMINAL PETITION No.2102 of 2007

Between:

M/s.Salem Textiles Limited
And others

...Petitioners

AND

The State of A.P., through
Public Prosecutor
And another

...Respondents

**THE HON'BLE SRI JUSTICE SAMUDRALA
GOVINDARAJULU**

CRIMINAL PETITION No.2102 of 2007

ORDER:

This petition is filed by the accused Nos.1, 2, 4, 7 and 8 under Section 482 Cr.P.C. for quashing proceedings in C.C.No.246 of 2006 on the file of Special Mobile Magistrate, Guntur, relating to offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short, the Act).

The second respondent is the complainant. It is alleged that during the course of business transactions, the accused became liable to pay huge amount to the complainant towards legally enforceable debt and the accused gave cheque for Rs.4,50,000/- to the complainant and when the complainant presented the same for encashment, the banker dishonoured the cheque with an endorsement "Account closed by CTO". Thereupon, after issuing notice and as the accused did not pay amount covered by the cheque, the complainant filed C.C.No.246 of 2006 in the lower Court against A-1 company and A-2 to A-9, who are stated to be Managing Director, Chairman, Joint Managing Director, Executive Director and Directors of A-1 company.

It is contended by the petitioners counsel that

A-1 company became a sick industry and was declared as such and proceedings in BIFR are pending as against A-1 company and that therefore criminal proceedings against the company and its directors are liable to be quashed as declaration of a company as sick industry under Sick Industrial Companies (Special Provisions) Act, 1985, has effect on pending civil proceedings. Certainly there is no effect of declaration of a company as sick industrial company on criminal proceedings. Therefore, criminal proceedings in the lower Court are not liable to be quashed on that ground.

It is contended by the petitioners counsel that the petitioners 2 to 5 ceased to be directors of A-1 company on different dates and that therefore continuation of criminal proceedings as against them is abuse of process of law. Two crucial dates relevant in a criminal case for punishment under Section 138 of the Act are date of issue of cheque and date of dishonour of the said cheque. Simply because some of the petitioners retired from the board of directors subsequent to date of issue of cheque and date of dishonour of cheque, their liability, particularly criminal liability under Section 138 of the Act, will not cease.

It is contended by the petitioners' counsel that the Honourable Supreme Court of India, in S.L.P.No.1851 of 2006, stayed all civil proceedings relating to cheques as well as agreement between the parties. At this stage, it may be noted that it is contention of the accused that under coercion, the

complainant has obtained five cheques as well as one agreement from the accused and that therefore they are not liable to be enforced. The question whether the present cheque for Rs.4,50,000/- was obtained by coercion or not, is a question of fact which this Court cannot go into and decide in a petition under Section 482 Cr.P.C. At the same time, the accused filed O.S.No.352 of 2002 on the file of I Additional Senior Civil Judge Court, Guntur, against the complainant for declaration that the agreement and cheques obtained from the accused under coercion are unenforceable. After trial, the Civil Court dismissed the said suit on 20.11.2005. As against the said decree of dismissal, the accused filed A.S.No.774 of 2005 in this Court. Pending the appeal, the accused filed A.S.M.P.No.2675 of 2005 for grant of stay of proceedings based on the above documents. When this Court passed conditional order in A.S.M.P.No.2675 of 2005, the accused filed S.L.P.No.1851 of 2006 in the Supreme Court of India and obtained interim stay on 12.01.2007. Since the accused did not comply with conditional order passed by this Court in A.S.M.P.No.2675 of 2005, the complainant presented the cheque in question and when it was dishonoured, filed C.C.No.246 of 2006 in the lower Court. The fact that the Supreme Court of India granted interim stay in respect of civil proceedings in S.L.P.(Civil) No.1851 of 2006 against the accused, will not clothe the accused with any right to seek stay of proceedings in criminal case also, pending the civil proceedings in this Court as well as the Supreme Court of India. Cause of action for the complaint is based on presentation of the cheque and

its dishonour, which occurred subsequent to non-compliance of conditional stay order passed by this Court. In the circumstances, I do not find any valid or legal reasons either to quash the criminal proceedings or to stay those proceedings in this petition.

In the result, the Criminal Petition is dismissed.

February 23, 2010
Bvv

SAMUDRALA GOVINDARAJULU, J