

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.75 of 2006

JUDGMENT:

The challenge in this Criminal Appeal at the instance of complainant, is the judgment dated 25.10.2005 in Criminal Appeal No.173 of 2003 on the file of VI Additional Sessions Judge, (Fast Track Court), Rajahmundry, East Godavari District wherein the learned Sessions Judge allowed the appeal and set aside the Judgment passed by the Additional Judicial First Class Magistrate, Ramachandrapuram in C.C.No.1507 of 2000 dated 27.08.2003, convicting the accused for the offence punishable under Section 138 of Negotiable Instruments Act (for short "the Act") and sentencing him to undergo SI for one year and to pay fine of Rs.3,000/- with default sentence.

2) The parties in this appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case which led to file the appeal can be stated thus:

a) The complainant is the Managing Partner of M/s.Sri Rajyalaxmi Agencies, a registered partnership firm and doing business in Cement, Fertilizers and Pesticides. The appellant/accused is their customer and making payments from time to time for the goods supplied and he was due to the Firm to a tune of Rs.4,24,323/- under account Khata in the year 1999-2000. To clear the said debt partly, he issued a cheque bearing No.340626, dated 30.04.2000 for Rs.4,24,000/- drawn on Andhra Bank, Sampara, East Godavari District and when the said cheque was presented

before Vysya Bank, Ramachandrapuram on 12.05.2000 for collection, it was returned unpaid for the reason “*payment stopped by the drawer*” vide bank’s memos dated 19.05.2000 and 30.05.2000. As such, the complainant issued registered legal notice dated 13.06.2000 under Ex.P8. The accused sent reply dated 20.06.2000 under Ex.P9 for which the complainant issued rejoinder dated 15.07.2000 under Ex.P10.

Hence the complaint.

b) The learned Magistrate took cognizance against the accused for the offence under Section 138 of NI Act and registered a case in C.C.No.1507 of 2000.

c) During trial, PWs.1 to 3 were examined and Exs.P1 to P11 were marked on behalf of complainant. No oral or documentary evidence was adduced on behalf of accused.

d) The Trial Court observed that complainant proved the case against the accused for the offence under Section 138 of NI Act and he is liable for punishment and ultimately convicted and sentenced him to suffer SI for one (1) year and to pay a fine of Rs.3,000/- in default to suffer SI for three (3) months.

e) Aggrieved, the accused filed appeal in Criminal Appeal No.173 of 2003 before the VI Additional Sessions Judge, East Godavari at Rajahmundry. The Appellate Court considering the facts of the case observed that complaint itself was not maintainable and complainant failed to prove that Ex.P5—cheque was dishonoured due to insufficient funds which is an essential ingredient to fix criminal liability for the

offence under Section 138 of NI Act and allowed the appeal by setting aside the judgment of the trial Court in C.C.No.1507 of 2000.

Hence, the instant appeal by the complainant.

4) Heard arguments of Sri N.Siva Reddy, learned counsel for appellant/complainant, Sri K.Chidambaram, learned counsel for 1st respondent/accused and learned Public Prosecutor (AP) for respondent No.2.

5) Learned counsel for appellant would argue that trial Court rightly held that the complainant could establish that the accused issued Ex.P5—cheque to discharge the legally enforceable debt and as the cheque was dishonoured due to stop payment instructions issued by the accused without any plausible cause and as the accused failed to establish that he owed only Rs.30,000/- and not the amount covered by the cheque and further he also failed to establish that the cheque was not issued to the complainant but was issued to NOCIAL Company and the complainant in collusion with the agent of the said Company some how got the cheque and pressed the same into service to file a false case, accordingly convicted and sentenced the accused. However, the Appellate Court though a major extent agreed with the findings of the trial Court that the complainant established that the cheque mentioned amount was due to him and cheque was issued by the accused to him for discharge of the said debt, however, came to a wrong conclusion that the offence under Section 138 of NI Act is attracted only when the cheque was dishonoured for want of '*sufficient funds*' in the account of the drawer and not when he issued stop payment instructions to his banker and under the said

wrong notion, set aside the judgment of the trial Court and acquitted the accused. Learned counsel would argue in vehemence that the offence under Section 138 of NI Act would attract also in cases where the drawer having issued a cheque in discharge of a legally enforceable debt, and later issued instructions to his banker to stop payment. He thus prayed to set aside the judgment of the lower appellate Court.

6) On the other hand, learned counsel for 1st respondent/accused supported the judgment of the Appellate Court and prayed to dismiss the appeal.

7) In the light of above rival arguments, the points that arise for determination in this appeal are:

1. *Whether the complainant could establish that Ex.P5—cheque was issued by the accused to discharge the legally enforceable debt?*
2. *Whether the stop payment instructions issued by the accused to his banker will attract penal liability under Section 138 of N.I. Act?*
3. *Whether the judgment of the lower Appellate Court is factually and legally sustainable?”*

8a) **POINT No.1:** The case of the complainant is that he is the Managing Partner of M/s.Sri Rajyalaxmi Agencies, a registered partnership firm doing business in Cement, Fertilizers and Pesticides and accused is their customer and he used to make payments from time to time for the goods supplied to him and in due course the accused fell due to the complainant—Firm a sum of Rs.4,24,323/- under Khata account in the year 1999-2000. To clear the said debt of the complainant, the accused issued Ex.P5—cheque bearing No.340626, dated 30.04.2000 for

Rs.4,24,000/- drawn on Andhra Bank, Sampara, East Godavari District. The complainant presented the said cheque with his banker i.e. Vysya Bank, Ramachandrapuram on 12.05.2000 for collection. It was returned unpaid for the reason '*payment stopped by the drawer*' vide Exs.P6 and P7 endorsements. After statutory notice the complainant filed the complaint. On the other hand, the defence of the accused as culled out from Ex.P9—reply notice and cross-examination of PW1 is that he never owed Rs.4,24,323.40 Ps. to the complainant, but he owed only Rs.30,000/- to the complainant and he never issued Ex.P5—cheque to the complainant and on the other hand, the accused issued a cheque in favour of NOCIL agent (company agent) for the sake of goods supplied by the said company to the accused, but the complainant in collusion with the said agent obtained the said blank cheque containing the signatures of the accused and pressed into the same and filed a false case against the accused. Needless to emphasise that preliminary burden is on the complainant to establish that Ex.P5—cheque was indeed issued by the accused in discharge of legally enforceable debt and he did not secure the cheque collusively.

b) To prove his case, complainant examined himself as PW1 and also examined PWs.2 and 3 and produced Ex.P1 to P11. Ex.P4 is the statement of account relating to the transactions of the complainant—Firm; Ex.P5 is the cheque; Exs.P6 and P7 are memos issued by Andhra Bank, Sampara and Vysya Bank, Ramachandrapuram. A perusal of Ex.P4 would show that by 05.04.2000 the accused was due a sum of Rs.4,24,323.40 Ps. which includes the interest. PW1 a registered

partnership firm and it was registered under A.P. General Sales Tax Act, 1957 and it maintains accounts in due course of its business. Though PW1 was extensively cross-examined, nothing specific was elicited to impeach the credibility of Ex.P4—statement of account. It is pertinent to note that not even a suggestion was given regarding the correctness of Ex.P4. It was suggested that one T.Adinarayana is also the customer of complainant and his dues were also included in the accounts of accused but the said suggestion was denied. Of course, the complainant at one stage admitted that as per the accounts the amount due would show the stock taken by the accused and T.Adinarayana also. From this admission it is sought to be argued, as if the complainant included the amounts due by the Adinarayana also in the account of the accused. However, this suggestion was staunchly denied by the complainant as stated supra. Further, it would appear that the said Adinarayana is no other than the younger brother of accused. This Court is of the view that the stock was taken both by the accused as well as Adinarayana who is his younger brother, for the sake of accused. The admission of complainant should be understood in that sense. If really Adinarayana has taken the stock exclusively for himself and he is not the younger brother of accused and if the accused is nothing to do with the goods taken by Adinarayana, certainly the accused should have produced the vouchers issued by the complainant to disprove the correctness of Ex.P4—statement of account. He did not do so. Therefore, Ex.P4 statement can be accepted to be true which shows that accused was liable to pay a sum of Rs.4,24,323/- to the

complainant during the relevant time but not Rs.30,000/- as claimed by him.

c) Then, Ex.P5—cheque is concerned, admittedly it contains the signature of accused. According to complainant, it was issued by the accused for due discharge of the aforementioned Khata debt. Therefore, according to the complainant, the cheque was issued to him by the accused for due discharge of legally enforceable debt. The defence version is already stated supra. It should be noted that except taking the plea that he did not issue the cheque and on the other hand cheque issued to NOCIL agent was obtained by the complainant in collusion with the said agent and filed the instant case, the accused had not taken any step to establish his case. He has not produced any record to show that he had issued a blank signed cheque to NOCIL Company. It appears he has not taken any action against NOCIL Company for giving away the cheque to the complainant. Therefore, the defence plea has no legs to stand. So, to sum up, the complainant could establish that accused owed Rs.4,24,323/- and Ex.P5—cheque was issued to him by the accused only to discharge the said debt.

This point is answered accordingly.

9) **POINT No.2:** This point is concerned, while the Trial Court held that ‘*stop payment instructions*’ issued by the accused would also attract the offence under Section 138 of NI Act, the lower Appellate Court took a different view and held that it is only in the case of ‘*insufficient funds*’ in the account of drawer or payment exceeds the amount arranged to be

paid from that account by an agreement made with the bank that the offence would attract. Since in the instant case, cheque was bounced by reason of stop payment instructions issued by the accused, the lower Appellate Court dismissed the complaint. On a close scrutiny of facts and law, it must be held that the view of the lower Appellate Court is not correct. It should be noted stop payment instructions would also attract the offence.

10a) In ***M.M.T.C.Limited and others vs. Mechi Chemicals and Pharma (P) Limited and others***¹ following the earlier decision in ***Modi Cements Limited vs. Kuchil Kumar Nandi***² the Apex Court observed as follows:

“The authority shows that even when the cheque is dishonoured by reason of stop payment instruction by virtue of Section 139 the Court has to presume that the cheque was received by the holder for the discharge in (SIC) or in part, of any debt or liability. Of course this a rebuttable presumption. The accused can thus show that the "stop payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden so proving would be on the accused.

b) Our High Court in ***Dr.Reddy's Laboratories Limited vs. Reddy Pharmaceuticals Limited, Delhi***³ following the above decisions held as follows:

¹ (2002) 1 SCC 234

² AIR 1998 SC 1057

³ 2015 (2) ALD (Cr.L.) 1026 (AP) = 2015 (2) ALT (Cr.L.) 310 (AP)

“Thus it is clear that the penal liability under Section 138 of NI Act gets attracted when stop payment instruction is issued either before or after presentation of the cheque.”

11) In view of the above precedential jurisprudence, the offence under Section 138 of NI Act gets attracted since the cheque was dishonoured due to stop payment instructions issued by the accused. It is pertinent to note that accused has not come up with plausible reason for his defence plea that there was no specific legal debt worth Rs.4,24,323/- and the cheque was issued to NOCIL Company but not to the complainant. Moreover, as per the evidence of PW2, the amount to the credit of the accused as on 27.12.1999 was only Rs.1,000/-. Therefore, the accused could not justify giving stop payment instructions having issued cheque towards a legally enforceable debt. Therefore, he committed the offence under Section 138 of NI Act.

This point is answered accordingly.

12) **POINT NO.3:** In view of the findings on point Nos.1 and 2, this Criminal Appeal is allowed by setting aside the judgment of the lower Appellate Court in CrI.A.No.173 of 2003 and by confirming the judgment of the trial Court in C.C.No.1507 of 2000.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.08.2018
Murthy