

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1357 OF 2010

(@ SPECIAL LEAVE PETITION (CRL) No.1361 of 2007)

P.J. Agro Tech Limited & Ors. ... Appellants

Vs.

Water Base Limited

... Respondent

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. The Appellant No.1 herein is an agro-based company having varied interests in providing feed supplements, vaccines etc. The Appellant Nos.2 and

3 are the Managing Director and Chairperson of the Appellant No.1 Company, which is based in Hyderabad in the State of Andhra Pradesh. In order to utilize the dealer network of the Appellant No.1 Company, the Respondent No.1 Company approached the Appellants for distribution of prawn feed manufactured by it. Inasmuch as, the said venture did not turn out to be very successful, the Appellant No.1 Company took a decision to discontinue its dealings with the Respondent No.1 Company. In furtherance of the above, the Appellant Company settled all its outstandings with the Respondent No.1 Company and also gave an authorization letter to the Respondent No.1 Company to collect all other dues directly from the customers of the Appellant No.1 Company, who had bought the feed but were yet to pay the price therefor. The concerned customers were also informed about the aforesaid decision. Thereafter,

on 4th October, 2001, the Appellant Company requested the Respondent No.1 Company to coordinate with one K. Balashankar Reddy, the then General Manager at Nellore, for collecting the dues which were still outstanding. From the contents of the said letter it appears that the Respondent Company had accepted the said offer. However, in the course of making collections from the customers directly, it was found that some of its employees had conspired with the said K. Balashankar Reddy and had misappropriated some amounts of money and the same was intimated by the Respondent No.1 Company to the Appellant Company which asked the former to take action against the said Balashankar Reddy and its concerned employees.

3. Subsequently, however, the Appellant and the Proforma Respondents received a notice dated 13th December, 2002, from the Respondent No.1 Company purporting to be a notice under Section 138 of the

Negotiable Instruments Act, 1881, hereinafter referred to as "the 1881 Act", wherein it was stated that a cheque issued by K. Balashankar Reddy on 25th November, 2002, drawn on the State Bank of Hyderabad, Nellore Branch, had been returned dishonoured with the endorsement "Account closed". The notice also demanded repayment of the cheque amount from the Appellants.

4. On receiving the said notice, the Appellants replied to the same on 26th December, 2002, stating that they never had any account with the State Bank of Hyderabad and the cheque in question had not been issued by the Appellant No.1 Company. Apparently, there was no response to the reply sent on behalf of the Appellants and instead the Appellants were served with summons from the Court of XVIIIth Metropolitan Magistrate, Saidapet, Chennai, in Complaint Case No.1142 of 2003 based on the complaint which had been filed by the

Respondent No.1 on 23rd January, 2003. The Appellants entered appearance in the aforesaid complaint case and upon obtaining copies of the complaint, they were surprised to learn that the same had been filed against the Appellants on the basis of a personal cheque issued by the Accused No.11, K. Balashankar Reddy, from out of his personal savings bank account. The said summons was challenged by the Appellants and the Proforma Respondents before the High Court on the ground that the Company did not have any account with the State Bank of Hyderabad and that the cheque had been issued by K. Balashankar Reddy (Accused No.11) from out of his personal savings bank account and that none of the Directors had signed the said cheque. It was contended that the complaint was an abuse of the process of Court and had been filed with the sole motive of extracting money from the Appellants. On 14th September, 2006, the High Court

dismissed the said petition holding that the cheque which had been issued by K. Balashankar Reddy was to meet the liability of the Appellant No.1 Company and its Directors on their request and that as a result they had rightly been prosecuted under Section 138 of the 1881 Act. The said order of the High Court dismissing the Appellants' petition has been challenged in the instant Appeal essentially on the ground that the High Court had erred in allowing the complaint proceedings to continue although the same were not maintainable against the Appellants and the Proforma Respondents who were not the drawers of the cheque, nor was the cheque issued from any of their banks.

5. Appearing for the Appellants, Mr. Siddharth Dave, learned Advocate, submitted that both the learned Magistrate as well as the High Court had failed to consider in their proper perspective the provisions of Section 138 of the Negotiable

Instruments Act, 1881. It was pointed out by Mr. Dave that in order to attract the provisions of Section 138 of the 1881 Act, it was necessary that a cheque would have to be drawn by a person on an account maintained by him with his banker and if the said cheque was dishonoured, it would be deemed that such person had committed an offence and would, without prejudice to any other provision of the Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque or with both. Mr. Dave urged that in order to maintain an action against a person under Section 138 of the 1881 Act, it would be necessary to show that the cheque had been issued by such person on an account maintained by him, which fact was absent in the instant case as far as the Appellants are concerned. It was reiterated that the cheque in question had been drawn by the Respondent No.11 in

his personal capacity on his bank and upon dishonour thereof, only he could be prosecuted under Section 138 of the 1881 Act. It was further submitted that the proceedings against the Company and its Directors were not maintainable and the High Court had erred in law in not quashing the same.

6. The stand taken on behalf of the Appellants was vehemently opposed on behalf of the Respondent No.1 Company and a spirited attempt was made to involve the Appellant No.1 Company and its Directors for dishonour of the cheque which had been issued by the Respondent No.11 from his own bank, which did not attract the provisions of Section 138 of the 1881 Act against the Appellant No.1 Company and its Directors. It was urged that since the cheque had been issued by the Respondent No.11 to liquidate the dues of the Appellant Company and its Directors, the High Court had quite justifiably

refused to quash the complaint filed by the Respondent No.1 Company.

7. From the submissions made on behalf of the respective parties, it is quite apparent that the short point for decision in this Appeal is whether a complaint under Section 138 of the 1881 Act would be maintainable against a person who was not the drawer of the cheque from an account maintained by him, which ultimately came to be dishonoured on presentation.

8. Since the provisions of Section 138 of the 1881 Act have fallen for consideration in this Appeal, the same are extracted hereinbelow :-

"138. Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either

because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

From a reading of the said Section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.

9. In the instant case, the cheque which had been dishonoured may have been issued by the Respondent No.11 for discharging the dues of the Appellant No.1 Company and its Directors to the Respondent

No.1 Company and the Respondent Company may have a good case against the Appellant No.1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The Appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by the Respondent No.11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.

10. Having regard to the above, we allow the Appeal and set aside the order passed by the High Court and quash the complaint filed by the Respondent No.1 Company as far as the Appellants and other

Proforma Respondents are concerned. In the event, any of the Appellants and/or Proforma Respondents have been released on bail, they shall stand discharged from their bail bonds forthwith.

11. The Appeal is allowed to the aforesaid extent.

.....J.
(ALTAMAS KABIR)

.....J.
(DR.MUKUNDAKAM SHARMA)

New Delhi
Dated: 28.7.2010