

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.6424 of 2013

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.47 of 2013 on the file of the Hon'ble XIII Special Magistrate, Hyderabad, for the offences under Section 138 read with Section 142 of Negotiable Instruments Act, 1881.

The brief facts of the case are as follows :

It is true that the petitioners herein availed the loan from the 02nd Respondent – company and also agreed to repay the said loan amount by equal monthly instalments. Accused No.3, who is not the petitioner herein, has given cheque for one of the monthly instalments and when the said cheque was presented in the bank, the same was returned with the endorsement “insufficient funds”. Thereafter, notice was issued to that person and proceedings were initiated. When petitioners received summons, they came to know that they are also arrayed as accused.

Admittedly, petitioners are not signatories to the cheque concerned.

Section 138 of Negotiable Instruments Act, 1881, reads as follows :

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.]

This Court is of the view that under Section 138 of Negotiable Instruments Act, if it is a company, the liability can be extended to the person who is not signatory to the cheque. But, admittedly, in the present case, the cheque is given in the individual capacity by accused No.3, who is not the petitioner herein, on behalf of petitioners herein. The fact remains that petitioners are not signatories to the cheque and the account in respect of which the cheque is given, also does not stand in their names. Hence, this Court is of the view that the proceedings in C.C.No.47 of 2013 on the file of the Hon'ble XIII Special Magistrate, Hyderabad cannot be proceeded against the petitioners herein by invoking the provisions under Section 138 of Negotiable Instruments Act.

Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.47 of 2013 on the file of the Hon'ble XIII Special Magistrate, Hyderabad, as far as petitioners herein are concerned, are hereby quashed.

Consequently, Miscellaneous Petitions pending, if any, in this Criminal Petition shall stand closed.

JUSTICE RAJA ELANGO

Dated: 08.09.2015

skmr