

HON'BLE SMT JUSTICE ANIS
CRIMINALPETITION No.5456 OF 2012

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ORDER:
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This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short,'Cr.P.C') is filed by the petitioner/second accused seeking to quash the proceedings in C.C.No.194 of 2012 on the file of II Special Metropolitan Magistrate, Hyderabad.

2. The petitioner herein is the second accused and first respondent herein is the complainant in C.C.No.194 of 2012 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the petitioner is that the first respondent herein filed a private complaint against the petitioner and one Abdul Razzak Abdul Kadar Godharawala for the offence under Section 138 of Negotiable Instruments Act (for short ' the Act') on the ground that the complainant was doing business of Transport and Logistics in Ahmedabad running in the name and style of Bombay Andhra Transport Corporation and he is financially sound and income tax assessee. During the course of business in Ahmedabad, the accused developed acquaintance with the complainant and with the said acquaintance, the accused requested the complainant to extend a loan of Rs.25.00 lakhs and the complainant obliged the said request and extended a loan of Rs.25.00 lakhs. After receiving the said amount, the accused issued a receipt-cum-promissory note dated 20-01-2011 and undertook to repay the said loan amount on 30-06-2011 and also issued a post dated cheque bearing No.033767

dated 30-06-2011 drawn on Union Bank of India, Dhanlaxmi Market Branch, Ahmedabad towards full and final settlement of the said loan amount. As per the instructions of the first accused, the complainant presented the cheque with his banker, viz., Development Credit Bank, Hyderabad, for realisation of the loan amount and the said cheque was dishonoured with an endorsement 'insufficient funds in the account' vide bankers memo dated 01-07-2011 and the same was intimated to the complainant by his banker on 02-07-2011. The complainant got issued legal notice dated 30-07-2011 to the accused by Registered Post and after receiving the same, a reply notice was issued by the accused on 06-08-2011 by making false allegations against the complainant.

4. The petitioner further contended that he has not issued any cheque in favour of the *de facto* complainant and the provisions of Section 138 of the Act will not be applicable to him and no cause of action arose against the petitioner and further the complainant did not specify the role of the petitioner and did not say whether the petitioner also signed the cheque along with the first accused and finally prayed the Court to quash the proceedings in C.C.No.194 of 2012 on the file of II Special Metropolitan Magistrate, Hyderabad.

5. Though notice was sent to the complainant, the same was returned as un-claimed.

6. Heard the counsel for the petitioner and perused the record.

7. The point for consideration is, whether the petitioner is entitled to quash the proceedings in C.C.No.194 of 2012 on the file of II Special Metropolitan Magistrate, Hyderabad?

8. A perusal of the record shows that the first respondent herein filed C.C.No.194 of 2012 against one Abdul Razzak Abdul Kadar Godharawala and Abdul Wahab Khan S.Pathan under Section 138 of

the Act. The complainant in the complaint alleged that at request of the accused, he has extended loan of Rs.25.00 lakhs and both the accused executed a pronote on 20-01-2011 and also issued a post dated cheque dated 30-06-2011 in favour of the complainant. When the accused failed to repay the amount, the complainant presented the cheque in the bank and the same was returned with an endorsement 'insufficient funds' vide its bankers memo dated 01-07-2011. Notice dated 30-07-2011 was issued by the complainant to the first and second accused. Both the accused gave reply denying the execution of the pronote.

9. The main contention of the petitioner is that he is not a party to the cheque bearing No.033767, dated 30-06-2011 drawn on Union Bank of India, Dhanlaxmi Market Branch, Ahmedabad and the said cheque was issued by the first accused and the if the cheque is dis-honoured with an endorsement of 'insufficient funds' in the account, the first accused alone is liable under Section 138 of the Act but not the petitioner. To prove the said contention, the petitioner filed a Xerox copy of cheque and a perusal of the cheque shows that it was issued by one Abdul Razzak Abdul Kadar Godharawala, it does not bear the signature of the petitioner. Therefore, the petitioner has not issued the said cheque dated 30-06-2011. A perusal of the complaint also not specific whether the petitioner along with the first accused issued the cheque in favour of the complainant, likewise the complaint also not specify the role of the petitioner/second accused and there is no pleading to establish that there is legally enforceable debt to be paid by the petitioner/second accused under the cheque dated 30-06-2011. In view of the fact that the petitioner has not signed the cheque which was dis-honoured for insufficient funds, the first accused who issued the cheque in favour of the complainant alone is to be prosecuted.

10. In the facts and circumstances of the case, the proceedings in C.C.No.194 of 2012 on the file of on the file of II Special Metropolitan Magistrate, Hyderabad, against the petitioner/second accused is hereby quashed.

11. Accordingly, the Criminal Petition is allowed.

12. The miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

ANIS, J

Date:25-02-2015

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