

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.1786 OF 2014

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ORDER:
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1. This Criminal Petition is filed by the petitioner-A1 under Section 482 Cr.P.C., seeking to quash the proceedings against him in C.C.No.215 of 2013 on the file of the IV Special Magistrate, Cyberabad, Kukatpally.

2. Brief facts of the case are as follows:

The 1st respondent-complainant and the accused are well acquainted with each other since a long time and out of the said acquaintance, A1 and A2 took hand loan of Rs.2,00,000/- with a promise to repay the same within a short period. After expiry of the said time, the 1st respondent demanded A1 and A2 to repay the loan amount. A1 and A2 issued a joint account cheque dated 24.3.2013 of ING VYSYA Bank, Kukatpally Branch, Hyderabad. When the 1st respondent-complainant presented the said cheque in his bank i.e., Andhra Bank, Kukatpally Branch, Hyderabad, the said cheque was returned on 15.5.2013 for the reason of insufficient funds. When the 1st respondent met both the accused, there was no positive response from A1. Hence, the 1st respondent got issued a legal notice dated 22.5.2013 to the accused. But the legal notices were returned. On the registered cover addressed to A1, it was endorsed as 'not claimed by A1' and on the registered cover addressed to A2, it was endorsed as 'deceased'. Hence, the 1st respondent filed the above complaint against A1 and A2 for the offence punishable under Sections 138 r/w 142 of the Negotiable Instruments Act.

3. Learned Counsel for the petitioner submitted that the petitioner is not the drawer of the cheque and the petitioner being the husband of

the drawer of the cheque from the joint account has been dragged in the complaint filed under Section 138 of the Act by the 1st respondent and that the wife of the petitioner was the drawer of the said cheque and that merely because the petitioner is a joint account holder, he cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act. The learned Counsel for the petitioner while contending that the drawer of the cheque can alone be prosecuted, he relied upon the judgment of the Apex Court in **Aparna A. Shah Vs. Sheth Developers Private Limited and another**^[1].

4. It is well settled that in case the drawer of the cheque fails to make the payment on receipt of notice then the provision of Section 138 of the Negotiable Instruments Act could be attracted against him/her only. Even though the cheque was drawn to a joint bank account being operated by the drawer of the cheque and his/her spouse, but the liability regarding its dishonour can be fastened only on the drawer of it since the controversial document is the cheque.

5. In the above referred judgment also, the Apex Court held that under Section 138 of the Negotiable Instruments Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder and that it is only the drawer of the cheque who can be made as an accused in any proceeding under Section 138 of the Negotiable Instruments Act.

6. In the present case, the fact remains undisputed is that the account in question stands in the name of the joint account of the petitioner as well as his wife and the drawer of the cheque issued to the 1st respondent-complainant was the wife of the petitioner. Merely because the petitioner is a joint bank account holder with his wife, it does not mean that he is also liable for the consequences of

dishonoring of cheque issued by his wife. He has neither drawn nor issued cheque in question and therefore, complaint against him is not maintainable.

7. In the above circumstances and in the light of the judgment referred to by the learned Counsel for the petitioner, this Court is of the view that since the petitioner was not the drawer of the cheque in question, he cannot be prosecuted under Section 138 of the Negotiable Instruments Act and therefore, the proceedings against him are liable to be quashed.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner in C.C.No.215 of 2013 on the file of the IV Special Magistrate, Cyberabad, Kukatpally. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Date : 21.3.2016
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HONOURABLE SRI JUSTICE RAJA ELANGO

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DATED 21.3.2016

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