

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Cr1.P.No.8984 of 2015

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed to quash the proceedings in C.C.No.242 of 2007 pending on the file of III Additional Chief Metropolitan Magistrate, Gajuwaka at Visakhapatnam, registered for the offence under Section 138 of NI Act, on the sole ground that the Account bearing No.SBGEN 006001508647 does not belong to drawer ie., the accused herein—Smt Ganjai Parvathi, and it belongs to her husband—Tirupathi Rao, but the cheque was issued by G. Parvathi.

2. Though Notice was served on respondent No.2 and filed a Memo Dt.06.01.2016 under USR Nos.121 of 2016 and 1048 of 2016 dt. 18.02.2016 in proof service of notice along with postal acknowledgment, none appeared on behalf of respondent No.2.

3. The main contention of the learned counsel for the petitioner is that when the petitioner was not the account holder, issuance of a cheque by her and dishonouring of the same for any reason on being presented, would not constitute the offence under Section 138 of NI Act and in this connection, he placed reliance on the judgment in *Jugesh Sehgal v. Shamsher Singh Gogi* (Criminal Appeal No.1180 of 2009).

4. The complaint was filed under Section 200 of Cr.P.C. against Gangai Parvathi, the petitioner herein, for the offence under Section 138 of Negotiable Instrument Act, alleging that she issued a cheque in lieu of the discharge of the debt due to respondent No.2 and on its presentation, it was dishonoured.

Subsequently, a Notice was issued to the petitioner as she failed to comply with the legitimate demand for payment of amount covered by the cheque.

5. The Cheque bearing No. 571482, dt. 24.10.2016 was signed by two persons and one of them was Ganjai Parvathi, to be drawn on the Account bearing No.006001508647 for Rs.26,760/-.

6. Learned counsel for the petitioner has produced the Statement of Account bearing No.00600150864, which relates to Ganjai Tirupathi, who is no other than the husband of the petitioner, but the complaint was filed only against Ganjai Parvathi and when she is not the account holder, there is any amount of justification in dishonouring the cheque.

7. A similar question came up before the Apex Court in **Jugesh Sekgal v. Shamsher Singh Gogi**, wherein it was held that in para No.3 of the judgment, when there is a clear averment that the cheque in question was issued from an account which was non existent on the day it was issued or that the account from where the cheque was issued ‘pertained to someone else’. As per complainant’s own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant (accused) and therefore, one of the requisite ingredients of Section 138 of NI Act was not satisfied and accordingly, allowed the petition.

8. Turning to the facts of the present case, the petitioner was also not the account holder, but allegedly issued a cheque along with other person, and signed on the cheque, being the drawer, as defined under Section 7 of NI Act. Therefore, the principle laid down by the Apex Court in the above referred judgment, is directly applicable to the present facts of the case and by

applying the same, the proceedings in C.C.No.242 of 2007 before the trial Court cannot be allowed to be continued since no offence is made out against the petitioner for the offence punishable under Section 138 of NI Act.

9. In the result, this Criminal Petition is allowed and the proceedings in C.C.No.242 of 2007 on the file of III Additional Chief Metropolitan Magistrate, Gajuwaka at Visakhapatnam, are quashed.

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

December 20, 2016.
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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