THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8596 of 2017

ORDER:

This petition is filed under Section 482 of the Criminal Procedure Code to quash the proceedings in C.C.No.339 of 2017 pending on the file of II Additional Judicial First Class Magistrate, Nuzvid, Krishna District, for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') on the ground that the petitioner/A3 is not the signatory to the cheque.

2. The 2nd respondent filed a private complaint alleging that the petitioner entered into development agreement and received Rs.3,22,785/-, as advance, for development. But A1 represented by its Managing Director failed to perform the obligation under the Development Agreement and upon insisting, A1 issued cheque bearing No.238176 on 30.09.2016 for Rs,3,22,785/- drawn on Dena Bank, Deccan, Gymkhana Branch, Pune in favour of the 2nd respondent, signed by A2, being authorised signatory of A1 and A2 and A3 have dealt with the transactions of the complainant. On presentation of the said cheque for collection, it was returned with cheque return memo dated 28.11.2016 and immediately, the 2nd respondent got issued a notice strictly complying with the requirement under Clause (b) of proviso to Section 138 of the Act and the said notice was received. The accused had neither paid the amount nor issued any reply.

3. The main contention raised before this Court by the petitioner is that he is not a drawer or maker of the cheque as defined under Section 7 of the Act and thereby, he cannot be made liable for the offence punishable under the Act.

4. Learned counsel for the petitioner reiterated the contentions raised in the petition by placing reliance on judgment of this Court in **Narendra Kurangi and others v Greenmind India Agritech (P) Ltd., Hyderabad and another**[1] in support of his contention.

5. This Court ordered notice to the 2nd respondent, proof of service is filed, but none appeared on behalf of the 2nd respondent. Therefore, this Court has no other option except to pass orders on merits.

6. As per the allegations made in the compliant, the cheque was issued by A1 company registered under the Companies Act and represented by its authorised signatory Sudher Darode (A2). According to the admission made in para 7 of the complaint, A3/petitioner-Anand Jog is not a maker or drawer of the cheque. But the only allegation made against this petitioner is that the petitioner/A3 also dealt with the transaction of the complainant. Mere making such an allegation that A3 also dealt with the transaction, no liability can be saddled against this petitioner/A3, not being a drawer or maker of the cheque. The offence under Section 138 of the Act would attract criminal liability only against the drawer of the cheque, not against the third party and filing of complaint and issue of summons to this petitioner is illegal. Even the language used in Section 138 of the Act clearly indicates that only the drawer or maker of the cheque is liable for prosecution the subject to the exceptions contained under Section 141 of the Act.

7. In **Aneeta Hada vs M/S Godfather Travels & Tours**[2]**,** the Apex Court held that Section 141 of the Act clearly stipulates that when a person, which is a company, commits an offence, then

[1] 2016(1)ALD (Crl)177
[2] AIR 2012 SC 2795

certain categories of persons in charge, as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. The words 'every person at the time offence was committed' used in Section 141(1) are not without significance and the same indicates the criminal liability on the date of offence, alleged to have been committed and unless a specific averment was made in the complaint that at the time, when the offence was committed, the person accused was in charge of and responsible for the conduct of the business of the Company, the requirements of Section 141 would not be satisfied as held in **Central Bank Of India Versus Asian Global Limited**[3] . Therefore, for attaching liability against the non executive director, there must be some allegation in the complaint and material to substantiate such allegation that the non executive director is responsible for the day to day affairs of the company, otherwise no criminal liability can be attached to such non executive director, who is not looking after the day to day affairs of the company as held by the Apex Court in **K.K. Ahuja v V.K.Vora**[4]**.** In view of the law declared by the Apex Court in the judgments referred supra and in the absence of any specific allegations and material in support of it, the petitioner, who is not a drawer or maker of the cheque, as defined under Section 7 of the Act and not looking after the day-to-day affairs of the company, the proceedings against him cannot be continued.

[3] AIR 2010 SC 2835
[4] (2009) 10 SCC 48

8. The facts of the judgment of the Apex Court in **Narendra Kurangi and others** case referred supra are identical to the present facts of the case. By applying principles laid down by the Apex Court and since the petitioner is not drawer or maker of the cheque. The proceedings against the petitioner/A3 are liable to be quashed by exercising power under Section 482 Cr.P.C. and such inherent jurisdiction can be exercised to prevent abuse of process of law and otherwise to secure the ends of justice. Keeping in mind the judgment of the Apex Court in ***State of Haryana*** v. ***Bhajan Lal***[5]**,** the Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence to make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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[5] 1992 Supp. (1) SCC 335

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. According to Guidelines 2 and 3 of the Apex Court, if the allegations made in the complaint or charge sheet if taken on its face value, it would not constitute a case against the petitioner. As the allegations made in the complaint on its face value do not constitute offence punishable under Section 138 of the Act, I find that it is a fit case to exercise inherent jurisdiction since filing such complaint is an abuse of process of the Court.

10. Accordingly, the criminal petition is allowed quashing the proceedings in C.C.No.339 of 2017 pending on the file of II Additional Judicial First Class Magistrate, Nuzvid, Krishna District against this petitioner/A3.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY,J

08.12.2017
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