

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION No.4243 of 2011

ORDER:

Heard learned counsel for the petitioner as well as learned Public Prosecutor.

Though notice is served on the 2nd respondent, there is no representation.

The present petition is filed by the petitioner/A6 to quash the proceedings initiated against him in C.C.No.1650 of 2010 for the offence under Section 138 of the Negotiable Instruments Act (for short, "the Act") on the file of the Court of XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad.

The brief facts of the case are that the petitioner was one of the Directors of M/s. S.V. Jewelers Private Limited, a private limited company, (for short, "the Company") dealing with jewelry business. However, on account of differences, he came out of the said company with effect from 12.06.2010. It appears that the Company, represented by other Directors, had business dealings with M/s. Sri Navdurga Gems and Jewels, 2nd respondent herein, in purchase of jewelry. In pursuance of the said transaction, the Company issued four cheques, dated 18.06.2010, 19.06.2010, 21.06.2010 and 23.06.2010, for a total sum of Rs.20,80,000/- towards payment for sale of gold and jewelry to it. On presentation, the said cheques were dishonoured with an endorsement "funds insufficient" on 20.07.2010. After issuance of legal notice, the 2nd respondent filed a complaint vide C.C.No.1650 of 2010 for the

offence under Section 138 of the Act before the XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad. Aggrieved by the same, the present petition is filed.

Learned counsel for the petitioner would contend that the petitioner, who is arrayed as A6, seized to be a Director of the Company with effect from 12.06.2010. To prove the same, a copy of Form No.32 filed before the Registrar of Companies is enclosed with the material papers filed along with this petition.

A perusal of the said Form No.32 would disclose that the petitioner is not associated with the Company with effect from 12.06.2010. Further a perusal of the allegations in the complaint reveals that accused Nos.2 to 9 purchased jewelry worth Rs.26,34,918/- from the 2nd respondent and issued four different cheques pertaining to Allahabad Bank, Balanagar Branch, Hyderabad for a sum of Rs.20,80,000/- assuring the 2nd respondent that all the cheques would be honoured on their presentation and remaining balance of Rs.5,54,918/- will be paid at the earliest. On presentation of the said cheques, they were dishonoured with an endorsement "funds insufficient". The particulars of the cheques mentioned in the complaint reveal that those cheques are dated 18.06.2010, 19.06.2010, 21.06.2010 and 23.06.2010 that is much later to the petitioner left the Company. That apart, learned counsel for the petitioner also would contend that the petitioner is not a signatory of the subject cheques. Therefore, by the date the cause of action arose for initiating the criminal proceedings by way of purchasing the jewelry, issuance of

cheques etc., the petitioner herein is not the Director of the Company. That being so, the liability that arises out of the transaction entered into between the 2nd respondent herein and the Company cannot be fastened on the petitioner, since he is not associated with the said Company in any manner.

Though notice has been served on the 2nd respondent, there is no representation to rebut the contentions argued by the learned counsel for the petitioner and the material placed before this Court.

In these circumstances, continuation of proceedings initiated against the petitioner in C.C.No.1650 of 2010 would amount to abuse of process of the Court as well asking the petitioner to undergo ordeal of an elaborate trial though there is no *prima facie* case made out against him.

Accordingly, the criminal petition is allowed, quashing the proceedings initiated against the petitioner in C.C.No.1650 of 2010 for the offence under Section 138 of the Act on the file of the Court of the XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE P. KESHA RAO

Date: 20.12.2017.
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