

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2232 & 2302 OF 2017

COMMON ORDER:

The petitioner in both these petitions is common. In these petitions filed under Section 482 of the Code of Criminal Procedure, 1973, she makes a request for quashment of proceedings in C.C.Nos.294 of 2016 and 304 of 2016 on the file of XXI Special Magistrate, Erramanzil, Hyderabad.

The petitioner is arraigned as accused No.1 in both the Calender Cases and alleged to have committed the offences punishable under Section 138 of the Negotiable Instruments Act.

Heard K.Kiran Das, learned counsel for the petitioner, and Sri Vijay Pissay, learned counsel for respondent No.1/complainant.

Substantially, the ground canvassed by the learned counsel for the petitioner is that the petitioner was not the person who issued the cheques, which were bounced and constitute the subject matter in both the cases, and, therefore, prosecuting the petitioner is nothing, but abuse of process of law, and, as such, sought to quash the proceedings in the aforesaid two Calender Cases. Learned counsel also would submit that it has been the reason accused No.2 has not come forward with petitions of like nature.

Learned counsel for respondent No.1/complainant would submit that the petitioner cannot seek exoneration as the agreement, which gave rise to issue of cheques by her husband, who is accused No.2 in the

above Calender Cases, was entered into and signed by her and the liability arises on account of the contract entered into between the petitioner and the complainant. Learned counsel would further submit that since one of the essential ingredients is to prove the liability, the petitioner cannot be said to be unconnected with the accusations herein. To fortify his submissions, he places reliance on a judgment rendered by the High Court of Delhi in **M/s. The Jammu & Kashmir Bank vs. Abhishek Mittal** (Criminal Appeal No.294 of 2011 dated 26.05.2011), a judgment rendered by the High Court of Kerala in **Sanal Kumar vs. Rajeev Kumar**¹ and also a judgment rendered by a learned Single Judge of this Court in **Jagadish Rai Agarwal and others vs. The State of A.P and others**².

It would suffice to refer to the observations made in **M/s. Jammu & Kashmir Bank's** case referred to above, wherein, the observations made by the Hon'ble Supreme Court in paragraph '10' in **ICDS Ltd. vs. Beena Shabeer and Another**³ are extracted in paragraph '8' and the expression is to the effect that any cheque and other liability are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute and any contra – interpretation would defeat the intent of the legislature. In **Sanal Kumar** (1 supra), the High Court of Kerala, placing reliance in **Alexander v. Joseph Chacko**⁴, held that the cheque in question need not necessarily be issued by the drawer to the payee for the discharge of

¹ 2004 (1) ALD (CrI.) 865 (Ker.)

² 2005 Cri.L.J. 314

³ (2002) 6 SCC 426

⁴ 1993 (2) KLT 326)

a personal liability of such drawer to the payee; a person can certainly issue a cheque to the payee for the discharge of the liability of another; such a cheque does not fall outside the purview/sweep of the provisions of Section 138 of the Negotiable Instruments Act; the cheque need be issued for the discharge of “any” legally enforceable debt or liability and the position has been settled in **Alexander**’s case (4 supra). In **Jagadish Rai** (2 supra), a learned Single Judge of this Court, in the context of a cheque issued by the Karta of the Hindu Undivided Family, held that like directors of company, sons of Karta can be made liable.

Learned counsel for the petitioner made an attempt to distinguish the fact-situation occurring in the cases cited above with that of the fact-situation occurring in the instant case, but the ground herein is based on legal principle, but not on fact-situation, and, therefore, it cannot be said that prosecuting the petitioner in the aforesaid two Calender Cases would amount to the abuse of process of law. There is no merit in both these petitions.

Accordingly, these Criminal Petitions are dismissed.

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

A. SHANKAR NARAYANA, J

22nd March, 2017

v v