

SMT JUSTICE T. RAJANI
CRIMINAL PETITION No. 5662 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings in C.C.No.223 of 2011 on the file of the Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard the counsel for the petitioner and the learned Public Prosecutor, who took notice for the 2nd respondent. The 1st respondent has not appeared in spite of notice.

3. The counsel for the petitioner submits that the petitioner herein is not a signatory to the cheque, which was dishonoured. Hence, no prosecution can be laid against her. He also relies on the decisions of the Supreme Court and this Court respectively reported in *Mrs.Aparna A.Shah v. M/s.Sheth Developers Pvt. Ltd.*¹ and *Smt.Supreet Kaur v. M/s.Model Co-operative Urban Bank Limited*². In *Mrs.Aparna A.Shah's* case (1 supra) it was held that the drawer of the cheque alone can be prosecuted and since the appellant is not a drawer of the cheque, the criminal proceedings against her should be quashed. Similar is the principle in *Smt.Supreet Kaur's* case (2 supra).

4. Even Section 138 of the Negotiable Instruments Act, 1881 prescribes punishment only for the dishonour of the cheque issued by a person. When there is no cheque issued by a person, there cannot be any offence that can be made out under Section 138 N.I.Act.

¹ AIR 2003 SC 3210

² 2011 Cri.L.J. 762

5. With the above observations, the Criminal Petition is allowed and the proceedings in C.C.No.223 of 2011 on the file of the Chief Metropolitan Magistrate, Visakhapatnam, are hereby quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

November 6, 2017
LMV

T. RAJANI, J

