HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.16757 & 16595 of 2016

COMMON ORDER:

The petitioners are accused Nos.2 & 3 among the 3 accused of C.C.No.418 of 2016 on the file of III Special Metropolitan Magistrate, Cyberabad at Kukatpally, which is a private complaint case filed by the 2nd respondent-complainant against 3 accused including the respective petitioners, for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act').

The averments in the complaint show that between the complainant and the accused persons 1 to 3, no other than A.2 son of A.1 and A.3 wife of A.1, there is a relationship and acquaintance and for the need of money they convinced the complainant to lend Rs.85,00,000/- on 08.08.2012 and A.1 and A.2 executed DP note for the said amount to repay with interest @ 24% per annum on even date and agreed to deposit original sale deed document No.5063 of 2007 standing in the name of A.3 for the house property at Kukatpally, Laxminagar as security for the said pro-note debt and for their failure to pay A.1 and A.3 issued cheque bearing No.094075 dated 09.05.2016 for Rs.40,00,000/- drawn on ING Vysya Bank in discharge of part payment of the loan amount that was returned unpaid with endorsement drawer signature differs by cheque return memo on 11.05.2016, from which the complainant got issued notices to the accused persons 1 to 3 and they issued false reply on 12.06.2016 and complainant cause issued rejoinder on 27.06.2016 from the non-payment and accrual of cause of action maintained the complaint within time and the learned Magistrate taken cognizance for the offence supra.

From the said averments, the cheque in question issued only by A.1 and A.3, however from perusal of the cheque in question it was signed by A.1 from the joint account of A.1 & A.3 and not even by A.3 and A.2 is not even one of the drawers of the cheque so also A.3 with no signature, but for A.1 as the sole drawer. It is therefrom contended in the quash petitions that the cheque was not issued by A.2 and A.3 and the taking of cognizance is unsustainable.

The learned counsel for the petitioners reiterated the same. Whereas the learned counsel for the complainant supported the cognizance order and sought for dismissal saying they borrowed the amount and even one person among them issued the cheque, all are liable.

In answering the short point for consideration the law is fairly settled from the expression of the Apex Court in **Aparna A.Shah Vs. Sheth Developers**[1] that only the drawer is liable even from the joint account where signed by one person as drawer. Apart from it even to bring any vicarious liability, the accused are individuals and not any entity to make the entity as party with accused by showing responsible for day to day affairs to make liable even from the expression of this Court referring to several expressions of the Apex Court in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**[2].

Having regard to the above and in the result, the Criminal Petitions are allowed by quashing the proceedings against A.2 and

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[1] 2013 Crl.L.J. 3743
[2] 2016 (1) ALD (Crl.) 177

A.3 by setting aside the cognizance and by cancelling the bonds executed, if any, but for A.1 who is the drawer of the cheque alone is liable to take cognizance for the offence under Section 138 of the Act subject to what is the defence available in trial to decide.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.08.2017
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