

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.4019 of 2011

ORDER:

This petition is filed seeking for quashment of the proceedings against the petitioner, who is A2 in C.C.No.250 of 2008 on the file of V Additional Munsif Magistrate, Guntur.

2. Heard the counsel for the petitioner; the counsel for the respondent Nos.1 and 2; and the Public Prosecutor appearing for the respondent No.3.

3. The only ground on which the petitioner seeks for quashment is that the cheque is not issued on behalf of this petitioner/accused, who is Unity Mills Pvt. Ltd., and the cheque shows that it was issued by the Proprietor for Sri Mahalakshmi Spinners.

4. The counsel also relies on a ruling of the apex court in Criminal Appeal No.1180 of 2009 (Arising out of Special Leave petition (Criminal) No.369 of 2006) reported in *Jugesh Sehgal vs. Shamsher Singh Gogi*, wherein the apex court reiterated the ingredients of Section 138 of N.I.Act, which reads as follows:

“To constitute offence under Section 138 of the Negotiable Instruments Act, 1881, the following ingredients are required to be fulfilled:

(1) A person must have drawn a cheque on an account maintained by him in a bank for payment for a certain amount of money to another person from out of that account;

(2) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(3) That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(4) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit to the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(5) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the draw of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(6) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

5. After reiterating the ingredients, the court held that it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 N.I.Act. In this case, the cheque bears the signature of one Atul Shah, Proprietor of Sree Mahalakshmi Spinners. The averments in the complaint are that A1 gave the cheque as a guarantor for the cheque payable by it to this petitioner. But when cheque is not issued by this petitioner, he cannot be prosecuted.

6. In view of the above, the Criminal Petition is allowed and the proceedings in C.C.No.250 of 2008 on the file of V Additional Munsif Magistrate, Guntur, shall stand quashed.

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

T. RAJANI, J

December 13, 2017
LMV