THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1972 of 2018

ORDER:

This Criminal Petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to call for the records relating to C.C.No.172 of 2014 on the file of Court of V Additional Metropolitan Magistrate at Medchal, and quash the same.

2. The petitioner herein is arrayed as A.2. A.1 is husband of the petitioner and the 2nd respondent herein is the *de facto* – complainant in the aforesaid Calendar Case. The 2nd respondent filed a private complaint under Section 200 Cr.P.C., against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act'), alleging that the petitioner and A.1 borrowed an amount of Rs.4,00,000/- for business needs on 14.04.2012 and executed a promissory note agreeing to repay the same within two (02) months. But, the accused did not pay the same as agreed and issued a cheque bearing No.085990 for Rs.4,00,000/- on 18.02.2013 towards the amount due under the promissory note, drawn on Axis Bank Ltd, Tarnaka, Hyderabad. On its presentation for collection, the cheque was dishonoured due to 'insufficient funds' and the same was returned with a cheque return memo and thereafter, a notice in compliance of Clause (b) of proviso to Section 138 N.I. Act was issued on 15.03.2013, calling upon the accused to pay the amount covered by the dishonoured cheque. The receipt of the same was acknowledged by the accused, but neither the accused paid the amount nor issued any reply. Hence the complaint.

3. The petitioner, who is arrayed as A.2 in the aforesaid

C.C.No.172 of 2014, filed the present petition to quash the proceedings against her on the ground that she is not a drawer of the negotiable instrument; that the petitioner never borrowed any amount and executed promissory note; that A.1 alone executed the promissory note and the petitioner stood as surety; and that the cheque issued by A.1 pertaining to joint account of petitioner and A.1. Therefore, the petitioner, who is not a drawer of the negotiable instrument, cannot be prosecuted for the offence punishable under Section 138 of the Act.

4. During hearing, learned counsel for the petitioner placed reliance on the judgment of the Apex Court reported in **Aparna A.Shah v. Sheth Developers Pvt. Ltd and another**[1] and the judgment of this Court reported in **Anand Jog v. State of A.P., rep. by the Public Prosecutor**[2]. On the strength of the principles laid down in the above judgments, he requested this Court to quash the proceedings in C.C.No.172 of 2014.

5. On the other hand, learned counsel for the 2nd respondent contended that the accused persons borrowed an amount of Rs.4,00,000/- from the complainant promising to repay the same within two months; that on repeated demands, accused issued cheque and when the same was presented in the Bank, the same was returned with an endorsement 'insufficient funds'. Hence, both the accused are liable to be prosecuted for the offence punishable under Section 138 of the Act and prayed to dismiss the petition.

6. It is a consistent case from the beginning that the petitioner was not drawer of the negotiable instrument and she never

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[1] 2013 (2) ALd (Crl.)1023 (SC)
[2] 2018 (2) ALT (Crl.) 186 (AP)

borrowed any amount and never executed any promissory note, thereby the petitioner is not liable for the offence punishable uner Section 138 of the NI Act.

7. As seen from the allegations made in the private complaint, the debt was allegedly borrowed by both the accused. But, A.1 alone executed the promissory note on 14.04.2012 in favour of respondent No.2 for Rs.4,00,000/- agreeing to repay the same with interest. But, it is referred in the complaint that the promissory note was executed as security. Whatever it may be, the promissory note was executed by A.1 alone agreeing to repay the amount as and when demanded by the 2nd respondent-*de facto* complainant. At the same time, the cheque bearing No.085990, dated 18.02.2013 was signed by Anand Sawrikar, A.1 and not by Vidya Sawrikar, the petitioner herein. Though their names were printed on the cheque leaf and the cheque was issued by A.1 allegedly drawn on Axis Bank Limited, Tarnaka, Hyderabad, for Rs.4,00,000/- towards discharge of the debt, A.1 become the drawer or a maker of the cheque as defined under Section 7 of the NI Act.

8. According to Section 138 of the Act, only drawer has to be called upon to pay the amount covered by dishonoured cheque and not by any other person. The petitioner is not a drawer or maker of the cheque as defined under Section 7 of the Act, to call upon him to pay the amount covered by dishonoured cheque and will not fasten any liability against her. Further, Sections 138 and 7 of the Act were read together, it is clear that only drawer of negotiable instrument is responsible and liable to be prosecuted for the offence and not any other third person.

9. The issue involved this case is squarely covered by the judgment of the Apex Court in **Aparna's case (1 supra)**, wherein the Apex Court held thus:

> "Under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to the notice of the Court, which contains the name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque."

10. The facts in the present case are identical to the above case. When the petitioner is not a drawer or maker of the cheque, she is not liable to be prosecuted for the offence punishable under Section 138 of the NI Act. The same view is expressed by this Court in **Anand Jog's (2 supra)**. Applying the principles laid down in the above two judgments, this Court is of the opinion that the petitioner, who is not a drawer or maker of the cheque is not liable to be prosecuted.

11. The contention of learned counsel for the 2nd respondent is that both the accused borrowed amount, but A.1 alone signed on the alleged cheque, drawn on Axis Bank Limited, Tarnaka, Hyderabad, on joint account of the petitioner and A.1. Mere issuance of cheuqe by one of the joint account holders, to make the other joint holder liable to be prosecuted cannot be accepted. Therefore, the contention of 2nd respondent is without any merit and consequently, the same is rejected. Therefore, the petitioner,

who is not a maker or drawer of the cheque is not liable to be prosecuted.

12. Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C.No.172 of 2014 on the file of Court of V Additional Metropolitan Magistrate at Medchal, against the petitioner-Accused No.1 only.

M. SATYANARAYANA MURTHY,J

AUGUST 08, 2018
YVL

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1972 of 2018

Date:08.08.2018

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