

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.2889 of 2018

Between:

Chittuluri Venkata Subramanya Rajaram. Petitioner

AND

Kotagiri Shivani
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 19.06.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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.... Petitioner

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and another.

... Respondents

! Counsel for Petitioner : M/s. Bharadwaj Associates

^ Counsel for Respondent No.1 : Sri L.Venkateshwar Rao

^ Counsel for Respondent No.2 : Public Prosecutor (Telangana)

< Gist:

> Head Note:

? Cases referred:

1) Judgment dt.04.12.2008 in CrI.M.C No.3869/2007 of High Court of Delhi at

New Delhi.

2) (2002) 6 SCC 426

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.2889 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings in C.C.No.113 of 2017 on the file of Additional Judicial Magistrate of First Class, Karimnagar registered against him for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short N.I Act”).

2) The brief allegations of the private complaint are the complainant married one Chittuluri Venkata Subba Naveen Kumar cousin of accused—Chittuluri Venkata Subramanya Rajaram, who is looking after the family affairs. While so, complainant and Ch.V.S.Naveen Kumar took divorce by mutual consent in O.P.No.985 of 2012 on the file of Family Judge, City Civil Court, Hyderabad. Before taking divorce, the accused and Ch.V.S.Naveen Kumar agreed to pay lumpsum amount of Rs.83 lakhs towards permanent alimony including the return of gifts presented by the father of complainant at the time of her marriage. On 07.02.2013, on which date divorce was sanctioned by the Court, the accused and his brother—Naveen Kumar returned jewellery worth Rs.60,75,000/- which were presented by the father of the complainant at the time of her marriage and for the balance amount of Rs.22,25,000/- accused requested the complainant and her father to accept the post-dated cheques by giving consent for divorce. Accordingly, the accused issued three post-dated cheques of various

dates for the balance amount of Rs.22,25,000/-. Thereafter, the accused approached the father of the complainant stating that due to financial constraints he failed to arrange the payments and requested to accept fresh cheques. Believing his words, the complainant accepted three fresh cheques. When she presented first cheque bearing No.012339 dated 28.12.2013 for Rs.4,25,000/- with her banker HDFC Bank Limited, Karimnagar, it was returned with the endorsement “*insufficient funds*”. Likewise, when the complainant presented the other two cheques bearing Nos.012340 and 012341 dated 07.01.2014 and 16.01.2014 respectively for Rs.9,00,000/- each, they too were returned on the ground “*payment stopped by the drawer*”. Hence, the accused is liable for the offence punishable under Section 138 of N.I Act. The Additional Judicial Magistrate of First Class, Karimnagar took cognizance of the case and registered the same as C.C.No.113 of 2017.

Hence, the instant Criminal Petition.

- 3) Heard arguments of Sri Vedula Venkata Ramana, learned senior counsel appearing for petitioner and learned Additional Public Prosecutor for the State.
- 4) Learned Senior Counsel Sri Vedula Venkata Ramana, would fulminate the maintainability of the complaint on the argument that even if complaint allegations were taken to be true, the accused, who is the brother of the husband of complainant took upon himself the responsibility of payment of the balance amount of Rs.22,25,000/- due

to the complainant from her husband and therefore, it is clear that the accused himself was not indebted to the complainant nor there was any legally enforceable debt existed between the complainant and accused and hence the offence under Section 138 of N.I Act is not maintainable against the accused. The liability if at all was on the part of the husband of the complainant but was not on the accused. He relied upon the decision reported in *Harish Kapoor v. Akansha Gupta*¹.

5) In opposition learned counsel for 1st respondent argued that the accused is none other than own brother of the husband of the complainant and when the marital relation between the complainant and her husband was strained, they entered into a memorandum of settlement deed dated 12.07.2012 agreeing to obtain a divorce by mutual consent before a competent Court of law and it was also agreed that the husband shall pay Rs.83,00,000/- to complainant towards permanent alimony on the date of dissolution of marriage. Thereafter, the accused and the husband of the complainant have returned the jewellery worth Rs.60,75,000/- on 07.02.2013 to the complainant and there remained balance of Rs.22,25,000/-. For the said amount, the accused stood as a guarantor on behalf of his brother and requested the complainant and her father to receive the post-dated cheques and give consent for divorce. Since the accused was a businessman at Hyderabad, believing him the complainant and her father agreed for the said course. Accordingly, the accused issued three post-dated cheques

¹ Judgement dt.04.12.2008 in CrI.M.C No.3869/2007 of High Court of Delhi at New Delhi.

drawn on IDBI Bank, S.D Road Branch, Secunderabad. Thus the accused offered the cheques on his free volition without any force by anybody. The consideration for him is the consent accorded by the complainant for mutual divorce. Therefore, his liability in respect of the cheques issued by him is as that of a guarantor on behalf of the principal borrower and therefore, the liability covered by three cheques is legally enforceable under Section 138 of N.I Act. Hence the complaint is maintainable. He placed reliance on the decision reported in *ICDS Ltd.*

*v. Beena Shabeer and another*²

6) The point for determination is:

“Whether there are merits in the petition to allow?”

7) **POINT:** The facts would reveal, the marital tie between the brother of the accused and the complainant was severed due to the strained relationship between them and they proposed to obtain divorce by mutual consent and in that context, they entered into a memorandum of settlement deed dated 12.07.2012 whereunder, it appears, the brother of the accused had agreed to pay Rs.83,00,000/- to the complainant towards her permanent alimony. It is not in dispute that out of the said amount, already the accused and his brother have paid Rs.60,75,000/- in the form of jewellery to the complainant and her father. With regard to the balance amount of Rs.22,25,000/-, the accused offered three post-dated cheques to the complainant to make herself agreeable to attend

² (2002) 6 SCC 426

the Court to obtain divorce by mutual consent. In the backdrop of those facts, it can be said, the accused stood as a guarantor for his brother in respect of the balance amount of Rs.22,25,000/- and offered post-dated cheques to complainant. As rightly argued by the counsel for 1st respondent, the consideration for him is the consent given by the complainant for the mutual divorce in a Court of law. No threat or coercion in issuance of the cheques by the accused was pleaded in the quash petition. Therefore, as rightly argued by the 1st respondent, the issuance of the cheques can be regarded as out of free volition of the accused. It is true that the accused is not personally liable to pay the alimony to the complainant and his brother alone is liable. He only stood as guarantor, we may say, and offered the cheques for the balance of the alimony. Now the pertinent question is, whether the proceedings under Section 138 of N.I. Act are maintainable vis-a-vis a guarantor. This legal issue is no more *res integra*, since the Apex Court in **Beena Shabeer**'s case (2 supra) has clarified that the employment of the words "where any cheque" discharge of "any debt or other liability" in Section 138 of N.I Act left no room for doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the cheque is returned by the banker unpaid.

In the above case, the husband of 1st respondent entered into a hire purchase agreement with the appellant for purchasing a Maruthi Car on hire purchase basis. The 1st respondent issued a cheque for Rs.80,490/- towards part payment and the said cheque was dishonoured

by the bank with the remark “insufficient funds”. The appellant filed a complaint under Section 138 of N.I Act against 1st respondent. The respondents filed a quash petition under Section 482 Cr.P.C before the High Court. The High Court allowed the petition on a finding that the cheque issued by the guarantor could not be said to have been issued for discharging any debt or liability and hence Section 138 of N.I Act cannot be maintained. Reprobating the same, the Apex Court held thus:

***“Para 10:** The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words “Where any cheque”. The above noted three words are of extreme significance, in particular, by reason of the user of the word “any” — the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.*

***Para 11:** The issue as regards the coextensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a*

cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. “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. Any contra-interpretation would defeat the intent of the legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor’s liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus do not lend any assistance to the contentions raised by the respondents.”

The above judgment, in my view, applies to the facts of the present case in all its fours. In the instant case also, the petitioner/accused offered the three cheques voluntarily as a guarantor on behalf of his brother and they were bounced back. It may be true that originally his brother was alone liable to pay the balance of the alimony amount. However, the petitioner stood as a guarantor and offered the cheques to make the complainant and her father agreeable for obtaining the divorce by mutual consent. Therefore, the liability of the petitioner falls within the ambit of debt or other liability employed in Section 138 of N.I Act. The petitioner cannot take recourse on the argument that he does not owe any liability to the complainant to pay the alimony and therefore, the issuance of cheques does not fall within the ambit of Section 138 of N.I Act. The decision cited by him i.e, **Harish Kapoor**’s case(1 supra), will be of no avail to him, firstly for the reason that the judgment of the Apex Court in **Beena Shabeer**’s case (2 supra) was not

cited before the Delhi High Court and secondly for the reason that in that case, by facts, it was held that the cheques offered by father-in-law towards the claim of the complainant therein for return of dowry articles and maintenance, which liability was on his son but not on him, cannot be said to be towards payment of debt which could be legally enforceable by the complainant against the petitioner/father-in-law. The post-dated cheque issued in a criminal case in a compromise between the parties cannot be considered as payment of any debt or other liability which is legally enforceable against the petitioner/father-in-law. In that case, on FIR lodged by the complainant therein against her father-in-law and her husband for the offences under Section 498-A, 406 r/w 34 IPC, both of them were arrested and pending bail application, there was a compromise, whereunder the petitioner/father-in-law agreed to pay her Rs.2.5 crores towards settlement of her claims, regarding maintenance etc., against her husband. One of the cheques issued by the petitioner/father-in-law was bounced on presentation. Hence, the complainant filed complaint under Section 138 of N.I Act, against the petitioner/father-in-law and also her husband. The Trial Court dismissed the complaint against the husband. Then the petitioner/father-in-law filed petition before High Court of Delhi to quash the proceedings against him arguing that the settlement was entered into between the parties under duress and coercion. However, the facts in the instant case are quite different. In the instant case, the

petitioner himself offered the cheques to make the complainant agreeable for the divorce. Hence the cited decision has no application.

8) In the result, this Criminal Petition is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 19.06.2018

Murthy / scs

