

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.7861 of 2011

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in C.C.No.230 of 2011, against the petitioner, who is A2, on the file of the Judicial Magistrate of First Class, Nalgonda. The offences alleged are under Section 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code.

2. Heard the counsel for the petitioner and the learned Public Prosecutor, appearing for the second respondent. None appears for the first respondent in spite of notice.

3. The complaint is filed based on a cheque issued by the accused. But according to the averments of the complainant, a cheque was issued in discharge of the liability of A1, who is the father of the petitioner herein.

4. The counsel for the petitioner submits that the petitioner had not issued the said cheque in discharge of the liability of his father and he, in fact, gave a complaint to the bank on 06.07.2004 with regard to the loss of cheque leaves and that the said fact is mentioned in the reply notice issued by the petitioner herein to the complainant. The counsel also relies on a decision of the High Court of Bombay in HITEN SAGAR v. IMC LTD.¹ wherein at para 3 it was held that a cheque must be issued in discharge of any liability and mere

¹ 2001 CRI LJ 4311

statement that the cheque was issued by the petitioner No.1 for and on behalf of the petitioners 2 and 3 will not be sufficient to give the cause of action for a complaint under Section 138 of the N.I. Act. It was also observed therein that in the notice sent to the petitioner it has not been mentioned that the drawer of the cheque has taken over the liability of petitioners 2 and 3. It further observed that there should be an agreement to the effect of taking over the liability of the other person for issuing the cheque.

5. In this case, no such agreement is brought forward. Hence, in view of the above, this Court opines that the continuation of further proceedings against the petitioner would only be abuse of process of law.

In the light of the above, the criminal petition is allowed and the proceedings in C.C.No.230 of 2011, against the petitioner, who is A2, on the file of the Judicial Magistrate of First Class, Nalgonda, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

October 8, 2018
DSK

T. RAJANI, J