SMT JUSTICE T.RAJANI

CRIMINAL PETITON No.5607 OF 2013

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C to call for the records pertaining to C.C.No.502 of 2013 on the file of XIX Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad, registered for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), and quash the same.

2. Heard learned counsel for the petitioner and learned counsel for the 2nd respondent.

3. A.1 is a firm viz., Online Forex Traders, represented by A.2 and A.3, who are Managing Partner and Partner. A.2 and A.3 are husband and wife. The case of the *de facto* complainant is that he invested huge amount in A.1 firm on various dates. On receipt of said amounts, A.1 firm, represented by A.2 and A.3, issued receipt, acknowledging the amount. He further submits that A.2 and A.3 paid interest for some time and thereafter, they stopped payment. As such the complainant demanded for return of amount. On persistent demands, A.2, being the Managing Partner of A.1 firm, issued a postdated cheque bearing 423134, dated 24.08.2010, for Rs.7,00,000/- drawn on HDFC Bank Ltd., RTC Cross Road, Hyderabad, in favour of complainant towards discharge of part of liability. It is further stated in the complaint that when the said cheque was presented in the Bank for collection, the same was returned with an endorsement "Insufficient funds" vide cheque return Memo, dated 26.08.2010. When the said information was

intimated to A.3, he gave evasive replies to avoid the payment. Hence, the complaint.

4. Learned counsel for the petitioner/A.3 by placing reliance on the Judgment of the Apex Court in **Aparna A.Shah v. Setha Developers Pvt.Ltd. and another[1]**, contended that the proceedings against A.3, who is only a Partner of the A.1 firm cannot be continued. The Apex Court by considering the facts therein, which are similar to the facts of the present case, held that in an offence committed by the company, only drawer of the cheque can be prosecuted. It is also observed that the appellant therein was not a drawer of the cheque and she has not signed the same and it is only her husband, who alone put his signature and ultimately, the proceedings against the appellant therein were quashed.

5. On the other hand, learned counsel for the 2nd respondent submits that as per the ruling of the Apex Court reported in **Monaben Ketanbhai Shah & another v. State of Gujarat and others[2]**, if the person committing an offence under Section 138 of the Act is a company, every person who, at the time of offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

6. The decision relied upon by the learned counsel for the counsel for the petitioner is subsequent to decision relied on the learned counsel for the 2nd respondent. Therefore, this Court is

[1] III (2013) BC 491 (SC)
[2] 2004 (3) R.C.R (Criminal) 800

bound by the decision relied on by the learned counsel for the petitioner.

7. In the case on hand, since the petitioner, who is arrayed as A.3, is only a Partner of the A.1 firm and she has not signed the cheque, the continuation of proceedings against her would be an abuse of process of Court.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C.No.502 of 2013 on the file of XIX Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad, against the petitioner/A.3 only.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

T.RAJANI, J

AUGUST 20, 2018
YVL

SMT JUSTICE T.RAJANI

CRIMINAL PETITON No.5607 OF 2013

Date: 20.08.2018

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