

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9997 OF 2014

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings in C.C.No. 119 of 2014 on the file of the Court of learned I Additional Chief Metropolitan Magistrate at Visakhapatnam (for short, 'the Court below') registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. Respondent No. 2 filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence punishable under Section 138 of the Act alleging that he is a film exhibitor; that he along with one B.Suri Babu, Mahalakshmi Naidu and Gopalam jointly approached M/s. Siri Vinayaka Films, Visakhapatnam, and entered into an agreement for screening a movie by name "Cameraman Gangato Rambabu" for the upset price of Rs.5,40,000/-; that the petitioner is a leaseholder of M/s. Raja Picture Palace, DTS, Kothavalasa, Vizianagaram District; that M/s. Siri Vinayaka Films approached the petitioner with a request to screen the movie "Cameraman Gangato Rambabu" and fixed Rs.5,000/- as rent per day to exhibit the movie in his theater on oral agreement and started exhibiting the movie in this theater from 18-10-2012 onwards; that the petitioner informed respondent No. 2 that he would retain the collections of the movie for a period of one week and assured that after deducting the rent from the collections, he would pay the remaining collections amount; that at the end of first week *i.e.* on 25-10-2012 when respondent No. 2 approached the petitioner and requested to return the amount, the latter postponed the payment for another week; that on the assurance of the petitioner, respondent No. 2 again

approached on 01-11-2012 and demanded to pay the amount but the former did not pay again and requested respondent No. 2 to wait till one more week; that after expiry of three weeks period of lease, the petitioner failed to pay the amount collected and upon exerting pressure by respondent No. 2, the former issued two cheques bearing Nos. (1) 000184 dated 12-11-2012 and (2) 000185 dated 16-11-2012 of Kotak Mahindra Bank, Hyderabad, each for Rs.1,50,000/-; that on 08-02-2013 when respondent No. 2 presented the above two cheques for collection, the same were returned with endorsements "Funds Insufficient" and that notice dated 07-03-2013 was issued in compliance of Section 138 of the Act calling upon the petitioner to pay the amount covered by the dishonoured cheques but the same was returned with an endorsement "Not claimed" on 09-03-2013.

3. The present petition is filed on the sole ground that the alleged agreement was entered with M/s. Raja Picture Palace, DTS, Kothavalasa, of which the petitioner is the leaseholder and the cheques were issued by N.K. Theatres Private Limited (for short, 'NKTPL'), of which the petitioner is the authorized signatory but respondent No. 2 did not show NKTPL as accused and therefore the complaint against the petitioner is not maintainable.

4. At the hearing, while learned counsel for the petitioner reiterated the grounds urged in the petition and placed reliance on ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited***¹ in support of his contention, learned counsel for respondent No. 2 has contended that when the authorized signatory is impleaded as accused, it is sufficient to proceed against the drawer of the cheques and therefore requested to dismiss the petition.

¹ (2012) 5 SCC 661

5. A bare look at the allegations made in the complaint, respondent No. 2 entered into an agreement with the petitioner who is the leaseholder of M/s. Raja Picture Palace, DTS, Kothavalasa, Vizianagaram District, for screening the movie Cameraman Gangato Rambabu on daily rent of Rs.5,000/-; the amount collected was retained by the petitioner allegedly for a week and did not return the same even after deducting the rent payable for the theater; when respondent No. 2 insisted for payment of the amount, the petitioner issued the above two cheques each for Rs.1,50,000/- and on presentation of the cheques, the same were dishonoured. Learned counsel for the petitioner has placed the copies of two cheques on record to establish *prima facie* that they are not issued by the petitioner in his individual capacity and they are issued by the authorized signatory of NKTPL. Therefore, the drawer of the cheques as defined under Section 7 of the Act is NKTPL but not the petitioner. According to Section 138 of the Act, when a cheque is issued, drawer of the cheque alone shall be called upon to pay the amount by issuing notice or otherwise and if the drawer fails to pay the dishonoured cheque amount within the stipulated time, the drawee is entitled to proceed against the drawer for the offence punishable under Section 138 of the Act. As discussed in the earlier para, the drawer is NKTPL as the cheques were signed by its authorized signatory. Therefore, the drawer must be impleaded as an accused and its authorized signatory is also liable by invoking Section 141 of the Act. This view is supported by the judgment of the Apex Court in **Aneeta Hada** (1st *supra*). A Full Bench of the Apex Court in **Aneeta Hada** (1st *supra*) held that

"Criminal liability for dishonour of cheque drawn by company can be attached on officers of the company when Section 141 is invoked. It is mandatory to implead the company as one of the accused, otherwise the complaint is not maintainable. The only exception would be in a case

applying principle of lex non cogit ad impossibilia i.e. if for some legal snag, company cannot be proceeded against without obtaining sanction of a Court of law or other authority, trial as against the other accused may be proceeded against if ingredients of Sections 138 as also 141 are otherwise fulfilled. In such an event, it is clarified that it would not be a case where company had not been made an accused but would be one where company cannot be proceeded against due to existence of a legal bar."

Therefore, in the absence of impleading the company as one of the accused, respondent No. 2 cannot proceed against the petitioner, who is the authorized signatory of the company, in his personal capacity. In the above judgment, the Full Bench overruled its earlier judgment in **Anil Hada Vs. Indian Acrylic Limited²** to the extent that failure to implead company as accused is not a ground to quash proceedings. In view of the above, the principle laid down in **Aneeta Hada** (1st *supra*) alone is applicable to the present facts of the case. By applying the principle laid down in **Aneeta Hada** (1st *supra*), the defect in the complaint i.e. failure to implead the company i.e. NKTPL is not a curable irregularity under Section 465 of Cr.P.C. Hence, the proceedings against the petitioner, who is not the drawer, cannot be allowed to continue and thereby the proceedings against the petitioner are liable to be quashed by exercising power under Section 482 of Cr.P.C. and are accordingly quashed.

6. The criminal petition is allowed. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 20-06-2018.
JSK

M.SATYANARAYANA MURTHY, J.

² (2000) 1 SCC 1