

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

CRIMINAL PETITION No. 3709 of 2011

Between:

P. Rama Mohana Rao

... Petitioner

AND

1. M/s Vijaya Adithya Agro Biotech Pvt. Ltd. and another

.... Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL PETITION No. 3709 of 2011**

% 29.01.2018

P. Rama Mohana Rao

..... Petitioner

Versus

\$ M/s Vijaya Adithya Agro Biotech Pvt. Ltd. and another

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellant : T. Rama Koteswar Rao

^ Counsel for the Respondents : Nuthalapati Krishna Murthy for R1
Public Prosecutor for R2

? Cases referred

¹ 2014 LawSuit (Pat) 320

² (2013) 8 SCC 71

³ 2005 Cri. L.J. 314

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 3709 of 2011

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C., by the petitioner/A1 seeking to quash the proceedings against him in C.C.No.208 of 2008 on the file of Additional Judicial Magistrate of First Class, Chilakaluripet (for short, 'the trial Court').

2. The 1st respondent-complainant lodged a private complaint before the trial Court, under Section 200 Cr.P.C., stating that Accused No.2 approached him for purchasing of De-Oiled Rice Bran, in the name of the petitioner/A1, on credit basis, and the complainant accepted the proposal of accused No.2 and, thereafter, the complainant has sent the De-Oiled Rice Bran in vehicles on different invoices, and also maintained a Khata in the name of the accused. It is further stated that the accused Nos.1 and 2 received the De-Oiled Rice Bran on various dates but they failed to make payment. When the complainant demanded the accused to make payment, the accused No.2 issued a Cheque bearing No.333040 dated 15.05.2007 for Rs.2,00,000/- drawn on State Bank of India, Eluru Branch, as part-payment. The complainant presented the cheque in the Indian Bank, Chilakaluripet Branch, for encashment, but the cheque was returned on 26.05.2007 with a memo "Funds Insufficient". The complainant informed the accused about the return of cheque by the Bank due to insufficient funds in the account of the accused. But the accused kept silent and did not make the payment. The complainant got issued a legal notice to the accused on 19.06.2007 demanding them to make the payment due, but they did not

respond and did not pay the amount. Therefore, the complainant filed a private complaint before the trial Court alleging that the accused Nos.1 and 2 have committed the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'). The complaint was taken on file as C.C.No.208 of 2008. Seeking to quash the proceedings against the petitioner/A1, this criminal petition is filed.

3. Heard the learned counsel Sri T. Rama Koteswar Rao for the petitioner; learned counsel Sri Nuthalapati Krishna Murthy for the respondent No.1-complainant; and learned Public Prosecutor representing the State.

4. Learned counsel for the petitioner submitted that the allegation made by the complainant that the De-Oiled Rice Bran was purchased by the accused No.2 in the name of accused No.1, is not correct. It is further submitted that the cheque in question was signed and issued by accused No.2 and that the petitioner/A1 is in no way connected with the issuance of the cheque and, therefore, there is no liability against the petitioner/A1 in this case and, therefore, there is no cause of action for the complainant to fasten liability to the petitioner/A1 and the prosecution launched against the petitioner basing on the private complaint filed by the complainant is a sheer abuse of process of Court, and hence the proceedings in C.C.No.208 of 2008 against the petitioner/A1 are liable to be quashed.

5. In support of his contentions, the learned counsel for petitioner relied on the judgment passed by the High Court of

Patna in **Sarita Kumari v. State of Bihar**¹, and drawn the attention of the Court to paragraph 17 which reads as under:

17. The matter went in appeal before the Hon^{ble} Supreme Court. After hearing the parties, while allowing the appeal the Hon^{ble} Supreme Court in para 27 held as under:-

"In the light of the above discussion, we hold that 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 our notice, though it contains the name of the appellant and her husband, the fact remains that her husband alone had 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".

6. Learned counsel for the petitioner placed reliance on the judgment of the Hon^{ble} Supreme Court in **Aparna A. Shah v. Sheth Developers Private Limited and Another**², wherein it was observed in paragraph 28 as under:

28. We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that

¹ 2014 LawSuit (Pat) 320

² (2013) 8 SCC 71

she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.

7. Per contra, the learned counsel for complainant placed reliance on Sections 26, 27 and 28 of the NI Act, which read as under:

26. Capacity to make, etc., promissory notes, etc.—Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

—A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself. Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Agency.—Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name. A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal. An authority to draw bills of exchange does not of itself import an authority to indorse.

28. Liability of agent signing.—An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

8. Relying on Sections 26, 27 and 28 of the NI Act, the learned counsel for respondent No.1 argued that accused No.2 is an agent of petitioner/A1, and it is on the instructions of petitioner/A1, the accused No.2 has issued the cheque and, therefore, the petitioner/A1 is also liable for prosecution under the NI Act for dishonour of cheque. It is also argued by the learned counsel for the complainant that the complainant supplied De-Oiled Rice Bran to the petitioner/A1 on credit basis on the request of accused No.2, and the accused No.2 has issued a cheque in discharge of a legally enforceable debt and the said cheque was dishonoured due to insufficiency of funds and, therefore, both the accused A1 and A2 are liable for prosecution under the provisions of the NI Act.

9. At the outset, this is a case in which a cheque was dishonoured due to insufficiency of funds in the account of the drawer of the cheque. Sections 26 and 27 of the NI Act are not applicable to the facts of the present case, for the reason that there is no specific Agreement between the parties binding the accused No.2 to act on behalf of petitioner/A1 for accepting or endorsing the bills. It is also pertinent to note that a general authority to transact business and to receive and discharge duties does not confer upon an agent the power to accept bills of exchange so as to bind his principal. Similarly, Section 28 of NI Act is also not applicable to the facts of the present case, for the reason that accused No.2 is the drawer of the cheque and not the petitioner/A1. Section 28 is applicable only in cases of an agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility. It is argued that accused No.2 signed the cheque as an agent of accused No.1, and hence accused No.1 is also liable. But, under

Section 28, the defence is available to accused No.2 and not to accused No.1, as accused No.1 is not the drawer of the cheque. In the instant case, the relationship of principal and agent between accused No.1 and accused No.2 is not established by any documentary proof except by filing of some documents for supply of goods. If accused No.2 was acting as agent, there was no indication on cheque that he signed as an agent of accused No.1 or that he does not intend thereby to incur personal responsibility. Therefore, the Sections 26, 27 and 28 of the NI Act would not come to the rescue of the complainant.

10. Learned counsel for the respondent No.1-complainant placed reliance on the judgment of this Court in **Jagadish Rai Agarwal v. The State of A.P.**³. Paragraph 7 of the judgment reads as under:

“The next contention of learned counsel for the petitioners relates to non liability of petitioners Nos. 2 to 4 for an offence under section 138 of the Act in respect of a cheque drawn by the first petitioner. Though ex facie there appears to be force in the contention of learned counsel for the petitioners, on deeper examination, I find force in the contention of learned counsel for respondents Nos. 2 to 4 that since the dishonoured cheque was issued by the first petitioner as karta of the HUF, petitioners Nos. 2 to 4, being the sons of the first petitioner and members of HUF, in view of the Explanation to section 141 of the Act, like directors of a company, can be made liable for the offence under section 138 of the Act. In the notice got issued by the petitioners through their counsel they clearly admitted that all of them have entered into an agreement to purchase the property of respondents Nos. 2 to 4. So, it is clear that they also have a role to play in the sale transaction and so prima facie they also would be liable for the offence under section 138 of the Act, if the cheque issued by the karta of the HUF is dishonoured. So, I find no grounds to quash the complaint against petitioners Nos. 2 to 4.”

³ 2005 Cri. L. J. 314

11. Placing reliance on the decision in **Jagadish Rai Agarwal (3 supra)**, the learned counsel for respondent No.1 contended that the accused No.2 has acted as an agent to petitioner/A1, and subsequently accused No.2 has issued the cheque which was dishonoured and, therefore, the petitioner/A1 is also liable for prosecution, he being the principal of accused No.2.

12. As a matter of fact, the decision in **Jagadish Rai Agarwal** is not applicable to the facts of the present case. **Jagadish Rai Agarwal** decision was rendered in the case of dispute between the members of a HUF family wherein the accused therein issued a cheque in the capacity of Karta of HUF and, therefore, all the other members were held liable for prosecution.

13. In the instant case, in the light of the decision in **Aparna A. Shah (2 supra)** relied on by the learned counsel for the petitioner, the petitioner cannot be held liable for offence punishable under Sections 138 and 142 of the NI Act since the cheque was issued by accused No.2 and the same was dishonoured due to insufficiency of funds. Therefore, in view of foregoing reasons and in the light of decisions relied upon by the learned counsel for the petitioner, the proceedings against the petitioner/A1 in C.C.No.208 of 2008 are liable to be quashed.

14. **IN THE RESULT**, the criminal petition is allowed, quashing the proceedings against the petitioner/A1 in C.C.No.208 of 2008 on the file of Additional Judicial Magistrate of First Class, Chilakaluripet. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

29th January, 2018
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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CRIMINAL PETITION No. 3709 of 2011

29th January, 2018

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