THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.6017 of 2015

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner-A.1 seeking to quash the proceedings against her in C.C. No.2 of 2013 on the file of the XX Additional Chief Metropolitan Magistrate at Hyderabad, for the offences under Sections 138, 141 and 142 of the Negotiable Instruments Act.

2. Heard the learned counsel for the petitioner-A.1, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. Learned counsel for the petitioner-A.1 would submit that for the offence under Section 138 of the Negotiable Instruments Act (for short, 'N.I.Act'), the respondents 2 and 3 cannot club the accusations against the petitioner-A.1 and her husband (A.2) and file one complaint; the respondents 2 and 3 herein have to file distinct complaints, but there is no provision in the Criminal Procedure Code to lodge a complaint by more than one person; the joint complaint filed by respondents 2 and 3 herein against the petitioner-A.1 is not maintainable; even if the facts of the complaint are taken as true, both the respondents have to file distinct complaints against the petitioner-A.1 and her husband (A.2); the petitioner-A.1 alleged to have given one cheque; if any default is there for encashment of cheque amount, a single statutory notice is required to be issued; no notice is served in this case; the continuation of the proceedings in C.C. No.2 of 2013 is abuse of process of law; and ultimately, prayed to quash the proceedings. He relied on the decisions in

Narayanaswami and others v. Egappa REddi and others[1], **City Automobiles, Vijayawada and another v. J.K. Industries Limited, Hyderabad and another**[2] and **M/s. Steel City Securities Limited, Secunderabad, rep. by K.Krishna Prasad v. P.D.V.Prasad and another**[3].

4. Learned Assistant Public Prosecutor opposed the grant of relief sought for by the petitioner-A.1.

5. Learned counsel appearing on behalf of respondent Nos.2 and 3-complainants would submit that the money transactions and documents, i.e., promissory notes and cancellation of agreement of sale, were jointly executed by the petitioner-A.1 and her husband (A.2) in discharge of the amounts fallen due; the petitioner-A.1 and her husband (A.2) had given the cheques which were dishonoured; a statutory notice was issued as required under Section 138(b) of the N.I.Act; even then, there was no compliance of the said notice; the cause of action was not distinct; and ultimately, prayed to dismiss the application. In support of his contentions, he relied on a decision of the Apex Court in **Rajini Chandra v. State of A.P.**[4]

6. In view of the contentions putforth by both sides, the point for determination is, whether the proceedings against the petitioner-A.1 in C.C. No.2 of 2013 on the file of the XX Additional Chief Metropolitan Magistrate at Hyderabad, are liable to be quashed as prayed for?

7. As per the material placed on record, the petitioner-A.1 claimed to be the owner of the plot No.39 measuring 300 square yards in Sy.Nos.61 and 62, situated at Sardar Vallabhai Patel Poor Class Housing

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1 AIR 1962 Madras 443
2 2002(1) ALT (Crl.) 9 (A.P.)
3 2007(1) ALT (Crl.) 473 (A.P.)
4 (2010) 0 SC (AP) 34708

Society. She sold the same in favour of respondent No.2 under a registered sale deed bearing Document No.2040/2006 for a sale consideration of Rs.10,03,777/-. There is also record to show that the petitioner-A.1 along with her husband (A.2) had acquaintance with the complainants-respondents 2 and 3 herein and received some amount of Rs.30,80,000/- on various occasions as hand loan to meet the personal necessities on execution of promissory notes jointly. As per the averments of the complaint, the accused have executed a promissory note as detailed below:

(i) Complainants submit that on receipt of a sum of Rs.10,00,000/- on 01.07.2006, the Accused herein have executed a Promissory Note for the aforesaid sum of Rs.10,00,000/-;

(ii) A further sum of Rs.10,00,000/- was borrowed on 14.08.2006 by the Accused and a Promissory Note was executed for the aforesaid sum of Rs.10,00,000/-;

(iii) A further amount of Rs.9,00,000/- was borrowed on 14.09.2006 by the Accused and a Promissory Note was executed for the aforesaid sum of Rs.90,000/-;

8. Having come to know that there is a defect in the title of the petitioner-A.1, she along with her husband (A.2) entered into a cancellation agreement with the complainants-respondents 2 and 3 herein and that was executed by all the parties to this litigation. When the petitioner-A.1 and her husband (A.2) fallen due huge amount, they have given the impugned cheques bearing Nos.346083 and 346084 dated 16.02.2007 and 16.03.2007 drawn on Bank of India, Ramakrishnapuram Branch, Secunderabad, for Rs.10,00,000/- and Rs.9,00,000/- respectively, to discharge their liability. Thereafter, they have committed default in payment of amount, as there is insufficiency of funds in their accounts. As

per the record, a notice was sent to them under registered post. The accused did not choose to receive the said notice in order to avoid the liability. It is contended that both the notices were issued to the petitioner-A.1 and her husband (A.2) to the addresses furnished by them in the registered sale deed. As seen from the record, the petitioner-A.1 and her husband are parties to the cancellation agreement relating to cancellation of sale deed and also borrowings made from respondent Nos.2 and 3.

9. The decisions relied on by the learned counsel for the petitioner-A.1 referred supra are distinct and the facts and circumstances of those cases are also distinct from the instant case. Therefore, they have no application to the case on hand. In the decision relied on by the learned counsel for the complainants-respondents 2 and 3 herein in **Rajini Chandra's** case (4 supra), two different cheques were given by the accused therein to the complainant in respect of the amounts fallen due in the land transactions; when both the cheques were dishonoured, after due notices, the complainant instituted the proceedings. It was held by the Apex Court that no distinct complaints are to be made. But in the instant case, the borrowings were made jointly by both the accused, i.e., the petitioner-A.1 and her husband (A.2) from the complainants-respondents 2 and 3 herein in discharge of the amounts fallen due under the joint promissory notes and the agreement relating to cancellation of sale deeds. The petitioner-A.1 and her husband A.2 gave different cheques to clear the debt. Under these circumstances, it cannot be held that there is a distinct cause of action to institute the proceedings. The documents under which the petitioner-A.1 and her husband (A.2) had fallen due amounts are one and the same which were executed by both of them in favour of the complainants-respondents 2 and 3 herein. Therefore, the impugned complaint is maintainable. The learned Magistrate has rightly

taken cognizance to proceed with the matter. There are no grounds to quash the proceedings against the petitioner-A.1 as prayed for.

10. The Criminal Petition is dismissed accordingly. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

27th February, 2018

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