

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8176 of 2018

ORDER :

The petitioner is A.3. Respondent No.2 is the complainant. Respondent No.2 filed private complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act') against three accused including the petitioner in C.C.No.2340 of 2017 that was taken cognizance by the learned XI Additional Chief Metropolitan Magistrate, Secunderabad and the case later transferred and re-numbered as C.C.No.469 of 2018 pending on the file of the XVIII Additional Chief Metropolitan Magistrate, Secunderabad. So far as the array of accused concerned, A.1 is M/s.Susheela Foods and Beverages (P) Ltd., represented by its Director C.Prabhakar Reddy, A.2 is the said C.Prabhakar Reddy, referred as Director of A.1 entity and A.3 Smt.C.Padmaja, wife of said C.Prabhakar Reddy, who is the petitioner. In the cause title array, she is neither referred as Director nor anyway connected with the day-to-day affairs and business of the company.

2. A perusal of the cheque undisputedly shown issued by A.1 entity M/s.Susheela Foods & Beverages (P) Ltd., signed by authorized signatory as drawer i.e., A.2. In the private complaint, para 9 it is mentioned, A.3 also being land owner of A.1 company as per Memorandum of Understanding (MOU) besides she is wife of A.2 and active participation in the project of A.1 supra, the said MOU and liable for the offences.

3. A perusal of the MOU, dated 18.03.2014, between the petitioner/A.3 and others, clause 13 reads as follows:

“The investor shall upon execution of this MoU, transfer a sum of Rs.30.00 lacs into the account of Smt. C. Padmaja, the land owner, to enable the Promoter to submit the OTS proposal to a nationalized bank on account of Susheela Granites (P) Ltd. After execution of the SHA as stated in para 12 above, this amount shall be treated as a part of the investor’s investment into the Company. Till such time, this amount shall be considered as loan to the Company and its promoter.”

4. Even taken everything accepted as true, even from the MOU A.3 neither became a director not an employee, without that it cannot be called she is responsible for day-to-day affairs in any manner with A.1 entity, which borrowed the amount allegedly and issued the cheque on behalf of the A.1 entity by its authorized signatory A.2. The case no way comes under Section 141 of the NI Act for impleading a company along with its directors or other persons responsible with the company affairs as employees. Here A.3 neither the employee nor director, the question of law even as per MOU for the offence under Section 138 NI Act does not arise, but for any civil liability if at all to enforce that too clause 13 of the MOU.

5. With these observations, the criminal petition is allowed quashing the proceedings so far as petitioner/A.3 concerned in C.C.No.469 of 2018 pending on the file of the XVIII Additional Chief

Metropolitan Magistrate, Secunderabad. The bail bonds of the petitioner/A.3, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

1st November 2018.

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