

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.12000 of 2013

ORDER:

This petition is filed, by the petitioner, who is A2, seeking for quash of the proceedings against him, in C.C.No.265 of 2013 on the file of the Court of II Metropolitan Magistrate, Cyberabad. The offence alleged against the petitioner is under Section 138 of the Negotiable Instruments Act.

2. Heard the counsel for the petitioner and the Public Prosecutor appearing for the 3rd respondent. None appears for the 1st and 2nd respondents in spite of notice.

3. The averments in the complaint are that the complainant and A2 are known to each other and, as such, A2 approached the complainant and took hand loan of Rs.5 lakhs and promised to repay the same within two months. Believing the said words, he gave a sum of Rs.5 lakhs to the accused as a hand loan. A2 executed a promissory note on 15.10.2012, for a sum of Rs.5 lakhs. After a period of two months, the complainant approached A2 requesting him to repay the said loan amount, then A2 requested the complainant for three months time. After the said period of three months, A2 again issued a cheque drawn on ICICI Bank Ltd., which belongs to A1 firm, in which the petitioner herein is a partner.

4. Now the counsel for the petitioner contends that the cheque was issued on behalf of A1 firm, in which this petitioner

is a partner. He contends that the loan was taken by the petitioner as a personal loan and not for the company. He also relies on the judgment of this court reported in *Othiappan vs. State of Andhra Pradesh*¹, wherein the petitions are filed mainly challenging that the prosecution levelled against the company and not in the individual capacity and added to that the cheques were not issued in the individual capacity and that there is no enforceable liability. The facts of that case are different from the facts of this case, as, it is the Company, which went before the High Court seeking for quash, whereas in the case on hand, the company did not issue the cheque.

5. The other ruling relied upon by the counsel for the petitioner is also rendered by this court reported in *D.Chandra Reddy vs. Ghouriseti Prabhakar*². The facts being that the petitioner took a loan from the complainant and towards repayment of loan, cheque, which was issued by the petitioner as Managing Director of Company, was bounced; that the cheque was drawn on an account maintained by the Company and not on account maintained by the accused in his personal capacity; that the accused was sought to be prosecuted in his individual capacity; that the requirement of section 138 of the Act that the cheque should have been drawn by the accused on the account maintained by him was not satisfied.

6. From the above, it is clear that the facts of the said case seem to be also different from the facts of this case. There the

¹ (2012) 1 ALD (CrI.) 549

² 2000(3) Crimes 599

Managing Director is prosecuted individually but in this case, the company is also added as an accused and this petitioner, who is a partner of A1 firm, was also added. The averments in the complaint would show that the petitioner borrowed the amount for his urgent business needs. The business obviously of the petitioner is of A1 firm, there is no plea that, being a partner therein, he had other business. Hence, unless the trial is taken up and the facts relating to the nature of the transactions that are permitted to be done by the petitioner and the extent of liberty that is given to the petitioner with regard to operating the account of the firm, are gone into, the true facts would not come out. Simply because the cheque was drawn on the name of A1 firm, it cannot be said that the petitioner is not liable for prosecution under Section 138 of N.I.Act. Unless all the relevant facts are permitted to be brought forth during trial, the liability of the petitioner cannot be decided.

7. In view of the above, this court opines that this is not a fit case for quashing the proceedings at this stage. However, it is made clear that the trial court shall decide the matter uninfluenced by the observations made by this court in this order.

8. With the above observations, the Criminal Petition is dismissed. Interim stay granted by this court on 25.03.2014 shall stand vacated.

As a sequel, the miscellaneous applications, if any pending,
shall stand closed.

T. RAJANI, J

August 29, 2018
LMV

