

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.12554 OF 2011

ORDER:

The present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners - accused Nos.1 and 2 seeking to quash the proceedings in Calendar Case No.893 of 2010, pending on the file of the Additional Judicial Magistrate of First Class, Karimnagar, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'Act, 1881').

2. Heard the learned counsel for the petitioners and the learned counsel for respondent No.2.

3. The learned counsel for the petitioners submits that the cheque was issued in favour of husband of the complainant and, hence, the wife cannot maintain the complaint. But, the learned counsel for respondent No.2 - complainant submits that authorization letter was given by the husband to respondent No.2, authorizing her to collect the amount under the cheque. The said authorization letter is also filed along with the complaint. Apart from that, a legal notice was got issued by respondent No.2, for which no reply was given by the petitioners. Hence, it amounts to admitting the fact that respondent No.2 is a holder in due course. As regards the maintainability of a complaint under Section 138 of the Act, 1881 by holder in due course of a cheque, the learned counsel relies on the judgment rendered by the Full Bench of this Court

in **K. Ramachandra Rao v. State of Andhra Pradesh**¹. The Full Bench of this Court, in paragraph No.16, held as follows:

“16. In Ram Chandra case (4 supra) it is clearly held that complaint filed through the power of attorney of a person aggrieved, tantamounts to filing of the complaint by the person aggrieved. For that reason, and since the right accrued to the payee or the holder in due course of a dishonoured cheque does not fall within the three exceptions to the rule QUI FACIT PER ALIUM, FACIT PER SE recognized by Section 183 of the Contract Act i.e. since the act to be performed (i) is not personal in its character, or (ii) is not annexed to any public office, and (iii) does not involve any fiduciary obligations, we hold that the power of attorney of a payee or a holder in due course of a dishonoured cheque can file a complaint for an offence under Section 138 of the Act after obtaining permission from the Court, either before or after filing of the complaint. The reference is answered accordingly.”

The rationality of the argument raised by the learned counsel for the petitioners is based on the definition of the holder in due course under Section 9 of the Act, 1881, which is as follows:

“9. **“Holder in due course”**.- “Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.”

4. He also draws attention of this Court to Section 138 (c) of the Act, 1881, wherein one of the pre-conditions for launching prosecution

¹. 2005 (2) ALT 607

is failure of the drawer of the cheque to make the payment to the payee or, as the case may be, to the holder in due course of the cheque.

5. Hence, by every means, it can be understood that the holder in due course of the cheque is also a person, who is entitled for initiating prosecution under Section 138 of the Act, 1881. Under these circumstances, it is considered as not a fit case to quash the proceedings.

6. With the above observation, the present Criminal Petition is dismissed.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand closed.

November 14, 2018
Mgr



SMT. T. RAJANI, J