

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10631 of 2018

ORDER :

The petitioner is A.1 among two accused in C.C.No.1670 of 2018 pending on the file of the II Metropolitan Magistrate-cum-Railways at Visakhapatnam. It is out come of the private complaint of the 2nd respondent/complainant against the two accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the N.I. Act') for dishonour of four cheques bearing Nos.743750, dated 20.11.2017, 743749, dated 20.10.2017, 743748, dated 20.09.2017 and 743747 dated 20.08.2017, each Rs.50,000/-. These are, as per the complaint averments particularly from para 4 out of 8 paras, out of ten cheques issued by A.2, named Sambagi Amurtha, no other than the daughter of the petitioner/A.1 S.Venkateswar Rao.

2. A perusal of the cheques shows she was the drawer of the cheques and not either from joint account or with joint signatures as co-drawer by A.1 also. The complaint averments show for the amounts due by A.1 in the settlement arrived for Rs.4,20,000/- before Lok Adalat on 11.02.2017 for its recovery 10 cheques issued, out of which six time barred and the four cheques presented returned dishonoured. The cheques signed only by A.2. What was referred is A.2 signed and issued the cheques, for the amount due as per the Lok Adalat settlement by A.1. Respondent No.2 served failed to attend.

3. Heard learned counsel for the petitioner/A.1 and the learned Public Prosecutor and taken as heard the complaint/respondent No.2.

4. Law is fairly settlement that if at all there is any civil liability and out come of which another person undertaking the liability even issued the cheque, it is only the drawer of the cheque liable and not the other persons, who are not drawers nor even a case of vicarious liability to make along with the principal offender alleged if any. The expression of the Apex Court in **Aparna S.Shah v. Sheth Developers Private Limited and another**¹ is very clear in this regard that only the drawer of the cheque liable and not other persons non-drawers unless there is any vicarious liability to fasten along with principal offender.

5. Having regard to the above, but for if at all to enforce the civil liability against A.1 and A.2, for the so-called debt due by A.1, out of settlement for the cheques issued by A.2, A.1 cannot be made liable for the offence under Section 138 of the N.I. Act, but for A.2, if any.

6. Having regard to the above, the criminal petition is allowed quashing the proceedings of the cognizance taken against A.1 for the offence under Section 138 of the N.I. Act in C.C.No.1670 of 2018 on the file of the II Metropolitan Magistrate-cum-Railways at Visakhapatnam. The bail bonds of the petitioner/A.1, if any, shall stand cancelled.

¹ (2013) 8 SCC 71

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

20th November 2018.

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