

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.12925 OF 2013

ORDER:

This petition is filed under Section 482 Cr.P.C. by the petitioner/A2 seeking to quash the proceedings against her in C.C.No.62 of 2012 on the file of IV Special Magistrate, Cyberabad, Ranga Reddy District at Miyapur, registered for the offence under Section 138 N.I.Act.

2. The brief facts of the complaint are that A2 is the mother of A1 and both accused availed a housing loan of Rs.40,00,000/- (rupees forty lakhs only) from the complainant for purchasing of entire third floor admeasuring 2350 square feet along with an undivided share of land admeasuring 347 square yards of house bearing No.11-2-289, situated at Mylargadda, Seethaphalmandi, Secunderabad, by executing a loan agreement on 20.11.2009. It is the further case of complainant that A1 issued a cheque bearing No.314321, dated 30.11.2010, drawn on Axis Bank Limited, Himayath Nagar Branch, Hyderabad, for an amount of Rs.48,007/- (rupees forty eight thousand and seven only) towards payment of EMI. When the complainant presented the said cheque in his bank i.e., Karur Vysya Bank Limited, Kukatpally Branch, the same was returned by the bank by a return memo dated 03.12.2010 due to the reason 'funds insufficient'. After following the due process, the complainant

filed instant complaint petition. Hence, the present application by the petitioner/A2.

3. Notice was served on the 2nd respondent/complainant. But, there is no representation. Hence, heard the learned counsel for the petitioner.

4. The submission of the learned counsel for petitioner is that though A2 is a party to the loan document, she is not a party to the cheque i.e., she is not a signatory of the cheque and she has nothing to do with the issuing of the cheque and therefore, the criminal proceedings against her are not maintainable and if at all the complainant is aggrieved, he may institute civil proceedings against both the accused. However, continuation of the criminal proceedings against petitioner/A2 would amount to abuse of the process of the Court. He thus prayed to allow the petition.

5. The point for determination is whether there are merits in the criminal petition to allow.

6. As can be seen from the copy of the cheque, which is filed along with the material papers, A1 i.e., S.Anand Kumar, alone signed on the cheque and the cheque book also belongs to him and it was drawn on Axis Bank Limited and issued to the complainant. Admittedly, the petitioner/A2 was not a signatory thereof. In these circumstances, this Court finds force in the submission of learned counsel for the petitioner that the petitioner/A2 cannot be made liable though she may

be one of the borrowers of the home loan. A non drawer of a cheque can't be prosecuted under Section 138 of N.I.Act {*Vide judgment of the Hon'ble Apex Court in Aparna A.Shah v. Sheth Developers Private Limited and others [2013 Crl.LJ 3743]*}. The relief as against petitioner/A2 for the complainant is elsewhere, not by virtue of the criminal complaint. The proceedings under Section 138 N.I.Act would certainly amount to abuse of process of the Court.

7. Accordingly, the criminal petition is allowed and proceedings in C.C.No.62 of 2012 on the file of IV Special Magistrate, Cyberabad, Ranga Reddy District at Miyapur, are quashed so far as petitioner/A2 is concerned.

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

10.08.2018
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U.DURGA PRASAD RAO, J