

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.10041 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/ A2, seeking to quash the proceedings in C.C.No.24 of 2017 on the file of the I Special Magistrate, Rajendranagar, Ranga Reddy District.

2. The petitioner is A2 among two accused including A1, his brother in the private complaint maintained by the 2nd respondent, for the offence punishable under Section 138 of the Negotiable Instruments Act against them, for the so called dishonour of the cheque for Rs.2,50,000/- dated 03.04.2017 bearing No.21506 drawn on Axis Bank, that was signed by A1 only, as drawer of the cheque.

3. The contention in the quash petition is that the petitioner/ A2 is no way responsible nor even drawer of the cheque make him liable and drawn attention of this Court to the expression of the Apex court in *Aparna A. Shah v. Sheth Developers Private Limited and another*¹.

4. Heard both sides.

5. It is the submission of the learned counsel for the 2nd respondent that the petitioner/ A2 also responsible for lending of the amount and thereby, even not drawer made liable.

¹ (2013) 8 S.C.C. 71

6. In fact, the complaint averments show that both A1 and A2 are brothers and the cheque was drawn and issued by A2 only and saying A1 also promised to pay and committed the offence for dishonour for insufficiency of funds. It is unknown how a non-drawer can be fastened with vicarious liability that too not a case of both are partners of any firm with active participation of the cheque if at all issued by any firm for the cheque issued was from its perusal undisputedly by the individual A1 alone and not by A2.

7. Having regard to the above and from the expression of the Apex court in *Aparna A. Shah (supra)*, the cognizance order of the learned Magistrate insofar as the petitioner/ A2 is unsustainable and quashed accordingly.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner/ A2 in C.C.No.24 of 2017 on the file of the I Special Magistrate, Rajendranagar, Ranga Reddy District.

9. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.12.2018

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