

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.6720 of 2014

ORDER :

The petitioners are the accused 1 & 2. A1 is the proprietary concerned represented by A2 and A2 is thereby insignificant for array of A1 with name of proprietary concerned as proprietor, is sufficient. The 2nd respondent to the quash petition is the complainant who is seeking to quash the proceedings in CC.720 of 2013, on the file of the learned VII Additional Chief Metropolitan Magistrate, Hyderabad, later transferred and now pending as CC.67 of 2014 before IV Special Magistrate, Erramanzil, Hyderabad. The calendar case taken cognizance is from the private complaint of the 2nd respondent for dishonour of the cheque in question for the offence U/s.138 of N.I. Act. It is from the cheque returned not paid and after statutory notice acknowledged, with no payment, with no reply and after approval of cause of action, the complaint is filed and that was taken cognizance.

The main impugment in the quash petition is that, cheque must have been issued but drawn by a person on the account maintained by him with a banker for payment of any amount of money to another for discharge of whole or in part, of any debt or other liability, returned to anybody either because of amount of money standing to the credit of that account is insufficient to honour or exceeds the amount arranged to be paid and cheque must be presented within six months from the date it is drawn to say within its validity and payer or holder in due course for payment of money due notice in writing after return of cheque within 30 days of receipt of cheque return information of unpaid amount

demanding if not paid within 15 days of said receipt of notice to accrue cause of action and by so referring the ingredients of Section 138 of N.I. Act, it is contended that cheque was not returned for insufficiency of funds, complaint as well as the legal notice for return of the cheque mentioned drawers signature to operate account not received and it is not sufficient to mulk with criminal liability for the offence U/s.138 of N.I. Act and the proceedings are there by liable to be quashed.

In support of the contention, in the course of hearing, while reiterating, the counsel for the accused/petitioner placed reliance on the expression of the Apex Court in ¹**APARNA A.SHAH Vs. SHETH DEVELOPERS PRIVATE LIMITED AND ANOTHER**, it is observed that, no one can be fastened with criminal liability for acts of others, except as expressly provided by law, only the drawer of the cheque is liable for prosecution and all the ingredients referred supra as observed in ²**JUGESH SEHGAL v. SHAMSHER SINGH GOGI**, to be made out.

Heard learned counsel for petitioners/accused and the counsel for the 2nd respondent/complainant and the learned Public Prosecutor representing the 1st respondent/State and perused the quash petition averments and the complaint and the statutory legal notice and other material on record.

The counsel for the complainant/respondent no.2 submits that the cheque returned is for the drawers signature to operate the account not received from the drawer by the bank and he is not supposed to give the cheque in question without giving his signature to operate the account to the bank and even after statutory notice, he failed to pay, thereby, he is liable for the cheque in question.

¹ (2013)8 Supreme Court Cases 71

² 2 (2009) 14 SCC 683

A perusal of the notice and the complaint shows that the cheque was returned dishonour. The reason mentioned as drawers signature to operate account, not received. It is not for any other reason having issued a cheque, it must be seen that he has to honour the cheque. When his signature to operate the account not given to the bank, the bank cannot permit the operation of the account which returned, is nothing but for want of funds to operate so as to construe. On that technical ground, that too after receiving the statutory notice not even paid, he cannot escape the liability and the expression in **APARNA A.SHAH Vs. SHETH DEVELOPERS PRIVATE LIMITED AND ANOTHER**, is in view of the above, no way applicable to quash the proceedings based on that.

Accordingly, the criminal petition is disposed off rather than dismissal, by left open any such defence to urge before trial Court to decide on its own merits during trial.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 30.01.2019
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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30th January, 2019

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