HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.4000 of 2019

ORDER:

1) The petitioner/accused No.2 in C.C.No.143 of 2019 on the file of the XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri, filed the present Criminal Petition under Section 482 of Cr.P.C., to quash the proceedings in the above C.C.

2) Brief facts of the case are that the second respondent herein filed a private complaint against the petitioner/accused No.2 and another for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, alleging therein that the petitioner/accused No.2 sold a Flat situated at West Marredpally, Secunderabad to the second respondent and she executed a registered a sale deed bearing document No.1089 of 2014. Though the petitioner sold the Flat, but requested the second respondent to permit them to stay in the said Flat and promised to pay the rent to him. Accused Nos.1 and 2 paid rent properly for some time and thereafter they committed default. On repeated requests made by the second respondent, accused No.1 issued cheques bearing Nos. 000055 and 000057 dated 20.09.2018 for Rs.5,00,000/- each drawn on HDFC Bank, West Marredpally Branch, Secunderabad, towards discharge of their liability. When the said cheques were presented by the second respondent in his banker State Bank of India, MCG Kushaiguda Branch, Hyderabad, the same were returned un-paid

with an endorsement "Funds in-sufficient" vide memo dated 07.11.2018. Thereafter, the second respondent issued statutory notice to the accused. Though the said notice was received on 28.11.2018, the accused have not taken any steps to pay the amount nor got replied. Hence, the second respondent filed a private complaint.

3) Heard learned counsel for the petitioner, learned Additional Public Prosecutor and the learned counsel appearing for the second respondent.

4) It has been submitted on behalf of the petitioner that the petitioner is neither signatory nor issued the cheque towards the legally enforceable debt and the petitioner is no way connected with the alleged offence under Section 138 of the Negotiable Instruments Act. The husband of the petitioner has signed the cheque and he is made as accused No.1 and he is attending the Court proceedings. The petitioner is falsely implicated only to blackmail her husband/accused No.1 and hence prayed to quash the proceedings against the petitioner.

5) Learned Additional Public Prosecutor opposed the application.

6) Learned counsel appearing for the second respondent would submit that the petitioner was having a joint account along with her husband and once the cheque was issued from the joint account, the petitioner should be held equally liable for the said

dishonored cheque in terms of Section 138 of the Negotiable Instruments Act, 1881.

7) Before proceeding further, it is useful to refer Section 138 of the N.I. Act which reads as under:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless—
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability".

8) From a bare reading of Section 138 of the Negotiable Instruments Act, 1881, it transpires that the liability of the drawer of the cheque, who has issued the cheque from the joint account maintained by him and his wife, does not specifically bear any implication that the latter is equally responsible even when the cheque was drawn by her husband and therefore, no vicarious liability can be fastened on the holder of a joint account by a mere fact that the dishonoured cheque was issued from the same account by the drawer of such a cheque. The analogy of Section 141 of the Negotiable Instruments Act, 1881 which deals with the offences of the company, cannot be stretched to make the joint holder of a bank account vicariously liable to face the prosecution under Section 138 of the Negotiable Instruments Act, 1881.

9) In ***Aparna Shah v. Sheth Developers Private Limited and another***[1] the Apex Court held as under:

"We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint

[1] (2013) 8 SCC 71

> account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act."

10) From the judgment referred to above, it is clear that only the person, who issued a cheque from a joint account, can be made accused in proceedings under section 138 of Negotiable Instruments (NI) Act for dishonour of the cheque.

11) In the case on hand also, the cheque in question which stood dishonoured, was issued under the signature of M.V.Seetha Rami Reddy (Accused No.1). The petitioner/A2 was only a joint account holder along with her husband, who is the drawer of the cheque. Therefore, I am of the view that the petitioner/A2 cannot be prosecuted either under Section 138 of the Negotiable Instrument Act or under the principles of vicarious liability as laid down under Section 141 of the Act.

12) Having regard to the facts and circumstances of the case and in view of the ratio laid down by the Apex Court in *Aparna Shah's case* (supra), I find merit in the submissions made by the learned Counsel for the petitioner that no case has been made out in the said complaint case filed by the second respondent against the petitioner, who is merely a joint account holder in the bank with her husband and she cannot be held liable for the cheque in question which remained unpaid due to insufficiency of funds in the said account.

13) Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/accused No.2 in C.C.No.143 of 2019 on the file of the XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri, are hereby quashed.

14) Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G. SRI DEVI

30.09.2019
Gkv/Gsn.

HIGH COURT FOR THE STATE OF TELANGANA ★ HYDERABAD