THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.9535 OF 2018

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') is filed by the petitioner/Accused No.6 seeking to quash the proceedings against her in C.C.No.168/2018 on the file of III Special Metropolitan Magistrate, Cyberabad at Kukatpally, registered for the offences punishable under Sections 138, 139, 141 and 142 of Negotiable Instruments Act, 1881 (for short 'N.I. Act').

2) Heard learned counsel for the petitioner/A.6, learned Additional Public Prosecutor representing the 1st respondent/ State and perused the record. Inspite of service of notice, there is no representation for the 2nd respondent/complainant.

3) Learned counsel for the petitioner would contend that the petitioner/A.6 is only a Member of A.1—M/s.Devarakonda Educational Society and she is no way connected with the alleged borrowing and issuing of subject cheque in favour of the 2nd respondent/*de facto* complainant. Without there being any material, she is being proceeded in the impugned C.C and ultimately prayed to allow the petition.

4) As per the averments of the complaint and sworn statement of the 2nd respondent/complainant, A.2 being the Vice President of the A.1—M/s.Devarakonda Educational Society, approached the 2nd respondent/complainant to advance some

amount for running the A.7— college and accordingly, the 2nd respondent/complainant and his cousin Mr. T. Veera Venkateswarlu, jointly paid an amount of Rs.53,15,000/- to A.7—college on various occasions and A.1 and A.2 assured that the said amount would be repaid to the complainant with interest. Thereafter, A.1 and A.2 did not repay the said amount and committed default and on repeated demands made by the 2nd respondent/complainant, A.7 represented by A.2 issued a cheque bearing No.163958 dated 21.11.2016 for Rs.15,00,000/- drawn on State Bank of India, Main Road, Medak towards part payment of the outstanding amount payable by the accused but the said cheque was returned with an endorsement "insufficient funds". Hence, the 2nd respondent/complainant got issued statutory notice to the accused calling upon them to repay the amount due. A.2 being the Vice President of A.1—Society, sent a reply dated 05.01.2017 and failed to pay the amount due under the subject cheque. In Para 4 of the complaint, the complainant stated that Accused No.1 received the said amount from him and accused have assured that the amount would be repaid and all the accused being the managing committee of the college of Accused No.7, were responsible for the payment of the outstanding amount.

5) It is pertinent to refer the provisions of Section 141 of N.I Act. If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well

as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Even if it is admitted that the petitioner/A.6 is a Member, it is not the case of the complainant that this petitioner/A.6 borrowed the money from the 2nd respondent/complainant and issued the subject cheque for repayment of the amount borrowed. A.1, A.2 and A.7, indulged in the borrowings as well as issuance of the subject cheque. Even then this petitioner/A.6 is not a signatory to the subject cheque.

6) Under these circumstances, the petitioner/A.6 cannot be proceeded for the offence under Section 138 of N.I Act.

7) Accordingly, the Criminal Petition is allowed by quashing the proceedings against the petitioner/A.6 in C.C.No.168/2018 pending on the file of III Special Metropolitan Magistrate, Cyberabad at Kukatpally.

Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 18.03.2019

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