THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.10203 OF 2017

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.3 seeking to quash the proceedings against him in C.C.No.354/2017 on the file of XXII Special Metropolitan Magistrate, City Criminal Courts, Hyderabad, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I.Act').

2) Heard learned counsel for the petitioner/A.3, learned Additional Public Prosecutor representing the 1st respondent/ State and perused the record. No representation for the 2nd respondent/complainant.

3) Learned counsel for the petitioner would contend that the petitioner/A.3 is only an Executive Member of A.1— M/s.Devarakonda Educational Society and he is no way connected with the alleged borrowing and issuing of subject cheques in favour of the 2nd respondent/complainant. Without there being any material, he 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, borrowed money from the 2nd respondent/complainant and

committed default in repayment of the same and on repeated demands made by the 2nd respondent/ complainant, A.2 issued subject cheques towards discharge of the loan borrowed but the said cheques were returned with an endorsement "funds insufficient". The 2nd respondent/complainant got issued statutory notice to the accused, for which A.2 being the Vice President of A.1—Society, gave reply notice dated 13.12.2016 and failed to pay the amount due under subject cheques. The complainant simply stated in the para 6 of the complaint that the petitioner herein/A.3 being an Executive Member of the A.1—Society and active member, in-charge of and responsible for the affairs of the A.1—Society, for the conduct of the business of the society, is liable to be prosecuted under Section 138 of N.I.Act along with other accused. It is specifically mentioned in the complaint that the loan amount is payable by A.1—M/s.Devarakonda Educational Society and A.2—Vice President to the complainant.

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.3 is an Executive Member, it is not the case of the complainant that this petitioner/A.3 borrowed the money from the 2nd respondent/

complainant and issued the subject cheques for repayment of the amount borrowed. It is the A.2, being the Vice President of the A.1—society, indulged in the borrowings as well as issuance of the subject cheques. Even then this petitioner is not a signatory to the subject cheques.

6) Under these circumstances, the petitioner/A.3 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.3 in C.C.No.354/2017 pending on the file of XXII Special Metropolitan Magistrate, City Criminal Courts, Hyderabad.

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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