

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.13898 of 2018

ORDER:

1) The petitioner, who is accused No.8, in C.C.No.467 of 2012 on the file of the IX Additional Chief Metropolitan Magistrate, Hyderabad, filed this Criminal Petition under Section 482 Cr.P.C. to quash the proceedings in the above C.C.

2) The brief facts of the case are that the second respondent herein filed a private complaint against accused Nos.1 to 8 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, alleging that accused No.1 company was represented by accused Nos.2 to 8 and engaged in the business of execution of EPC and turnkey contracts. While so, A2 to A8 had approached the 2nd respondent/complainant to avail trade finance amount of Rs.10,00,00,000/- for six months and accordingly the complainant had advanced the said amount. Thereafter, the accused issued two cheques on 20.01.2012 and 29.01.2012 for Rs.1,20,00,000/- and Rs.10,00,00,000/- respectively, drawn on Axis Bank Limited, towards repayment of loan amount, in favour of the 2nd respondent/complainant. When the said cheques were presented by the second respondent in City Union Bank, Hyderabad, for realization, the

same were returned with an endorsement "Funds insufficient" vide cheque return memos dated 16.03.2012 and 15.03.2012 respectively and thereafter a notice was issued calling upon the accused to pay the cheque amount within the stipulated time. Even after receipt of notice, the petitioner and other accused neither paid the amount nor issued any reply. The petitioner arrayed as accused No.8 on the sole ground that she is one of the Directors of accused No.1 company.

3) Though vakalath filed on behalf of the second respondent, there is no representation on his behalf. Hence, heard the learned counsel for the petitioner; learned Additional Public Prosecutor appearing for the first respondent-State and perused the record.

4) It has been submitted on behalf of the petitioner that the petitioner is not liable to be prosecuted as she is neither signatory nor the direct involver in the transactions. It is further submitted that the petitioner, has submitted her resignation and therefore, she is not liable to be prosecuted for the aforesaid offence. Learned Counsel for the petitioner has placed on record copies of Form No.32 showing the resignation of the petitioner with effect from 15.02.2012 as such the petitioner is not liable for prosecution for the aforesaid offence.

It is also submitted that by an order dated 11.09.2018 passed in CrI.P.Nos.626 and 4279 of 2013, this Court quashed the proceedings against some of the Directors of accused No.1 company, who are arrayed as accused Nos.4, 5 and 7 in the above C.C., and the present petitioner also stands on the same footing as that of accused Nos.4, 5 and 7.

5) A perusal of the material on record would disclose that the petitioner has filed the copy of Form No.32 showing her resignation with effect from 15.02.2012. Admittedly, the petitioner is Director of accused No.1 company as on the date of offence but she is not participating in day-to-day affairs of accused No.1 company. Even if the allegations made in the complaint are accepted to be true, when she is not participating in day-to-day affairs of the company and not Executive Director of accused No.1 company, she cannot be prosecuted under Section 138 of the Negotiable Instruments Act, taking aid of Section 141 of the Negotiable Instruments Act, in view of the law laid down by the Apex Court in **National Small Industries Corporation Limited v. Harmeet Singh Paintal**¹. Hence, the Criminal proceedings are liable to be quashed.

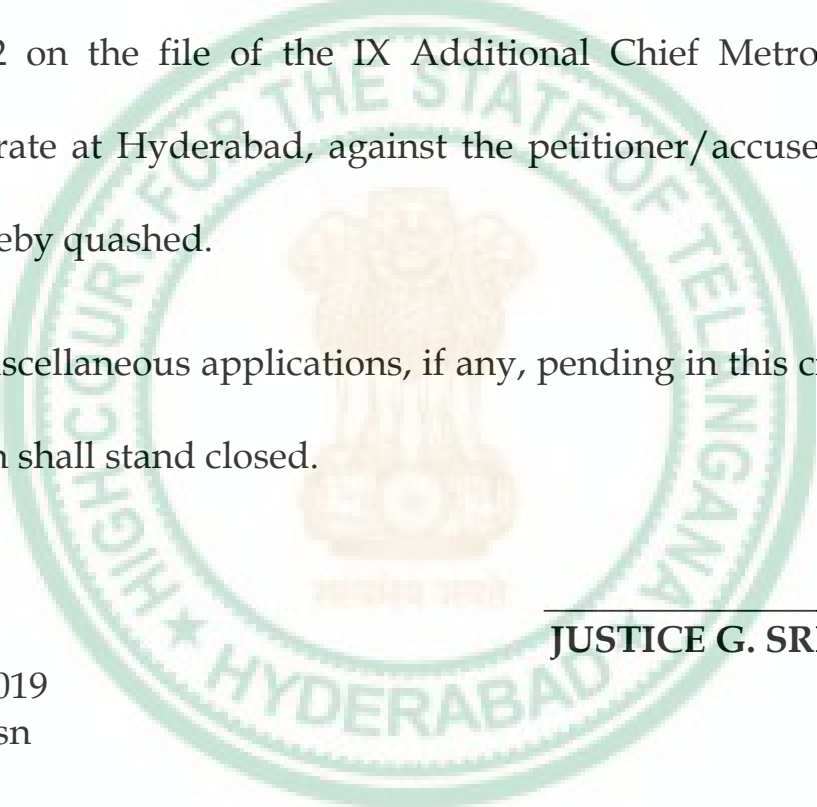
¹ (2010) 3 SCC 330

6) By following the aforesaid judgment of the Apex Court referred to above, this Court quashed the proceedings against the Directors of the company, who are not participating in day-to-day affairs of the company vide Crl.P.No.12211 of 2017, dated 01.10.2018.

7) In view of the law laid down by the Apex Court, the Criminal Petition is allowed and the proceedings in C.C.No.467 of 2012 on the file of the IX Additional Chief Metropolitan Magistrate at Hyderabad, against the petitioner/accused No.8 are hereby quashed.

8) Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

30.09.2019
gkv/Gsn

A large, faint, circular watermark seal of the High Court for the State of Telangana, Hyderabad, is centered in the background. It features the state emblem of India in the center, surrounded by the text 'HIGH COURT FOR THE STATE OF TELANGANA' and 'HYDERABAD' at the bottom.
JUSTICE G. SRI DEVI

