

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO: 6506 OF 2022

Between:

Dr. Gadugu Suvarna Rekha, W/o. Kandhala Praveen, Aged about 50 yrs,
Occ. Medical practitioner, R/o. Plot No.98-NP, Raghavendra Colony,
Hayathnagar, Rangareddy.

...PETITIONER/ACCUSED NO. 2

AND

1. Hima Bindu Busani, W/o. T. Ravi, Aged about 51 Yrs, Occ. Private Job, R/o.
H.No.2-2-647/227, Flat No.101, Gowri Nilayam, Central Excise Colony,
Hyderabad.

...RESPONDENT No. 1/COMPLAINANT

2. THE STATE OF TELANGANA, Through Public Prosecutor, Hon'ble High
Court of Telangana.

...RESPONDENT No. 2

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash proceeding against the Petitioner/ Accused No. 2 in S.T.C No. 1745 of 2022 on the file of Hon'ble XII Metropolitan Magistrate at Hyderabad disposal of the Main Case to stay all further process.

I.A. NO: 1 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quashing of the proceedings against the Petitioner/Accused No. 2 in S.T.C.No. 1745 of 2022 on the file of Hon'ble XII Metropolitan Magistrate at Hyderabad, dispense with the filing of certified copy of the Complaint in S.T.C. No. 1745/2022 on the file of XII Metropolitan Magistrate at Hyderabad along with the main criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri K GIRIDHAR RAJU, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No. R2 and of Sri CH. VENKATARAMAN, Advocate for the Respondent No. 1

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.6506 OF 2022****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner – Accused No.2 to quash the proceedings against her in S.T.C.NI No.1745 of 2022 pending on the file of learned XII Metropolitan Magistrate at Hyderabad, filed for the offence under Section 138 of Negotiable Instrument Act.

2. Heard learned counsel for the petitioner – Accused No.2 and learned Additional Public Prosecutor for the respondent – State. Perused the material on record.

3. The petitioner is the wife of Accused No.1. The case of the 1st respondent – complainant is that amounts were given to Accused No.1 and this petitioner-Accused No.2 over a period of time to an extent of Rs.23,18,000/- as hand loan and the accused promised the 1st respondent to repay the same within a period of six months. However, the amounts were not paid by the accused.

Later, the accused No.1 issued a joint account cheque bearing No.000640 for an amount of Rs.10,00,000/- to the 1st respondent.

4. When the 1st respondent presented the said cheque for clearance on 14.01.2022, the said cheque was returned unpaid for the reason of "insufficient funds" with a cheque return memo dated 14.01.2022. Later, on 27.01.2022, the complainant got issued legal notice to the accused. Since the amount covered by the cheque was not paid by the accused even after receiving the notice, 1st respondent filed the present complaint.

5. The main ground on which the petitioner is seeking quashing of the proceedings is that though the cheque was issued by husband-Accused No.1, the petitioner was also implicated in the present case for the reason of the account being a joint account. He further relied on the judgments of the Hon'ble Supreme Court reported in ***Alka Khandu Avhad vs. Amar Syamprasad Mishra and others***¹ and ***Mrs.Aparna A.Shah v. M/s. Sheth Developers Pvt. Ltd. and another***².

¹ AIR 2021 SC 1616

² AIR 2013 SC 3210

6. It is not in dispute that this petitioner has not signed on the cheque.

7. In **Alka Khandu Avhad's** case (supra), cited by the learned counsel for the petitioner/A.2, the Hon'ble Apex Court observed as follows:

"Para 7: On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

- i) that the cheque is drawn by a person and on an account maintained by him with a banker;
- ii) for the 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; and
- iii) the said cheque 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.

Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the

NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence Under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

8. In ***Mrs. Aparna A. Shah's*** case (2 supra), cited by the learned counsel for petitioner/A.2, the Hon'ble Apex Court took the view that under Section 138 of the N.I. Act, it is only the drawer of the cheque who can be proceeded. In the said case, the husband had drawn the cheque on the account, which was being jointly maintained by him and his wife. The Hon'ble Supreme Court held that in case of issuance of a cheque from joint account, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who has a joint account holder.

The Hon'ble Supreme Court observed as follows:

"Para 23: We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint 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. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

9. As seen from the cheque, admittedly, the petitioner is not a signatory. When the petitioner is not a signatory, the question of the petitioner being a drawer of the cheque does not arise. Though it is a joint account, when the petitioner has not signed on the said

cheque, she cannot be mulcted with criminal liability under Section 138 of N.I. Act. Therefore, the proceedings against this petitioner are liable to be quashed.

10. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner-Accused No.2 in S.T.C.NI No.1745 of 2022 pending on the file of learned XII Metropolitan Magistrate at Hyderabad are hereby quashed.

Miscellaneous applications pending, if any, shall stand closed.

//TRUE COPY//

Sd/- G. SIREESHA
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The XII Metropolitan Magistrate at Hyderabad
2. The SHO, Nallakunta Police Station, Hyderabad
3. Two CCs to the Public Prosecutor, High Court at Hyderabad
4. One CC to SRI. K GIRIDHAR RAJU Advocate for the Petitioner
5. One CC to SRI. GH VENKAT RAMAN Advocate for the Respondent 1
6. Two CD Copies

VII

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HIGH COURT

KS, J

DATED: 29/12/2022



ORDER

CRLP.No.6506 of 2022

Disposing of Criminal Petition

⑨ copies
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27/1/23