

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

+ Criminal Petition Nos. 5068, 5069, 5076 and 5081 of 2021

% Date: 29.10.2021

Between

Kodam Danalakshmi

... Petitioner/Accused No.2

AND

**\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court of Telangana, Hyderabad, T.S.
and another**

..Respondents

! Counsel for the Petitioner : Sri B.Mohan

^ Counsel for the Respondent No.1: Assistant Public Prosecutor

^ Counsel for the Respondent No.2: Sri V.V.L.N.Sarma

>HEAD NOTE:

? Cases referred

1) AIR 2021 SC 1616

2) AIR 2013 SC 3210

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CRIMINAL PETITION Nos.5068, 5069, 5076 and
5081 of 2021

COMMON ORDER:

Since facts of the case and the issue involved in all these Criminal Petitions are similar, all these Criminal Petitions are taken up together and are being disposed of by this common order.

2. Criminal Petition No.5069, 5076, 5081 and 5068 of 2021, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') are filed by the petitioner/A.2 seeking to quash the proceedings against her in C.C.No.134 of 2019 on the file of VII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur and C.C.Nos.274, 275 and 276 of 2019 on the file of XII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur, respectively.

3. Heard Sri B.Mohan, learned counsel for the petitioner/A.2, learned Assistant Public Prosecutor for the respondent No.1/State, Sri V.V.L.N. Sarma, learned counsel for the respondent No.2/complainant, in all the Criminal Petitions and perused the record.

4. The learned counsel for the petitioner/A.2 would contend that the petitioner, who is arrayed as A.2 in the subject C.Cs, is not a signatory to the subject cheques and she is falsely implicated in the subject C.Cs. No ingredients constituting the offence under Section 138 of Negotiable Instruments Act, 1881 (for short "N.I.Act") are made out against the petitioner/A.2 and therefore, continuation of proceedings against the petitioner/A.2 is nothing but abuse of

process of law. In support of his contentions, learned counsel relied upon the decisions 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 and ultimately prayed to allow the Criminal Petitions as prayed for.

5. On the other hand, the learned counsel for respondent No.2/ complainant conceded that the petitioner/A.2 is not a signatory to the subject cheques but contended that the petitioner/A.2 is aware of the money transactions and handing over of the subject cheques. It is submitted that the petitioner/A.2 is maintaining joint account with her husband i.e, A.1 and the subject cheques relate to the said joint account only. The petitioner/A.2 has knowledge of the subject transactions and most of the amounts were paid to her account only. In view of these circumstances, the Courts below rightly took cognizance of the offence under Section 138 of N.I.Act against the petitioner/A.2 along with A.1. It is further submitted that the trial in the subject C.Cs has already commenced and hence, there is no irregularity in proceeding against the petitioner/A.2 for the offence under Section 138 of N.I.Act and ultimately prayed to dismiss the Criminal Petitions.

6. The learned Assistant Public Prosecutor supported the arguments advanced by the learned counsel for respondent No.2/ complainant and ultimately prayed to dismiss the Criminal Petitions.

¹ AIR 2021 SC 1616

² AIR 2013 SC 3210

7. In view of the above submissions made by both sides, the point for determination in these Criminal Petitions is:

“Whether the proceedings against the petitioner/A.2 in C.C.No.134 of 2019 on the file of VII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur and C.C.Nos.274, 275 and 276 of 2019 on the file of XII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur, are liable to be quashed?”

8. **POINT**: As seen from the material placed on record, the petitioner is arrayed as A.2 in the subject C.C.No.134 of 2019 on the file of VII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur and C.C.Nos.274, 275 and 276 of 2019 on the file of XII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur. The Courts below took cognizance of the said cases for the offence under Sections 138 of N.I.Act against A.1 and his wife i.e, petitioner/A.2. The main contention of the learned counsel for the petitioner/A.2 is that the proceedings against the petitioner/A.2 in the subject C.C.s are liable to be quashed, inasmuch as she is merely a joint account holder and not a signatory to the subject cheques.

9. Here, it is apt and appropriate to extract Section 138 of N.I.Act, which reads as follows:

“Section 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 agreement 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 be extended 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.

As per the mandate given under Section 138 of N.I Act, 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 agreement made with that bank, such person shall be deemed to have committed an offence.

10. 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.

11. 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."

12. In the instant case, it is evident from the entire material placed on record, particularly, the complaints filed by the respondent No.2/complainant under Section 138 of N.I. Act r/w Sec.200 Cr.P.C, the petitioner/A.2 is merely a joint account holder and she is not the signatory to the subject cheques. On the other hand, it is culled out from the record that though the account relating to the disputed cheques is a joint account, only one signature, which appears to be of A.1, are seen on those disputed cheques. Penal provisions should be construed strictly, but not in a routine/casual manner. The words used in Section 138 of N.I.Act

that "such person shall be deemed to have committed an offence" refers to a person who has drawn the cheque, but not any other person, except the contingencies mentioned under Section 141 of the N.I.Act. In view of the same, the submission made by the learned counsel for the petitioner/A.2 that the petitioner/A.2, who is a mere joint account holder but not a signatory to the subject cheque, cannot be proceeded under Section 138 of N.I.Act, merits consideration, inasmuch as a joint account holder cannot be prosecuted, unless and until he/she is a signatory to the subject cheque. Further, the commencement of the trial in the subject C.Cs cannot be a ground to continue the proceedings against the petitioner/A.2. The Courts below erred in taking cognizance against the petitioner/A.2, particularly, when she is not a signatory to the disputed cheques. So the contentions raised on behalf of the respondents do not merit consideration. In view of these circumstances, when no ingredients under Section 138 of N.I.Act are made out against the petitioner/A.2, continuation of the subject proceedings against the petitioner/A.2 is abuse of process of law. Therefore, the proceedings in the subject C.Cs against the petitioner/A.2, are liable to be quashed.

13. In the result, Criminal Petition Nos.5069, 5076, 5081 and 5068 of 2021, are allowed and the proceedings against the petitioner/A.2 in C.C.No.134 of 2019 on the file of VII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur and C.C.Nos.274, 275 and 276 of 2019 on the file of XII Special Metropolitan Magistrate, Ranga Reddy District, at Hastinapur, are hereby quashed.

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

Date: 29.10.2021

Note: Mark L.R copy: **YES/NO**

(b/o)
scs

Dr. SHAMEEM AKTHER, J