

Telangana High Court

Smt. B.Archana vs The State Of Telengana And Another on 16 March, 2023

Bench: K.Surender

KS,J

Crl.Petition No.2637_2023

1

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.2637 OF 2023

O R D E R:

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 N.I.No.5221 of 2022 on the file of X Metropolitan Magistrate, Manoranjan Court Complex, Hyderabad for the offences under Sections 138 and 142 of Negotiable Instruments Act.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent No.1 - State.

3. The respondent No.2/M/s.Gangothri Finance and Chits represented by its Managing Partner, has filed the present complaint against accused Nos.1 and 2, stating that amounts were taken by them for running their partnership firm. In the course of transaction, both the accused have submitted applications and accused No.1 executed a demand promissory note and cash receipt to the firm for the said amount. Thereafter, KS,J Crl.Petition No.2637_2023 the complainant extended Rs.10,00,000/- which was given as loan. Both the petitioner and her husband undertook to repay the said amount. Finally, the accused No.1 issued a cheque for repayment and also executed demand promissory note, cash receipt and loan documents. The said cheque bearing No.717852 for an amount of Rs.19,24,000/- was presented for clearance and was returned un paid.

4. The only ground on which the petitioner is seeking for quashment of proceedings against this petitioner is that the cheque was issued by accused No.1 and she is not a signatory to the said cheque and the said cheque was issued on personal account of accused No.1.

5. As seen from the cheque, the cheque is a personal cheque issued by accused No.1/B.V Ramesh. Though this petitioner is a partner in the partnership firm and amounts were taken from the finance firm, it would not be proper for the complainant to prosecute this petitioner, who is not a signatory to the said cheque. Under Section 138 of Negotiable Instruments Act, drawer of the cheque would be liable, if the cheque is returned KS,J Crl.Petition No.2637_2023 unpaid. In the present transaction even though the petitioner is a partner in the partnership firm being run by accused No.1 and petitioner herein, when the cheque is issued in the personal capacity of the accused No.1, this petitioner is not vicariously liable under section 138 of Negotiable Instruments Act.

6. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications pending, if any, shall stand closed.

_____ K.SURENDER, J Date:16.03.2023 Smk