

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.07 OF 2020

Between:

N.V.Bharathi and another ... Petitioners

And

The State of Telangana,
Rep. through Public Prosecutor,
High Court for the State of Telangana,
Hyderabad and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 13.03.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER
+ CRL.P. No. 7 of 2020

% Dated 13.03.2023

N.V.Bharathi and another ... Petitioner

And

\$ The State of Telangana,
Rep. through Public Prosecutor,
High Court for the State of Telangana,
Hyderabad and others ... Respondents

! **Counsel for the Petitioners:** Sri V.V.Anil Kumar

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

Sri B.Shanker for R2 and R3

>HEAD NOTE:

? Cases referred

¹ (2007) 5 Supreme Court Cases 103

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION No.07 OF 2020

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioners/Accused in C.C.No.4 of 2019 on the file of X Special Magistrate, Erramanzil, Hyderabad for the offences under Sections 138 and 142 of the Negotiable Instruments Act, 1861 (for short, 'the Act').

2. The petitioners are being prosecuted by the respondents 2 and 3 for the offence under Section 138 of the Act. The case of the complainants is that the petitioners herein approached them for financial assistance and an amount of Rs.15.00 lakhs of hand loan was advanced. The said loan was acknowledged and the petitioners agreed to pay 18% interest per annum. A cheque No.118413 dated 07.05.2018 was issued for Rs.10.00 lakhs in the name of Nomula Hari Rishikesh. On presentation, the same was returned unpaid, for which reason, notice was issued. Having received notice, since the petitioners failed to make the payment covered by the cheque, present complaint was filed.

3. Learned counsel appearing for the petitioners would submit that the cheque was issued by the firm-proprietary concern namely Aditya Marine. Since the petitioners are partners of the firm, the prosecution without making the firm as an accused, cannot be maintained. Learned counsel relied on the judgment of High Court of Madras in Criminal O.P.No.13147 of 2015, dated 23.07.2019 in the case of **Rangabashyam and another v. Ramesh**. In the said judgment, the Madras High Court held that under Section 141 of the Act, the partners or the Directors or the persons in charge of the company would be made vicariously liable and it has to be shown that they are responsible for the day to day affairs of the business. Unless the company or the partnership firm is made as an accused, the prosecution cannot be maintained against the other persons. The above said proposition is not in dispute. In the event of a company or a partnership firm issues a cheque, the signatory of the cheque and the persons responsible for the conduct of day to day affairs of the firm/company would be vicariously liable under Section 141 of the Act. The provision makes the

company or firm liable and the persons responsible, vicariously liable. In the absence of company/firm being made as an accused, the question of prosecuting the persons in-charge of such company/firm does not arise.

4. The cheque in question was issued by the proprietor of Aditya Marine and signed A1/N.V.Bharathi as a Proprietor/authorized signatory.

5. In the case of proprietary concern, an individual or a person would be the proprietor and the proprietary concern would be identified on the basis of the proprietor. There would be no other persons in a proprietary concern to be made vicariously liable.

6. Since the firm or the proprietor are seen as one entity, even in the absence of a proprietary concern being made as an accused in a prosecution under Section 138 of the Act, it has no bearing on the prosecution of the proprietor.

7. The Hon'ble Supreme Court in the case of **Raghu Lakshminarayanan v. Fine Tubes**¹ while dealing with a

¹ (2007) 5 Supreme Court Cases 103

similar situation held that the proprietary concern stands absolutely on a different footing. A person carrying on business in the name of the business concern being a proprietor would be solely responsible for the conduct of its affairs. A proprietary concern cannot be a company or a partnership firm, as such, the question of proceeding against the proprietor within the meaning of Section 141 of the Act does not arise.

8. For the aforementioned reasons, not making the proprietary concern as a party is of no consequence. However, the 2nd petitioner, who is the husband of the 1st petitioner, is made as an accused. Since the cheque is issued by the 1st petitioner as a proprietor of Aditya Marine, the prosecution of the 2nd petitioner cannot be maintained. An individual cannot be made vicariously liable when the cheque is issued by the proprietor. Though, it is mentioned in the complaint that the 2nd respondent also received money which was advanced as a loan, the prosecution under Section 138 of the Act can only be maintained against the drawer of the

cheque who maintains the account on which the cheque is drawn.

9. Section 141 has no application to a proprietary concern. Under the said provision, only the partners of a partnership firm or a company Directors and the responsible persons on a daily basis can be made vicariously liable.

10. For the said reasons, the prosecution under Section 138 of the Act cannot be permitted to continue against the 2nd petitioner.

11. In the result, the proceedings against 2nd petitioner/A2 in C.C.No.4 of 2019 on the file of X Special Magistrate, Erramanzil, Hyderabad, are hereby quashed. However, the prosecution may go on against 1st petitioner/A1.

12. Accordingly, the Criminal Petition is allowed in part.

Miscellaneous Petitions, if any pending, shall stand closed.

K.SURENDER, J

Date: 13.03.2023
Note: Issue L.R copy
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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.7 OF 2020

Date: 13.03.2023.

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