HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.15179 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioner/A5 seeks to quash the proceedings in C.C.No.1576 of 2012 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad.

2) The said C.C. was filed by respondent No.2 against the petitioner and four others on the allegation that A1 is the Firm—M/s.Leo Meridian Infra Projects and Hotels represented by A2—Managing Director; A3—the Vice President; A4—the Director and A5—the Purchase Manager and they purchased TMT bars on credit basis from the complainant and issued 12 cheques for Rs.1,29,09,700/- in due payment of the cost of the material and when the complainant presented three out of twelve cheques in Indian Oversees Bank, they were returned with the remarks "*payment stopped by the drawer*" and he issued notice and the accused have sent reply notice with false allegations. With these averments the complainant filed C.C.No.1576 of 2012 on the file of XI Additional Chief Metropolitan Magistrate, Hyderabad against the accused under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act") for recovery of the amount covered by the cheques.

3) Now, the petitioner/A5 seeks to quash the proceedings on the plea that he is only a Purchase Manager and he was not signatory of the cheques issued by A1—Firm and he was not responsible for the day-to-day affairs of the Firm and he used to act under the instructions of Managing Director and he made this fact clear in his reply notice also and therefore, continuation of the proceedings would amount to abuse of process of law.

4) Heard both sides.

5) The point for determination in this petition is:

“Whether there are merits in this petition to allow?”

6) **POINT**: The liability of a Company is described under Section 141 of NI Act. It reads thus:

“**141. Offences by companies**

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.”

So, a keen scrutiny of Section 141 of NI Act shows that two categories of persons can be held responsible for the offence under Section 138 of NI Act. They are covered under section 141(1) and Section 141(2) of NI Act. Under Section 141(1) of NI Act, every person who at the time of offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence. Added to it, under sub-Section (2), when it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7) So, merely because the petitioner is not a signatory of the cheque, it cannot be automatically concluded that he is nothing to do with the cheque transaction. The complainant's case is that accused Nos.2 to 5 have dealt with the case transactions with the complainant—Firm and they approached the complainant and requested the company to supply the TMT bars and promised to pay the dues within 45 days from the date of supply of TMT bars and they have given 12 cheques.

8) In these circumstances, without taking evidence, it is difficult to come to a conclusion whether or not the offence is committed with the consent and connivance or neglect of the petitioner/A5. Therefore, it is not a fit case to quash the proceedings. Petitioner/A5 can be ordered to face the trial and vindicate his defence stand.

9) With these observations, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 25.02.2015

Murthy