HON'BLE SMT JUSTICE ANIS

CRIMINAL PETITION Nos.9124, 9125 & 9127 OF 2012

C O M M O N - O R D E R:

These criminal petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), seeking to quash the proceedings against the petitioners-A.3 to A.5 in C.C.Nos.168, 170 & 169 of 2012 on the file of the XXV Special Magistrate, Erramanzil, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, (for short 'the Act').

2. The petitioners herein are A.3 to A.5, whereas respondent No.1 is the State, respondent Nos.2 & 3 are A.1 & A.2 and respondent No.4 is the *de facto* complainant in C.C.Nos.168, 170 & 169 of 2012 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the said C.Cs before the trial Court.

3. The case of prosecution in brief is that the *de facto* complainant 'M/s.Divija's Exotic Udipi Restaurant', represented by its owner Ravindra T.Shetty, filed the criminal complaints in C.C.Nos.168, 170 & 169 of 2012 on the file of XXV Special Magistrate, Erramanzil, Hyderabad, for the offence punishable under Section 138 of the Act against the accused/A.1 to A.5. The owner of the *de facto* complainant-Restaurant alleged in his complaints that he was running the Restaurant business in lease premises at D/o 4-3-394, 395, 403 to 405, 409 and 410 situated at Bank Street, Koti, Hyderabaad, and when he intended to close his business and cancel his lease with the owner of the premises, A.1 represented by A.2 approached him for the purchase of the said Restaurant along with material and used utensils for a consideration of Rs.16,40,000/-, Stall for a consideration of Rs.1,50,000/- and also agreed to pay goodwill of Rs.1,50,000/- i.e., for the total consideration of Rs.19,40,000/-. After cancelling the lease agreement with the owner of the premises, A.1 represented by A.2 entered into a Memorandum of Understanding on 14th July 2011 with the *de facto* complainant-Restaurant. The owner of the *de facto* complainant stated that A.1 to A.5 are renowed persons in the hotel business and believing them, he handedover the Restaurant and the material, and as per their agreement

they have not paid a single pie; that thereafter, they started running the business by changing the name of the Restaurant by 'Wah Taj' and on repeated demand by him, A.1 to A.5 represented by A.2 with the consent of the A.3 to A.5 issued a cheque bearing No.666692 dated 28.12.20011 for an amount of Rs.1,50,000/- and another bearing No.666691 dated 02.11.20012 for an amount of Rs.1,50,000/- towards part payments in pursuance of the agreement dated 14th July, 2011. Further, A.3 issued a cheque bearing No.859987 dated 03.01.20012 for an amount of Rs.16,40,000/-. All these cheques were presented with Vijaya Bank, Habsiguda Branch, Hyderabad, for clearance and those cheques were returned with an endorsement 'Insufficient Funds', as such the *de facto* complainant filed the criminal cases.

4. The *de facto* complainant filed the counters, wherein he admitted about the filing of the criminal cases against A.1 to A.5 in C.C.Nos.168, 170 & 169 of 2012 on the file of the XXV Special Magistrate, Erramanzil, Hyderabad. In the counters, he stated about the issuing of Cheques for Rs.1,50,00-/-, Rs.16,40,000/- and Rs.1,50,000/- by A.2 & A.3 and dishonoring of the same when he presented in his Bank. He also stated that without paying a single pie, A.1 to A.5 are running the business in the name and style of 'Wah Taj'; that even after issuing the notices, no amount has been paid; that A.2 in the capacity of Director, issued cheque bearing No.666692 dated 28.12.20011 for an amount of Rs.1,50,000/- and cheque bearing No.666691 dated 02.11.20012 for an amount of Rs.1,50,000/- towards discharge of the liability as per the Memorandum of Agreement dated 14th July 2011; that A.3 being the son of A.2 also issued a cheque bearing No.859987 dated 03.01.20012 for an amount of Rs.16,40,000/-; and that as per the records submitted with the Registrar of Companies, Hyderabad, the list of signatory for A.1 shows that A.3 to A.5 are the signatories for the business of A.1-M/s.Belson Hotels Private Limited. Therefore, A.3 to A.5 are liable for the deeds of A.2 on behalf of A.1 and pending the criminal proceedings will not amount the abuse of process of law and prayed the Court to dismiss the petition.

5. The learned counsel appearing for the petitioners/A.3 to A.5 argued that A.3 to A.5 have no knowledge about the alleged agreement of Memorandum of Understanding dated 14th July 2011 entered by the *de facto* complainant with A.1 represented by A.2; that all the complaints does not speak about the

participation of A.3 to A.5 in the said Memorandum of Understanding/Agreement; that A.3 to A.5 came to know about the alleged agreement after the issuance of the said summons by the Court; that A.3 to A.5 are not the parties to the said agreement dated 14.09.2011 and they are nothing to do with the agreement; that if at all the agreement is genuine one, it is in between the *de facto* complainant and A.2 only, and it not concerned with A.3 to A.5; that A.3 to A.5 have not participated in the day to day business of A.2 and they have no knowledge about issuing cheques in favour of the *de facto* complainant, which were dishonoured; and prayed the Court to quash the proceedings in C.C.Nos.168, 170 &169 of 2012 on the file of the XXV Special Magistrate, Erramanzil, Hyderabad.

6. On the other hand, the learned Public Prosecutor for the state of Telangana and the learned counsel appearing on behalf of respondent No.4/*de facto* complainant stated that there is
prima facie case against the petitioners and as such, the petition is liable to be dismissed.

7. Now, the point for determination is --

> Whether the petitioners herein are entitled to quash the proceedings in C.C.Nos.168, 170 & 169 of 2012 on the file of XXV Special Magistrate, Erramanzil, Hyderabad for the offence punishable under Section 138 of the Act, as prayed for or not?

8. **<u>P O I N T</u>**: A perusal of the record shows that there is no dispute that the *de facto* complainant was the owner of the fourth respondent-M/s.Divija's Exotic Udipi Restaurant on lease in the premises at D/o 4-3-394, 395, 403 to 405, 409 and 410 situated at Bank Street, Koti, Hyderabaad, and when he intended to close his business and cancel his lease with the owner, A.1 to A.5 approached him to purchase the Restaurant along with the material and used utensils for the consideration of Rs.16,40,000/-, Stall for the consideration of Rs.1,50,000/- and goodwill of Rs.1,50,000/- i.e., for total consideration amount of Rs.19,40,000/-. A.2 on behalf of A.1, being one of the Directors, entered into a Memorandum of Understanding on 14th July 2011. After entering into the agreement, A.2 issued two cheques bearing Nos.666692 dated 28.12.20011 for an amount of Rs.1,50,000/- and No.666691 dated 02.11.20012 for an amount of Rs.1,50,000/- towards part payment of the agreement. Likewise, A.3 also

issued a cheque bearing No.859987 dated 03.01.20012 for an amount of Rs.16,40,000/-. When all these cheques were presented to the Banker of the *de facto* complainant i.e., Vijaya Bank, Habsiguda Branch, Hyderabad for clearance on 28.11.2011, those cheques were returned with an endorsement 'Insufficient Funds'. The main grievance of the petitioners/A.3 to A.5 is that they do not have any knowledge about the alleged Memorandum of Understanding dated 14th July 2011 entered between the *de facto* complainant and A.2; that they came to know about the said fact only when they received the summons from the Court; that further, they have nothing to do with the said agreement and it is not binding on them. This contention of the petitioners/A.2 to A.5 cannot be accepted because one of the signatory to the cheque amount of Rs.16,40,000/- is the first petitioner/A.3 and that cheque was also dishonoured. There is no dispute that A.2 to A.5 are the Directors of M/s.Belson Hotels Private limited. A.2 being the son of A.1 and one of the Directors, issued two cheques amounting to Rs.1,50,000/- each and A.3 being one of the Directors issued another cheque for Rs.16,40,000./-. Therefore, being the Director of M/s. Belson Hotels Private Limited, the contention that A.3 to A.5 do not have knowledge about the agreement dated 14th July 2011 cannot be accepted and it is far from truth. A perusal of the copy of the list of signatory for A.1 i.e., M/s.Belson Hotels Private Limited shows that A.2 to A.5 are the Directors and all of them are signatories to M/s.Belson Hotels Private Limited and that is the reason why A.3 signed the cheque for Rs.16,40,000./- and his son A.2 signed two cheques for Rs.1,50,000./- each.

9. Section 141 of the Act 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 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 attribute to, any neglect on the part of, any director, Manager, secretary, or other office 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.*

As per this section, the burden of proof lies on the petitioners/A.2 to A.5 to show that they are not responsible for the conduct of business of the Company as well as the Company, whether the petitioners/A.2 to A.5 had knowledge of the Memorandum of Agreement or not and whether they are innocent or not, which have to be gone into during the trial and they are the triable issues. Further, when the matter is posted for cross-examination of PW.1, these applications were filed for quashing the proceedings in C.C.Nos.168, 170 & 169 of 2012. Further, the petitioners/A.3 to A.5 had not filed any evidence to come to a conclusion *prima facie* that they are not participating in the business activities of A.1-M/s.Belson Hotels Private Limited. Therefore, I am of the view that pending proceedings in C.C.Nos.168, 170 & 169 of 2012 on the file of the XXV Special Magistrate, Erramanzil, Hyderabad, for the offence punishable under Section 138 of the Act will not amount to abuse of process of law and the criminal petitions are liable to be dismissed.

10. Accordingly, the Criminal Petitions are dismissed.

11. The miscellaneous petitions, if any, pending in the Criminal Petitions shall stand closed.

ANIS, J

Date: 29.04.2015

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