THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

<u>Criminal Petition No.4797 of 2014</u>

<u>ORDER:</u>

In this petition filed under Section 482 Cr.P.C., petitioner/A3 seeks to quash the proceedings in C.C.No.19 of 2014 on the file of III Special Metropolitan Magistrate, Cyberabad at Kukatpally.

2) The first respondent/complainant filed C.C.No.19 of 2014 under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act"). His case is that first accused is a partnership firm conducting business as engineers, builders and contractors and A2 to A4 are its managing partner and partners respectively. While so, accused firm allocated construction work of compound wall, road and drainages at Markapuram site worth Rs.15.17 crores under Letter of Intent (LOI) dated 13.06.2013 to the complainant concern which deals in infrastructure development. Obliging the terms of LOI the complainant deposited EMD and provided bank guarantee. Despite his honouring and fulfilling terms, the accused failed and neglected the agreed terms. The further case of the complainant is that accused issued three cheques bearing Nos.000029, 000030 and 000031 dated 31.07.2013 for Rs.49 lakhs each drawn on HDFC Bank, Nizveedu in favour of complainant but on presentation the cheques were dishonoured. On further repeated requests, A2 to A4 issued another cheque bearing No.004352 dated 30.08.2013 for Rs.50 lakhs drawn on Tamil Nadu Mercantile Bank Limited, Vinukonda, Prakasam District but the same was

also dishonoured on presentation. Since the aforesaid cheques which were issued in discharge of legally enforceable debt were dishonoured, the complainant filed C.C.No.19 of 2014 after issuing statutory notice dated 20.11.2013.

3) Denying the complaint allegations, learned counsel for petitioner/A3 argued that M/s.A.K.Mehta and Company, a partnership firm was dissolved on 11.06.2013 itself and consequently all the bank accounts were closed through letters dated 01.08.2013 and 18.09.2013 and subsequently the present complainant and A2—Challa Prasad entered into a Memorandum of Understanding (MOU) dated 16.10.2013 whereunder the said Challa Prasad took the responsibility of making payments to the complainant and when the complainant issued statutory notice under NI Act, the petitioner/A3 in his reply notice dated 01.12.2013 made clear all the above aspects and in spite of having clear knowledge about the dissolution of the firm and petitioner having no responsibility for the claims, the claimant filed a false complaint roping M/s.A.K.Mehtha and Company and present petitioner and hence continuation of proceedings will amount to abuse of process of law and thus liable to be quashed.

4 a) In oppugnation, learned counsel for complainant vehemently argued that the alleged dissolution of M/s.A.K.Mehtha and Company is false and it is intended to cheat the complainant. Expatiating it, he argued that copy of dissolution deed would read as if it was executed on e-stamp

and dissolution was certified on 11.06.2013 but surprisingly it was notarized long after i.e. on 16.07.2013 and therefore, there is any amount of fraud in the alleged dissolution of M/s.A.K.Mehtha and Company.

b) Learned counsel further argued in the letter dated 01.08.2013 addressed to the Manager, HDFC Bank the partners of M/s.A.K.Mehtha have not mentioned about the alleged dissolution of firm but they simply asked to close their account on the ground that they were unable to maintain the account due to some reasons. He argued that if really the bank accounts were closed due to dissolution of firm they should have clearly mentioned that fact in the said letter. Similarly, in the letter dated 18.09.2013 addressed to Manager, Tamil Nadu Mercantile Bank Limited, Chebrolu, Guntur District also, except making a request to close their account on the ground that they were not able to maintain the account due to some reasons, the accused have not stated that they dissolved their partnership firm. Learned Counsel thus argued that the alleged dissolution is a myth to cheat the complainant.

c) Nextly, learned counsel argued that if really the firm was dissolved on 11.06.2013 itself, there was no reason why they should accept EMD and bank guarantee from the complainant subsequent to 11.06.2013 and accused should have refused to receive the amounts stating that their firm was already dissolved. Learned counsel thus argued that the accused cannot escape their liability showing the dissolution as a ground. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

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

6) **POINT**: As can been seen from the respective contentions, petitioner/A3 seeks quashment of proceedings mainly on the ground that partnership was dissolved on 11.06.2013 and subsequently the complainant and one of the partners—Challa Prasad entered into MOU dated 16.10.2013 whereby Challa Prasad took up the responsibility to pay the amounts due to the complainant and hence proceedings against the present petitioner/A3 are not maintainable. These averments are strongly denied by the complainant. As stated supra, the complainant questions the very authencity of dissolution of firm. So, as the matter stands, whether the firm—M/s.A.K.Mehtha and Company was lawfully dissolved or not and whether the complainant and Challa Prasad entered into MOU on 16.10.2013 wherein Challa Prasad took up the responsibility to pay the amounts to complainant or not etc. facts have to be decided only after a full fledged trial but not in this petition filed under Section 482 Cr.P.C. The petitioner/A3 can put forth his defence through cogent evidence for appreciation of the trial Court.

7) I find no merits in the petition and in the result, this Criminal Petition is dismissed.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 09-03-2015

Murthy