HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.7206 and 8448 of 2014

COMMON ORDER :

These Criminal Petitions are filed by Petitioners/Accused Nos.2 to 10 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.158 of 2014 and C.C. No.168 of 2014 on the file of XII Special Magistrate, Hyderabad registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2) Heard the learned counsel for the petitioners and the 2nd respondent, represented by public prosecutor, before admission and before issuing notice to the 1st respondent-complainant and perused the material on record.

3) The facts of the case in ***Anita Malhotra V. Apparel Export Promotion Council***[1] which was relied on by the counsel for the petitioners, are entirely different to the case on hand. The non-executive director who filed the quash petition since arrayed as A-3, submitted his resignation on 31.08.1998 itself and form No.32 of the Companies Act and Rules which is a statutory intimated the facts of resignation to the Registrar of Companies and entered therein. It is during the year 2004 for the cheque

presented and dishonoured the statutory notice issued and even for the statutory notice, the appellant/A-3 given reply informing that she resigned from the company in the year 1998 itself and when certified copy of the annual return is when a public document which provides details about existing directors at the relevant time of issuing cheque of its dishonour and the A-3 was not the director therefrom held a fit case for quashing. Here the facts are entirely different and it is not the case of any of the directors that they resigned from the Company. It is not even any of their case that they are nothing to do with day to day affairs of the Company or they come under the third category and none are signatories to the agreement and pronote and the consequent cheque in question. It is not a case of no allegations at all as the complaint clearly spells out from paragraph Nos.1 to 3 that A-1 represented by A-2 to A-10 availed the trade finance loan covered by written agreement with terms and conditions which they all duly executed besides demand promotes of even date 25.07.2012 with their promise to repay with interest by 15.07.2012 and failed to pay and even for several requests and repeated demands for repayment of the loan with interest over due at their instance and it is they that approached the complainant to present the cheque issued by them dated 16.07.2013 and believing their assurance when presented returned dishonoured and even for the legal notice issued dated 26.07.2013 served on A-1 to A-4 and A-6 to A-10 which they received on 31.07.2013, they failed to reply and A-5 managed to cause return the notice as left and all the accused A-1 to A-10 having issued the cheque with malafide intention, knowing full well that funds insufficient, are thereby liable.

4) It is not to say a bald statement of all the accused are liable as there are further details supra to say what was laid in ***Anitha Malhotra*** supra of even mere bald statements of all accused responsible not sufficient without further details. Even coming to ***Pooja Ravinder Devidasani V. State of Maharashtra***[2] there it was held on the facts that of 7 complaints filed by the complainant's company which extended trade finance to the accused entity Elite International Private Limited to which the appellant ***Pooja Ravinder Devidasani*** supra was the director at the relevant time and as per the complainant, the appellant was in-charge and at the helm of affairs of Elite International Private Limited supra and vicariously liable that was taken cognizance and process issued and went unsuccessful in the writ petition filed before the High Court to quash the cognizance taken by the Magistrate and the matter reached the Supreme Court by the appeal supra, there the observation was the appellant resigned as Director much before the issuance of the cheque in question and even earlier she is the non-executive director of Elite International Private Limited with no active

role of its business or in the issuance of cheques in question and her resignation also approved by Board of Directors meeting held on 17.12.2005 and also informed to the Registrar of Companies in the appropriate forum under Section 159 and when the annual return for the year ending 31.03.2006 also filed to that effect and the Trade facility was sanctioned on 19.01.2005 as per letter of guarantee executed by the appellant of even date and her resignation was on 17.12.2005 and after her resignation she ceased to play any role in the affairs of the Company to say the cheque in question issued by the Company 2 ½ years later to the resignation, in the year 2008 and the resignation is also in form No.32 of the Companies Act filed under Section 303 of the Companies Act on 20.12.2005 with Registrar of Companies indicating changes of Directors also as two new directors appointed as director (operations) while showing the appellant has resigned and the complainant/2nd respondent arrayed the newly appointed directors as A-4 and A-5 and also arrayed being conscious and well aware of the fact of the appellant resigned earlier and no longer part of the Elite International consequently by referring to ***National Small Industries Corporation V. Harmeet Singh Paintal***[3] and there shall be a specific averment as to how the accused was responsible that is not there in quashing the proceedings. Here at the cost of repetition, the facts are different. There are averments in the complaint. In fact, the scope of Section 141 of the Negotiable Instruments Act is well considered by the Apex Court as to the Company is a first category of person liable and the Managing Director by virtue of the status in the second category automatically liable and for other directors liability it must be shown they are also responsible for the affairs are for issuing the cheque in question and its dishonour and even the Company not impleaded the complaint proceedings against second and third category from the specific averments can sustain even vide ***Anitha Hada V. God Father Travels Pvt. Ltd.***[4].

5) Having regard to the above and for no pronote or agreement or cheque in question filed before this Court even to show whether not all the accused persons signed, leave about mere non-issuing of reply though leads to adverse inference that itself is not sufficient to show their complicity when they are not under the second category or third category of persons from respective complaint averments. Thus, the material is falls short for this Court to quash the proceedings, but for remedy if any is left open to invoke Section 258 Cr.P.C to consider only from the complaint averments and the complaint enclosures if any grounds to seek for stopping of proceedings, by filing any such petition within 15 days from the date of receipt of the order, else to face the trial.

6) With the above observations, these criminal petitions are disposed of. As a sequel, miscellaneous petitions pending, if any, in the above criminal petitions shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

08.07.2015
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[1] (2012)1 SCC 520
[2] 2014 (12) LAWS (SC) 55
[3] (2010)3 SCC 330
[4] (2012)5 SCC 661