

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition NO.14471 of 2013

ORDER

This petition under Section 482 Cr.P.C. is filed by the petitioner/accused No.7 seeking to quash the proceedings in C.C. No.402 of 2013 on the file of the IX Special Magistrate, Erramanzil, Hyderabad.

The brief facts of the case are as follows ;

The 02nd Respondent-complainant filed a complaint C.C.No.402 of 2013 under Sections 138 read with 142 of Negotiable Instruments Act against the accused No.1, a Private Limited Company, claiming to be represented by accused Nos.2-9 as Directors of its Company. The petitioner is shown as accused No.7 as one of the Director of the accused No.1 company in C.C.No.402 of 2013 on the file of IX Special Magistrate, Erramanzil, Hyderabad. The 02nd Respondent-complainant has filed cheque bounce case under Section 138 read with Section 142 against the accused Nos.1-9 on the ground that accused No.1 company – 03rd Respondent has borrowed Rs.50 crores of money for its business on 10-01-2012 towards short term loan agreeing to make repayment within 364 days, but failed to repay and a cheque was issued bearing No.710661 with date 10-01-2013 and it was dishonoured when presented on the same date i.e.,

on 10-01-2013.

The contentions of the learned counsel for the petitioner is that petitioner – accused No.7 has severed all his links with the accused No.1 company from 30-01-2012 onwards, thus, the petitioner – accused No.7 ceased to be a Director of the accused No.1 company from 30-01-2012 and is in no way concerned with or aware of the alleged offence dated 10-01-2013 under Section 138 and Section 142 of the Negotiable Instruments Act which took place long after the petitioner – accused No.7 ceased to be a Director of the accused No.1 company. It is further contended that since the petitioner –accused No.7 ceased to be a Director of Company, he is neither aware nor concerned with the offence alleged against the company. Further, he is not aware of the legal notice or demand notice or filing of complaint against him. On coming to know of it, he appeared and got the N.B.W. recalled against him narrating the true state of facts.

Heard and perused.

Petitioner is not the Director even at the time of issuance of the cheque concerned. The complaint also does not disclose the fact that petitioner is actively participating in the day-to-day affairs of the company concerned. Admittedly, the petitioner is not a signatory to the cheque also.

Considering the facts and circumstances of the case and also in view of catena of judgments of the Apex

Court in which ratio was laid down that to assign the responsibility, the Director should be the person who is truly participating in the day to day affairs of the case, this Court is of the view that the proceedings against the petitioner are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings in C.C. No.402 of 2013 on the file of the IX Special Magistrate, Erramanzil, Hyderabad, against the petitioner alone are quashed. Miscellaneous petitions filed in this criminal petition, if any, pending, shall stand closed.

RAJA ELANGO, J.

29th October, 2015

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