

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.13463 of 2015

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash proceedings initiated against the petitioners/A-3 to A-6 in C.C.No.353 of 2015 pending on the file of XIV Special Magistrate's Court, Erramanzil, Hyderabad, arising out of private complaint filed by the 2nd respondent under Section 200 Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short "the Act").

Heard the learned counsel for the petitioners and the learned counsel for the 2nd respondent/complainant.

The main grievance of the petitioners herein is that admittedly, A-1 company is a partnership firm and the petitioners herein being sleeping partners of the said firm are not liable for prosecution for the offences committed by A-1 company under the Act, as they have nothing to do with the day-to-day affairs of A-1 company. In support of his contentions, learned counsel for the petitioners/A-3 to A-6 invited the attention of this Court to Section 141 (1) of the Act to contend that as per the said provision, the partners of the firm are also liable for prosecution under the Act, if they are proved to be actively participating in the day-to-day affairs of the firm, and they shall be deemed to be guilty of the offence and shall be liable to be proceeded with. The petitioners herein/A-3 to A-6 being sleeping partners of the A-1 partnership firm have nothing to do with the day-to-day affairs of the company and hence, they are not at all liable for prosecution under the Act.

On the other hand, Sri B. Vijaysen Reddy, learned counsel

for the 2nd respondent-complainant, while arguing for some time, vehemently stated that whether the petitioners herein are actively participating in the day-to-day affairs of A-1 company, either active partners or sleeping partners, enabling to fasten liability on them for prosecution or not will be decided by the trial Court only during the course of trial, and the same cannot be decided at this stage, and hence, the criminal petition is liable to be dismissed. In support of his contentions, he relied on a decision reported in **Mymoonath Beevi v. State of Kerala**^[1].

Having regard to the facts and circumstances of the case and in view of the submissions made by the learned counsel for both parties, this Court is of the view that all these issues raised herein cannot be decided by this Court invoking the jurisdiction under Section 482 Cr.P.C., leaving it open to the trial Court to decide all these questions during the course of trial, since this Court cannot sit as a fact finding Court.

In that view of the matter, as the identity of the petitioners herein is not in dispute, the presence of the petitioners is dispensed with before the trial Court except on the dates when their presence is essentially required by the Court for the purpose of examination under Section 251 Cr.P.C. and also for 313 Cr.P.C. examination. The petitioners herein shall be represented by their counsel before the trial Court on all hearing dates.

With the above direction, the criminal petition is disposed of. Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Date: 23-02-2016

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