THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3028 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/A5 seeks to quash the proceedings in C.C.No.394 of 2012 on the file of V Additional Judicial First Class Magistrate, Kakinada whereunder the petitioner and three others were charged for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act").

2) The 1st respondent/complainant filed the aforesaid criminal case with the allegation that in respect of sub-contract work allotted to it by the 1st accused—partnership firm, the complainant finished the work and in that context for payment of the amount due to the complainant—company, the accused—firm issued a cheque for Rs.28,50,000/- bearing No.816604 dated 10.02.2012 drawn on South Indian Bank, Kakinada and complainant—company presented the said cheque through his banker—South Indian Bank, Serilingampalli Branch, Madeenaguda, Hyderabad and the same was returned with a memo dated 16.02.2012 with an endorsement "Account Frozen". Despite issuance of notice by the complainant—company under Section 138 of NI Act on 28.02.2012 the accused did not pay the amount but accused Nos.1 and 2 who are its managing partners issued a reply notice dated 16.03.2012 with all false allegations. Hence C.C.No.394 of 2012. While so, the instant petition is

filed by the petitioner/A5 who is one of the partners of A1—firm seeking quashment of proceedings.

3) Heard arguments of Sri Bolla Venkata Rama Rao, learned counsel for petitioner/A5 and Sri S.Subba Reddy, learned counsel for R1/complainant.

4) Vehemently arguing that criminal complainant is not maintainable against petitioner/A5, learned counsel argued that as per partnership deed dated 21.06.2005, the petitioner/A5 is only one among the four partners of M/s.Sri Lakshmi Srinivasa Constructions and he is neither Managing Partner of the said concern nor he is attending the day today affairs of the firm and therefore, CC is not maintainable against him. Learned counsel argued that as per Section 141 of NI Act the offence under Section 138 is maintainable against every person who at the time of the offence was committed, was incharge of and was responsible to the company for the conduct of the business of the company. But in the instant case, as already stated, petitioner/A5 was not incharge of partnership firm for the conduct of its business and in fact, A2 is the Managing Partner and as per the terms of partnership deed, petitioner is not responsible to look after the day today management of the business of the firm and cheque in question was also issued by second accused in his capacity as Managing Partner and therefore, CC is not maintainable against him. Learned counsel further submitted that in respect of another C.C.No.113 of 2012 filed by

V.Chandra Sekhar against M/s.Sri Lakshmi Sreenivasa Constructions the proceedings against the present petitioner who is arrayed as accused No.4 in the said criminal case were quashed by this Court in its order dated 11.06.2013 in Crl.P.No.2217 of 2013 on the ground that the petitioner is neither a signatory to the cheque nor responsible for the conduct of the affairs of business of the firm and further, complainant therein failed to show the role of the petitioner in the day today affairs of M/s. Sri Lakshmi Sreenivasa Constructions which is a partnership concern. Learned counsel filed copy of the order in Crl.P.No.2217 of 2013 for consideration. He thus prayed to allow the petition and quash the proceedings against petitioner/A5.

5) Per contra, learned counsel for first respondent/complainant opposed the petition on the ground that the petitioner is one of the four partners of M/s.Sri Lakshmi Sreenivasa Constructions and he is also equally responsible in the day today business of the said firm hence he is also liable for the offence.

6) On a careful perusal of the material papers field by petitioner/A5, I find considerable force in the submission of petitioner. The partnership deed dated 21.06.2005 would show that M/s. Sri Lakshmi Sreenivasa Constructions is a partnership firm consisting of four partners and petitioner/A5 is one of them. As per the terms of partnership, the second accused M.Srinivasu is the Managing Partner and he is

authorized to look after the day today management of the business of the firm. Therefore, it can be said petitioner/A5 is not concerned with day today management of the business of the firm. Further, the cheque in question was admittedly issued by second accused in his capacity as Managing Partner of M/s.Sri Lakshmi Sreenivasa Constructions. The present petitioner has nothing to do with the issuance of the said cheque. As per Section 141 of NI Act, the offence under Section 138 of NI Act can be imputed against a company, (which by explanation includes a firm) against every person who at the time the offence was committed was incharge of and was responsible to the company for the conduct of the business of the company. In the instant case, as per the terms of partnership deed, the petitioner/A5 is not incharge of the firm and he is also not responsible for the day today conduct of the business of the company and most importantly he was not signatory of the cheque in question. Above all, the complaint allegations are silent as to the role of petitioner/A5. Therefore, as rightly argued, CC is not maintainable against petitioner/A5. In similar circumstances, when a different complainant filed C.C.No.113 of 2012 against M/s. Sri Lakshmi Sreenivasa Constructions, proceedings against the present petitioner who was shown as accused No.4 therein, were quashed by this Court in Crl.P.No.2217 of 2013. For all the above reasons, in my considered view, continuation of proceedings against the petitioner/A5 in the instant C.C.No.394 of 2012 would amount to abuse of process of the

Court.

7) Accordingly, this Criminal Petition is allowed and proceedings in C.C.No.394 of 2012 on the file of V Additional Judicial First Class Magistrate, Kakinada are quashed against the petitioner/A5.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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U.DURGA PRASAD RAO, J

Dt: 02.06.2016
Murthy