

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.5563 of 2017

ORDER:

The petitioners are accused Nos.4 to 7 in C.C. No.35 of 2017 pending on the file of I Special Magistrate, Cyberabad at L.B Nagar, where the learned Magistrate has taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), which is outcome of private complaint of 1st respondent—complainant.

2) Heard learned counsel for petitioners and learned public prosecutor representing the 2nd respondent—State and perused the material on record.

3) The case was originally numbered as C.C. No.1413 of 2016 on the file of XI Metropolitan Magistrate, Cyberabad at L.B Nagar, Ranga Reddy District, later transferred to the Court of I Special Magistrate and renumbered as C.C. No.35 of 2017. It is in respect of the dishonour of the two cheques in question bearing Nos.000148 and 000149 dated 30.06.2016 for the sums of Rs.8,00,000/- and Rs.10,00,000/- respectively issued on behalf of Accused No.1 partnership firm, signed by Accused Nos.2 and 3 representing Accused No.1 firm, to the complainant.

4) The very complaint averments clearly show that the other accused, who are petitioners herein i.e., Accused Nos.4 to 7 are not the drawers of the cheque in question but for referred as partners. There is no specific worth evidence in the private complaint to make them liable vicariously along with firm to say that how they are, if at all, responsible for day-to-day affairs of the

partnership firm in question within the meaning of Section 148 of the Act.

5) From the very wording of the Section 148 of the Act, in fact, from the very averments in para Nos.1 to 4, it is crystal clear that Accused No.1 is the partnership firm and complainant having business relationship with accused No.1 firm representing accused Nos.2 and 3 and it is in relation to contract work given by sub-contract for the amounts due. The cheques in question were issued on behalf of Accused No.1 firm, signed and issued by accused Nos.2 and 3 in part of discharge of liability and when the cheques were presented returned with an endorsement 'FUNDS INSUFFICIENT'. Hence, the complainant issued legal notice on 13.10.2016 to the accused through his counsel through registered post with acknowledgement and the same was received by accused on 14.10.2016. The complainant filed the acknowledgements along with the private complaint as enclosures 7 to 15 respectively besides document No.16 is a copy of partnership deed.

6) A perusal of the para No.3 of the legal notice shows that when the accused failed to pay the amount in spite of repeated demands made by complainant, the accused No.1 firm represented by accused Nos.2 and 3 issued two cheques duly signed in favour of complainant in part discharge of legal liability and the same were dishonoured and there is connivance of accused Nos.4 to 7.

7) That allegation as rightly contended in the grounds of quash petition by Accused Nos.4 to 7 no way sustainable of there is no specific averment of Accused Nos.4 to 7 are responsible for

day-to-day affairs of the Accused No.1 company and if so, how that specific acts required as held by this Court in ***Narendra Kurangi vs M/s.Greenmint India Agritech (P) Limited, Hyderabad***¹ katena of the expressions in **Aparna A.Shah Vs. Sheth Developers**².

8) Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C. No.35 of 2017 on the file of I Special Magistrate, Cyberabad at L.B Nagar against accused Nos.4 to 7. The bail bonds of the petitioners/ accused Nos.4 and 7 shall stand cancelled.

9) Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.



JUSTICE Dr. B.SIVA SANKARA RAO

Date:15.09.2017
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¹ 2016 (1) ALD (crl.) 177

² 2013 CrI.L.J. 3743