

**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**Criminal Petition No. 10837 of 2010**

**ORDER :**

Notice served to the 2<sup>nd</sup> respondent/defacto-complainant is deemed service under Section 27 of the General Clauses Act, and the same is sufficient.

Heard the learned counsel for the petitioners/A.3,A.5,A.8,A.9 and A.11 of C.C.No.853 of 2007 on the file of the learned Judl.Magistrate of First Class, Vizianagaram, a private complaint case for the offences punishable u/sec.138 and 142 of the Negotiable Instruments Act, and also the learned Public Prosecutor for the 1<sup>st</sup> respondent-State and perused the grounds urged in the quash petition and other material on record.

From the very reading of the complaint averments, the A.1 is a Firm and A.2 is Managing Partner of it and the other persons A.3 to 12 are the partners and the A.2 borrowed an amount of Rs.3,50,000/- on 18.12.2006 for investment purpose in the A.1-Firm from the complainant in the capacity of Managing Partner of the A.1-Firm and for that the A.2 executed a demand promissory note in favour of the defacto-complainant on the even date to repay with interest. It is the A.2 that issued cheque in question bearing No.639522,dt. 10.08.2007 for Rs.4,00,000/- in final settlement of said debt including interest and the cheque when presented returned dishonoured and the statutory notice issued to all the accused persons and the some of them unserved and there is no response thereby there is accrual of cause of

action to take action for the commission of offence against the accused.

From the substance of the said complaint including from the list of documents showing document No.1 as cheque in question, it is clearly mentioned as issued by the A.2 for nothing in contemplation of Section 141 of the N.I.Act. The other accused are no way responsible for day-to-day affairs of the said A.1-Firm but for the A.2 being the Managing Partner, the very cognizance against the other accused merely because they are Partners is unsustainable and even there is no proof of service of notices against any of them after dishonor of the cheque issued by the A.2 stating about insufficiency of the funds in the account of A.1-Firm, and the same is discussed in the expressions of this Court in **Narendra Kurangi Vs. Greenmint Inida Agritech Private Limited**<sup>1</sup> ( in CrI.P.No.11336 of 2014 of this Court) and also the expression of Apex Court in **Aparna A.Shah vs M/S Sheth Developers P.Ltd**<sup>2</sup>

In view of the above, the Criminal Petition is allowed quashing the cognizance taken against these petitioners, other than the A.1 and A.2. The petitioners are acquitted and their bail bonds shall stand cancelled. Consequently, the pending miscellaneous petitions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:10.08.2017

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<sup>1</sup> (2016) 1 ALD (CrI.) 177

<sup>2</sup> (2013) 8 SCC 71