HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.4306 of 2017

ORDER:

The petitioners are Accused Nos.1 and 4 in C.C. No.521 of 2016 on the file of II Additional Judicial First Class Magistrate, Eluru, which is outcome of a private complaint of the 2nd respondent—defacto complainant for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2) A perusal of the private complaint shows that the complainant is an Ex-service man. Accused No.4—M/s.Scropio Security Services, Secunderbad, dealing in the business of running Tollgates by providing Security men, after bagging contracts from the Government to run the Tollgates. Accused No.1 is the General Manager, Accused Nos.2 and 3 are directors of Accused No.4 firm. Accused Nos.1 to 4 have been dealing in the business of running Tollgates at various places in different states in the Country. They agreed to give sub-contract to the complainant in respect of the Toll Plazas, viz., Bollapalli Toll Plaza, Near Guntur and Bankapur Toll Plaza, Karnataka State, on the plea that the accused bagged the contract for the same and asked the complainant to deposit Rs.30,20,000/- and they entered into an agreement to that effect with the complainant on 25.04.2009 and the Accused No.2 signed thereon as an authorized signatory for Accused Nos.1, 3 and 4. The complainant pooled up the amount from his friends for the purpose of running Toll Plazas with the assistance of his friends and paid the said amount viz., 1) Rs.7,00,000/- by way of cash on 25.04.2009, 2) Rs.49,500/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru on 02.05.2009, 3) Rs.50,000/-

credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru on 25.05.2009, 4) Rs.1,00,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 25.05.2009, 5) Rs.10,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 06.07.2009, 6) Rs.15,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 15.07.2009, 7)Rs.25,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 16.07.2009, 8)Rs.1,00,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 21.07.2009, 9)Rs.2,50,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 21.08.2009, 10)Rs.20,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 01.10.2009, 11)Rs.1,00,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 12.12.2009, 12) Rs.50,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 16.12.2009, 13) Rs.20,000/- credited to the account of Accused No.2 of ICICI Bank, R.R.Pet, Eluru, on 21.12.2009 and 14) Rs.15,30,000/- by way of cash to the accused Nos.1 to 3 from 21.12.2009 to 04.03.2010.

3) A perusal of the report further shows that as contrary to the agreement, the accused failed to assign sub-contract to the complainant and also failed to return the amount collected from the complainant. After repeated requests made by the complainant, ultimately the accused issued a cheque for Rs.30,20,000/- in favour of the complainant on 09.03.2015 towards part-satisfaction of the amount due to the complainant and when complainant presented the said cheque on 10.03.2015, the same was returned with an endorsement “Funds Insufficient”.

The accused intentionally failed to repay the amounts, and issued the cheque knowing that there was no sufficient amount, and for failure to repay the amount, the accused are liable.

4) Even from the very complaint averments, the cheque in question was issued on behalf of accused No.2 and signed by Accused No.2 for the amounts paid by the complainant credited to the account of Accused No.2. Thereby, there is nothing to make accused No.1 liable in the absence of showing accused No.1 is responsible for day-to-day affairs. No doubt, accused No.1 is mentioned as General Manager of the M/s.Scorpio Securities, however, merely because he is being referred as General Manager, he cannot be made liable, for nothing to show that other than Accused No.2, who is the director of Accused No.4 firm, Accused Nos.1 and 3 are no way responsible for the day-to-day affairs.

5) Having regard to the above, so far as accused No.1 is concerned, the prosecution is liable to be quashed.

6) However, even coming to Accused No.4, the entity is not made as a party but for the General Manager of the entity is arrayed as Accused No.4 i.e., self same Accused No.1, that filing the case against entity, the General Manager would be made liable vicariously, even for that matter Accused No.3 is also a Director of it, as per the settled law of the Apex Court in ***Anil Hada V. India Accrelic Limited***[1] referring to ***Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd***[2] and this Court in **Narendra Kurangi**

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[1] (2000)1 SCC 1
[2] (2012)5 SCC 661

and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another[3].

7) So far as accused No.2 is concerned apart from that he is not before the Court, if at all, is the drawer of the cheque and as the said cheque was issued from his account, he can otherwise be made liable and in his absence, it is premature to make any discussion but for to say for the M/s.Scorpio Securities Services not made as accused, but for to say the non-drawer of the cheque in the capacity of General Manager and the General Manager by name, they cannot be prosecuted without making the entity as an accused.

8) Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C. No.521 of 2016 on the file of II Additional Judicial First Class Magistrate at Eluru, West Godavari District against Accused Nos.1 and 4 for the offence punishable under Section 138 of N.I Act. The bail bonds of the petitioners/ accused Nos.1 and 4 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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[3] 2016 (1) ALD (Crl.) 177