

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16546 OF 2016

ORDER:

Requesting to quash the proceedings in Calendar Case No.80 of 2016 on the file of Special Magistrate Court No.II, L.B.Nagar, R.R. District, the present petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The petitioners herein are arraigned as accused Nos.3 & 4 respectively in the aforesaid Calendar Case. They alleged to have committed the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, along with accused Nos.1, 2 & 5.

3. Heard M/s. Pillix Law Firm, the learned counsel for the petitioners.

4. The main submission of the learned counsel for the petitioners have been that firstly, the petitioners have not issued the said cheque; second, the petitioners are not looking after day to day affairs of accused No.1 company; third, the notice was only issued to the accused No.1, but not to the petitioners, and when there is Managing Director managing the day to day affairs of A-1 company, the petitioners cannot be roped in, and, therefore, sought to quash the proceedings.

5. The learned counsel for the petitioners has also placed reliance in **SMS Pharmaceuticals Limited v. Neeta Bhalla¹** and **Ramraj Singh v. State of Madhya Pradesh²**. Notice got issued by the 2nd respondent/complainant, dated 4.1.2016 and the reply given by A-1 company dated 18.1.2016, and the Copy of Board of Directors of A-1 company showing Mr. Kondal Rao as the Managing Director, the petitioners herein as Additional Directors are filed.

6. Now, the short question that arises for consideration is whether the petitioners are unconnected with day to day affairs of A-1 company and it was only the Managing Director, T. Narsing Rao, who has been looking after the day to day affairs of the company.

7. At the outset, it is to be mentioned that the petitioners herein have filed Criminal M.P. Nos.1133 & 1134 of 2016 under Section 251 of the Code requesting the learned II-Special Magistrate, L.B. Nagar, R.R. District to stop the proceedings in C.C. No.80 of 2016 against them agitating the very same grounds, which are now agitated by the learned counsel for the petitioners.

8. The learned Magistrate passed separate orders in Criminal M.P. Nos.1133 & 1134 of 2016 on 3.11.2016 having referred to the rulings relied on by the learned counsel for the petitioners in **S.M.S. Pharmaceuticals Limited** (1 supra) observing that the complaint filed by the complainant would show that the complainant is dealing

¹ 2005 (4) Crimes 34 (SC)

² (2009) 6 SCC 729

in various types of lubricants and that the accused Nos.2 to 4 ,being the directors of A-1 company, looking after day to day affairs of the company and during the course of business, accused No.1 issued purchase orders for supply of lubricants to the complainant, and, accordingly, the complainant supplied the same under various bills, and thereby dismissed the petition.

9. The petitioners except filing the Board of Directors of A-1 company, as mentioned in the above, have not chosen to file any material to show that the Managing Director alone is entrusted to look after day to day functions of A-1 company. When such vital information is not placed before this Court, despite having been unsuccessful before the Court below, certainly, it cannot be said that the prosecution of the petitioners herein in the aforesaid Calendar Case would amount to the abuse of the process of law. Besides the same, the grounds agitated by the petitioners relate to disputed questions of fact, which are to be established when trial takes place in the Calendar Case.

10. Hence, the Criminal Petition is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 24.04.2017
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