HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7762 of 2010

ORDER:

The petitioners are A.2 & A.3 of C.C.No.1791 of 2009 pending on the file of XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, where the learned Magistrate has taken cognizance for the offence under Section 138 of Negotiable Instruments Act (for short 'the Act'), which is outcome of the private complaint of the 2nd respondent-defacto complainant, maintained the quash petition seeking to quash the proceedings.

Heard learned counsel for the petitioners/accused and even though notice was ordered to the 2nd respondent, it was returned unserved and thereafter it was ordered to serve notice on the advocate on record before the lower Court, though notice served, failed to attend. The respondent No.3/A.1 shown as not necessary party.

A perusal of the complaint shows that the complainant is dealing with supplies of cosmetics, plastic and general produces for the last several years. While so, the accused Nos.1 to 3 having acquaintance with the complainant, the complainant used to supply the cosmetics, plastic items and general produces on credit basis as the accused were running a retail general shop in the name and style of Sri Foods and Spices. Whenever the complainant supplies the goods to the accused, they used to give some cash and for the remaining amount they used to give cheques. While issuing the cheques, the accused requested the complainant to wait for sometime since their firm is getting confidence of the customers and they are offering credit basis to their customers and they are about to pay the amounts. At that time, the complainant clearly informed the accused that it is highly impossible to supply the goods on credit basis but only on payment of cash. Since the period of cheques were going to expire, the complainant brought to the notice of the accused and accused assured that the cheques would be honoured. On the assurance, the complainant presented the cheques i.e., total 9 cheques (four cheques issued for Rs.25,000/- each by Sripal Reddy as proprietor of the business Sri Food & Spices and another 5 cheques for Rs.20,000/- each by Sripal Reddy individually without referring as entity through his Savings Bank Account) and the same were dishonoured due to insufficiency of funds and after intimating the same to the accused, they failed to pay the amount. Hence, he is constrained to file the complaint.

The grounds urged in the quash petition are that the petitioners/A.2 & A.3 are neither the partners nor proprietors of the firm and they are no way concerned with the said firm and the cheques were issued by A.1-Sripal Reddy as proprietor of the firm and they are falsely implicated and the continuation of proceedings against them is nothing but abuse of process, hence the proceedings are liable to be quashed. Whereas the learned Public Prosecutor supported the cognizance taken by the learned Magistrate and there is nothing to quash the proceedings.

A perusal of the cheques in question shows that it was issued by the proprietary concern of Sripal Reddy either referring individually or as proprietor of Sri Food & Spices i.e., A.1 who is the drawer of the cheques in question. The law is fairly settled from the expression of the Apex Court in **Aparna A.Shah Vs. Sheth Developers**[1] that only the drawer of cheque alone is liable. Apart from it, the three accused are individuals and A.2 & A.3 are not even partners of any firm to make liable, for A.1 is a proprietor solely responsible as also drawer of the cheque and as also can be seen from the expression of this Court in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**[2]**.** The law is fairly settled in **Rohit Parusharam Vs. Dhiraj Rawal and Another**[3] that propriety concern and proprietor are not two different persons, but only one and the same. It is only in the case of a firm, firm is different like a company within the meaning of Section 141 of the Act, to the partners/directors, but for by virtue of the status as managing partner or managing director or chairman of the company/firm as the case may be, they are also liable along with other persons specifically pleaded for vicarious liability of how, if not drawer and not in that above capacity, responsible for the day to day affairs. That question also does not arise herein for proprietary concern and proprietor are one and the same i.e., A.1 Sri Food & Spices of Sripal Reddy. So far as A.2-Sridhar Reddy and A.3-Shravan Kumar concerned, even from the complaint, there is nothing to show whether there is any partnership if so when formed and how and whether they are partners or not and even if partners how they are responsible for the day to day affairs for not the drawers.

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[1] 2013 Crl.L.J. 3743
[2] 2016 (1) ALD (Crl.) 177
[3] 2006 (1) ALT (Crl.) 264

Having regard to the above and in the result, the Criminal Petition is partly allowed by quashing the proceedings against the petitioners/A.2 & A.3 by setting aside the cognizance and by cancelling the bonds executed, if any by them, but for against A.1 who is the drawer of the cheque alone to make liable, to take cognizance for the offence under Section 138 of the Act subject to what is his defence available in trial to decide.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.09.2017
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