SMT. JUSTICE T.RAJANI

CRIMINAL PETITION Nos.626 and 4279 of 2013

COMMON ORDER:

Since both these criminal petitions arise out of the same crime, they are being disposed of by this common order.

2. Both these criminal petitions are filed under Section 482 Cr.P.C., seeking to quash the proceedings in C.C.No.467 of 2012 on the file of IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, registered for the offence under Section 138 of Negotiable Instruments Act, 1881, against the petitioners.

3. The petitioners in Crl.P.No.626 of 2013 are A4 and A5 and the petitioner in Crl.P.No.4279 of 2013 is A7 in the aforesaid C.C.

4. The facts, in brief, are that A1 firm was represented by A2 to A8 and engaged in the business of execution of EPC and turnkey contracts. While so, A2 to A8 had approached the complainant Company to avail trade finance amount of Rs.10,00,00,000/- for six months and accordingly, the complainant had advanced the said amount. Later, in discharge of the said liability, the accused issued two cheques on 20.01.2012 and 29.01.2012 for Rs.1,20,00,000/- and Rs.10,00,00,000/- respectively, drawn on Axis Bank Limited. When the complainant presented those cheques for collection, they were returned with endorsement 'funds insufficient'. Thereupon, the complainant got issued the legal notice on 10.04.2012 to the accused, but there was no response from them. Hence, the complaint.

5. Heard learned counsel for the petitioners, learned Public Prosecutor for the first respondent and Sri K. Maheswara Rao, learned counsel for the second respondent-complainant.

6. The initial dispute that was raised with regard to the date of cheque stands resolved by looking at the cheque dated 29.01.2012 for Rs.1,20,00,000/-, as, in the complaint, it was mentioned as 20.01.2012 and it can be taken as typographical error based on the date found on the cheque itself.

7. The only ground urged by the petitioners is that the petitioners, who were erstwhile Directors of A1 Company, have submitted their resignation prior to the date of issuance of the cheques and therefore, they are not liable to be prosecuted for the aforesaid offence.

8. Learned counsel for the petitioners has filed the certified copies of Form No.32 showing the resignation of A4- P. Ram Bhoopal w.e.f 24.01.2012 and A5-G. Vishnu Bhoopal w.e.f 22.11.2011 and A7- B.K.Sharma w.e.f 10.12.2011 and submits that as the said resignations are prior to the date of issuance of the cheques, the petitioners are not liable for prosecution for the aforesaid offence. He placed reliance on the judgment of the Apex Court in **Harshendra Kumar D. v. Rebatilata Koley and others**[1]**,** wherein it was held that an ex-Director cannot be made accountable and fastened with liability for anything done by company after acceptance of his resignation by company. The Apex Court further held that resignation of appellant as Director of Company was

---

[1] (2011) 3 SCC 351

accepted and notified to Registrar of Companies in prescribed form (Form 32) and on the date when the offence was committed by Company, appellant was neither Director of Company nor had anything to do with the affairs of Company and held that if criminal complaints are allowed to proceed against appellant, it would result in gross injustice and tantamount to abuse of process of Court and hence, the proceedings were quashed.

9. Learned counsel for the second respondent contends that the fact of resignation of petitioners has to be gone into during trial and it is not safe to quash the proceedings at this stage. He also placed reliance on the judgment of the Apex Court in **Harshendra Kumar's** case, referred supra, wherein it was held at paragraph Nos.16 and 17 as under:

> **"Every company is required to keep at its registered office a register of its Directors, Managing Director, manager and secretary containing the particulars with respect to each of them as set out in clauses (a) to (e) of sub-section (1) of Section 303 of the Companies Act, 1956. Sub-section (2) of Section 303 mandates every company to send to the Registrar a return in duplicate containing the particulars specified in the register. Any change among its Directors, Managing Directors, managers or secretaries specifying the date of change is also required to be furnished to the Registrar of Companies in the prescribed form within 30 days of such change. There is, thus, statutory requirement of informing the Registrar of Companies about change among Directors of the company.**
>
> **In this view of the matter, in our opinion, it must be held that a Director, whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies - cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words `every person who, at the time the offence was committed', occurring in Section 141 (1) of the NI Act are not without significance and these words indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed.**

The above ruling is also to the effect that a person, who is not a Director of the Company as on the date of offence, cannot be prosecuted.

10. Learned counsel for the second respondent further contends that it would not suffice for the petitioners to file Form No.32 and they have to file all the documents pertaining to the proceedings of acceptance of their resignation.

11. But, in the considered opinion of this Court, the purport of the judgment of the Apex Court in **Harshendra Kumar's** case, referred supra, does not seem to be so. The observations in paragraph No.16 are not to the effect that Form No.32 cannot be taken as evidence of acceptance of resignation. It only speaks about the obligation of informing the change of Directors, to the Registrar. Form-32, filed in this Court, shows that the said obligation was fulfilled and it was recorded by the Registrar that the petitioners have resigned as Directors.

12. Learned counsel for the second respondent further relied on the judgment of the Apex Court in **State of M.P., v. Awadh Kishore Gupta and others**[2], which is on the extent of power under Section 482 of Cr.P.C. The Apex Court explained at paragraph No.11 to the extent of powers under Section 482 of Cr.P.C., and cautioned that the Courts have to exercise said power with great caution. At paragraph No.13, the Apex Court observed that when the investigation is not completed, it is not permissible for the High Court to look into materials, the acceptability of which is essentially a

[2] (2004)1 SCC 691

matter for trial. But it also observed that the Court can evaluate material and documents on records, but it cannot appreciate evidence.

13. In **Rajiv Thapar and others v. Madal Lal Kapoor[3],** the Apex Court held as under:

> The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as

[3] (2013) 3 SCC 330

would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

14. In the present case, Form No.32, which is unimpeachable document, needs no evaluation. It stands as proof of fact, which can be accepted. Hence, in view of the fact that the petitioners were not the Directors of A1 Company on the date of offence, this Court opines that continuation of proceedings against the petitioners would only be an abuse of process of law and the proceedings are liable to be quashed.

15. Accordingly, both the Criminal Petitions are allowed, quashing the proceedings in C.C.No.467 of 2012 on the file of IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, against the petitioners/A4 and A5 in Crl.P.No.626 of 2013 and the petitioner/A7 in Crl.P.No.4279 of 2013. Miscellaneous applications, if any, pending in these criminal petitions shall stand closed.

T. RAJANI, J

11th September, 2018.

sj