THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.1489 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.76 of 2017 pending on the file of V Additional Judicial Magistrate of First Class, Kakinada, East Godavari District, registered for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act (for short 'the Act')

The petitioner is the sole accused and the 2nd respondent is the complainant. As per the allegations made in the complaint, the 2nd respondent and his brother Mamidipalli Chandra Sekhar, Sunkara Vidya Sagar and Pyda Surya Nanda Krishna Divya Deep jointly started a cable network business in the name and style of M/s Sree Devi Enterprises, Kakinada under partnership deed dated 27.10.2009, wherein the said partners invested amount and that the petitioner/accused is the Managing Partner, the 2nd respondent is the working partner, who run the business for considerable time. As there were business disputes, they settled the disputes by negotiations and that the 2nd respondent and three other partners retired from the said partnership business and one Percherla Venkata Durga Prasad joined as new partner by document dated 25.09.2015. The cheque bearing No.274638, dated 20.12.2015 issued by M/s Sree Devi Enterprises duly signed by the authorised signatory and on presentation for collection, it was dishonoured. After following necessary procedure under proviso (b) of Section 138 of the Act, the 2nd respondent filed complaint.

The only contention before this Court is that the firm was not impleaded as accused, but only the Managing Partner was impleaded and it is contrary to the principles laid down by the Apex Court in **Anita Hada v Godfather Travels and Tours Pvt. Ltd.**[1]

Learned counsel for the 2nd respondent opposed the petition on the ground that the cheque was issued towards share of the *de facto* complainant, who agreed to retire from the partnership business and therefore, the partnership ceased to subsist and thereby impleading the petitioner alone as accused is sufficient to prosecute the complaint for the offence punishable under Section 138 of the Act.

No doubt, the cheque was issued by M/s Sree Devi Enterprises, Kakinada duly signed by the partners as per the allegations made in para 1 of the complaint itself, but the cheque was issued towards payment of share of the 2nd respondent for Rs.1,50,000/- by the firm itself. Without impleading the firm, the complaint was filed, which is contrary to the principles laid down in **Anitha Hada's** case referred supra.

In view of the law declared by the Apex Court as long as the firm is continuing its business in the same name and style without any dissolution, the firm is the accused represented by its Managing Partner as it is subsisting in the eye of law, though the 2nd respondent agreed to retire from the partnership business. Therefore, applying the principle laid down in **Anitha Hada's** case referred supra, the proceedings against the petitioner are liable to be quashed.

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[1] (2012) 5 SCC 661

In the result, the criminal petition is allowed quashing the proceedings against the petitioner in C.C.No.76 of 2017 pending on the file of V Additional Judicial Magistrate of First Class, Kakinada, East Godavari District.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

01.10.2018
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