HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8850 of 2017

ORDER :

The petitioner is the accused in the private complaint case originally numbered as C.C.No.1363 of 2014 re-numbered later as S.T.C.No.99 of 2016 out come of the private complaint of the 2nd respondent-complainant for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

2. The petitioner is arrayed as Shaik Basha, Chairman and Managing Director of Tytas Property Private Limited. In the complaint it is averred that complainant is a businessman and accused resident of Nellore town doing real estate under the name and style of Tytas Property Private Limited and also mentioned as accused is Chairman and Managing Director of the company. The accused company according to the complaint advertised of doing sites business at Bangalore and Hyderabad, planned showing some plots at NRI Elite County in Sy.No.147 of Maddur Gram Panchayat area of Shabad Mandal, Ranga Reddy District, and received more than Rs.20 lakhs in the year 2008 from the complainant and failed to return the amount and failed to register any house plots in the name of the complainant and there is a dispute between the accused and complainant. There is a dispute between accused and complainant and one V.Vijaya Bhaskar Reddy intervened and settled, as per which, the accused executed an agreement (confirmation deed) in favour of complainant towards settlement of the old debt supra due to pay Rs.20 lakhs and till

payment of the amount accused executed a registered GPA in favour of the complainant towards plot Nos.38, 302, 303 and 309, total 1267 sq. yards in Sy.No.147 in Maddur Gram Panchayat supra, by document No.2683 of 2008, and in addition to that accused issued two cheques 373905 for Rs.15 lakhs and 373906 for Rs.5 lakhs on 16.09.2012 and 16.11.2012 respectively, drawn on ICICI Bank, Panjagutta Branch in favour of the complainant with a condition that the cheque for Rs.15 lakhs will be cleared within six months from the date of due and another cheque of Rs.5 lakhs will be cleared within eight months from the date of issue and if the accused repaid to return the cheques and complainant also to cancel the registered GPA in his name and accused if fails to pay the amount within the stipulated time supra, complainant is at liberty to file criminal case in Court of law and got full right to collect the said amounts due from the accused. It is further averred said agreement duly signed by both accused and complainant. Though time limit stipulated for the first cheque six months from the date of issue of the cheque and second cheque eight months from the date of issue of cheque, as per Section 20 of the Limitation Act and Section 142 of the NI Act, six months time from specified date mentioned and the complainant thereby files the complaint within the limited period, as accused not paid the cheque amounts, the complainant got issued notice for payment of the two cheques amount and accused failed to pay having received the notices acknowledged by his wife on 26.12.2012 and got issued reply, dated

19.01.2013, by admitting about giving of the cheques for the collateral purpose and with contention of barred by limitation. It is averred that these two cheques submitted with Pulivendula branch for collection on 01.12.2012, same were returned dishonoured of accused blocked his account and after receiving the same cause issued notice referred supra, dated 19.12.2012, and after service and waiting statutory period from the cause of action claimed filed the case.

3. The learned Magistrate has taken cognizance. The contentions of the accused in seeking to quash the same is on the ground that there is no legally enforceable debt, the cheques are given only for assurance and not for legally enforceable debt even from the array of the complaint averments with reference to the settlement, document to pay a cause of action by its presentation from alleged dishonour and the claim is barred by law, for cheques presented after six months admittedly from the date of issue and it is one of the contentions that the entity was not added as a party, but for the accused in person, thereby the cognizance order is not sustainable. Even in the notice issued, dated 19.12.2012, to the accused/Shaik Basha, referred as Chairman and Managing Director of Tytas Property Private Limited in saying he was doing business at Hyderabad and Bangalore by started a registered office under the name and style supra. The undertaking letter, dated 16.03.2012 is between complainant/V. Mallikarjuna Reddy and Tytas Property Private Limited, Chairman and Managing Director/Shaik Basha and both signed the same. Here

the crux is to decide whether there is any entity with name Tytas Property Private Limited either as a partnership firm or a company, as the case may be, if not the accused/Shaik Basha was doing business with that name and style as a proprietary concerned, the question of impleading with the accusation the so-called entity does not arise as a proprietary concerned and proprietor or one of the same though a company and its directors including Managing Director and representative of the company are different. Once such is the case, it is a matter to be adjudicated on the factual dispute including with reference to the terms of the undertaking document as to there is a legally enforceable debt or not and not prima facie possible to quash the cognizance order, but for left open all defences to raise before the lower Court including by filing any application under Section 251 Cr.P.C. as laid down by the Apex Court in **Bhushan Kumar and another v. State (NCT of Delhi) and another**[1] and the Delhi Court in **Arvind Kejriwal and others v. Amit Sibal and another**[2]**,** either before the commencement of trial or in the course of evidence during pendency of trial from the evidence.

4. Accordingly, the criminal petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

2nd November 2018.

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[1] (2012) 5 SCC 424
[2] (2014) DLT 489