

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.8268 and 8881 of 2013

COMMON ORDER:

Since the petitioners herein are arrayed as A3 and A4 respectively in the same criminal proceedings and the cause of action being the same, the criminal petitions are disposed of by this common order.

2. The criminal petitions are filed seeking quash of proceedings against the petitioners, who are A3 and A4 respectively, in CC.No.407 of 2013 on the file of the V Additional Chief Metropolitan Magistrate – cum – Juvenile Court, Nampally. The offences alleged are under Section 138 of the Negotiable Instruments Act.

3. Heard the counsel for the petitioners, counsel for the second respondent and the learned Public Prosecutor, appearing for the first respondent.

4. The complaint is filed against the petitioners and others under Section 138 of the Negotiable Instruments Act. The petitioners are shown as Directors of A1 company, the Managing Director of which issued the cheque.

5. The argument of the petitioners counsel is two fold: firstly, he contends that the averment made in the complaint does not explain the nature of the duty that the petitioners have been performing in the company and secondly, he contends that the petitioners have submitted resignation prior to the date of issuance of cheque and they no longer continue to be the directors of A1 company.

6. As regards the first contention, the counsel for the second respondent submits that the averment is nevertheless made in the petition that A3 and A4, who are the Directors of A1 company, are actively involved in the day-to-day affairs of the company of A1. He further contends that the said averment would suffice for continuing the prosecution against the petitioners. He relies on a decision of the Supreme Court in ANITA MALHOTRA v. APPAREL EXPORT PROMOTION COUNCIL<sup>1</sup> which is to the effect that the averment that the petitioners were in charge of the day-to-day affairs has to be made.

7. There is no quarrel with the said proposition. Even in the decision in GUNMALA SALES PRIVATE LTD. v. ANU MEHTA [CRLA.No.2228 of 2014 dated 17.10.2014], relied upon by the counsel for the petitioners, the said proposition was upheld. The Supreme Court while upholding the reiterated principle held that a complaint cannot be quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about the role of the petitioner because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial, also held that the material produced by the accused can be analysed to see whether the averment in the complaint is true or false. The decision of the Supreme Court in SMS PHARMACEUTICALS LTD v. NEETA BHALLA<sup>2</sup> is to the effect that it is necessary to specifically aver in a

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<sup>1</sup> 2012 (1) ALD (CRL.) 645 (SC)

<sup>2</sup> 2005 LAWSUIT (SC) 1265

complaint under Section 141 of the Negotiable Instruments Act that at the time the offence was committed, the person accused was in charge of, responsible for the conduct of the business of the company. As, such averment is nevertheless made in the complaint, the said decision need not be considered.

8. But the decision in GUNMALA SALES PRIVATE LTD. (supra) would held the petitioners, as the certified copy of Form 32, is filed by the petitioners to prove that their resignation was accepted in pursuance of a resolution passed by the company on 01.10.2012.

9. The counsel for the second respondent opposed the reliance sought to be placed on the said certificate, on the ground that the said fact has to be subjected to trial and cannot on its face value be accepted.

10. In GUNMALA SALES PRIVATE LTD. (supra) the Supreme Court referred to its earlier decision in *HARSHENDRA KUMAR D v. REBATILATA KOLEY* [(2011) 3 SCC 351] in which also a similar issue came up for consideration. There was an averment in the complaint therein that the appellant was responsible for the day-to-day affairs of the company, despite the said averment the Court quashed the complaint taking into consideration the resolution passed by the company wherein it was reflected that the appellant therein had resigned from the post of Director much prior to the issuance of cheque. The decision in *AWADH KISHORE GUPTA* [Appeal (crl.) 292 of 1997 dated 18.11.2003] was also referred to, wherein it was held that when the investigation was not completed, it was impermissible

for the High Court to look into the materials, the acceptability of which is essentially a matter for trial and while exercising jurisdiction under Section 483 of the Code it is not permissible for the Court to act as if it was a trial Judge. The Supreme Court, however, at paragraph 25 opined that the said observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstances, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is also observed that it is fairly settled by then that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusation. But it, further, observed that, however, in an appropriate case, if on the face of the documents which are beyond suspicion or doubt placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the material which has significant bearing on the matter at *prima facie* stage. It also observed that criminal prosecution is a serious matter which affects the liberty of a person and no greater damage can be done to the reputation of a

person than dragging him in a criminal case. It held that the High Court therein fell into grave error in not taking into consideration the uncontroverted documents relating to the appellants resignation from the post of Director of the company and had these documents been considered by the High court, it would have been apparent that the appellant has resigned much before the cheques were issued by the company.

11. The facts of the case on hand are in similar to the facts dealt with by the Supreme Court in the above decision and it would be an error on the part of this Court, if after considering Form 32, which is a public document reflecting resignation of the petitioners on 01.10.2010, it declines to quash the proceedings.

In the result, the criminal petitions are allowed and the proceedings against the petitioners, who are A3 and A4 respectively, in CC.No.407 of 2013 on the file of the V Additional Chief Metropolitan Magistrate – cum – Juvenile Court, Nampally, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

November 29, 2018  
DSK

T. RAJANI, J