

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.6279 of 2017

ORDER:

The criminal petition is filed for quash of the proceedings in Cc.No.1178 of 2015 on the file of the Chief Metropolitan Magistrate, Vijayawada.

2. Heard the counsel for the petitioners and the learned Public Prosecutor, appearing for the first respondent. None appears for the second respondent in spite of notice.

3. The grounds, on which quash of proceedings is sought for, are that no specific averments are made in the complaint as required by the observations made in the decision of the Supreme Court in S.M.S PHARMACEUTICALS LTD. v. NEETA BHALLA¹, which are to the effect that it is necessary to aver that at the time the offence was committed, the person accused was in-charge and responsible for the conduct of the business of the company and without there being such an averment in the complaint, the requirement of Section 141 of the Negotiable Instruments Act cannot be satisfied.

4. In this case, there is no denial of the fact that A3 and A4 are the Directors of the company. The averments in the complaint would show that A2 to A4 are the Directors and they promised to repay the amount to the complainant within two months and thereafter, the averments show that all the accused committed default of the payment of the amount. The very fact that A2 to A4 made promise to

¹ (2005) 8 SCC 89

the complainant in the capacity of the Directors of the company would show that they are in-charge of the day-to-day affairs of the company. The specific averments that they are in-charge of the day-to-day affairs of the company, in the considered opinion of this Court, may not be a requirement to satisfy Section 141 of the Act. When it can be gathered from the other averments that the accused are in-charge of the day-to-day affairs of the company, it cannot be said that there is no specific averment in the complaint to that effect.

5. The submission of the counsel for the petitioners that apart from A2 to A4, there are other directors also, would also throw some light on the fact that A2 to A4 are the persons, who are in active participation in the affairs of the company. Otherwise all the directors might have been roped in as accused. Hence, this Court opines that it is not a fit case for quash of the proceedings.

The criminal petition is dismissed. However, the plea of the counsel for the petitioners that they are finding it difficult to attend the Court on every date of adjournment, as they have to travel from Bombay, can be taken into consideration and the Court below is directed not to insist upon the presence of the petitioners unless it is necessary for the proceedings. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

January 5, 2018
DSK

T. RAJANI, J