

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.8669 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioners - accused Nos.3, 6 and 7, to quash the proceedings against them in Calendar Case No.389 of 2016, pending on the file of the learned XIX Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act, 1881').

2. Respondent No.2 herein filed a private complaint before the Magistrate for the offences punishable under Sections 138 and 141 read with 142 of the Act, 1881, alleging that:

“ i) *Respondent No.2 - complainant M/s. Padmaja Electrical Industries is a partnership firm, engaged in the business of manufacturing electrical control panels, distribution boards and all kinds of electrical panel boards with their operations at Visakhapatnam, Hyderabad and Secunderabad, and also at other parts of the Country having its marketing office at 505, Minerva House 94, S.D. road, Secunderabad.*

ii) *Accused No.1 is a Private Limited Company and accused No.2 is its Managing Director. The Managing Director is responsible for day-to-day business operations of accused No.1, and accused Nos.3, 4, 5, 6 and 7 being other Directors of accused No.1 company, are also liable for the acts of accused No.1.*

iii) During the course of business, accused No.1 placed an order with the complainant for supply of panel boards vide order No.PSTC/PO/54/10-11, dated 24.12.2010 by accepting the offer/quotation, dated 21.12.2010 issued by the complainant, and as per the purchase order placed by accused No.1 upon the complainant, the value of the supply was Rs.5,29,620/- and accused No.1 agreed for payment of 90% against proforma invoice after final inspection and clearance for dispatch, and to pay balance 10% after thirty days after receipt of material at the site VSP of accused No.1.

iv) Subsequently, as there were changes in the specifications of accused No.1, the complainant had made the supplies as per the revised specifications of accused No.1, submitted bill for Rs.6,44,873/-. The other terms stipulated inter alia that specifications of MCC panels shall be done by M.N. Dastur & Co., as per their QAP on completion of job, but before the delivery of material at LBSS-6 site Visakhapatnam.

v) On receipt of the amount i.e., value of the goods for Rs.6,44,873/-, accused No.1 failed to pay the amount as agreed, on demand, accused No.1 issued a cheque bearing No.088297, dated 25.11.2011 for Rs.4,76,658/- payable to the complainant drawn on Vijaya Bank, HRBR Layout, Bangalore, and the cheque was presented for collection in their bank account with Allahabad Bank, Minerva Complex, S.D. Road, Secunderabad, but it was returned unpaid on the ground that "payment stopped by drawer" as per the cheque returned memo, dated 27.11.2011, issued by Vijaya Bank, Service Branch, Himayathnagar, Hyderabad.

vi) On return of the cheque, several demands were made and, finally, a notice, dated 18.01.2012, was issued through their counsel calling upon accused Nos.1 and 2 to pay the amount covered by dishonoured cheque, and despite receipt of the notice, no amount was paid, hence, the complaint."

3. The present Criminal Petition is filed only on the ground that the petitioners - accused Nos.3, 6 and 7 are not participating in the day-to-day business transactions of accused No.1's company, and in the absence of any allegation in the complaint about their participation except the allegation that the petitioners being the Directors of accused No.1 are also liable for the acts of accused No.1 company being its Directors in paragraph No.2(b) of the complaint, it is not sufficient to fasten any vicarious liability for the offence punishable under Section 138 of the Act, 1881, invoking Section 142 of the Act, 1881, and requested to quash the proceedings against these petitioners, who are not the Directors participating in day-to-day business affairs of accused No.1 company.

4. This Court ordered notice to respondent No.2 - complainant, and proof of service is filed, but none appeared.

5. During hearing, learned counsel for the petitioners reiterated the grounds urged in the petition regarding insufficiency of allegations to fasten vicarious liability invoking Section 141 of the Act, 1881, and placed reliance on the judgment in **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla**¹, to contend that in the absence of any material that these petitioners are participating in day-to-day affairs of the company regularly, the petitioners cannot be made responsible for the criminal acts of accused No.1 company invoking Section 141 of the Act, 1881.

¹. 2005 (4) KLT 209

6. In view of the specific contention, it is appropriate to advert to the contentions made in the complaint. In paragraph No.2 (b) of the private complaint filed by respondent No.2 herein, the specific allegation against these petitioners is as under:

“The Accused No.1 is a Pvt. Ltd., Company and the Accused No.2 is the Managing Director of the Accused No.1 Company. The Accused No.1 as the Managing Director is responsible for day to day business operations of the Accused No.1 Company. The Accused No.3,4,5,6 and 7 being the other Directors of Accused No.1 Company are also liable for the acts of the Accused No.1 Company being its Directors.”

If this piece of pleading in the private complaint is accepted as it is, the question of vicarious liability against these petitioners, who are Non-Executive Directors of accused No.1 Company cannot be fastened for the reason that they are not participating in day-to-day affairs of accused No.1 company, and no material is placed on record along with the private complaint that they are also participating in day-to-day affairs of accused No.1 company, but this question is no more *Res Integra* in view of the long line of prospective pronouncements of the Hon'ble Supreme Court in **Pooja Ravinder Devidasani v. State of Maharashtra**², **S.M.S. Pharmaceuticals Ltd.**¹ and **Ashoke Mal Bafna v. Upper India Steel Mfg. & Engg. Co. Ltd**³.

7. In view of the law declared by the Apex Court referred supra, the petitioners are not liable to be prosecuted, they being Non-Executive

². AIR 2015 SC 675

³. AIR 2017 SC 2854

Directors and not participating day-to-day affairs of accused No.1 Company.

8. In the result, the present Criminal Petition is allowed, and the proceedings against the petitioners - accused Nos.3, 6 and 7 in Calendar Case No.389 of 2016, pending on the file of the learned XIX Additional Chief Metropolitan Magistrate, Secunderabad, invoking the Section 141 of the Act, 1881, are hereby quashed, at the stage of admission itself.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.

M. SATYANARAYANA MURTHY, J

September 25, 2018
Mgr

