HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.13644 OF 2013

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. by the petitioner/A3 seeking to quash the proceedings against him in C.C.No.1053 of 2012 on the file of IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, registered for the offence under Section 138 of Negotiable Instruments Act, 1881, based on the private complaint under Section 138 and 142 of N.I.Act against A1 to A3.

2. A1 is the Jagadamba Hospitals Private Limited, A2 is shown as its Managing Director and petitioner/A3 is shown as one of its Directors. Its case is that A2 and A3 are acquainted with the complainant and requested for hand loan for the purpose of meeting the business requirement of their hospital and accordingly, the complainant advanced various amounts on different dates between April, 2010 and February, 2012 and as per the accounts maintained by the complainant and accused, the amount of Rs.24,88,630/- was due by 31.08.2012. Towards discharge of the part of the said liability, A1 has issued a cheque bearing No.249669, dated 05.09.2012 for Rs.24,00,000/- drawn on Central Bank of India, Himayathnagar Branch, Hyderabad, towards part satisfaction of the said liability. The further case of the complainant is that when he deposited the cheque with his

banker, Kotak Mahindra Bank, Somajiguda, Hyderabad, on 07.09.2012, it was returned with the endorsement 'insufficient funds' on 11.09.2012. After issuing statutory notice and following the due process, the complainant filed the private complaint and it was taken on file by learned IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and registered as C.C.No.1053 of 2012. Hence, the instant petition at the instance of petitioner/A3.

3. The submission of learned counsel for petitioner is that the complaint is silent as to the role of petitioner/A3. Allegedly, the cheque was issued by the accused No.1 and as per the complaint averments, A2 is the Managing Director. It is not specifically mentioned in the complaint that petitioner/A3 is incharge of and responsible for the business activities of accused No.1 hospital. In that view, the requirements under Section 141 of N.I.Act are not satisfied and therefore, the continuation of the criminal proceedings against petitioner/A3 would amount to abuse of process of the court and hence, the petition may be allowed.

4. Per contra, learned counsel for 2nd respondent/ complainant would submit that the 2nd and 3rd respondents are none other than the father and son and they are doctors and they started the accused No.1 hospital, which is a private limited, for which, the accused No.2 is the Managing Director and the petitioner/A3 is the Director and both of them are in

active participation of the hospital business and therefore, both of them are liable for the bouncing of the cheque. To satisfy the said contention, the learned counsel for 2nd respondent filed certain material papers, one of which is the Articles of Association of 1st accused, wherein at Para No.38, the A2 and A3 are shown as Directors of the company. Learned counsel also filed certain documents to show that A2 and A3 for the purpose of running the A1 hospital, obtained loans from different agencies and banks. One of such documents is the medium term loan for Rs.40,00,000/- obtained by A1 to A3 from Indian Bank, Barkatpura, Hyderabad, wherein, both A2 and A3 have signed on the loan documents in the capacity of the Directors of A1. These documents would prima facie show that both A2 and A3 are incharge and actively participating in the day to day business activity of A1. Of course, the veracity of these documents and contentions of the respondent/complainant and also the contention of the petitioner/A3 have to be tested during the full-fledged trial. As the matter stands, there is a prima facie material against all the accused including petitioner/A3. Therefore, it is not a fit case to quash the proceedings.

5. In the result, this criminal petition is dismissed, giving liberty to petitioner/A3 to vindicate his stand during the trial. Since the C.C. is of the year 2012, the trial court shall make every endeavor to dispose of the C.C. at the earliest but not

later than four months from the date of receipt of copy of this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

U.DURGA PRASAD RAO, J

20.08.2018
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