

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.10882 of 2017

ORDER:

The petitioners herein are A1 and A2 of C.C.No.289 of 2017 on the file of the III Special Magistrate, Hyderabad, where taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act, which is an outcome of the private complaint of the 1st respondent-entity.

2. The petitioners herein are the independent entities, shown represented by same person, as respective managing partner. The impugned cognizance order of the learned Magistrate is no way sustainable and liable to be quashed.

3. One of the contentions of the learned counsel for the petitioners is that two days before the cheque book issued, the cheques in question taken blank prior ante-dated. The contention of the learned counsel for the 1st respondent/complainant is that the cognizance order of the learned Magistrate no way requires interference by this Court on any of the grounds, but for, if at all open as part of the defence and the complaint averments are sufficient to fasten liability and to sustain the cognizance order.

4. Heard and perused the material on record.

5. A perusal of the complaint, particularly, from para-2, same is reiterated in the sworn statement taken on oath from affidavit for the cognizance discloses that the complainant supplied drugs to the retail outlets and stockists run by both the accused i.e. M/s.Nizam Pharmacy LLP, represented by its Managing Partner, M.Sudhamani (A1), Jeevandhara Generic Drugs, HLL Pharmacy and M/s.Jayadeva Pharmacy, represented by its managing partner, self same M.Sudhamani (A2) and for the amounts due by the four respective retail outlet holders of Rs.80,53,490/- from the cheques of Rs.40,00,000/- are issued for part payment in discharge of the liability by Smt.M.Sudhamani. The cheques in question which bearing Nos.098071 and 098072, dated 25.10.2016 respectively for each Rs.40,00,000/- drawn on Federal Bank, Panjagutta Branch, Hyderabad.

6. The issued cheques from its perusal shows rooted from the cheque book of M/s.Nizam Pharmacy LLP and signed by its authorized signatory, Smt.M.Sudhamani. The said Smt.M.Sudhamani was referred as managing partner of M/s.Nizam Pharmacy LLP (A1). When both the cheques were issued by M/s.Nizam Pharmacy LLP, represented by its authorized signatory Smt.M.Sudhamani for M/s.Jayadeva Pharmacy, represented by its managing partner, Smt.M.Sudhamani, was not the drawer of the cheque, the

question of liability against M/ s.Jayadeva Pharmacy (A2), represented by said Smt.M.Sudhamani does not arise from the expression of the Apex Court in Aparna A. Shah v. Sheth Developers Private Limited and another¹.

7. Even from the complaint averments that the amount due also belongs to M/ s.Jayadeva Pharmacy (A2)-entity does not make any difference in the absence of both the entities from the joint account, issued the cheque or otherwise, even represented by managing partner that is the case herein.

8. Accordingly the Criminal Petition is allowed insofar as M/ s.Jayadeva Pharmacy (A2) by quashing the proceedings in C.C.No.289 of 2017 on the file of the III Special Magistrate, Hyderabad and dismissed against M/ s.Nizam Pharmacy LLP (A1) and its other defences are left open.

9. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.12.2018

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¹ (2013) 8 S.C.C. 71