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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on:14th August, 2015

\+ **CRL.M.C. No.3128/2015**

M/S WEBNET SOFTWARE TECHNOLOGY AND OTHERS
..... Petitioners

Represented by: Mr. Ankur Mahendroo and Mr. Shresth Choudhary, Advocates.

Versus

ANAND SETHI AND ANOTHER ..... Respondents

Represented by: Mr. S.C. Arora, Advocate for Respondent No.1.
Mr.Sudhershan Joon, Additional Public Prosecutor for the State.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CRL.M.C. No.3128/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of complaint case titled as '***Anand Sethi Vs. Sandeep Bajaj & Ors***.' and the consequent proceedings arising therefrom.

2. Learned counsel appearing on behalf of the petitioners submits that the cheque in question was issued on behalf of the partnership firm, wherein the complainant/respondent No.1 was also a partner, the said firm has not been dissolved, thus, the complainant cannot sue the petitioners for dishonour of the cheque in question.

3. On this issue, the learned counsel has relied upon the case of ***Mukesh Raoji Navadhare Vs. Ajit Bhaskar Kasbekar & Anr. 2010 (2) Crl. CC 0213 (Bombay)***, wherein held as under:-

> *"5. A partnership firm is not a body corporate. Section 4 of the Partnership Act defines "partnership" as relation between the persons who have agreed to share profit of a business carried on by all or any of them acting for all. The persons who have entered into a partnership with one another are called individually as partners and collectively "a firm". The name under which the business is carried on is called the firm name. The firm name is merely a compendious name given to group of persons who have agreed to carry on business in partnership.*
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> *6. In M/s Malabar Fisheries Co. v. The Commissioner of Income Tax, Kerala, AIR 1980 SC 176, the Supreme Court has considered the nature of a firm and has explained the difference between the mercantile view and the legal view on a partnership firm. Merchants and lawyers have different notions in respect of a firm. Commercial men and accountants are apt to look upon a firm in the light in which lawyers look upon a corporation i.e., as a body distinct from the members composing it, and having rights and obligations distinct from those of its members. Hence, in keeping partnership accounts, the firm is made debtor to each partner for what he brings into the common stock, and each partner is made debtor to the firm for all that he takes out of that stock. In the mercantile view, partners are never indebted to each other in respect of partnership transactions; but are always either debtors to or creditors of the firm. But this is not the legal notion of a firm. The firm is not recognized by lawyers as distinct from member compositing it. The law, ignoring the firm,*

looks to the partners composing it. Property of the firm is their property and what is called the debts and liabilities of the firm are their debts and their liabilities. In a point of law, a partner may be a debtor or the creditor of his co-partner, but he cannot be either debtor or creditor of a firm of which he himself is a member. In para 18 of the decision, the Supreme Court observed:

> *"18. Having regard to the above discussion, it seems to us clear that a partnership firm under the Indian Partnership Act, 1932 is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate rights of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest."*

4. Also relied upon the case of ***Keki Hormusji Gharda and Others Vs. Mehervan Rustom Irani and Another, (2009) 6 SCC 4751.***

5. Learned counsel submits that the cheque issued on behalf of the partnership firm is deemed to be issued by all the partners; thus, one partner cannot sue another partner in case the said cheque gets dishonoured. Therefore, there is no merit in the complaint filed by the respondent No.1.

6. The facts remain that the complaint was filed in the year 2003, summons against the petitioners were also issued in the year 2003 and the matter is pending for defence evidence. Whereas, the present petition has been filed in the year 2014, i.e., after more than a decade, when the case of the complainant/respondent No.1 is at the feg end.

7. So far as the question of law is concerned, the Trial Court has power to decide this issue if it is raised by the petitioners.

8. In view of the above noted facts and considering the fact that the aforesaid criminal complaint is at its feg end, I am not inclined to pass any order in this petition, however, liberty is granted to the petitioners to raise all the issues before the Trial Court at the appropriate stage.

9. The petition stands dismissed accordingly.

Crl. M.A. No. 10831/2014 (for stay)

With the dismissal of the petition itself, the instant application has become *infructuous.* The same is accordingly dismissed.

SURESH KAIT
(JUDGE)

AUGUST 14, 2015
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