HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.198 of 2019

ORDER:

1. The petitioners, who are accused Nos.3 to 6 in C.C.No.563 of 2018 on the file of the VIII Special Magistrate, Miyapur, filed this Criminal Petition under Section 482 Cr.P.C. to quash the proceedings in the above C.C.

2. The brief facts of the case are that the second respondent herein filed a private complaint against accused Nos.1 to 6 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, alleging that accused No.1 company represented by the petitioners along with accused No.2 issued cheque bearing No. 000430 dated 05.10.2017 for Rs.5,00,000/- drawn on Karur Vysya Bank Limited, A.S.Rao Nagar Branch, Hyderabad, in discharge of its legally enforceable debt. When the said cheque was presented by the second respondent in its banker H.D.F.C. Bank Limited, Balanagar Branch, Ranga Reddy District, the same was returned with an endorsement "Payment stopped by Drawer" vide cheque return memo, dated 07.11.2017 and thereafter a notice was issued calling upon the accused to pay the cheque amount within the stipulated time. Even after receipt of notice, the petitioners and other accused

neither paid the amount nor issued any reply. The petitioners arrayed as accused Nos. 3, 4, 5 and 6 on the sole ground that they are Additional Directors of accused No.1 company.

3. A counter-affidavit came to be filed by the second respondent/*de facto complainant* stating that the second respondent had supplied the goods as demanded by the accused in good faith and raised taxable invoices for supply of materials and demanded payments and to clear the said legally enforceable debt the accused had issued the subject cheque, which was returned un-paid. It is also stated that though the petitioners are not signatories to the dishonoured cheque, but they are vicariously liable for the business done with the second respondent since the transactions took place when the petitioners were on record as Additional Directors of accused No.1 Company.

4. Though the counter-affidavit has been filed on behalf of the second respondent/de facto complainant, there is no representation on its behalf on the date of hearing. Hence, heard the learned Counsel for the petitioners; learned Additional Public Prosecutor appearing for the first respondent-State and perused the record.

5. Learned Counsel for the petitioners submitted that the petitioners are not liable to be prosecuted as they are neither signatories nor the direct involvers in the transactions. It is further submitted that the petitioners, who were erstwhile Additional Directors of accused No.1 company, have submitted their resignation prior to the date of issuance of the cheque and therefore, they are not liable to be prosecuted for the aforesaid offence. Learned counsel for the petitioners has placed on record copies of the requisite Forms showing the resignation of the petitioners with effect from 07.08.2017 and submits that as the said resignations are prior to the date of issuance of the cheque, they are not liable for prosecution for the aforesaid offence.

6. In **Harshendra Kumar D. v. Rebatilata Koley and others[1],** wherein the Apex Court held as under:

> "An ex-Director cannot be made accountable and fastened with liability for anything done by company after acceptance of his resignation by company. The Apex Court further held that resignation of appellant as Director of Company was accepted and notified to Registrar of Companies in prescribed form and on the date when the offence was committed by Company, appellant was neither Director of Company nor had anything to do with the affairs of Company and held that if criminal complaints are allowed

[1] (2011) 3 SCC 351

> to proceed against appellant, it would result in gross injustice and tantamount to abuse of process of Court and hence, the proceedings were quashed."

7. A perusal of the material on record would show that the cheque was issued on 05.10.2017, by that date the petitioners have already submitted their resignations with effect from 07.08.2017 and that they are not participating in day-to-day affairs of the company. In view of the law laid down in **Harsheendra Kumar's case (supra)** and having regard to the fact that the petitioners were not the Directors of accused No.1 Company on the date of offence, this Court opines that continuation of proceedings against the petitioners would be an abuse of process of law and the proceedings are liable to be quashed.

8. Accordingly, the Criminal Petition is allowed and the proceedings in C.C.No.563 of 2018 on the file of the VIII Special Magistrate, Miyapur, against the petitioners/A3 to A6 are hereby quashed.

9. Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

JUSTICE G. SRI DEVI

30.09.2019
gkv/Gsn