

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.1091 and 1092 of 2016

COMMON ORDER:

One Smt.Kallem Karuna w/ o K.Ananth Reddy is A.3 in C.C.Nos.163 and 164 of 2015 on the file of the X Special Magistrate, Panga Reddy district, at Hasthinapuram which are outcome of private complaints dt.18.02.2015 filed by the self-same complainant-N.Venkateshwar Reddy against self-same three accused viz: M/s Vijayadurga Estates and Company(for short, 'Company') represented by its Managing Partner Sri Kallem Venugopal Reddy-A.1, against individual Sri Kallem Venugopal Reddy-A.2 and Smt.Kallem Karuna-A.3-the petitioner herein taken cognizance by the learned Magistrate supra for the self-same offences punishable u/ sec.138 and 141 of the Negotiable Instruments Act(for short, 'the N.I.Act'), for dishonour of cheque bearing Nos.137785 for Rs.30lakhs in C.C.No.163 of 2015 and cheque bearing No.137784 for Rs.85,57,000/- in C.C.No.164 of 2015 both dt.04.12.2014 issued in the name of said Venkatewar Reddy-the complainant and the drawer of the cheque from the account of A.1-company is, its Managing Partner-A.2 to say it is the firm that issued cheque as its drawer. A.1 and A.2 are shown as R.3 and R.4 respectively in these Criminal Petitions. The said cognizance orders are the impugment herein.

2. The common contentions in both the quash petitions between the same parties are that the learned Magistrate falsely taken cognizance against the petitioner as there is no any statutory notice issued by the complainant to her and with no specific averments against her and even she is not a signatory of the alleged cheque within the meaning of the drawer of there is no any legally enforceable debt or otherwise and if at all as stated by the complainant, the amounts taken by the A.2, he is liable at best in the absence of showing the amounts lent to the A.1-Company which is a registered partnership firm covered by deed, dt.26.10.2009 to which the petitioner(A.3), A.2, K.Karunakar Reddy and K.Padmaja are partners not even impleaded and there is already a civil suit O.S.No.312 of 2015 for rendition of accounts of A.1-Company with a petition in I.A. No.53 of 2015 on 01.06.2015 including for rejection of plaint and those averments

show she is no way responsible for day-to-day affairs and thereby cognizance order is liable to be set aside for nothing to make her liable for issuance and otherwise of the so called cheques.

3. During the course of hearing, the learned counsel for the petitioner/ A.3 reiterates the same. Whereas, it is the submission of the learned counsel for the complainant that the very complaint averments when constitute cause of action for the complaint filed for the offence committed, cognizance was rightly taken by the learned Magistrate and for the cheque issued by the firm represented by the Managing Partner as drawer of the partners responsible for day-to-day affairs liable and the complaint averments disclose the same and there is nothing to quash the proceedings and stay vacate petition with counter in the present quash petitions reiterated the same and thereby sought for dismissal of the quash petitions.

4. As per the expression of the Apex Court in *Krishna Texport and Capital Markets Limited v. ILAA Agarwal*¹, the statutory notice after dishonour of the cheque within the purview of Section 138 of NI Act given to the company itself is sufficient as notice to the partners and persons responsible for day-to-day affairs without even service of individual notices. Once such is the case, the contention that there is no separate notice issued to the petitioner is untenable. There is no contemplation u/sec.141 r/w 138 of the NI Act of individual notices to all partners/ Directors for notice given to the Company is sufficient.

5. Keeping in mind said principle, the contentions of no individual notice to the petitioner issued is untenable for not a case of notice not given to the partnership firm, much less within the statutory time. In the civil suit for dissolution and rendition of accounts between the partners of the firm in O.S.No.312 of 2015 any allegation against the Managing Partner by others is a matter *inter se* leave about any defence therefrom of the petitioner not responsible for day-to-day affairs as per averments therein, to raise defence in the cheque bounce case by filing the document in relation to it for adjudication of factual disputes for not a ground for quashing and such assumptions without substance much less material in this regard to arrive any conclusion for trial of the

¹ 2015 (8) SCC 28

suit not even commenced by letting any evidence with any proof of that fact in this regard.

6. Coming to the only consideration as to the quash petitioner is responsible for day-to-day affairs of the firm and there is sustainable allegation specifically with accusation in the complaint or not concerned, in the Calendar cases supra, the petitioner was arrayed as A.3. The allegations are mainly against A.1-Company represented by its Managing Partner A.2 who signed and issued cheque and promised to maintain the balance in the accounts and when the cheque presented it was dishonoured and what all averred in para-12 of the respective complaints is that the A.2 mainly issued the cheques for the amounts due to repay in part, on consent and connivance of A.3 supra, that allegation is unsustainable in the absence of any specific allegations demonstrating from the complaint averments to show existence of cause of action against the petitioner-A.3 also as to how and in what manner she is responsible for day-to-day affairs which is undisputedly lacking from the whole reading of the detailed averments in the complaints running in 23 paragraphs including from subsequent paragraphs as to cause of action and mere allegation of they did not agree to make payment for the cheques dishonoured for the notice given is sufficient.

7. Having regard to the above, both the Criminal Petitions are allowed quashing the proceedings against the self-same petitioner/A.3 in respective C.C.Nos.163 and 164 of 2015 on the file of the X Special Magistrate, Ranga Reddy district, and she is acquitted. Her bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date:18.03.2019
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Dr. B.SIVA SANKARA RAO J,