

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2267 of 2014

ORDER :

The petitioners in the revision are M/s.Lepakshi Woven Sacks Industries represented by its Managing Partner P.Lata Kishan Rao W/o. P.Kishan Rao and P.Late Kishan Rao W/o.P.Kishna Rao. The respondent No.2 is the complainant in C.C.No.104 of 2014 in maintaining the private complaint under Section 138 of the Negotiable Instruments Act (for short, 'the NI Act') for dishonor of the cheque bearing No.605097 dated 02.03.2012 issued in his favour by M/s.Lepakshi Woven Sacs Industries, represented by its Managing Partner. The said M/s.Lepakshi Woven Sacks Industries represented by its L.Kishan Rao S/o.P.Madhav Rao was arrayed as the 3rd respondent to the revision. The present revision is maintained against the orders in CrI.P.Nos.2109 and 2110 of 2014 passed by the learned X Special Magistrate, Hyderabad on 14.10.2014 on the petition filed to reopen the complainant's evidence and to add the additional accused respectively one under Section 311 Cr.P.C. and the other under Section 319 Cr.P.C. and after contest from allowing of the petitions by the impugned order in questioning on its sustainability.

2. The contentions in the grounds of revision vis-à-vis the oral submission of the learned counsel for the petitioners supra that as per the NI Act, mandatory provision of service of notice to relevant party within stipulated time and without which and without there is any legally enforcement of debt or liability, there is no cause of action much less to implead a co-accused that too after progress of the trial

while near to the stage of arguments of the calendar case and the impugned order in so far as adding of the additional accused is unsustainable and sought for setting aside the order to that extent by allowing the revision.

3. Learned counsel for the petitioner in support of the arguments placed reliance on the judgment of the Bombay High Court in **Kamal Lakhotia v. Shri Rajesh Parekh: Bhaven Parekh**¹.

4. Whereas it is the submission of the learned counsel for the 2nd respondent/complainant that the impugned order is a reasoned one, supported by reasons to the conclusion running in 6 pages in specifically answering at paras 6 to 10 the point for consideration formulated in adding invoking Section 319 Cr.P.C. that is applicable on the procedure in trial of the cases even to the offences under NI Act for the Special Act no way provide any procedure and thereby sought for dismissal of the revision.

5. Heard and perused the material on record so also the impugned order.

6. No doubt as held by the Apex Court in **Krishna Texport and Capital Markets Limited v. ILAA Agarwal**², 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

¹ 2010 (6) AIR BomR 96

² 2015 (8) SCC 28

individual notices. Once such is the case, the contention that there is no separate notice to the newly added party is untenable.

7. Now coming to the sustainability of adding in the calendar case of 2014 on the application no doubt in 2014 itself by the impugned order dated 14.10.2014 itself, the cause of action for the offence arises from dishonor of the cheque after intimation of dishonor from Bank and after statutory notice and statutory waiting in case of non payment to file a complaint within one month against whoever accused concerned. Once it is filed beyond that one month as contemplated by amended Act particularly referring to Section 142 of the NI Act leave of the Court to condone the delay of impleading required. It is not even a case that the petition is filed with condonation of delay in availing the cause of action after accrual for non availment within one month in seeking extension of time invoking Section 142 of the NI Act. Thereby itself the order of impleading subsequently after lapse of the cause of action period of one month no way sustains. However, that is not the end of the matter herein as the statutory notice is given to the entity the cheque in question was issued by the entity and the cheque signed on behalf of the entity by the Managing Partner and a perusal of the cheque clearly shows Smt. P.Latha Kishan Rao is the signatory on behalf of the entity as the drawar of the cheque. Instead of mentioning Smt. P.Latha Krishna Rao even it is inadvertently mentioned in the private complaint of the entity represented by its Managing Partner as Sri Latha Kishan Rao, it doesn't mean there is

any other person by name Sri L.Kishan Rao. The husband of Smt.Latha Kishan Rao is only P.Kishan Rao and not P.L. Kishan Rao. The inadvertent mention no way absolve the liability of the entity and to that extent even amendment of the cause title the petitioner can invoke before the trial Court rather than adding her again as a new party.

8. With these observations, the revision is disposed of setting aside the adding of the new party by giving liberty to the complainant to avail the remedy of amendment of the mistake in the array of the name in the cause title of the accused entity represented by its Managing Partner correctly arrayed but for the array of the name.

Miscellaneous petitions pending, if any, shall stand closed.

20th February 2019

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Dr. B. SIVA SANKARA RAO, J