MHLA120000102023

ORDER BELOW EXH.39 IN SCC NO.1/2023
Ambadas Vs. Omkar Sugar Factory

1] This is an application moved by accused nos. 2 & 3 under section 255 of the Code of Criminal Procedure. [For short “Cr.P.C.”] for dropping proceedings against them. The accused persons are charged for the offence under Sec. 138 of the Negotiable Instruments Act, 1881. [For short “N.I” Act].

2] Accused seeks exemption from liability in alleged offence on the ground that the accused no.1 is made nominal party to the present case as it is nowhere concern with the alleged transaction. It is stated that the accused no.3 had issued alleged cheque in individual capacity and not by virtue of the position in the company. It is further stated that there is civil dispute between the complainant and accused persons and there is no criminal liability. It is further stated that there is no allegations against the accused no.2 in the commission of offence. Hence, prayed for dropping proceedings against accused nos.1 to 3. The learned advocate for the accused has placed reliance upon:

a] *K. M. Mathew Vs. State of Kerala and Anr.,1992 AIR 2206, 1991 SCR Supl.(2) 364,*

b] *Everest Advertising Pvt. Ltd., Vs. State Govt of NCT of Delhi & Ors., Appeal (crl.) 520 of 2007, SC,*

c] *Mainuddin Abdul Sattar Shaikh Vs. Vijay D Savli, AIR 2015 SC 2579,* **4.** *P.J. Agro Tech Ltd. and Ors. Vs. Water Base Ltd.*

3] The complainant has filed say at Exh.41 and resisted on the ground that application is not tenable as there is no provision of dropping proceedings. The accused nos.2 and 3 have borrowed Rs.5,00,000,00/- from the complainant for business of accused company on promise to supply sugar to him. Accordingly, Hamipatra dated 16/5/2021 (collectively 5) & 4/8/2022 were executed by the accused no.2 & 3 in favour of the complainant. Subsequently, notarized agreement 21/5/2021 was also executed between the complainant and accused persons. Hence, for repayment of said amount the alleged cheque was issued to the complainant which was dishonored. Therefore, accused persons are liable for the offence as the alleged cheque was issued on behalf of the accused company. He stated that this application is moved to procrastinate the case. Hence, application may be rejected. The learned advocate for the complainant has placed reliance upon :

a] *Ashutosh Ashok Parasrampuriya & Anr. Vs. M/s. Gharrkul Industries Pvt. Ltd. & Ors., LL 2021 SC 560.*

b] *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., Appl (crl.) 664 of 2002, SC.*

c] *Kulwant Chauhan & Anr. Vs. The State of Maharashtra & Anr, APL.1023-1433.2019, Bombay H.C.,*

4] Heard the learned advocates for the accused and the complainant.

5] Having considered rival contentions, limited issue arises for adjudication whether proceedings can be dropped against accused persons. Before going into the merits of the application it would be proper to refer sec 141 of the N.I. Act.

<u>Sec. 141 of the N.I.Act : Offences by companies:-</u>

> *If the person committing an offence under Sec.138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that the had exercised all due diligence to prevent the commission of such offence:*

6] On reading above provision it is crystal clear that every person who was in charge and responsible for the conduct of business of the company at the time of commission of an offence are liable for criminal action. It is necessary to mention here that there are specific averments in the complaint that the accused no.2 and 3 have issued alleged cheque as the Chairman and Director of the company accused no.1. To support his contention the complainant has filed Hamipatra dated 16/5/2021 & 4/8/2022 and notarized agreement dated 21/5/2021, on record. In fact, on perusing said documents with naked eyes it reveals that signatory details clearly indicates that the accused no.2 and 3 have signed on it as the Chairman and Director of the accused company. Further accused nos. 2 & 3 have not been made as accused in individual capacity but incapacity of Chairman and Director of the accused Company.

7] It is contention of the complainant that in pursuance of said transaction the alleged cheques dated 30/9/2022 were issued by accused persons to the complainant. However, after looking into the allegations in the complaint and material on record it prima facie appears that accused nos. 2 & 3 are incharge and responsible as Director and Chairman of the company for the affairs of the accused company. Therefore considering facts of the case, process was issued against accused nos.1 to 3. It is pertinent to note that, till date accused persons have not challenged said order of issue process. Hence, it is clear from material on record that, the alleged cheque was issued in discharge of dues of the accused company by accused nos. 2 & 3, thus they are liable under sec 138 NI Act .

8] The net result of the aforesaid discussion is that accused persons are liable for commission of offence under provision of Sec.141 and there are sufficient ground to proceed against them. With all respects to ratio laid down by Hon'ble Apex Court in cited case laws but as the facts of the present case and that in cited case are different same are not applicable to the present case.

9] Thus, in view of above discussion, I am of the considered view that application is devoid of merits. Hence, same deserves to be rejected. In turn, I pass the following order:-

ORDER

Application (Exh.39) hereby stands rejected.

Sd/--

Date :30/11/2023.

(R.D.Kharate)
Judicial Magistrate,F.C., Nilanga.