

Karnataka High Court Mr.Raghavendra Govindaraju ... vs Saimeg Infrastructure Private ... on 29 May, 2017 Author: K.N.Phaneendra IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29th DAY OF MAY, 2017

BEFORE

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

CRIMINAL PETITION NO.8390 OF 2015

Between:

Mr. Raghavendra Govindaraju Sathyanarayana Major in age Director, Bright Sky Energy India Private Limited No.401, 2nd 'C' Cross, 14th Block Nagarabhavi 2nd Stage Bengaluru-560 072 Karnataka ...Petitioner

(By Sri Leeladhar H.P., Advocate)

And:

Saimeg Infrastructure Private Ltd., (A Company incorporated under The Companies Act, 1956) and having its Registered office At 3-4-753, Barkatpura Hyderabad - 500 027 Andhra Pradesh Represented by its Manager & Authorized Signatory 2

Mr. Madhu Gaddam S/o Butchaiah Gaddam ...Respondent

(By Sri Sharan A Kukreja for Sri Namrata Kolar, Advocate)

This Criminal Petition is filed under Section 482 of

Cr.P.C., praying to quash the order of taking cognizance and issue of summons to the petitioner dated 01.02.2013 by the IX Additional Chief Metropolitan Magistrate, Hyderabad, A.P., in C.C.No.88/2013 now transferred as XIV Additional C.M.M., Mayo Hall Unit, Bengaluru in (Old C.C.No.229/2013) New C.C.No.56633/2014 now pending on the file of the XXXVI A.C.M.M. (SCCH-8) Bengaluru in C.C.No.56633/2014 at Bengaluru and allow the petition, etc.

This Petition coming on for hearing on

interlocutory application this day, the Court made the following:-

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent. 2. Though this case is posted for hearing on interlocutory application for vacating stay, with the consent of both the counsels, the matter is heard on merits itself. 3. Two questions have been raised by the learned counsel for the petitioner and requires to be considered by this Court, are; 1. The complainant who has filed the complaint under section 200 of Cr.P.C., for the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act has not made specific averments with regard to the role of accused No.3 (petitioner herein) who was also one of the Directors of the Company, and 2. The accused No.3 Mr. Raghavendra Govindaraju Sathyanarayana was not at all the Director as on the date of the issuance of cheque or as on the date of filing of the complaint. Therefore, the complaint itself was not maintainable against the accused No.3 (petitioner herein). 4. The factual aspects are not in dispute that the complainant/respondent has filed a complaint under Section 200 of Cr.P.C., making the company as first accused and three Directors as accused No.2 to 4 for the offence punishable under Sections 138 and 141 of the Negotiable Instruments Act and on the basis of the said complaint, the trial Court has taken cognizance and issued summons against the respondents No.1 to 4. Calling in question the cognizance taken by the trial Court and as well as the issuance of process against the accused No.3, the accused No.3 is before this Court on the basis of the above said grounds urged. 5. In support of the above said contentions, learned counsel for the petitioner Sri Leeladhar H.P., has submitted that though there is some allegations made in the complaint, they are not sufficient and specific with regard to the role of the petitioner as the Director of the first accused company. When there is no specific averments in the complaint with regard to role adverted as one of the Directors, merely because the accused No.3 was a Director of the Company, he cannot be made responsible for issuance of the disputed cheque. 6. Further he submitted before this Court in respect of point No.2 that the resignation has been tendered by the accused No.3/petitioner herein requesting to remove him from the Director's post with effect from 22.03.2012 itself and Form No.32 was processed and ultimately the Assistant Registrar of Companies has issued a certificate stating that he has been removed from the post of Director w.e.f., 22.03.2012. Therefore, as on the date of filing of the complaint, the petitioner was not a Director of the company. Therefore, no complaint can be lodged against the person, who was not a Director of the Company. 7. Contraverting the above said arguments of the learned counsel for the petitioner, learned counsel for the respondent strenuously submitted that there is specific averments made in the complaint with regard to the role and conduct of the accused in the Company and it is specifically stated what has been transpired between the complainant and the first accused company and particularly the role of the accused No.3/petitioner herein at several paragraphs of the complaint. Therefore, on overall reading of the complaint, one can definitely understand the role of the accused No.3 in the company. 8. Learned counsel also submitted that Form No.32 though produced which is a certified copy issued by the Assistant Registrar of Companies, but it is a disputed document. As on the date of the complaint, there was no acceptance

of resignation of the petitioner herein, there was no communication by the company Registrar in this regard. He also produced a document before this Court today along with a memo, showing that one Mr. Alok who is the person competent to put his Digital Signature to process the resignation letter of the accused No.3/petitioner herein, actually signed the said document on 10.04.2013. In such an eventuality how the document produced by the petitioner came to be in existence is a doubtful circumstance. Therefore, that can only be thrashed out during the course of trial. The Court cannot consider Form No.32 issued by the Assistant Registrar of Companies as conclusive evidence before this Court, though initial presumption can be raised with regard to the certified copies, but, it is only a rebuttal presumption. An opportunity should be given to the complainant to rebut the same before the Court that, as on the date of issuance of the cheque and as well as, as on the date of filing of the complaint, the accused No.3/petitioner herein still continued as a Director and his resignation was not accepted. 9. On the above said rival contentions and on careful perusal of the complaint averments, it is seen that at Para 1 to 9, it has been stated as to the transaction that has taken place between the complainant and the first accused company with regard to the issuance of cheque and as well as the amount due. At Para 12, it is categorically stated that accused No.3 is also one of the Directors of the said company and he in fact forced the complainant by writing letters through e-mail and requesting time, to pay back the money. 10. Even he drew my attention to the letter dated 01.10.2012, which is a copy of the e-mail letter to the Director by the complainant stating that the amount due to the complainant should be paid and it was a formal commitment and the same should be given to the complainant. In fact, this is a letter addressed by the accused No.3 to the complainant. Apart from the above, it is also stated at Para 15 that by virtue of the transaction between the accused No.3 and the company, the complainant has specifically stated that the accused Nos.2, 3 and 4 were the Directors of the accused No.1 company and in-charge of the management of accused No.1 company at the time the offences were committed. 11. Further it is reiterated at Para 12 that on the date of issuance of cheque also accused No.2 to 4 were the Directors of the said company and they were in-charge and responsible for the conduct of the business of the accused No.1 company. 12. On overall reading of the complaint, if the complainant is symbolically aware that the accused had indulged in day to day affairs of the company, at the time of evidence, the complainant is at liberty to give details as to the activities of each and every Director. Once it is stated that he was also involved in the day to day affairs of the company and there is some prima- facie material to establish the same, in my opinion, it cannot be said that there is no material at all to show that there is no averments in the complaint with regard to the role of accused No.3/petitioner herein. Therefore, the first argument of the learned counsel for the petitioner, in my opinion, is not tenable. 13. The second point that has been raised is very interestingly canvassed before this Court that the petitioner was not a Director as on the date of the issuance of cheque and as well as on the date of filing of the complaint. The document very strongly relied upon by the learned counsel is, Form No.32. Of course, it bears the signature of the Assis-

tant Registrar of Companies, which say that the resignation of the accused No.3 (petitioner herein) was accepted with effect from 22.03.2012. An objection has been taken to this document. When the document is objected to by the other side and specifically denied and as well as countered that, the said document is not genuine one, such documents can't be made use of as conclusive evidence to draw any inference. 14. Further the learned counsel has also produced Form No.32, to show that the person who has processed said resignation letter of the accused No.3/petitioner herein has actually processed it in the year 2013, not in the year 2012. In support of that, he has also produced a Xerox copy of the document before this court, which also creates a doubt whether as on the date of filing of the complaint, whether the resignation of the Director was already accepted with effect from 22.03.2012, has to be tested only after parties adduce evidence. 15. These documents produced before the Court clearly indicate that the document produced by the petitioner with regard to the Form No.32 and acceptance of the resignation are all disputed documents in my opinion, which are to be established during the course of trial. 16. In this context, learned counsel for the petitioner has relied upon a decision of the Hon'ble Apex Court reported in 2015 Cri.L.J. 1165 between Pooja Ravinder Devidasani vs. State of Maharashtra & Anr. Of course, in the said case, the Apex Court has considered Form No.32 furnished by the appellant therein. In the said case also, it was canvassed by the other side that Form No.32 furnished by the appellant was disputed by the respondent No.2. Therefore, the Court could not have drawn an inference on the basis of such disputed document. The Apex Court has declined to consider the said argument by giving reasons that, the said document was also relied upon by the complainant for the purpose of making two Directors of the company as accused persons. The Apex Court has considered that the complainant cannot blow hot and cold at the same time, because the complainant has relied upon Form No.32 to the extent of the portion where new Directors have been added. The remaining portion of the said document has been disputed that with regard to resignation of one of the Directors on that ground, the Hon'ble Supreme Court has come to the conclusion that it cannot be a disputed document, because the complainant has accepted and admitted the said document, so far as the other two Directors are concerned. Resignation of one of the Directors also contained in the same document in Form No.32. Therefore, on the logical inference that it is an admitted document, the Apex Court has stated that, that cannot be a disputed document and on that ground quashed the proceedings against the Director who has resigned from the position. 17. The above said ruling is not in a straight jacket manner applicable so far as the present case is concerned for the simple reason that, here the Form No.32 is totally disputed by the complainant and to that extent, he has also produced some documents to show that this resignation was processed by the competent authority in the year 2013. Therefore, a doubt arises, whether actually on the date of Form No.32 issued by the Assistant Registrar of Companies, it was accepted or it was actually accepted on 25.04.2013. Therefore, a serious doubt arises, whether as on the date of the complaint, the accused No.3 was not a Director and his resignation was accepted with effect from 22.03.2012 itself.

Therefore, the said fact is a disputed fact, which cannot be decided while deciding the petition under Section 482 of Cr.P.C. 18. In the above said facts and circumstances, the petitioner is at liberty to produce these documents before the trial Court and establish on facts that he was no more a Director of the company from 22.03.2012 itself, so as to exonerate himself from the liability as pleaded by the company. Under the above said facts, I do not find any strong reasons to interfere in the cognizance taken by the trial Court and as such, the petition is liable to be dismissed. Accordingly it is dismissed. Sd/- JUDGE
KMV*