

Serial No. 15
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 87 of 2021

Date of Order: 01.12.2021

Mark Alexander Davidson

Vs.

Rahat Bawri (HUF) & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. S. Agnihotri, Adv.

For the Respondent(s) : Mr. S. Jindal, Adv. (For R/1)
Mr. A. H. Kharwanlang, Adv. (For R/4)
None for R/2 & 3

1. Heard Ms. S. Agnihotri, learned counsel for the petitioner, who has submitted that the petitioner was arrayed as one of the accused in an ongoing criminal proceedings before the Court of the Additional Deputy Commissioner (Judicial) in Cr Complaint Case No. 70(T) of 2020 under Section 138 r/w Sections 141 and 142 of the Negotiable Instruments Act, 1881 r/w Sections 403/406/409/417/418/420 IPC which is a complaint filed by the respondent No.1 herein on an alleged dishonour of cheque drawn on HDFC Bank, Kalapahar, Guwahati Branch.

2. Ms. S. Agnihotri, learned counsel has submitted that the petitioner herein has since retired from the partnership firm known and styled as "Twelve Baskets" on 01.04.2018 and is completely disconnected from the affairs of the said firm. However, the complaint of the respondent No.1 before

the Trial Court is with regard to the dishonour of number of cheques purportedly issued by the said firm ranging from the period dated 15.10.2019, by which date the petitioner was no longer involved with the business of the said firm.

3. The petitioner was surprised to receive summons by the Court in connection with the aforementioned Cr Complaint Case and has therefore, approached this Court with this instant petition and further prayer that the proceedings against him may be quashed.

4. It is submitted that this petition may be admitted and the petitioner undertakes to issue notice upon respondents. In the meantime, it is prayed that the proceedings, as far as the petitioner is concerned, before the Trial Court may be stayed in the interim, considering the fact that the Trial Court had posted the case for hearing on the issue of prayer for interim compensation, which at this juncture would cause prejudice to the petitioner where, *prima facie* no case has been made out against him.

5. Also heard Mr. S. Jindal, learned counsel for the respondent No.1 who has accepted notice and has stood before this Court with no objection to the admission of this instant petition. However, strong objection was taken to the prayer of grant of interim stay.

6. Mr. Jindal has submitted that the fact that the petitioner has stated that he has since resigned from the said partnership firm, reliance of which was placed on the purported deed of retirement dated 01.04.2018, copy of which was annexed as Annexure P-4 to this petition, would not exonerate the

petitioner from his liability, in fact from vicarious liability in accordance with law. Reference is made to Section 32 of the Indian Partnership Act, 1932 particularly sub-Section 3 which mandates that public notice is required to be given in the event of the retirement of a partner, the mode of which has been spelled out at Section 72 of the said Indian Partnership Act. There is no evidence in this regard as far as the petitioner is concerned and as such, he cannot claim exemption from the proceedings initiated against him. Reference was also made by Mr. Jindal to the case of **Meera Raju & Ors. Vrs. State Bank of Travancore**: 2012 SCC Online Mad 3580 para. 19 and 20 and has submitted that at paragraph 19 of the aforementioned case the Hon'ble Madras High Court has held that *"It is clear that a retiring partner will be liable on behalf of the firm which would bind the firm until public notice as prescribe by Section 72 is given"*.

7. At this juncture, this Court would not travel further to go into the merits and the facts and circumstances of the dispute between the parties, however whatever has been contended by the learned counsel for the respondent No. 1 would be a subject matter of hearing at the relevant point of time.

8. This Court is also mindful of the fact that in similarly situated case involving the respondent No.1 herein, this Court has temporarily restrained the respondent No.1 herein from taking any coercive steps against the accused/petitioner therein.

9. In consideration of the submission made, at the outset, the petitioner is hereby directed to take steps on respondents No. 2 and 3 by Dasti service as

prayed for, returnable within 2(two) weeks. Respondent No. 4 has appeared through Mr. A.H. Kharwanlang, learned counsel and as such, no service in this regard is required.

10. On the prayer of the petitioner for stay of the proceedings, it is the considered opinion of this Court that the rival contention would be taken up in due course and as such, a level playing field would allow the parties to freely agitate their respective case. Viewed accordingly, the respondent No.1 is directed not to take any coercive steps against the petitioner herein until further orders.

11. List this matter in the first week of February, 2022 as prayed for.



Judge

Meghalaya
01.12.2021
"Tiprilynti-PS"