



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF MARCH 2014

BEFORE

THE HON'BLE MR. JUSTICE S.N.SATYANARAYANA

CRIMINAL PETITION NO.5772 OF 2013

BETWEEN:

1. PANKAJ DHIRAJLAL SANGHVI,
DIRECTOR, VIJAY STEELS TUBES
& FITTINGS PVT. LTD.,
AGED YEARS,
R/AT V 302, MANTRI PARADISE,
BANNERGHATTA ROAD,
BANGALORE - 560 076.

2. SURYAKANTH NANALAL DOSHI,
DIRECTOR, VIJAY STEELS TUBES
& FITTINGS PVT LTD.,
AGED YEARS,
R/AT NO.535, 9TH MAIN, 2ND STAGE,
SIDDHARTHA LAYOUT,
BANGALORE - 560 076.

... PETITIONERS.

(BY SRI.VINOD KUMAR.M, ADV.)

AND:

M/S.RELIGARE FINVEST LTD.,
NO.10, PRIDE ELITE BUILDING,
201, 2ND FLOOR, MEUSIUM ROAD,
BANGALORE - 560 025,
ALSO AT
THE ESTATE 9TH FLOOR, NO.48/26,
121, DICKENSON ROAD,
BANGALORE - 560 023.

REPRESENTED BY ITS
DULY CONSTITUTED ATTORNEY/
AUTHORISED REPRESENTATIVE
MR.ALI.HASKAR P.K.

... **RESPONDENT.**

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THIS PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.32585/2011 PENDING ON THE FILE OF XV ACMM, BANGALORE, IN SO FAR AS THE PETITIONERS ARE CONCERNED.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Accused Nos.3 and 5 in C.C.No.32585/2011 on the file of XV ACMM Court, Bangalore, seeking quashing of the aforesaid proceedings as against them on the ground that they are not necessary parties to the proceedings, which is initiated under Section 138 of the N.I. Act by the complainant – respondent herein.

2. Admittedly the transaction between complainant – respondent and the first accused – company is in respect of financing provided by the respondent – complainant in favour of Vijay Steels Tubes and Fittings Pvt. Ltd., for its business

activities. The material available on record discloses that the liability for repayment of entire loan from the first accused – company is not only by the Managing Director of first accused, but on all the Directors of the first accused – company and the cheque which is dishonoured, is not issued to clear the dues in the course of business transaction of the company on the other hand, it is the cheque which is issued towards repayment of loan, which was borrowed by the first accused from the respondent. The present proceedings which is initiated for dishonour of cheque is challenged by two of the Directors on the ground that they are not the signatories and there is no nexus between the business of first accused – company and its Directors. In support of the same, they relied upon the Judgment of the Apex Court in the matter of Mrs. Anita Malhotra Vs. Apparel Export Promotion Council & Anr. reported in AIR 2012 SC 31.

3. Heard the counsel for petitioners and perused the Judgment. Nodoubt in a financial transaction where

issuance of cheque is pursuant to commercial transaction by the company with respect to third party, i.e., either supplier or any other creditor of the company, the Principal Officer of the Company, who is directly responsible with the said transaction is required to be prosecuted for dishonour of cheque, but in the instant case the fact situation is different. It is in respect of loan transaction which is there between the complainant, non banking finance company and the first accused – company, which is manufacturer of steel tubes and fittings and incidentally the said loan transaction is not only between the finance company, which has lend the loan, and the company, which has borrowed the loan, it also includes the Director of borrowing company in the said transaction. When the borrowing company along with all the Directors has agreed to repay the loan in a particular manner, any cheque that is issued not only bind the signatory, on behalf of the company, but all the Directors of the Company, who are responsible for repayment of loan. In that view of the matter, the Judgment, which is referred supra, will have no bearing

on the facts on hand. Therefore accused Nos.3 and 5 in C.C.No.32585/2011 cannot take shelter under the said Judgment and seek quashing of proceeding as against them. Accordingly the petition is dismissed.

**Sd/-
JUDGE.**

AGV.