

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL Nos.403-405 OF 2019**  
**(Arising out of SLP(Crl.) Nos.9626-28 of 2017)**

**A.R. RADHA KRISHNA**

**... APPELLANT**

VERSUS

**DASARI DEEPTHI & ORS.**

**... RESPONDENTS**

**O R D E R**

1. Leave granted.
2. These appeals, by special leave, are directed against the order dated 22.09.2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition Nos. 6508, 6530 & 6531 of 2017, whereby the High Court allowed the Criminal Petitions filed by respondent nos. 1 and 2 and set aside the cognizance order passed by the trial court.
3. The case of the prosecution in brief is that the appellant had entered into an investment agreement with M/s Dhruvi Infra Projects Limited (accused no.1) on 01.12.2013 on the basis of representation of respondent nos. 1 and 2 herein, who were the Directors of the said Company. The appellant invested a total

amount of Rs.2,11,50,000/- in the said project. According to the appellant, as on 31.03.2016, a total amount of Rs.1,81,50,000/- was left to be repaid to him along with applicable interest on it. Thereafter, upon several representations by the appellant, M/s Dhruti Infra Projects Limited agreed to repay the amount *via* issue of seven cheques in favour of the appellant. Six cheques for Rs.25,00,000/- each and one cheque for Rs.30,00,000/- were drawn on different dates by the authorised signatory, *i.e.*, M.D. of M/s Dhruti Infra Projects Limited, which were returned dishonored, on presentation by the appellant, with the remark "*Payment stopped by Drawer*".

4. Thereafter, the appellant issued a legal notice on 04.08.2016 to (i) M/s Dhruti Infra Projects Limited (accused no. 1); (ii) M.D. of M/s Dhruti Infra Projects Limited (accused no. 2); (iii) Respondent No. 1 and Respondent No. 2 (as Directors).

5. Consequently, proceedings were initiated by the appellant under Sections 138 & 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). During the pendency of the said complaint, the respondent nos. 1 and 2 made an application before the High Court for the quashing of the proceedings initiated against them. The High Court, as mentioned above, allowed the

Criminal Petitions filed by respondent nos. 1 and 2 and quashed the proceedings against them. Being aggrieved, the appellant has approached this Court through the instant appeals.

6. Learned counsel for the appellant, Mr. Y. Rajagopala Rao vehemently contended that the High Court was not justified in allowing the quashing petitions by invoking its power under Section 482 Cr.P.C. despite the fact that a *prima facie* case was made out against respondent nos. 1 and 2 in the complaint filed by the appellant. He contended that the trial court, on the basis of the material on record, took cognizance of the case against respondent nos. 1 and 2 under Sections 138 and 141 of the Act. Learned counsel for the appellant further submitted that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to “*Stop Payment*”.

7. On the other hand, learned counsel for the respondents, Mr. Kaushal Yadav submitted that the answering respondents are only non-executory Directors of the company, neither playing any role in the conduct of day-to-day business of the company nor being in charge of the affairs of the company. Further, he also contended that merely by virtue of being a Director in a company, one cannot

be deemed to be in charge of, or responsible to, the company for the conduct of its business.

8. In any case, the learned counsel for the respondents further submitted that his clients are ready to pay the balance amount of Rs.70,00,000/- to the appellant within a period of six months. However, learned counsel for the appellant did not agree to the same.

9. Having heard learned counsel for the parties and carefully scrutinizing the record, we are of the considered opinion that the High Court was not justified in allowing the quashing petitions by invoking its power under S.482, Cr.P.C. In a case pertaining to an offence under S. 138 and S. 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under S. 482, Cr.P.C., must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a

company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under S. 482, Cr.P.C. when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See ***Gunamala Sales Private Limited v. Anu Mehta and Ors.*, (2015) 1 SCC 103**]

10. A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that the respondent nos. 1 and 2 were actively participating in the day-to-day affairs of the accused no.1 – company. Further, the accused nos. 2 to 4 (including the respondent nos. 1 and 2 herein) are alleged to be from the same family and running the accused no.1 – company together. The complaint also specifies that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to “*Stop Payment*”. No evidence of unimpeachable quality has been brought on record by the respondent nos. 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court.

11. In the above view of the matter, the instant appeals are allowed and the impugned order dated 22.09.2017, passed by the

High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition Nos.6508, 6530 & 6531 of 2017, is set aside and that of the trial court is restored.

12. Before parting with the matter, we make it clear that we have not expressed any opinion on the merits of the case pending before the trial court. Needless to say, the trial court will adjudicate the matter on its own merits uninfluenced by any of the observations made herein.

13. However, keeping in view the nature of the case, we direct the trial court to expedite the trial and dispose of the same in accordance with law.

.....**J.**  
**(N.V.RAMANA)**

.....**J.**  
**(MOHAN M.SHANTANAGOUDAR)**

.....**J.**  
**(INDIRA BANERJEE)**

**NEW DELHI;**  
**FEBRUARY 28, 2019.**

ITEM NO.1

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s).9626-9628/2017

(Arising out of impugned final judgment and order dated 22-09-2017 in CRLP No.6508, 6530 & 6531 of 2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh)

A.R. RADHA KRISHNA

Petitioner(s)

VERSUS

DASARI DEEPTHI &amp; ORS.

Respondent(s)

Date : 28-02-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR.JUSTICE N.V. RAMANA  
HON'BLE MR.JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MS.JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr.Y.Raja Gopala Rao, AOR  
Mr.B.Mohan, Adv.  
Ms.Y.Vismai Rao, Adv.  
Mr.K.Sharat Kumar, Adv.

For Respondent(s) Mr.Kaushal Yadav, AOR  
Ms.Sunita Yadav, Adv.  
Mr.Nand Lal Kumar Mishra, Adv.  
Ms.Ankita Aggarwal, Adv.  
Ms.Shweta Yadav, Adv.

Mr.S.Udaya Kumar Sagar, AOR  
Ms.Bina Madhavan, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Keeping in view the nature of the case, we direct the trial court to expedite the trial and dispose of the same in accordance with law.

(SATISH KUMAR YADAV)  
AR-CUM-PS

(RAJ RANI NEGI)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)

