

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**
+ CRIMINAL PETITION Nos.11336 and 13561 of 2014

% 11-09-2015

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CRIMINAL PETITION No.11336 of 2014

#Mr.Narendra urangi and 2 others

....Petitioners

Vs.

\$ M/s.Greenmint India Agritech Pvt. Ltd and another

.... Respondents

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CRIMINAL PETITION No.13561 of 2014

#Sigma Agrocure Products Private Limited and another

....Petitioners

Vs.

\$ M/s.Greenmint India Agritech Pvt. Ltd and another

.... Respondents

!Counsel for the Petitioners : Smt.G.Jhansi

Counsel for the Respondents: Sri V.Prabhakar

<Gist :

>Head Note:

? Cases referred:

1. (2005)4 SCC 530
2. (2011)1 SCC 74
3. (2015)4 SCC 609
4. (2012)5 SCC 661
5. (2005)8 SCC 89
6. (2000)1 SCC 1
7. (2008)13 SCC 703
8. 1973 SCC 491
9. (2014)10 SCC 373
10. (1987)3 SCC 684
11. (2007)3 SCC 693
12. (2010)3 SCC 330
13. 2010(2) ALD (CrI.) 564 (SC)
14. 2013(2) ALD (CrI.) 331 (AP)
15. AIR 2015 SC 675
16. AIR 2010 SC 1898

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION Nos.11336 & 13561 of 2014

COMMON ORDER :

The petitioners in Crl.P.No.11336 of 2014 are A-3 to A-5 and the petitioners in Crl.P.No.13561 of 2014 are A-1 and A-2 of C.C. No.262 of 2014 on the file of II Special Magistrate, Hyderabad for the offence punishable under Section 138 of Negotiable Instruments Act, outcome of the private complaint filed by the 1st respondent-complainant for dishonour of the cheque bearing No.369876, dated 19.02.2014 for Rs.50,00,000/-. It is from the cause of action and after statutory notice, dated 24.02.2014 served on the accused persons 1 to 5 covered by acknowledgments dated 25.02.2014 and after the statutory waiting for non-payment and no reply, the complaint is filed.

2) The present quash petitions filed – (a) so far as by the petitioners A-3 to A-5 are that they are mere directors and they are no way responsible for the day to day affairs of the Company which is a statutory requirement under Section 141 of the N.I.Act with specific allegations in the complaint for taking cognizance and the private complaint case without even such averments and without proper application of mind on the said requirement taken cognizance for the offence by the learned Magistrate from a stray sentence at para No.7 of the Complaint 'that all the accused persons are looking after the business affairs of the Company and being responsible for the business affairs of the Company, having committed the offence under Section 138 of the N.I.Act- - - - for the cheque dishonoured - - - - for funds insufficient - - - hence they are liable to be punished for the said offence', which is not

sufficient in the absence of clearly making a mention in the complaint as an averment as to the specific and categorical role played by any of the directors to make them liable particularly for A-3 to A-5 to make them vicariously liable, that without which the criminal liability cannot be fastened so casually, that of A-4 and A-5 are even ladies and homemakers unnecessarily lugged in to exert undue pressure to extract money irrespective of merits of the case even they are not remotely connected to the entering of alleged sale and purchase agreement between A-1 company and the defacto-complainant and the calendar case cognizance results miscarriage of justice, for the reason even the complaint averments taken on face value attract no any offence.

(b) In so far as A-1 Company and A-2 its Managing Director concerned, it is averred that A-1 and A-2 are also falsely and erroneously implicated even they are innocent, to extract money by exercise of threat, the material filed with complaint shows the product supplied by the complainant were returned as per Clause II of sale-cum-purchase agreement dated 07.10.2013 and as such there is no legally enforceable debt in subsistence, that the Court below did not apply its mind in this regard in taking cognizance and issuing summons which is nothing but abuse of process, that A-1 Company filed arbitration O.P. No.1784 of 2014 before 24th Additional Chief Judge, City Civil Court, Hyderabad against the complainant and also filed application under Section 9 of the Act to direct the complainant herein to take back the stock from Kranthi Road Transport Private Limited and that once the stock is returned that is not even receiving by its refusal by the complainant, there is no legally enforceable debt or other liability and continuation of proceedings are nothing but gross abuse of process and hence to quash. It is the submission of the accused/quash petitioners supra

by reiteration of the above contentions.

3) Whereas it is the submission by the complainant that the complaint itself when mentions the averment of the accused persons 3 to 5 are also liable for day to day business of the A-1 entity along with A-2 Managing Director, being the directors from that specific allegations the complaint is sustainable and cognizance of the offence since rightly taken by the Court for the cheques issued for legally enforceable debt dishonoured, that the so called return of the stock when not even received for the consignment having taken that cannot be returned and cheque issued for the stocks dispatched not in dispute and there is no even any reply to the statutory notice served on them and thus all the accused are liable and thus the quash petitions are liable to be dismissed at the threshold for the reason of the statutory presumptions against them to adduce any defence evidence to rebut under the reverse onus clause if at all there is no any legally enforceable debt or other liability to subsist and hence to dismiss the quash petitions.

4) Heard both sides as referred supra and at length and perused the material on record.

5) From the above rival contentions to answer in so far as liability of a Company concerned, law is very clear on the principle of alterego. The Constitutional bench in ***Standard Chartered Bank V. Directorate of Enforcement***^[1] held that Company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. Though it was held that it is not expressing any opinion on the question whether a Corporation could be attributed with requisite Mensrea to prove the guilt the

same is later clarified by the subsequent expression of the Apex Court in ***Iridium India Telecom Ltd. V. Motorola Inc.***^[2] referring to the several expressions of the American and England Courts in paras 59 to 64 of the expression page Nos.98 to 100 in nutshell that a Company in many ways be like a human body they have a brain and nerve centre which controls what they do. Some of the people in the Company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent directing the mind and will of the Company and control what they do. The state of mind of these managers is the state of mind of the Company and is treated the law as such. The fault of the manager will be the personal fault of the Company. The knowledge and intention must be imputed to the body corporate. It was concluded therefrom by referring to ***Standard Chartered Bank*** para No.6 supra of a Company is liable to be prosecuted and punished for criminal offences in deviation to the earlier authorities in India of Corporations cannot commit a crime, for generally accepted modern rule is that except for such crime as a corporation is held incapable of committing by reason of the fact that they involve personally with maliciolus intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agent. The criminal intent of the alterego of the Company, that is the personnel group of persons that guide, the business of the Company would be imputed to the Company/corporation. It was the observation in ***Iredium*** supra that was again followed in latest three Judge bench expression of the Apex Court in ***Sunil Bharti Mittal V. C.B.***^[3]. It was observed in ***Sunil Bharti Mittal*** (supra)

that the corporate entity, an artificial person acts through its officers, directors, managing director, charman etc, if such fact continues an offence involving Mensrea it would normally be evident and action of that individual who would act on behalf of the Company in particular in relation to criminal conspiracy. However, the cordial principle of criminal jurisprudence is that there is no vicarious liability unless the statute specifically provides so. An individual who has perpetrated the commission of an offence on behalf of a Company can be made as an accused along with the Company, if there is sufficient material on his active role. Second situation is knowledge it may be implicated is in those cases where statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating by such a provision. It is therefrom referring the Section 141 of N.I.Act in particular as an example at para No.44 of **Sunil Bharti Mittal** supra and the expression of the Apex Court in **Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd**^[4] held that the group of persons that guide the business of the company if the criminal intent that would be imputed to the body corporate and in this back drop Section 141 of the N.I.Act has to be understood. Such a position is therefore because of statutory intendment making it a deemed fiction. In **Sunil Bharti Mittal** supra it also referred the three Judge bench expression of the Apex Court in **S.M.S.Pharmaceuticals Ltd. V. Neeta Bhalla**^[5]. In **S.M.S.Pharma** supra at para No.8 it is observed that there is no universal rule that a Director of a Company is in-charge of its every day affairs. It all depends upon the respective roles assigned. A company have managers or secretaries for different Departments and may have more than one Manager or Secretary.

In ***Aneeta Hada*** supra it is observed with reference to Section 141 of N.I.Act that the deeming fiction makes the functionaries of the Companies to be liable as its own signification. In fact before ***Aneeta Hada, S.M.S.Pharmaceuticals, Standard Chartered Bank*** and ***Iridium India*** supra, some of which referred in ***Sunil Bharti Mittal***, the expression of the Apex Court in ***Anil Hada V. India Accrelic Limited***^[6] speaks in a case under Section 141 of the N.I.Act that even the Company or Corporation not impleaded as accused the proceedings against a Director can be issued. The same later held not good law in ***Aneeta Hada (I) V. Godfather Travels & Tours (P) Ltd.***^[7] saying without the Company impleaded as accused on the principle of *Lex non cogit ad impossibilia* and from that legal snag if the Company is not made accused, the proceedings against others cannot be. The said principle of ***Aneeta Hada*** (1) then came before three Judge bench expression in ***Aneeta Hada*** (2) supra where the ***Anil Hada*** is overruled and ***Aneeta Hada*** (1) is affirmed in saying at paras 51 to 59 the relevancy of which reads the decision in ***Anil Hada*** has to be treated not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the Company on the doctrine referred supra. Section 141 of the N.I.Act makes the other persons vicariously liable for commission of an offence on the part of the Company and to attract the vicarious liability the condition precedent laid down in Section 141 of the N.I.Act has to be satisfied. Thus, the words as well as the Company used therein makes it absolutely and unmistakably clear that when the Company can be prosecuted, then the only persons mentioned in the other categories could be vicariously liable for the offence subject to the

averments in the petition and proof thereafter. For maintaining prosecution under Section 141 of the N.I.Act, arraying of a Company as an accused is imperative. The other categories of offenders can only be brought in the drag net on the touch stone of vicarious liability as the same has been stipulated in the petition itself as held in ***State of Madras V. C.V.Parekh***^[8]. The same question when again came for consideration before the two Judge bench in ***Anil Gupta V. Star India Private Limited***^[9], ***Aneeta Hada (2)*** of two Judge bench referred supra is reiterated in para No.12 in saying the decision in ***Anil Hada*** supra is over ruled with the clarification as stated in Para No.51 of ***Aneeta Hada (2)*** and the decision in ***U.P.Pollution Control Board V. Modi Distillery***^[10] has to be restricted to its own facts. In ***S.M.S Pharmaceuticals*** (three Judge bench) supra also it is made clear with reference to section 141 of the N.I.Act that it is necessary to aver that at the time the offence was committed, the person accused was in-charge of and responsible for conduct of business of the Company and without this averment being made in the complaint, the requirements of Section 141 of the N.I.Act cannot be said to be satisfied. A clear case should be spelled out in the complaint against the persons sought to be made liable to show as incharge of and responsible to the Company for the conduct of its business. Every person connected with the Company thereby shall not fall within the ambit of Section 141 of the N.I.Act but of those persons who were incharge of and responsible for the conduct of business of the Company at the time of commission of the offence. The liability arises on account of conduct or act or omission on the part of a person and not merely on account of holding an offence or a position in a Company. The complaint

therefore must disclose the necessary facts which make a person liable, specifically aver that at the time of offence committed, the person accused was incharge of and responsible for conduct of the business of the company. A director cannot be deemed to be incharge of and responsible to the Company for the conduct of the business for no deemed liability of a Director from that status, unless the aforesaid requirement of Section 141 of the N.I.Act has been averred as a fact in the complaint. In another expression referring to Section 141 of the N.I.Act by the Apex Court in ***Saroj Kumar Poddar V. State***^[11] referring to ***S.M.S. Pharmaceuticals*** supra apart from another expression, that for dishonour of cheque making of requisite averments in the complaint is a statutory requirement and the allegations satisfy the same, in the absence of which the proceedings are liable to be quashed. The other expression of the Apex Court two Judge bench in ***National Small Industries Corporation V. Harmeet Singh***^[12] also referring to ***Parekh*** supra and ***S.M.S.Pharmaceuticals*** supra among other expressions held that vicarious liability on the part of any Director or other person as incharge and responsible to the conduct of business be specifically averred, though same is not required against a Managing Director. Section 141 of the N.I.Act is very clear that it must be shown that the person for vicariously liable should be at the time of offence committed incharge of and responsible to the Company for conduct of its business. Otherwise every person connected with the Company shall not be made liable but those persons responsible for conduct of its business. A Director of a Company who is not incharge and not responsible for conduct of business at relevant time will not be made liable for the criminal offence. As the liability arises from

being incharge and responsible for conduct of business of the Company at the relevant time of commission of offence. It is not even sufficient to make a bald and cursory statement in a complaint that the Director is incharge of and responsible to the Company for conduct of its business without saying anything more as to his role. The complaint should spell out as to how and in what manner a co-accused was incharge of or responsible to the accused company for conduct of its business. Same is also reiterated in another two Judge bench expression of the Apex Court in ***Central Bank of India V. Asian Global Limited***^[13] relying on ***S.M.S. Pharmaceuticals*** and those were followed by a single Judge expression of this Court in ***Arrakuntal V. Ganeshan V. Sai Rama Cotton Syndicate***^[14] . Even other latest expression in ***Poojari Ravinder Devi Dasani V. State of Maharashtra***^[15] reiterates the same reliance upon ***National Small Industries Corporation*** supra.

6) Having regard to the above propositions which are in one line speak that a bald averment in complaint is not even sufficient but for a specific allegation as to how a Director of a company who stands in a different footing to the Managing Director by his status liable or to be made liable for the offences punishable under Section 138 of the N.I.Act.

7) Here a perusal of the very complaint relevant portion extracted supra, but for a bald statement, there is no material averment as to how A-3 to A-5 are liable. It is not even the case from perusal of the cheque of any of them are signatories, along with A-2 on behalf of A-1 entity. The mere serving of notice and their silence even with no reply, no way make them liable thereby,

but for to draw adverse inference so far as A-1 and A-2 concerned as to but for no defence they could have replied as laid down in Para No.15 of the Apex Court's expression in **Rangappa V. Mohan**^[16] (three Judges bench). The cognizance taken by the learned Magistrate so far as A-3 to A-5 is thus unsustainable and is liable to be quashed.

8) Now, coming to A-1 Company and A-2 Managing Director concerned as discussed supra, along with A-1 by virtue of the status apart from A-2 is signatory to the cheque issued not in dispute is liable. It is needless to say as per **Rangappa** supra, the burden is on the accused under reverse onus clause from the cheque routed from the account of the accused No.1 company signed by A-2 on behalf of the A-1 that too there are transactions. Thus, it is for the accused to discharge to rebut the presumption by entering the defence as to how the amount covered by the cheque is not legally enforceable debt or other liability. The contention that the stock is entitled to be returned if not to the standard or the stock is returned through some transport agency and complainant not received, that by itself does not absolve the liability for not a case of as on the date of cheque issued, there is no debt or other liability. Needless to say, this observation no way takes away any defence of the accused 1 and 2 as to the stock is not to the standard quality and thereby liable to be returned and there from the amount therein to be deducted out of the cheque amount, if any. Even that itself does not absolve from total liability, but for to the proposition if any, unless it extends to the total liability and it is premature for this Court to say anything muchless to quash the proceeding but for the matrix on facts require the accused 1 and 2 to face the trial, that too having

received the statutory notice and failed to reply and adverse inference arises against them besides the presumption against them under reverse onus clause. Thereby, there is nothing to interfere so far as the cognizance taken by the learned Magistrate against A-1 and A-2 concerned.

Crl.P.No.11336 of 2014:

9) In the result, the Criminal Petition is allowed and all the proceedings in C.C. No.262 of 2014 on the file of II Special Magistrate, Erramanzil, Hyderabad in so far as A-3 to A-5 are quashed. The bail bonds of the accused Nos.3 to 5, if any, shall stand cancelled.

Crl.P.No.13561 of 2014:

10) In the result, the Criminal Petition is dismissed.

11) As a sequel, miscellaneous petitions pending if any in the above criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

11.09.2015

N.B: L.R. Copy to be marked.
(b/o) ksh

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- [\[1\]](#) (2005)4 SCC 530
 - [\[2\]](#) (2011)1 SCC 74
 - [\[3\]](#) (2015)4 SCC 609
 - [\[4\]](#) (2012)5 SCC 661
 - [\[5\]](#) (2005)8 SCC 89
 - [\[6\]](#) (2000)1 SCC 1
 - [\[7\]](#) (2008)13 SCC 703
 - [\[8\]](#) 1973 SCC 491
 - [\[9\]](#) (2014)10 SCC 373

[\[10\]](#) (1987)3 SCC 684

[\[11\]](#) (2007)3 SCC 693

[\[12\]](#) (2010)3 SCC 330

[\[13\]](#) 2010(2) ALD (CrI.) 564 (SC)

[\[14\]](#) 2013(2) ALD (CrI.) 331 (AP)

[\[15\]](#) AIR 2015 SC 675

[\[16\]](#) AIR 2010 SC 1898