

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Crl.P.No.2367 of 2015
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ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.230 of 2014 of the IX Metropolitan Magistrate, Cyberabad, Kukatpally, Ranga Reddy District.

2. Petitioners herein are arrayed as accused in the said C.C. before the said Court and are alleged to have committed offences under Sections 138 and 142 of the Negotiable Instruments Act, 1882 (for short 'the Act').

3. The 2nd respondent had lodged a private complaint under Section 200 Cr.P.C. contending that 1st petitioner is a Company incorporated under the Companies Act, 1950 for the purpose of development of dairy products and petitioner Nos.2 to 4 are its promoters and directors. It is alleged that petitioner Nos.2 to 4 approached 2nd respondent in September 2012 with a request to take over the unit of 1st petitioner and agreed to transfer shares in 1st petitioner in favour of 2nd respondent; that petitioner Nos.1 to 4 had agreed to transfer 51% shares in the 1st petitioner company to 2nd respondent on the net assets of the 1st petitioner after settlement of loans availed by 1st petitioner and that 2nd respondent had agreed to the said proposal; and that subsequently from 25-08-2012 to 25-02-2013, the 2nd respondent had remitted a sum of Rs.1,49,63,089/- as per directions of the petitioners. It is further alleged that 2nd

respondent came to know that petitioner Nos.2 to 4, with a *mala fide* intention to defraud 2nd respondent had started selling high yielding buffaloes and had misappropriated the sale proceeds thereof and neglected to manage the dairy farm on expected lines. The 2nd respondent alleged that when he questioned the said illegal sale of buffaloes, petitioner Nos.2 to 4 confessed the mischief played by them and promised to refund the entire money paid/remitted by the 2nd respondent with interest at 18% per annum and had also agreed to cancel the oral sale transaction; that petitioner No.2 on behalf of petitioner Nos.1, 3 and 4 executed promissory notes for partial liability and the deal was cancelled mutually.

4. It is further alleged that 2nd petitioner, on his behalf, and also on behalf of petitioner Nos.1, 3 and 4, issued six cheques for a sum of Rs.51,90,000/- in all towards part payment of the said liability on ICICI Bank Limited, Kukatpally Branch, Hyderabad; 2nd respondent presented cheques through its bankers Corporation Bank, Gunrock Branch, Secunderabad for collection through CTS clearing and the said cheques were dishonoured by the ICICI Bank on the ground of "funds were insufficient" in the account of the 2nd petitioner and the same were returned by the Corporation Bank vide Memo dt.06-08-2013. It is further alleged that 2nd respondent had issued notice dt.16-08-2013 under Section 138 of the Act calling upon the petitioners to repay the said sum within 15 days; and that while petitioner Nos.1 to 3 acknowledged the receipt of the notice, the 4th petitioner got it returned the same with endorsement "not claimed". It is further contended that 1st petitioner sent legal notice dt.03-09-2013 with

false contentions.

5. On 03-10-2013 a complaint was made before XI Additional Metropolitan Magistrate, Secunderabad setting out these allegations and the said Magistrate took cognizance of the same. It was numbered as C.C.No.2022 of 2013 and later transferred to the IX Metropolitan Magistrate, Cyberabad, Kukatpally, Ranga Reddy District and renumbered as C.C.No.230 of 2014.
6. The learned counsel for the petitioners would contend that under Section 138 of the Act, only the drawer of the cheque can be prosecuted and since the cheques in question are alleged to have been issued only by the 2nd petitioner, only 2nd petitioner would be liable to be prosecuted and the other petitioners cannot be prosecuted. He further contended that even if the allegation of 2nd respondent that the cheques were issued by 2nd petitioner on behalf of petitioner Nos.1, 3 and 4, is accepted as true since the cheques were not issued by 1st petitioner, petitioner Nos.1, 3 and 4 cannot be prosecuted vicariously. He placed reliance on the judgment of the Supreme Court in **Anil Gupta Vs. Star India Pvt. Ltd and another.**
7. The learned counsel for 2nd respondent on the other contended that the stand taken by the petitioners is not correct and since the cheques in question are alleged to have been issued by 2nd petitioner not only on his behalf but also on behalf of petitioner Nos.1, 3 and 4, all the petitioners can be prosecuted.
8. I have noted the submissions of both sides.

9. In **Anil Gupta** (1 supra) cited by counsel for petitioners, the Supreme Court, after referring to Section 138 of the Act held that only drawer of a cheque falls within the ambit of Section 138 of the Act whether human being or a body corporate or even a firm. It held that commission of offence by a Company is an express condition precedent to attract the vicarious liability of others under Section 141 of the Act and that the words "*as well as the company*" appearing in Section 141 of the Act make this unmistakably clear; and when the company can be prosecuted, then only the persons mentioned in the other categories mentioned in S.141 could be made vicariously liable for the offence subject to the averments in the petition and proof thereof.
10. Thus, from the above decision, it is clear that only the drawer of a cheque falls within the ambit of Section 138 of the Act. Admittedly in the present case, the cheques were issued only by the 2nd petitioner and not by 1st petitioner company or by petitioner Nos.3 and 4. Petitioner Nos.3 and 4 are obviously sought to be made vicariously liable by 2nd respondent on premise that 1st petitioner company is also liable. But for this to be allowed to be done, 1st petitioner company should also be liable to be prosecuted. The 1st petitioner can be prosecuted only if the 1st petitioner was the drawer of the cheques in question. Since that is not the case on the admitted facts, and since it is admitted that 2nd petitioner alone was the drawer of the cheques, even if 2nd respondent had alleged that the cheques were issued on behalf of petitioner Nos.1, 3 and 4, the petitioner

Nos.1, 3 and 4 are not liable to be prosecuted and at best only 2nd petitioner, who is the drawer of the cheques is liable to be prosecuted.

11. In this view of the matter, this Criminal Petition is partly allowed quashing the proceedings in C.C.No.230 of 2014 on the file of the IX Metropolitan Magistrate, Cyberabad, Kukatpally, Ranga Reddy District only as against petitioner Nos.1, 3 and 4 and it is dismissed as against 2nd petitioner.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 23-04-2015

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