

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION Nos.9574 & 9575 of 2014

COMMON ORDER :

These criminal petitions are filed by the petitioners/A-4 & A-5 under Section 482 Cr.P.C to quash the proceedings in C.C. No.368 of 2013 and C.C. No.367 of 2013 respectively on the file of learned XX Additional Chief Metropolitan Magistrate, Hyderabad at Nampally under which the learned Magistrate taken cognizance basing on the private complaint filed by the 1st respondent for the offences punishable under Section 138 read with 142 of the Negotiable Instruments Act.

2. The petitioners filed the above petitions to quash the proceedings of the cognizance taken under Section 200 and 202 read with 190 of Cr.P.C by the learned Magistrate in ignorance of the factum of the petitioners are no longer directors by the date of the alleged seven cheques in question, said to have been issued by the 1st accused in both the calendar cases. In this regard the petitioners placed reliance upon Form No.32 under the Companies Act which records the factum of the petitioners/A-4 and A-5 are no longer directors with effect from 01.11.2012 by virtue of the resignation from the Company (A-1). As the cheques in question are subsequent to that and the Apex Court in **Anita Malhotra V. Apparel Export Promotion Council**^[1] particularly at para Nos.13 and 14 observed that Form No.32 is a public document and High Court went wrong and document filed by the accused persons in order to seek quash, once the public document shows, they are no longer continuing as directors muchless responsible for the day to day affairs and the proceedings are liable to be quashed. The same analogy applies to

the present facts of the case, needless to say the said expression of **Anita Malhotra** supra reiterating the expression in **Harshendra Kumar D. v. Rebatilata Koley**^[2] apart from **Anitha Hada V. God Father Travels Pvt. Ltd.**^[3], **S.M.S.Pharmaceuticals V. Neeta Bhalla**^[4], **Standard Chartered bank V. Directorate of Enforcement**^[5], in the three Judges bench in **Sunil Bharathi Mittal V. Central Bureau of Investigation**^[6] reiterated the proposition. Needless to say further details not necessary in this case as to the liability of the Company as prime accused and the vicarious liability of the second category and the third category from the specific averments and maintainability irrespective of the first category liability against those of the second and third category liability persons dealt with therein. Therefore, the private complaint against the petitioners herein will no way survive and the petitioners shall not be arrayed as accused.

3. In the result, both the criminal petitions are allowed. C.C. No.367 of 2013 and C.C. No.368 of 2013 on the file of XX Additional Chief Metropolitan Magistrate, Hyderabad are hereby quashed only in regard to the petitioners/A-4 and A-5. The bail bonds of the accused, if any, shall stand cancelled and pending warrants, if any, shall be recalled.

4. Miscellaneous petitions pending, if any, in both the Criminal Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

03.07.2015
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^[1] (2012)1 SCC 520

[\[2\]](#) 2011(3) SCC 351

[\[3\]](#) (2012)5 SCC 661

[\[4\]](#) (2005)8 SCC 89

[\[5\]](#) AIR 2005 SC 2622 = (2005)4 SCC 530

[\[6\]](#) (2015)4 SCC 609