**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No.8112 of 2013**

**ORDER :**

This petition is filed by the petitioner/accused No.4 under Section 482 Cr.P.C to quash all the proceedings in C.C. No.644 of 2012 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad registered for the offence punishable under Section 138 of the Negotiable Instruments Act, outcome of the private complaint filed by the 2nd respondent-complainant.

2) The complaint averments are that the complainant along with the accused Nos.1 to 6 had entered into a registered development agreement with one Bhavya Constructions on 03.02.2001 in respect of some property situated at Somajiguda, Hyderabad, that while developing the said property, certain disputes arose between the accused and complainant on oneside and the Bhavya Constructions on the other side, that the accused has executed a power of attorney on 14.09.2006 in favour of the complainant to look after the interest of the accused in the said property, that the accused were allotted 20.5 flats in the said property after its development, that the accused had requested the complainant to sell the said flats on their behalf, that the complainant had spent considerable time and effort and money in selling the said flats on behalf of the accused, that the accused had agreed to pay a sum of Rs.20,12,000/- i.e., 4% of the total sale consideration received by the accused for the services rendered by the complainant, that the accused No.5 as the Managing Partner of the accused No.6 had issued a cheque bearing No.925953, dated 05.08.2008 drawn on the Andhra Bank, Jubillee Hills, Hyderabad for

a sum of Rs.20,12,000/- in favour of the complainant for the payment of the amounts due, that when the complainant deposited the said cheque in its banker the same was returned with an endorsement ‘funds insufficient’ on 12.09.2008, upon which the complainant addressed a notice dated 19.09.2008 through its advocate to the accused demanding and calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the said notice, that the accused failed to pay the cheque amount and hence the complainant filed the complaint.

3) The present quash petition is filed by the petitioner/Accused No.4 stating that the alleged cheque was issued by A-5 by signing on the same on behalf of the firm that absolutely there is no allegation that the petitioner is party to the cheque that the A-6 firm was dissolved with effect from 15.03.2008 and pursuant to the dissolution of the firm, a statutory notice was also given in Form No.5 under Section 63(1) of the Indian Partnership Act, 1932 to the Registrar of the Firms informing that A-1 to A-4 ceased to be the partners of the firm from 15.03.2008, that as on the date of issuance of cheque the petitioner and A-1 to A-3 ceased to be the directors of the A-6 firm and hence the petitioner cannot be prosecuted for the alleged acts done by A-5 on behalf of the A-6 firm, that no vicarious liability can be fastened on the petitioner for the alleged acts done by A-5, that there is absolutely no allegation against the petitioner that she is responsible for issuing the cheque, that in the complaint nothing is spelt out as to how the petitioner is responsible for issuance of the cheque by A-5 on behalf of A-6 firm, that it is settled principle of law that under criminal law vicarious liability cannot be fastened for the acts done by other accused and as such the cognizance taken by the learned Magistrate is illegal, that the initiation of the proceedings against the petitioner/A-4 is

without any basis and continuation of the proceedings against the petitioner/A-4 would amount to abuse of process of the Court and prayed to quash the proceedings in C.C. No.644 of 2012 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad in so far as the petitioner-A-4.

4) Whereas it is the submission by the complainant that the complaint itself when mentions the averment of the accused persons 1 to 4 are also liable for day to day business of the A-6 entity along with A-5 Managing Partner, being the partners 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 and thus all the accused are liable and thus the quash petition is 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 petition. In the course of hearing the complainant filed as additional material eight documents of which 1$^{st}$ document is the list of documents filed with the private complaint, 2$^{nd}$ document only letter issued by complainant to A-4, 3$^{rd}$ one is the authorization issued in favour of complainant by A-4 (quash petitioner), 4$^{th}$, 7$^{th}$ and 8$^{th}$ documents are the G.P.As executed by A-6 firm one signed by A-4 and A-5, other two also signed by A-4 in favour of complainant, 5$^{th}$ document is the M.O.U executed by A-5 in favour of complainant and 6$^{th}$ document is another G.P.A. It is contended therefrom that the documents show the complicity of petitioner-A-4 to the offence and sought for dismissal of the quash petition. As per settled law the material for taking cognizance on private complaint is criteria to

decide sustainability or not to decide to continue or quash the proceedings. Undisputedly, there are no specific averments as to how the petitioner as partner of A-6 is liable for day to day business of A-6 firm other than A-5 being Managing Partner by statutory legal fiction as per Section 141 of the Act liable vicariously, that too when A-4 is not even drawer of the cheque.

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

6) 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 expressions of the Apex Court in ***S.M.S Pharmaceuticals V. Neetabhalla***[2] (3 Judges' bench) and ***National Small Industries Corporation V. Harmeet Singh***[3] and other expressions following it and conclusively held in ***Iridium India Telecom Ltd. V. Motorola Inc.***[4] referring to the several expressions of the Apex Court and of 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 observations in ***S.M.S Pharmaceuticals*** and ***Iredium*** supra that was again followed in the latest three Judge bench expression of the Apex Court in ***Sunil Bharti Mittal V. C.B.I***[5]***.*** It was observed in ***Sunil Bharti Mittal*** (supra) that the corporate entity, an artificial person acts through its officers, directors, Managing Director, Chairman 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***[6] 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 observations in the three Judge bench expression of the Apex Court in ***S.M.S.Pharmaceuticals*** supra at para No.8 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 therein 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***[7] 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 was later held as not good law in ***Aneeta Hada (I) V. Godfather Travels & Tours (P) Ltd.***[8] 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*** supra is over ruled and ***Aneeta Hada*** (1) supra 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 only 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 to be stipulated in the petition itself as held in ***State of Madras V. C.V.Parekh***[9]. The same question when again came for consideration before the two Judge bench in ***Anil Gupta V. Star India Private Limited***[10], ***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***[11] 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***[12] referring to ***S.M.S. Pharmaceuticals*** supra apart from another expressions, 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***[[13]] 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***[[14]] 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***[[15]]. Even other latest expression in ***Poojari Ravinder Devi Dasani V. State of Maharashtra***[[16]]

reiterates the same relying upon ***National Small Industries Corporation*** supra. The same has been reiterated in the latest expression by this Court in ***Narendra Urangi V. M/s.Greenmint India Agritech Pvt. Ltd.***[17]

7) 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 to plead and show as to how a Director of a company who stands in a different footing to the Managing Director by his status under Section 141 of the Negotiable Instruments Act is liable or to be made liable for the offences punishable under Section 138 of the N.I.Act.

8) Here a perusal of the very complaint relevant portion extracted supra, but for a bald statement, there is no material averment specifically to show as required by law as to how A-1 to A-4 are liable and in the absence of such plea, mere filing of documents even to connect the accused as executant of any G.P.A in favour of complainant not suffice as what is the material plea required is how responsible at the relevant time of not only cheque issued but also cheque dishonoured and despite notice not paid within the statutory time to constitute the offence. It is not even the case from perusal of the cheque of A-1 to A-4 signatories, along with A-5 on behalf of A-6 entity. In this case for A-6 cheque admittedly signed only by A-5 and thus when A-4 is not drawer, cannot otherwise be made liable as held in ***Aparna Shaw V. M/s.Sainath Developers Ltd.*** The cognizance taken by the learned Magistrate thus so far as the petitioner/A-4 is thus unsustainable and is liable to be quashed, leave about A-1 to A-3 who are not parties herein to further discuss about them.

9) In the result, the Criminal Petition is allowed and the proceedings in C.C. No.644 of 2012 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad in so far as the petitioner/A-4 are quashed. The bail bonds of the petitioner-accused No.4, if any, shall stand cancelled.

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

Dr. B. SIVA SANKARA RAO, J

03.02.2016
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[1] (2005)4 SCC 530
[2] (2005)8 SCC 89
[3] (2010)3 SCC 330
[4] (2011)1 SCC 74
[5] (2015)4 SCC 609
[6] (2012)5 SCC 661
[7] (2000)1 SCC 1
[8] (2008)13 SCC 703
[9] 1973 SCC 491
[10] (2014)10 SCC 373
[11] (1987)3 SCC 684
[12] (2007)3 SCC 693
[13] (2010)3 SCC 330
[14] 2010(2) ALD (Crl.) 564 (SC)
[15] 2013(2) ALD (Crl.) 331 (AP)
[16] AIR 2015 SC 675
[17] 2015(3) L.S 239