**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.15452 OF 2016**

**ORDER:**

This criminal petition, under Section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C'), is filed to quash the proceedings in Crime No.611 of 2016 of Kusaiguda Police Station, Cyberabad, Ranga Reddy District, registered for the offences punishable under Sections 405, 420, 421, 423, 424, 463, 464, 477-A IPC.

The petitioner is working as Senior Executive Officer (Operations) at M/s.Intemo Systems Ltd., Hyderabad and whereas A.1 to A.3 are the Managing Director and Directors of the Company. The second respondent, who is the de facto complainant, allegedly invested Rs.4 crores approximately in Intimo Systems Ltd., and thereafter the second respondent, Managing Director and other Directors entered into MOU dated 22.08.2013 and the same was signed by all the parties to the said MOU.

It is the contention of the petitioner that she was being an employee i.e. Senior Executive Officer (Operations) is not liable for the offence punishable under Sections 405, 420, 421, 423, 424, 463, 464 and 477-A IPC, since she is not concerned with any investments in the company and at best Accounts Officer of the Company is liable for the offences referred above since vicarious liability cannot be attached to the employees working in the Company.

The question of vicarious liability cannot be decided at this stage, it depends upon the work being attended by the Officers working in the Company.

In **S.K. ALAGH V. STATE OF U.P. AND ORS.**[1] the Apex Court had an occasion to discuss about the vicarious liability of employees and Directors of the Company, at paragraph 15, held that Appellant No.1 is the Managing Director of the Company. Respondent No.3 was its General Manager. Indisputably, the company is a juristic person. The demand drafts were issued in the name of the company. The company was not made an accused. The dealership agreement was by and between M/s. Akash Traders and the company. Later, at paragraph 19, it is held that a criminal breach of trust is an offence committed by a person to whom the property is entrusted, ingredients of the offence under Section 406 are : (1) a person should have been entrusted with property, or entrusted with dominion over property; (2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; (3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. At paragraph 21, it is further observed that the Essential Commodities Act, Negotiable Instruments Act, Employees' Provident Fund (Miscellaneous Provision) Act, 1952 etc. have created such vicarious liability. It is interesting to note

[1] (2008) 5 SCC 662

that Section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to Section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company

In view of the principle laid down in the Judgment referred above, under Section 406 IPC vicarious liability is not extendable to the Directors or Officers of the Company. It is to be decided based on the entrustment of amount to the petitioner and commission of any fraud only during trial, if any charge sheet is filed after due investigation.

Therefore, it is difficult at this stage to quash the proceedings in Crime No.611 of 2016 registered for various offences referred above, since the liability of the petitioner depends upon the investigation to be done by the investigating agency and proof of certain allegations, if any made out to constitute any of the offence during trial only.

Hence, I find no ground to quash the proceedings in Cr.No.611 of 2016 of Kusaiguda Police Station, Cyberabad, Ranga Reddy District, at this stage.

However, police, Kusaiguda Police Station, Cyberabad, Ranga Reddy District, are directed to follow the procedure contemplated under Section 41-A Cr.P.C. and the guidelines laid down by the Apex Court in **ARNESH KUMAR V. STATE OF BIHAR**[2] before effecting the arrest of the petitioner.

With the above observation, the criminal petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

**M. SATYANARAYANA MURTHY, J**

Date: 31.10.2016
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[2] AIR 2014 SC 2756