HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos. 9152, 4256, 6072/2016

& 3615 OF 2017

COMMON ORDER:

In all the four quash petitions, the petitioners are M/s Ginzer Infrastructure Private Limited represented by its authorized signatory and Director, Ravipati T. Raghunath and said Ravipati T. Raghunath respectively, which are in seeking to Quash the four Calender Cases taken cognizance respectively, viz., the offence under Section 138 of Negotiable Instruments Act in two cases of CC Nos. 340 & 341 of 2015 and the offences under Sections 420 418, 409, 506, 120-B r/w 34 IPC as the case may be in other two cases of CC Nos. 2959 of 2016 and 673 of 2015.

2. The first respondent in all the four cases respectively is by name M/s M.S Agarwal Foundries Private Limited represented by its Manager and Liaison Officer, Jairaj Naidu respectively.

3. The petitioners are seeking to quash the two cheque bouncing cases respectively mainly on the grounds that all the amounts claimed are incorrect and cheques are not given for any legally enforceable debt, but obtained from the complainant the blank cheques in advance for the supply of Steel Bars/material in the business dealings under the guise of safety and security for the amounts being fallen due for the credit supply, for the bills being raised. After receipt of the statutory notices respectively in the cheque bouncing cases, the petitioners (accused) sent their representative to verify and

reconcile the accounts from the beginning of the business dealings started on 8.7.2013 to 7.5.2014 respectively. It is the complainant in fact that cheated the A1 Company by taking advantage of the blank cheques available in its misuse in filing the false cases. The complainant filed winding up petition to wind up the company of the first accused before the High Court of Karnataka, Bengaluru, vide Company Petition No. 174 of 2015 dated 29.7.2015 and therein shown the principal amount due as Rs. 1,22,05,180-00 with interest; whereas the statement of account shows Rs. 1,26,61,815-00 and whereas in CC No. 340 of 2015, under several cheques the total amount claimed for the alleged cheques given was Rs. 4,72,68,964-00 apart from use of another blank cheque in CC No.341/2015 for Rs. 94,67,700-00 and is nothing but playing fraud in filing the said cheque bouncing cases and other cases for the alleged offences of cheating etc. The trial Court having issued warrants in these cases to A2 representing A1 entity and also individually and even prayed for recall of warrants, insisted for his personal appearance which is contrary to law. Originally the cheque bounce cases were filed before the trial Magistrate at Bangalore and later pursuant to the expression of the Apex Court in ***Dashrath Rupsingh Rathod Vs. State of maharashtra***[1]**,** from the cheques drawn at Hyderabad; transferred the cases to Hyderabad Court and thereby are pending on the file of the learned IV Special Magistrate, Hyderabad and contention of the

[1] (2014) 9 SCC 129

cases are nothing but abuse of process of law including in taking of cognizance and issuing of NBWs against the petitioners/accused. It is also contends that the learned Magistrate has no jurisdiction for A1 and A2 are having business dealings at Bangalore and the complainant's branch office is at Bangalore and the material supplied was only there. The amended Negotiable Instruments Act came into force with effect from 15.6.2015 and it no way negates the benefit to the petitioners-accused. It is also contends that there is nothing to show any dishonesty in issuing the cheques much less to deceive for wrongful gain and cause wrongful loss to the complainant or any criminal beach of trust or conspiracy or criminal intimidation in entertaining the private complaints filed and in referring to the Police for investigation. Thus all the proceedings covered by the four cases are sought to be Quashed. It is also the contention that the representative of the complainant's company did not mention about his acquaintance with the facts of the case in filing the private complaints respectively. The learned counsel requests from the common hearing of the four cases reiterated the above contentions.

4. Whereas it is the submission of the learned counsel for the complainant respectively, that the quash petition averments are with the suppression of material facts to misguide the Court, the four cases under challenge are not even similar and so far as the offence under Section 420 IPC etc., covered by CC No. 2959/2016 is with altogether different facts to the cheque

bouncing cases. The complainant filed vacate petitions in the cheque bouncing cases and counter in other cases to vacate the interim order and to dismiss all the four quash petitions. It is also averred that both the parties entered into a memorandum of compromise in the company matter before the High Court of Karnataka and decided to settle amicably and there having arrived for a total sum of Rs. 1,40,00,000-00 for full and final settlement within a period of 12 months and pursuant to the same, A1 represented by A2 issued 11 cheques and one demand draft and the final settlement entered into therein by both the parties and there is liberty given even to the complainant in case of non-compliance to it to revive the company petition to pursue other legal remedies. The complainant did not conceal anything in filing the cases. The representative of the complainant is acquainted with the facts. The accused committed the offences of cheating and breach of trust etc., and with dishonest intention having issued the cheques caused return of the same also and for the summons not honoured; NBWs were rightly issued by the trial Court in the cases. The contention of use of blank cheques given as assurance for the future transactions are untenable and untrue and are meant to gain sympathy of the Court if possible, that the A2 is responsible for the day to day affairs of A1 entity and both A1 & A2 are liable for all the offences and thereby sought for dismissal of all the Quash Petitions.

5. Heard both sides at length and perused the material on record.

6. Before coming to the other facts, so far as jurisdictional aspect is concerned, particularly for the Negotiable Instruments Act offences, undisputedly the cases were filed in Bangalore before the respective Magistrate Court and on point of jurisdiction, pursuant to the expression of the Apex Court in ***Dashrath Rupsingh Rathod Vs. State of maharashtra*** (supra -1), the cases were returned to the complainant and were thus presented in Hyderabad Court and are pending before the IV Special Magistrate, Somajiguda, Hyderabad. Undisputedly, subsequent to that expression, with retrospective effect the Negotiable Instruments Act is amended in 2015, conferring jurisdiction to the Court, where the cheque presented by the complainant returned dishonoured from the place of presentation itself even. Further, the law is reiterated in this regard by the subsequent expression of the Apex Court in ***M/s Bridgestone India Private Limited vs. Inderpal Singh***[2]**.** Thereby the contention that the Court has no jurisdiction is untenable and on that ground none of the quash petitions are maintainable, including the cases for the offences under IPC subject to proof from part of cause of action shown arisen within the meaning of Sections 177 to 179 Cr.P.C.

7. Now coming to another question as to whether the cheques were given for the future transactions only for

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[2] 2016 (2) SCC 75

assurance and not for any legally enforceable debt or other liability concerned, as per the complaint averments, the said cheques in question were given for the amounts due and payable and for the legally enforceable debt or other liability. Once such is the case, when it is not even the case of the accused that from a reading of the complaint it is in any way indicating that the cheques were given for the future transactions and there are no dues in the transactions taken place to enforce, there is no need to interfere, much less to quash the proceedings but for any such defense is left open to the accused to raise during trial of the cases and establish the same by repudiating the presumption available under Sections 118 and 139 read with Section 138 explanation of the Negotiable Instruments Act.

8. Coming to the other contention of the representative of the complainant entity as its Manager and Liaison Officer, did not state that he is acquainted with the facts of the cases filed on behalf of the complainant Company representing out of that personal knowledge, concerned; the Company being juristic person must represent through human agency is the settled law including from the expressions of the Apex Court in ***SMS Pharmaceuticals Limited Vs. Neeta Bhalla and another***[3]***,*** ***Standard Chartered Bank Vs. State of Maharashtra***[4] and the same followed in several expressions including ***Iridium***

[3] (2005) 8 SCC 89
[4] (2016) 6 SCC 62

India Telecom Ltd. V. Motorola Inc.[5] 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 its mind or will. Others are directors and managers who represent directing the mind and will of the Company and control by what they do. The state of mind of these managers is the state of mind of the Company and is treated by 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. Thus, the 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 malicious 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. The same is in fact followed in ***Sunil Bharti Mittal V. C.B.I***[6] and in ***Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd***[7]. Coming to the Company as complainant concerned also same is the law to represent the company by its Manager or other. In fact from the expression of the Constitution Bench of the Apex Court in ***A.C. Narayanan Vs.***

[5] (2011) 1 SCC 74
[6] (2015) 4 SCC 609
[7] (2012) 5 SCC 661

State of Maharashtra[8] on a reference to it by a two Judge Bench of the Apex Court answer to resolve the conflict in the earlier two Judge Bench expressions in ***M.M.T.C.Limited and another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another***[9] and ***Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Limited and Others***[10]***;*** the reference was answered holding that there is no conflict between the two earlier expressions apart from what MMTC speaks is if there is any defect in the complaint in representing the complainant through GPA holder or other person, it is a curable one at any time during the subsistence of the complaint case.

9. Having regard to the above, once the complainant's Company is represented by its Manager or Liaison Officer and filed the complaint though there is no specific averment respectively in the complaint cases of his acquainted with the facts and states from personal knowledge or from the material on record with reference to the record, that itself is not a ground more particularly when he filed an affidavit in the form of sworn statement and from which taken cognizance of the offence under Section 138 of Negotiable Instruments Act by the learned Magistrate.

10. Having regard to the above, on that ground also there is nothing to dismiss the complaint cases but fro such defence also left open during trial. In the quash petitions it is not the case of A2-Ravipati T. Raghunath of he was not in-charge of the

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[8] (2014) 11 SCC 790
[9] (2002) 1 SCC 234
[10] (2005) 2 SCC 217

day to day affairs of the A1 company, apart from he was also drawer of the cheques in question to make him vicariously liable along with the A1 company.

11. From the above expressions including from the case in ***Anil Gupta V. Star India Private Limited***[11] reiterated ***Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd*** (supra -7) by overruling the expression in ***Aneeta Hada (I) V. Godfather Travels & Tours (P) Ltd***[12] and from the expression of the Apex Court in ***Aparna A Shah Vs. M/s Sheth Developers Private Limited***[13]**,** the drawer of the cheques is vicariously liable along with the Company for the cheques issued on behalf of the Company.

12. Thus, so far as Criminal Petition No. 9152 of 2016 against CC No. 341 of 2015 on the file of learned IV Special Magistrate, Somajiguda, Hyderabad, filed for the offences under Section 138 of Negotiable Instruments Act, in respect of the dishonor of the cheque bearing No. 128186 dated 7.4.2014 for Rs. 94,67,700-00 and similarly the Criminal Petition No. 4256 of 2016 against CC No. 340 of 2015 on the file of learned IV Special Magistrate, Somajiguda filed under Section 138 of Negotiable Instruments Act, in respect of the dishonor of the 15 cheques in question bearing Nos. 104153 to 57, 104175, 103033, 103977, 76, 113030, 32 and 35 respectively for total sum of Rs. 4,72,68,964-00 for the reasons *prima facie* shown the cheques were routed from the account of the accused and nothing even

[11] (2014) 10 SCC 373
[12] (2008) 13 SCC 703
[13] 2013 Crl.L.J 3743

shown of the cheques do not bear the signature of A1 represented by A2, by left open all available defenses including on the existence of any legally enforceable debt or other liability the Quash Petitions are disposed of with the following directions:

(i) So far as NBWs pending concerned, the trial Court shall on appearance of the petitioner/A2 for and on behalf of A1 entity, shall recall the warrants by obtaining bonds, as contemplated by Section 88 Cr.P.C with or without sureties, as the case may be, for the future due appearance.

(ii) Needless to say after that, if at all there is any difficulty for personnel appearance of A2, it is left open to file an application to represent the A1 & A2 through special vakalat holder under Section 205 Cr.P.C for the trial Court to hear and consider with necessary conditions, and

(iii) all defences of accused in the cheque dishonour cases supra are left open during trail to raise before the trial Court.

13. So far as Criminal Petition No. 6072 of 2016 in relation to CC No. 673 of 2015 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad for the offences under Sections 420, 409 r/w Section 506 IPC are concerned, the averments at the cost of repetition from the complaint shows that 15 cheques in question supra that were presented returned

dishonored from which legal notices given with no reply and even no payment made for the amount of Rs. 4,72,68,964-00; there is there from nothing to say any *prima facie* accusation of offences of criminal conspiracy or cheating or breach of trust etc. So far as the allegation of the accused No. 2 supra abused the complainant's official after received legal notice in un-parliamentary language concerned, it is not clear as to the alleged occurrence taken place in whose presence and when and where much less with intention of accused to create fear in the mind of the complaint to attract any offence under Section 506 IPC. Coming to the offence of cheating from further averments in the complaint of A2 having not paid the amount due of the cheques dishonored, even after notice received close the business office to abscond and to cheat the complainant's Company and other creditors and even switched off the mobile phone making himself out of their reach concerned, there is nothing to show A2 in abscond and A1 company was wound up, but for if at all the complainant himself filed winding up petition and there even from the case of the complainant there was a settlement in the pending company petition proceedings of C.P.No. 174 of 2015 before the Karnataka High Court and the settlement speaks from the memorandum of compromise executed on 5.11.2016 mentioning the criminal case No. 340 of 2015 to withdraw after the accused cleared the amounts covered by the first three cheques for Rs. 10,00,000/- each bearing cheque Nos. 326852, 326836 and 37 respectively. The said withdrawal is for CC No. 531 and in the first phase out of four phases the entire liquidation within 12 months from the date of the compromise/settlement, Memorandum of Understanding (MOU) supra for a total sum of Rs. 40,00,000/- and the second installment of three cheques for Rs. 10,00,000/- each bearing cheque Nos. 236838 to 40 to withdraw CC No. 341 of 2015 and on payment of third installment of Rs. 15,00,000/- each of three cheques bearing Nos. 236841 to 43 to withdraw CC No. 340 of 2015 and on payment of 4th installment all within 12 months period supra, under cheques bearing Nos. 2368442, 46 of Rs. 15,00,000/- plus Rs. 15,00,000/- plus Rs. 15,00,000/- to withdraw the CC No. 673 of 2015 which is the case herein.

14. It is not even the case of the accused that pursuant to the MOU any of the four installments under the respective three cheques of each installment paid and without payment, the question of withdrawal of cheques does not arise apart from the cheques supra issued were acknowledged for the liability of Rs. 1,40,00,000/- in settlement by mentioning about the pendency of cases and for withdrawal of the cases.

15. Having regard to the above, even from the MOU, so far as CC No. 673 of 2015 is concerned, there is no offence under Sections 409 and 506 IPC and even no offence under Section 420 IPC for the cheques issued dishonored for liability not denied but for non payment, as complainant himself says that for the statutory notice no reply given by the accused and not

even a case of denial of liability to show from any circumstances of dishonest intention from the inception. Thereby the subsequent giving of cheques and non adherence to the payment may not enable withdrawal and from that itself does not even possible at this stage much less to hold by giving of the fresh cheques the existing criminal proceedings will not survive and what is the position of law laid down by the Apex Court in ***Lalit Kumar Sharma Vs. State of U.P.***[14] also no way applicable herein for not a case of withdrawal of the complaint under MOU but for to say on respective payments of the cheques to withdraw respectively as per the mutual understanding and thereby but for left open any such defenses, in relation to cheques in question, the prosecution covered by CC No. 673 of 2015 nowhere survives against the accused persons including for the offence of cheating. Thereby Criminal Petition No. 6072 of 2016 is allowed quashing the proceedings in CC No. 673 of 2015 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad.

16. Coming to Criminal Petition No. 3615 of 2017 against CC No. 2959 of 2016 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad for the offences punishable under Sections 409, 418, 420 read with Sections 34 and 120-B of IPC, the complaint averments therein are not only against quash petitioners/A1 and A2 but also the directors and other employees of the entity M/s Ginzer Infrastructure Private

[14] (2008) 5 SCC 638

Limited, supra, showing as many as 15 accused for the above offences. A1 represented by A2, A3- R. Satyanarayana Murthy, Director and they along with other accused employees of the A1 entity approached the complainant and placed purchase order for the material for their project works including by marking e-mail communications for the goods by giving the delivery address from time to time that were supplied on credit basis of the Steel Bars under various invoices, and in discharge of legal liability, issued the 15 cheques supra covered by CC No. 340 of 2015 for total amount of Rs. 4,72,68,964-00 respectively in January and February, 2014 and those were dishonored and the complainant issued legal notice demanding payment intimating the dishonour and accused paid some amounts after filing of the complaint and liable to pay Rs. 1,26,61,815-00 with 36% per annum interest on Rs. 1,41,27,550-00, as agreed between them inter se and they failed to make the payment by urging time to make payment having admitted the liability from time to time, and it is because of their credit transactions entered into and failed to pay, thereby they are liable for criminal breach of trust and cheating being all conspired together in committing the offences, hence to take action. The said complaint was on 6.1.2016. It is in relation to the cheques in question and as referred supra, cheques in question were presented, dishonored, and legal notice was issued, and what at best it shows is they did not even reply and they did not deny the liability. It is suffice to say that there is no dishonest intention much less to the extent of which in the credit transactions, and further, as referred to supra, on 5.11.2016 subsequent to the filing of the private complaint, there is MOU between A1 and A2 with the complainant's Company. A1 represented by A2 regarding the payment, acknowledged liability and thereby also there is no offence of cheating and also there is no any entrustment much less anything in trust to say any criminal breach of trust. Thereby the proceedings in CC No. 2959 of 2016 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad are unsustainable and are liable to be quashed by allowing the Criminal Petition No. 3615 of 2017.

17. Accordingly, Criminal Petition Nos. 9152 & 4256 of 2016 are disposed of and Criminal Petition Nos. 6072/2016 & 3615 of 2017 are allowed. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 09.10.2017
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