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

**CRIMINAL PETITION Nos.6558 & 6570 of 2017**

**COMMON ORDER:**

The selfsame petitioners Sri Satya Sai Baba & G.Venkata Sridhar respectively are QA Manager and Factory Manager of M/s. Hindustan Coca-Cola Beverages Private Limited, who are the accused Nos.1 & 2 of STC Nos.400 & 401 of 2014 pending on the file of II Additional Chief Metropolitan Magistrate, Visakhapatnam, where the learned Magistrate has taken cognizance for the offence punishable under Section 36(20 of the Legal Metrology Act 2009 (for short 'the Act') for the violation of Rules 28 & 32 of AP Legal Metrology (Enforcement) Rules 2011 for contravention of Rules 19 & 20 of Legal Metrology (Package Commodities) Rules read with Section 18 of the Act.

Heard learned counsel for the petitioners and the learned Public Prosecutor representing the State including the District Inspector, Legal Metrology the complainant in both cases for common disposal.

The contentions urged in the grounds in seeking to quash the cognizance order and order in the cases are that alleged violation if at all is by the entity and without impleadment of the entity who is the manufacturer of the seized product in question, the officers of the entity cannot be made liable for no provision of vicarious liability without the principal offender and even under Section 49 of the Act in respect of offence committed by company, the person if any who has been nominated under sub Section (2) to be in-charge of and responsible to the company for conduct of the business of the company and where no person has been nominated every person who at the time of commission of offence was in-charge of and was responsible to the company for conduct of such business of the company and the company shall be deemed to be guilty of offence and shall be liable to proceed against and punished accordingly. The proviso to it speaks that nothing contained in sub section shall render any person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence and thereby without array of the company the proceedings are liable to be quashed is the sum and substance of the submission.

Whereas it is the submission of the learned Public Prosecutor the person nominated on behalf of the company can be made liable and it is not mandatory of the company to be made as an accused and thereby there is nothing to quash the proceedings.

In fact recent expression of the Apex Court in **Standard Chartered Bank Vs. State of Maharashtra and Others**[1] no doubt in relation to offence under Section 138 of the Negotiable Instruments Act held that there must be specific averment in complaint regarding responsibility of the persons shown as accused for conduct of the business of company at the time of commission of offence without which the taking of cognizance in issuing of summons is unsustainable. It is also observed that the other officers of the company cannot be made liable unless the company is made as accused. The other judgment of the Apex

[1] (2016) 6 SCC 62

Court in **Anil Gupta Vs. Star India Private Limited**[2] relying upon the 3 Judge Bench of the Apex Court in **Aneeta Hada Vs. Godfather Travels & Tours Private Limited**[3]. This Court in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**[4] and referring to it in Crl.P.No.2368 of 2017 dated 17.08.2017 held as follows:

> "From the above every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It is the case of the quash petitioner/accused of not liable without impleadment of the firm by virtue of the provisos of Section 141(1) of the Act supra, though he cannot otherwise claim any lack of knowledge from the legal notice served on him as Managing Partner of the firm and the MOU also refers him as such it is by virtue of the statutory legal fiction every person in charge of the affairs of the company deemed liable as also laid down in **Aneeta Hada Vs. Godfather Travels & Tours Private Limited**[5].
>
> Coming to the specific allegation in the complaint referred supra, it is the complainant approached the accused Sanjay Dattatray Bhalerao in 2013 for purchase of the flat and stated paid the amounts to him for purchase of the flat as part of the consideration that could not be completed and undertook to pay interest for not handing over by completion of construction for not started and even MOU speaks the entity M/s. Aditya Enterprises represented by the accused as its associate. This Court in this regard held in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**[6] that mere serving of notice and silence with no reply no way make the Director of the Company liable in the absence of

---

[2] (2014) 10 SCC 373
[3] AIR 2012 SC 2795
[4] 2016 (1) ALD (Crl.) 177
[5] AIR 2012 SC 2795
[6] 2016 (1) ALD (Crl.) 177

specific accusation of responsible for the day to day affairs by referring also to some of the Constitution Bench expressions of the Apex Court among **Standard Chartered Bank Vs. Directorate of Enforcement**[7], **Iridium India Telecom Limited Vs. Motorola Inc.**[8], **Sunil Bharti Mittal Vs. CBI**[9] and **Aneeta Hada (II)** supra besides **SMS Pharmaceuticals Limited Vs. Neeta Bhalla**[10]. In **Aneeta Hada (II)** supra of the Constitution Bench by referring to most of above expressions, besides holding the expression in **Anil Hada Vs. India Accrelic Limited**[11], as not good law and also it is made clear as held in **Aneeta Hada (I)** in 2008 that without the company is impleaded as accused, the proceedings against others cannot sustain from the very wording of Section 141 of the Act of "as well as the company" makes it unmistakably clear that when the company can be prosecuted, then only persons mentioned in the other categories could be vicariously liable and arraying the company as accused is imperative for other categories of offenders to be brought into the dragnet on the touch stone of vicarious liability. The later two Judge Bench of the Apex Court in **Anil Gupta Vs. Star India Private Limited**[12] approved **Aneeta Hada (II)** by overruling **Anil Hada** and also by referring to **U.P. Pollution Board Vs. Modi Distillery**[13] and **State of Madras Vs. C.V. Parekh**[14], besides **Saroj Kumar Poddar Vs. State**[15], **National Small Industries Corporation Vs. Harmeet Singh**[16] and **Central Bank of India Vs. Asian Global Limited**[17], **Poojari Ravinder Devi Dasani Vs. State of Maharashtra**[18]."

Here coming back to the complaint averments, the company in question is not arrayed as accused. The very complaint

[7] (2005) 4 SCC 530
[8] (2011) 1 SCC 74
[9] (2015) 4 SCC 609
[10] (2005) 8 SCC 89
[11] (2000) 1 SCC 1
[12] (2014) 10 SCC 373
[13] (1987) 3 SCC 684
[14] (1970) 3 SCC 491
[15] (2007) 3 SCC 693
[16] (2010) 3 SCC 330
[17] 2010 (2) ALD (Crl.) 564 (SC)
[18] AIR 2015 SC 675

averments shows on 12.06.2012 at about 12.15 PM, LW.1 along with Lws.2 & 3 and other officials of Legal Metrology inspected M/s. Hindustan Coca-Cola Beverages Private Limited, the manufacturer and packer of sweetened carbonated beverage Limca 200 ml and at that time A.2 was present as in-charge and inspected by the complainant and his batch and drawn samples from a package out of the lot of packages from the warehouse where it is stored and the 32 packages from the lot size of the Limca 200 ml for sale/distribution with specification and before conducting test followed sixth schedule and Rule 19 of the Rules and found the quantity is 199.51 ml and not 200 ml and also seized 5 crown caps and 5 empty bottles and it is pursuant to which and for violation of the Rules etc., the prosecution is launched in seeking to take cognizance on the accused for the alleged violations it is basically the company that violated the provisions from the facts supra and the company is the main accused to make the others responsible for day to day affairs also by virtue of Section 49 of the Act which is almost in pari materia to Section 141 of Negotiable Instruments Act and as such also from the wording of they are co-accused with the company and when the company is not accused question of making them vicariously liable does not arise. Thereby the prosecution is unsustainable.

Accordingly and in the result, both the Criminal Petitions are allowed by quashing the proceedings, however by giving liberty to the complainant to file fresh complaint if at all by impleading by showing the company along with other responsible as accused.

Consequently, miscellaneous petitions, if any shall stand closed.

**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 14.09.2017
ska