

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.1325 of 2015

ORDER:

The petitioner is the A.1 among the three accused arrayed in the police final report pursuant to Cr.No.39 of 2009 of the SHO, Governorpet Police Station, Andhra Pradesh State, registered for the offences punishable u/sec.420IPC and Sections 4 to 6 of Prize, Chits and Money Circulation Schemes(Banning) Act, 1978(for short, 'the PCAMCS (B) Act, 1978 and from the said police final report, the learned Magistrate by order dt.17.09.2014, taken cognizance in allotting the CC.No.572 of 2014 for the said offences against the accused persons 1 to 3 supra while ordering summons to A.1 and A.3 and NBW against A.2.

Leave about several contentions raised in the quash petition, the main contention is that even pursuant to the provisions of Section 6 of the Act, 1978 supra *para materia* to Section 141 of the Negotiable Instruments Act, and from the legal position pursuant thereto apart from unless there is a statutory provision providing of vicarious liability for the acts of the company or entity, no vicarious liability arises and by virtue of the provisions, even the persons responsible for day-to-day affairs and from the status of the Managing Director and the like, the liability is along with the Company being the main accused from any such allegations and thereby the cognizance order is unsustainable and even from the reading of the very police final report showing the entity-Amway India is operating money circulation scheme and A.1 is controlling the same and A.2 and A.3 are acting under him as business partners in the said circulation business. Suffice to say without the entity as a prima accused, the others including the A.1 to A.3 as Managing Director or Controlling Authority

and other authorities working in the business cannot be prosecuted to take cognizance.

Having regard to the above and in the result, the Criminal Petition is disposed of by setting aside the cognizance order in C.C.No.;572 of 2014 passed by the learned Magistrate and the matter is remitted back to the learned Magistrate to pass fresh cognizance order if at all there is any material within its power u/sec.190 Cr.P.C. including from the expression of the Constitution Bench of the Apex Court in **Dharampal Vs. State of Haryana**¹.

Needless to say, all available defences are left open to the petitioners/A.1 to A.3. Pending miscellaneous petitions, if any, shall stand closed.

Date: 05.10.2017
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JUSTICE Dr. B.SIVA SANKARA RAO



¹ (2014) 3 SCC 306