

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION Nos.6508, 6530 & 6531 of 2017

Between:

Dasari Deepthi and another

.....Petitioners

and

State of Telangana and another

.....Respondents

Date of Judgment pronounced on : 22-09-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

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

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< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioners : Sri S. Syam Sunder Rao

^ Counsel for the respondents : Sri B. Mohan

? **Cases referred**

1. (2005) 8 SCC 89
2. 2016 (1) ALD (Crl.) 1044 (AP)
3. (2016) 6 SCC 78
4. (2016) 6 SCC 62
5. 2013 CrLJ 3743
6. 2016 (1) ALD (Crl.) 177
7. (2005)4 SCC 530
8. (2011)1 SCC 74
9. (2015)4 SCC 609
10. (2012)5 SCC 661
11. (2005)8 SCC 89
12. (2000)1 SCC 1
13. (2008)13 SCC 703
14. 1973 SCC 491
15. (2014)10 SCC 373
16. (1987)3 SCC 684
17. (2007)3 SCC 693
18. (2010)3 SCC 330
19. 2010(2) ALD (Crl.) 564 (SC)
20. 2013(2) ALD (Crl.) 331 (AP)
21. AIR 2015 SC 675
22. (2014) 11 SCC 790
23. (2005) 2 SCC 217
24. (2002) 1 SCC 234

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CRIMINAL PETITION Nos.6508, 6530 & 6531 of 2017****COMMON ORDER:**

The petitioners are accused Nos.3 & 4 respectively of C.C.Nos.59, 17 & 16 of 2017 on the file of XI & XXI Special Magistrate, Erramanzil, Hyderabad respectively, among 4 accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') respectively from the 3 private complaints of the 2nd respondent-defacto complainant selfsame person against the 1st accused M/s. Dhruti Infra Projects Limited represented by its Managing Director, the 2nd accused-Mr. K.Krishnakanth and the accused Nos.3 & 4 shown as Directors of the 1st accused company.

The averments in the respective complaints of the 3 cases supra that were taken cognizance show that accused Nos.2 to 4 on behalf of the accused No.1 company approached the complainant for investment in their project in the year 2013 and after enquiring about company credentials and after satisfying, advanced loan to accused No.1 an amount of Rs.50,00,000/- (by way of cash on 09.10.2013 of Rs.20,00,000/-, through RTGS on 21.08.2013 an amount of Rs.5,00,000/- and the remaining amount by 3 cheques bearing Nos.156959, 156960 & 182457 on 10.11.2013, 11.11.2013 and 10.12.2013 of Rs.10,32,000/-, Rs.4,68,000/- & Rs.10,00,000/- respectively). It is also averred that after receiving said amount, A.2 on behalf of A.1 executed an agreement on 01.12.2013 admitting of receipt of Rs.50 lakhs and agreed to pay monthly interest of Rs.1,00,000/- to the complainant and that in case of default, the complainant is entitled to recover the amount

with interest. The complainant further averred that he also invested an amount of Rs.1,61,50,000/- through RTGS (Rs.53,00,000/- through IDBI Bank on 17.02.2014, Rs.48,50,000/- through Canara Bank on 17.02.2014, Rs.30,00,000/- through IDBI Bank on 22.05.2014 and Rs.30,00,000/- through IDBI Bank on 01.08.2014) and the total comes to Rs.2,11,50,000/- which was invested by the complainant in the A.1 company.

The case of the complainant further that from the beginning A.1 to A.4 requested the complainant to invest in their project and promised to repay the said amounts with interest and also assured that if they failed to repay, they offered to register flat Nos.404, 405 & 409 in their Tranquil Towers, K.R. Puram, Hobli, Bangalore East Taluk in favour of the complainant. He submits that they failed to pay monthly interest on the above amount. He further submits that accused have paid an amount of Rs.30,00,000/- out of the total amount of Rs.2,11,50,000/- (remaining balance is Rs.1,81,50,000/-) and they have also paid an amount of Rs.25,00,000/- on 11.01.2016 and the same was adjusted towards interest as agreed by the accused and thus, he is entitled for an amount of Rs.1,81,50,000/- together with interest as on 31.03.2016. It is further submitted that on several demands made by the complainant for repayment, the accused have issued the following seven cheques i.e., bearing Nos.170775, 170776, 170777, 170778, 170779 & 170780 for Rs.25,00,000/- each dated 11.05.2016, 18.05.2016, 06.06.2016, 10.06.2016 & 22.06.2016 respectively and another cheque bearing No.172518 for Rs.30,00,000/- dated 26.06.2016, all the cheques were drawn on

Bank of India, Whitefield Branch, Bangalore (Karnataka). It is also averred that accused Nos.2 to 4 are actively participating in the day to day affairs of accused No.1 company and made promise to adhere to the terms of the agreement and to repay the amount and the cheques were issued to discharge the existing liability i.e., legally enforceable debt. When the cheques were presented with his Banker IDBI Bank, Banjara Hills, Hyderabad, the same were returned dishonoured with an endorsement of "payment stopped by drawer". Thereafter, the complainant got issued legal notices dated 04.08.2016 to accused Nos.1 to 4 and notices returned as addressee left and thus, the complainant filed the respective complaints to take action.

The quash petitions contentions impugning the said private complaints filing & taking of cognizance are that in the 3 complaints in question, there are no any specific allegations particularly in so far as A.3 & A.4 who are the petitioners respectively of the 3 quash petitions that how they are responsible if at all in any manner much less for day to day affairs of the company and there is nothing even to say that they either executed the agreements or issued the cheques in question as drawers along with A.2 representing A.1, for the cheques in question were issued only by A.2 as Managing Director of A.1 company and the petitioners/A.3 & A.4 are not even in-charge of the affairs of the company from mere Non-Executive Directors and the learned Magistrate did not advert to it in taking cognizance. It is also averred that as per the catena of the expressions of the Apex Court, the taking of cognizance and issue of summons against the petitioners/accused 3 & 4 of the 3 cases are thus unsustainable

and nothing but abuse of process and thereby the quash petitions are to be allowed.

Learned counsel for the quash petitioners having reiterated the same also contended that there is no whisper in the complaints filed by the complainant as GPA holder of the payee in question, for not the holder in due course of the cheques and there is no specific pleading further of the complainant as GPA holder of the payee got personal knowledge of the facts and the transactions and hence sought for allowing the quash petitions.

Whereas it is the submission of the learned counsel for the complainant that the prosecution is sustainable including against the quash petitioners and the learned Magistrate has rightly taken cognizance against A.1 to A.4 including the petitioners/A.3 & A.4 of the 3 cases who are responsible for the day to day affairs of the company-A.1 along with A.2-Managing Director and the complaint averments are sufficient to say that the complainant is GPA holder of the payee and got personal knowledge of the facts and thus there is nothing to interfere with the cognizance orders on the manner of filing complaints and sought for dismissal of the quash petitions.

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

The cheques in question presented that were returned dishonoured were issued on behalf of A.1 Company from its account signed by A.2 being its Managing Director and as its authorized signatory. There is nothing specifically in any of the 3

complaints to say any of the petitioners/A.3 & A.4 are responsible for day to day affairs and there is also no such pleading in the respective complaint's averments and in the absence of which including from the legal notice in question from reading of its contents as to how they are responsible for day to day affairs or otherwise, the prosecution against A.3 & A.4 per se unsustainable.

It is because mere mention in the complaints of A.2 to A.4 are actively participating in A.1 company is not sufficient. No doubt, it is averred that A.2 to A.4 on behalf of A.1 approached the complainant to invest in their project, he agreed to invest the amounts supra and also further invested and on demand after part discharge, issued cheques that were dishonoured.

The investment agreement in question refers only A.1 company represented by A.2 as Managing Director on one hand and the complainant on the other hand by name A.R. Radhakrishna and it no way refers the petitioners/A.3 & A.4, even A.3 & A.4 not signatories. In the absence of the petitioners are at least attestors to the agreement in question, it is difficult prima facie to appreciate the complainant's vague allegation of all approached or all were demanded or all are actively participating in the affairs of the A.1 company.

Both the learned counsel in so far as allegations in the complaint drawn attention to **SMS Pharmaceuticals Limited Vs. Neeta Bhalla and Another**¹ in which at Para 8 it is specifically observed that even Board of Directors may appoint Special Committee consisting of one or two directors out of the board of company as responsible for day to day functioning of the company

¹ (2005) 8 SCC 89

and these are the matters which form part of resolution and nothing is oral. It is therefrom observed what emerges from the role of Director of a company is a question of fact depending upon peculiar facts of each case. Thus even from this, it is nothing to say there are any resolutions making A.3 & A.4/petitioners are responsible for the affairs of A.1 company and there is nothing even to say A.3 & A.4 are attestors to the so called original development agreement of December 2013 much less parties along with A.2 representing A.1 company and there is nothing even pleaded as to how they are responsible for day to day affairs and in the absence of which any stray sentence is no way sufficient even from the expression of this Court in **Nusun Genetic Research Limited and Others Vs. the State of Telangana**² apart from other expressions in this regard including the latest in **Tamilnadu News Print and Papers Limited Vs. D.Karunakar & Others**³ referring to **SMS Pharmaceuticals supra** it is also clear that merely a person acting as a Director does not make him responsible for cheque issued on behalf of the company in the absence of showing he must be in-charge and responsible for conduct of the business of the company and there has to be a specific averment in the complaint how he was in charge of conduct of business of the company at the time of commission of offence alleged and it is only when there is specific averment clearly contained in the complaint of how responsible for day to day affairs of the company as Director, the quashing of the proceedings cannot be resorted to against such Director. Further in **Standard Chartered Bank Vs.**

² 2016 (1) ALD (Crl.) 1044 (AP)

³ (2016) 6 SCC 78

State of Maharashtra⁴ it is held that there must be specific averment in the complaint regarding responsibility of the Directors as to how responsible for the conduct of day to day business of the company at the time of commission of the offence. In fact there the accused persons were Chairman and Managing Director respectively and 2 others were drawers of the cheques in question and 2 others besides the company were whole time Directors shows specifically from the pleading of in-charge of day to day affairs to make all responsible that was not properly adverted to the High Court in quashing the proceedings. Even from these expressions, it is crystal clear that there must be a basic pleading of not only responsible for day to day affairs but also to show how either from the status of whole time Directors and drawers are made responsible from anything in writing as to day to day affairs or as Chairman and Managing Director even not drawers as the case may be, without which it is only the drawer that is made liable and not otherwise, the non-drawers but for specific averment to make vicariously responsible as also held in **Aparna A Shah Vs. M/s. Sheth Developers Private Limited**⁵. So far as the petitioners concerned, there are no any specific averments to make them responsible in the peculiar facts of the case for day to day affairs for they did not issue the cheques in question for they were not even parties to the agreement originally in question of lending in this regard the expressions of this Court in **Nusun Genetic supra** and also in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**⁶ by

⁴ (2016) 6 SCC 62

⁵ 2013 CrLJ 3743

⁶ 2016 (1) ALD (CrL.) 177

scanning the law categorically held that there must be specific averments in the complaint if at all other than the drawer and even for a company for any of its Directors or other officers to make them responsible under Section 141 of the Act, as to how and in what manner they are responsible either in issuing the cheques or for its dishonour, without which even any legal notice after dishonour of its cheques received by them with or without reply that will not make them liable even with any reply and the Company and its Managing Director as drawer of the cheque on behalf of the Company can prima facie liable, but not the other Directors in the absence of any specific allegation making them responsible as in-charge of affairs of the company with clear averment. For more clarity Para 5 of the **Narendra Kurangi** supra as follows:

“5) 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**⁷ 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 expression of the Apex Court in **Iridium India Telecom Ltd. V. Motorola Inc.**⁸ referring to the several expressions of the 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

⁷ (2005)4 SCC 530

⁸ (2011)1 SCC 74

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 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. It was the observation in **Iredium** supra that was again followed in latest three Judge bench expression of the Apex Court in **Sunil Bharti Mittal V. C.B.P.** 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**¹⁰ 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 backdrop Section 141 of the N.I.Act has to be understood. Such a position is therefore because of statutory intendment making it a

⁹ (2015)4 SCC 609

¹⁰ (2012)5 SCC 661

deemed fiction. In **Sunil Bharti Mittal** supra it also referred the three Judge bench expression of the Apex Court in **S.M.S.Pharmaceuticals Ltd. V. Neeta Bhalla**¹¹. In **S.M.S.Pharma** supra at para No.8 it is observed 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 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**¹² 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 later held not good law in **Aneeta Hada (I) V. Godfather Travels & Tours (P) Ltd.**¹³ 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** is over ruled and **Aneeta Hada** (1) 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 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

¹¹ (2005)8 SCC 89

¹² (2000)1 SCC 1

¹³ (2008)13 SCC 703

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 been stipulated in the petition itself as held in **State of Madras V. C.V.Parekh**¹⁴. The same question when again came for consideration before the two Judge bench in **Anil Gupta V. Star India Private Limited**¹⁵, **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**¹⁶ 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 in-charge 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 in-charge 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 in-charge of and responsible for conduct of the business of the company. A director cannot be deemed to be in-charge 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**¹⁷ referring to **S.M.S. Pharmaceuticals** supra apart from another expression, that for dishonour of cheque making of requisite

¹⁴ 1973 SCC 491

¹⁵ (2014)10 SCC 373

¹⁶ (1987)3 SCC 684

¹⁷ (2007)3 SCC 693

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**¹⁸ 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 in-charge 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 in-charge 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 in-charge 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**¹⁹ 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**²⁰ . Even other latest expression in **Poojari Ravinder Devi Dasani V. State of Maharashtra**²¹ reiterates the same reliance upon **National Small Industries Corporation** supra.”

No doubt so far as filing of the complaint by the GPA holder concerned, the agreement dated 01.12.2013 is with A.R. Radha

¹⁸ (2010)3 SCC 330

¹⁹ 2010(2) ALD (CrI.) 564 (SC)

²⁰ 2013(2) ALD (CrI.) 331 (AP)

²¹ AIR 2015 SC 675

Krishna-the complainant and not his wife, but for she is only attestor by name Smt. A.R. Varalakshmi. The cheques in questions shown issued by A.1 Company represented by its Managing Director-A.2 as drawer respectively in the name of said AR. Radhakrishna and not in the name of Varalakshmi even. In the cause title of the 3 complaints taken cognizance, it is mentioned as A.R. Radha Krishna represented by GPA holder Smt. A.R.Varalakshmi the complainant. It is thus clear that payee is A.R. Radha Krishna whereas the complainant is his wife Smt. A.R.Varalakshmi referring in the long cause title only as GPA holder and not even as holder in due course. In perusal of the entire complaint averments of the 3 complaints, there is no specific mention of the GPA holder got personal knowledge of the transaction, but for at verification Para of the complaints by her as Smt. A.R.Varalakshmi, GPA holder of the complainant declare the contents of the complaint read over and explained to her in English which are true and correct to the best of her knowledge and belief. Whether there is sufficient compliance for sustainability of the complaint is though in question, here more particularly with reference to the expression of the Constitution Bench of this Court in **A.C. Narayanan Vs. State of Maharashtra**²² in answering the reference with reference to the earlier expressions in **Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Limited and Others**²³ and **M.M.T.C. Limited and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another**²⁴, no doubt, the **AC Narayanan supra** clarified that there is no conflict between the

²² (2014) 11 SCC 790

²³ (2005) 2 SCC 217

²⁴ (2002) 1 SCC 234

earlier expressions and MMTC also speaks the defect is a curable one.

From the above, it is suffice to say the taking of cognizance by the learned Magistrate against the petitioners/A.3 & A.4 of the 3 cases for the offence under Section 138 of the Act on facts referred supra are unsustainable and are liable to be quashed.

Accordingly and in the result, the criminal petitions are allowed by quashing the proceedings against the petitioners/A.3 & A.4 by setting aside the cognizance order. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.09.2017

Note: L.R. Copy to be marked

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