HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.15050 OF 2016

ORDER:

The petitioner, who is arraigned as accused No.1, requesting to quash the proceedings in Calendar Case No.671 of 2016 on the file of I Additional Judicial Magistrate of First Class, Tadepalligudem, West Godavari District, Andhra Pradesh, filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The petitioner is arraigned as accused No.1 in the aforesaid Calendar Case. He along with accused No.2 is alleged to have committed the offences punishable under Section 420 IPC and Sections 3 and 4 of Agriculture Produce (Grading & Marketing) Act, 1937, (for short 'Act 1937') in Crime No.57 of 2016 registered by the Inspector of Police, Tadepalligudem Rural Circle.

3. The allegations are that, M/s. 3F Industries Limited (for short 'Company'), Prathipadu village, Pentapadu Mandal, has been indulging in unauthorized packing of vegetable fat spread under the Ag-Mark Insignia without having valid certification of authorization (Ag-Mark).

i) During the inspection of Authorized Officer of Directorate of Marketing and Inspection, Sub-Office, Guntur, they found that the packer authority of which accused Nos.1 and 2 are the Director and

General Manager, were in possession of unauthorized produce, packing & grading and marketing under the Ag-Mark and, thus, using Ag-Mark Insignia (Symbol) on packed products and cheating the Government and Public intentionally by fraudulent manner causing wrongful gain to themselves and loss to the Government to a tune of Rs.56.00 lakhs.

ii) On report being filed, the Station House Officer, Pentapadu Police Station registered a crime for the offences mentioned in the above and issued the First Information Report. Later, on completion of investigation, charge sheet was laid.

iii) It is stated that during inspection, 1884 Cartons (28,260 kgs.) worth about Rs.56.00 lakhs of mellobrand of vegetable fats spread packed in different batches in the month of April, 2016 were found. Both the accused obtained anticipatory bail from this Court and on their surrender before the Magistrate, they were enlarged on bail.

4. Heard Sri Ch. Dhanamjaya, learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

5. The learned counsel would make the following submissions:

i) On a reading of the allegations made in the complaint, it is clear that no offence is made out either under Section 420 IPC or under Sections 3 and 4 of the Act 1937, and even assuming that the alleged lapse occurred on the part of the Company as alleged in failure to get a license renewed, but it was only a mere irregularity and no criminal liability can be fastened against the petitioner or against the Company.

ii) His next submission is that, the prosecution has been launched against the petitioner in his personal capacity without making the Company as an accused and the petitioner and, therefore, cannot be prosecuted for those offences for the reason that even according to the complaint that the license was issued in favour of the Company and the Company failed to renew its license after 31.03.2014.

iii) The learned counsel further would submit that the petitioner was the Director of the Company, that the persons, Sri G. Thammaiah, Quality Control Manager and also Person In-charge, Sri Narasimha Murthy, Junior Officer of the Company are authorized to represent the Company and to submit periodical returns by obtaining necessary permissions and licenses as per the Board Resolution that came into effect on 24.01.2014 passed at 10.25 AM. It is further stated that the petitioner is one out of 10 Directors of the Company, and even as per the Articles of Association, no specific job was assigned to the petitioner to make him responsible for day-to-day affairs of the Company and that the license was issued by the competent authority in the name of the Company formerly known as Food Fats & Fertilizers Private Limited, but not in the name of the petitioner. Therefore, the petitioner cannot be held responsible or liable for the prosecution for either of the offences.

iv) The learned counsel would submit that the Company is commanding good reputation from among the public and also from the industries in particular and it is unknown to criminal law to try a person extending vicarious liability against the petitioner for the wrong done by the Company which is a juristic person, and unless the Company against whom the allegations are made is found guilty, the person who is connected with the day-to-day affairs of the Company cannot be punished in his individual capacity and, therefore, sought to quash the proceedings in the aforesaid Calendar Case.

6. The learned counsel for the petitioner also places reliance in **Aneeta Hada v. Godfather Travels and Tours Private Limited with other cases**[1]; **Sunil Bharti Mittal v. Central Bureau of Investigation**[2]; **Standard Chartered Bank v. State of Maharashtra and others**[3]; and **N. Srinivasan v. State of Telangana and another**[4].

7. The learned Additional Public Prosecutor, on the other hand, would submit that in fact license obtained by the petitioner had expired on31.03.2014, and it was not got renewed, but, still, running

1. (2012) 5 SCC 661
2. (2015) 4 SCC 609
3. (2016) 6 SCC 62
4. 2017 (1) ALD (Crl.) 413

the business. On vicarious liability, it is, according to him that there is no bar enacted by the provisions of the Act 1937, nor in the Indian Penal Code, like the one embedded in Section 141 of the Negotiable Instruments Act, 1881 (for short 'the Act 1881') and, therefore, the rulings relied on by the learned counsel for the petitioner are wholly inapplicable to the present fact-situation. It is not a fit case where quashment can be ordered by exercise of extraordinary power under Section 482 of the Code.

8. In **Standard Chartered Bank's Case** (Supra 3), accused Nos.2 and 3 were Chairman and Managing Director respectively, accused Nos.6 and 7 were signatories to cheques which were dishonoured, and accusedNos.4and 5 were whole-time Directors and they were in charge of day-to-day business of company, and all of them had, with active connivance, mischievously and intentionally issued the cheques in question and referring to the provisions of the Section 141 of the Act 1881, while setting aside the order passed by the High Court quashing the charge on the ground that there were no specific averments in the complaint for issuance of summons against the accused persons, directed the learned Magistrate to proceed with complaint in accordance with law. Thus, irrespective of authorized signatory, the Chairman and Managing Director and other two Directors, who were whole-time Directors and they were in charge of day-to-day business of the company, still, the Hon'ble Supreme Court

directed the learned Magistrate to proceed with the complaint cases in accordance with law. Thus, in the present case also, the submissions now made by the learned counsel for the petitioner can be examined during trial as relevant material has to be placed before the learned Magistrate in case a provision analogous to Section 141 of the Act 1881 is available in the Act, 1937 or the law declared by the Hon'ble Apex Court in an identical situation.

i) In **Aneeta Hada's Case** (Supra 1), again the fact-situation reflects the decision was rendered in the context of bouncing of cheques, where the legal bar embedded in Section 141 of the Act, 1881 was considered. Further, the mandatory requirement envisaged by the provisions of Section 141 of the Act, 1881 was dealt. While emphasizing that prosecution against Director or authorized Signatory of cheque without arraigning of a company as an accused held not maintainable.

ii) In **Sunil Bharti Mittal's Case** (Supra 2), the Hon'ble Supreme Court in paragraph Nos.42 to 44, while emphasizing the circumstances that Director/Person In-charge of the affairs of the Company can also be prosecuted when the Company is an accused person thus:

> "42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea,

it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act

> attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

iii) In the context of whether an individual, who has perpetrated the commission of an offence on behalf of a Company can be made an accused, along with the company, the Hon'ble Supreme Court held that if there is sufficient evidence of his active role coupled with criminal intent, he can be made an accused and also in a situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision, and when the Company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to that effect, and also one such example is Section 141 of the Act, 1881.

iv) In **N. Srinivasan's Case** (Supra 4), in fact, the company was made as accused No.7 and the proceedings in calendar case against accused No.3, who was the petitioner therein, were quashed not merely on the ground that the company was not made as a party, but the ground that the name of the petitioner - accused No.3 therein was not occurring in two writ petitions nor was there any material from investigation directly to show his role actively to make him personally liable for accusation as to any participation or privy for any conspiracy much less to commit offence or to abet offence under the Prevention of Corruption Act.

9. In a quash petition, like the one at hand, to cull out the intent, it is premature at this stage and unless full-fledged trial takes place, it is difficult to infer criminal intent on behalf of an individual in arriving at whether he has perpetrated the commission of offence on behalf of the Company. In the present case, no doubt, the Company is not shown as an accused, but the individuals are shown as accused persons, who are the present petitioner and one P. Venkata Rama Rao, who was Director and General Manager of 3F Industries Limited, but the offences alleged are punishable under Section 420 IPC, where there is no legal bar as the one embedded in Section 141 of the Act, 1881, or in the Act, 1937. The petitioner is not disputed that there was no license subsequent to 31.03.2014, and more particularly, when respondent No.2 caused inspection. In fact, one of the submissions made by the learned counsel for the petitioner has been that failure to get a license renewed by the company was only a mere irregularity and no criminal liability can be fastened. The fact that during the inspection by respondent No.2, the petitioner and accused No.2 were in possession of unauthorized produce, packing and grading and marketing under the Ag-Mark and using Ag-Mark Insignia (symbol) on packed products and cheating the Government and Public intentionally by fraudulent manner causing wrongful gain

to themselves and wrongful loss to the government to the tune of Rs.56.00 lakhs cannot be lost sight of.

10. Thus, it is not a case where quashment as prayed for can be ordered by exercising the extraordinary power under Section 482 of the Code. However, it is open to the petitioner to agitate the grounds raised herein as defence during trial. It is observed that the learned Magistrate would dispose of the Calendar Case uninfluenced by any of the observations made herein.

The present Criminal Petition is accordingly, dismissed at the stage of admission itself. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.

A. SHANKAR NARAYANA, J

July 24, 2017.
Mgr