HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.3147, 3148, 3149, 3158, 3160, 3216, 3219, 3220, 3225, 3814, 3816, 3817, 3818, 3819, 3820, 3837, 3859, 4108, 4114, 4120, 4121, 5118, 5119, 5284, 5306, 5307, 5308, 8854 and 13809 of 2013

COMMON ORDER:

These Criminal Petitions are filed by the petitioner under Section 482 Cr.P.C, to quash the 29 Criminal Cases wherein she is appearing as Accused No.3. A batch of 29 Criminal Cases were filed under Sec.138 of Negotiable Instruments Act, 1881 (for short "N.I.Act") by several complainants in different Criminal Courts in Guntur against three accused viz., 1) M/s. Lakshmi Ganesha Textiles Limited Rep.by its Managing Director—Vikram Naidu Radhakrishnan, 2) Vikram Naidu Radhakrishnan and 3) Savithri Radhakrishnan, with more or less similar pleas to the effect that 1st accused is the Company incorporated under Indian Companies Act, carrying business in yarn and A.2 and A.3 are its Managing Director and Director respectively and they are having day-to-day control and supervision over the affairs of A.1—company and during the course of their business transaction, they issued cheques to the complainants, drawn on ICICI Bank Limited, Coimbatore and on presentation by the Complainants in different banks at Guntur, the cheques were dishonored on the ground that payment was stopped by the drawer. After completion of legal formalities, the complainants filed Criminal Cases under Sec.138 of N.I.Act, against the aforesaid accused.

2) The Accused No.3 filed the instant batch of Criminal Petitions seeking to quash the proceedings on the pleas that the petitioner was innocent and unnecessarily implicated without there being any incriminating material to connect her with the alleged offence; learned Magistrate took cognizance of the offences in a highly mechanical fashion though there is absolutely no semblance of material to show that the petitioner was responsible for issuance of the cheques or she was in-charge and having control and supervision over the day-to-day affairs of A.1 company and on the other hand, Form-32 submitted by A.1-company would show that the petitioner was a non-Executive Director w.e.f. 07.12.2007 and ceased as such, w.e.f, 23.11.2012; A.1-company is managed by A.2 as its Managing Director; the Balance Sheet of the Company would show that no remuneration was paid to the petitioner; and all these would manifest that the petitioner was no way connected with the affairs of A.1-company and she was not having any day-to-day control and supervision over the affairs of A.1-company; above all, the petitioner was not the signatory to the cheques and hence, the proceedings against her in all the Criminal Cases are liable to be quashed, having been fell foul of law.

3) The respondent No.2/complainant filed counter and additional counter and opposed the Criminal Petitions *inter alia* contending that during the business transactions with the complainant companies in 2011 and 2012, the petitioner/A.3 was in occupation of the business of A.1-company and she was bodily present in the company and on the respective

dates of issuance of cheques also, she was actively participating in the business transactions which was evident from the relevant documents of the Company and she was having full knowledge about the issuance of subject cheques and their dishonor. It was contended that the petitioner/A.3 in the capacity of Chairman for M/s. Lakshmi Ganesha Textiles Limited (A.1), issued letters on 20.02.2012 to M/s. Sri Rama Cotton Ginning and Oil Mills, Koyavaripalem and also to M/s. Sri Vijaya Venkateswara Cotton Mills Pvt. Ltd, Dokiparru, stating that their company paid money to the respective Mills by way of RTGS and that the Mill owners assured that they would not insist for further payment for the next two months. The petitioner also wrote a letter on 21.06.2012 that the mortgage of Ac.0-66 cents of land belonging to Vikram. R. Naidu and Miss Diya R.Naidu would be created in favour of four parties and these letters would show, she was actively participating in the affairs of A.1-company. R.2 further pleaded that the petitioner had full knowledge with regard to the issuance of cheques in favour of complainants by A.1-company and signed by A.2, and she consented and therefore, she cannot be exonerated from the criminal cases. Whether she ceased to be a Director/Non-Executive Director is a disputed question of fact which cannot be determined in the quash petitions and hence, the petitions are liable to be dismissed.

4) The petitioner filed reply to the counter and additional counter filed by respondent No.2 and denied the contentions.

5) Heard arguments of Sri T.Nagarjuna Reddy, learned counsel for petitioner and Sri G.L.V.Ramana Murthy, learned counsel for respondent No.2/complainant.

6 a) Severely castigating the cognizance taken by trial Courts against the petitioner/A.3 in the batch of criminal cases, learned counsel for petitioner Sri T.Nagarjuna Reddy, would firstly argue that the ingredients of the offence under Sec.141 of N.I Act are not fulfilled in the instant case since the petitioner/A.3 was only a Non-Executive Director of A.1's company between 07.12.2007 to 23.11.2012 and ceased to be as such thereafter and during the relevant period, she was not incharge of and responsible for the conduct of the business of the company and even admittedly, she was not the signatory of any one of the cheques and the trial Courts without considering these aspects, mechanically took cognizance and issued summons and as such, the cognizance was vitiated by law.

b) Secondly, he would argue, in order to attract an offence under Sec.141 of N.I Act against a Director of the company, who was a non-signatory of the cheque, there must be specific averment in the complaint not only to the effect that such a Director, at the time of the offence was committed, was incharge of and responsible for the conduct of the business of the company, but the complaint must also contain averments showing how and in what manner he was responsible for the conduct of the business of the company. In the instant case, he would emphasize, most of the complaints miserably lack even the basic averments that A.3 was incharge of and responsible for the conduct of A.1's company, leave aside the specific averments that the manner in which she was responsible for the conduct of the business of the company. On that count also, the complaints are liable to quashed.

7) Remonstrating the above arguments, learned counsel for respondent No.2/complainant Sri G.L.V. Ramana Murthy, would contend that petitioner/A.3 is the mother of A.2 and she being the head of the family and as one of the Directors, was incharge of and responsible for the conduct of the business of the A.1's company and though she was not a signatory of the cheques, she was very much aware of the factum of issuance of cheques and consented and had knowledge of their dishonour also. That she was actively involved in the day-to-day business of the A.1 company is evident from the letters dated 20.02.2012 written by her to the trading parties in the capacity of Chairman and therefore, it is futile on her part to deny her involvement in issuance of the cheques.

a) He would further argue that in all the complaints, the basic averments that the A.3 was incharge of and responsible for the conduct of the business of A.1's company were clearly mentioned and such basic averments were sufficient for the trial Court to take cognizance of the offence and issue summons and it is not the requirement of law that the complainant should invariably mention about the method and manner in which petitioner/A.3 was involved in the conduct of the business or in issuance of the cheques and that part relates to the trial. He would thus argue that the trial Courts rightly took cognizance in all the criminal cases.

b) Learned counsel would further argue that whether the petitioner/A.3 was only a Non-Executive Director between 07.12.2007 to 23.11.2012 or whether she officiated as a Director involving in the day-to-day business affairs of the A.1-company during the relevant period of offence is a pure question of fact, which can be decided only after full-fledged trial. He thus prayed to dismiss the petitions.

8) The above divergent arguments raise two points, one legal and other factual, for determination of this batch of petitions:

i) *To take cognizance of an offence under Sec.141 of N.I. Act against a Director, whether basic averments that, at the time the offence was committed, he was incharge of and was responsible for the conduct of the business of the company are suffice or specific averments showing as to how and in what manner the Director was responsible for the conduct of the business of the company, must also be made in the complaint?*

ii) *If it is held, basic averments are sufficient, whether the complaints and their sworn affidavits did contain such basic averments and whether the petitioner/A.3 could by unimpeachable material demonstrate that the basic averments pleaded were false to the core to deserve quashing of the proceedings?*

9) **POINT No.1**: It is well settled principle that a person is liable for punishment for the offence committed by him and not by someone else. The concept of vicarious liability in penal statutes is rare and exceptional one. Such cases one may come across in Indian Penal Code under Sec.34 (acts done by several persons in furtherance of common intention);

Sec.107, 114 (abatement); Sec.120-A and 120-B (criminal conspiracy); and Sec.149 (offence committed in prosecution of common object by unlawful assembly). It should be noted that Sec.34 IPC is only a rule of evidence but not a substantive offence. One such offence on the principle of vicarious liability was introduced through Sec.141 in Negotiable Instruments Act. This Section speaks of the offence committed by Companies under Sec.138 of N.I.Act. As per this Section, if a company issues a cheques towards discharge of legally enforceable debt and it bounced back and company failed to repay the debt inspite of the statutory notice, the company is said to have committed the offence under Sec.138 of N.I.Act. In such an instance, the "company" will be the principal offender. Since the company is a body corporate and includes a firm or other association of individuals, this Section holds, such of the Directors, Managers, Secretaries or other Officers of the company, who were incharge of and responsible for the conduct of the business of the company will be vicariously liable. Section 141 of N.I. Act reads thus:

> ***Sec.141. Offences by companies:***
>
> *(1) If the person committing an offence under section 138 is a company, 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:*
>
> > *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purpose of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

10) With regard to Section 141(1) of N.I.Act, the point of controversy is, whether the basic averments that the Director or some other person was incharge of and was responsible for the conduct of the business of the company is suffice or specific averments showing as to how such Director or other person was responsible for the conduct of the business of the Company should also be made. On this aspect, there is a dichotomy of opinion.

i) In ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla (Case-I)***[1], a three Judges Bench of Apex Court was answering three questions referred to it, of which, the first question which is germane for us is thus:

> *"(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company."*

Referring the provisions of N.I Act and several decisions, the Apex Court answered the above questions thus:

> *(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.*

It is pertinent to note that in this decision, no other averments were specified apart from the basic averments.

ii) In ***Saroj Kumar Poddar vs. State (NCT of Delhi) and another,***[2] a Division Bench in Para 14 observed that the appellant-Director did not issue cheque and he had resigned from the Directorship of the company and though it may be true as to exactly on what date the said resignation was accepted by the company is not known but even otherwise, there was no averment in the complaint petitions as to how and in what manner the

[1] (2005) 8 SCC 89
[2] (2007) 3 SCC Pg.693

appellant was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning.

a) Thus it would appear that, in this decision the Division Bench remarked that apart from the basic averments there were no other averments as to in what manner the appellant was responsible for the conduct of the business of the company.

iii) However, in a subsequent decision reported in ***N.Rangachari vs. Bharat Sanchar Nigam Limited***[3], another Division Bench declined to follow ***Saroj Kumar Poddar***'s case(2 supra) in view of binding ratio in ***S.M.S. Pharmaceuticals Limited*** case-1 which was rendered by three judges. It was held thus:

> ***"Para 23:*** *In the light of the ratio in S.M.S. Pharmaceuticals Ltd. [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] what is to be looked into is whether in the complaint, in addition to asserting that the appellant and another are the Directors of the company, it is further alleged that they are in charge of and responsible to the company for the conduct of the business of the company. We find that such an allegation is clearly made in the complaint which we have quoted above. Learned Senior Counsel for the appellant argued that in Saroj Kumar Poddar case [(2007) 3 SCC 693: (2007) 2 SCC (Cri) 135:(2007) 2 Scale 36] this Court had found the complaint unsustainable only for the reason that there was no specific averment that at the time of issuance of the cheque that was dishonoured, the persons named in the complaint were in charge of the affairs of the company. With great respect, we see no warrant for assuming such a position in the context of the binding ratio in S.M.S. Pharmaceuticals Ltd. [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] and in view of the position of the Directors in a company as explained above."*

---
[3] (2007) 5 SCC pg.108

iv) Added to above, in ***S.M.S.Pharmaceuticals Ltd. vs Neeta Bhalla and another***[4]***(Case-II: after reference),*** a Division Bench of Apex Court in Para 26 observed that in ***Saroj Kumar Poddar***'s case (2 supra) no general law was laid down and the observations were made in the context of the said case.

v) In ***N.K.Wahi vs. Shekhar Singh and others***[5], a Division Bench of Apex Court held that to launch prosecution against the Directors, there must be a specific allegation in the complaint as to the part played by them in the transaction and there should be clear and unambiguous allegation as to how the Directors were incharge and responsible for the conduct of the company and the description should be clear.

vi) In ***K.K.Ahuja vs. V.K.Vora and another***[6], a Division Bench of Apex Court has drawn the distinction between the cases falling under Sec.141(1) and 141(2) of the N.I. Act and observed that to bring the case under Sec.141(1) of the N.I.Act, an averment in the complaint that he was incharge of and was responsible to the company, for the conduct of the business of the company is necessary and no further averment would be necessary though some particulars will be desirable; whereas to bring the case under Sec.141(2) of the N.I.Act, necessary averments relating to the consent and connivance or negligence of the Director, Secretary or Manager {as defined in Sec.2(24) of the Companies Act} or a person referred to in clause (e) and (f) of Sec.5 of Companies Act, or other

[4] (2007) 4 SCC 70
[5] (2007) 9 SCC 481
[6] (2009) 10 SCC 48

Officers of the company and their position and duties and their role in regard to the issue and dishonor of cheques have to be made.

vii) In ***National Small Industries Corporation Ltd vs. Harmeet Singh Paintal and another***[7], a Division Bench of Apex Court held that for making a person liable under Sec.141(2) of the N.I.Act, the mechanical repetition of a requirements of Sec.141(1) of N.I.Act will be of no assistance but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore responsible under Sec.141(2) of the Act.

viii) In ***Pooja Ravinder Devidasani vs. State of Maharashtra and another***[8], a Division Bench of Apex Court observed that for making a Director of a company liable for the offences committed by company under Sec.141 of N.I Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

ix) In ***Gunmala Sales Pvt. Ltd. vs. Anu Mehta and others***[9], a Division Bench of Apex Court having discussed several decisions and observing that ***S.M.S.Pharma's case (Case-I)****(1 supra)* which was a three judges Bench decision and holds the field, summarized its conclusions thus:

a) *Once the complaint filed under Sec.138 r/w Sec.141 of N.I.Act, the basic averment is made that the Director was incharge of and responsible for the conduct of the business of the company at the*

---

[7] (2010) 3 SCC 330
[8] (2014) 16 SCC Pg.1
[9] (2015) 1 SCC 103

relevant time when the offence was committed, the Magistrate can issue process against such Director.

b) *If petition is filed to quash the complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.*

c) *On an overall reading of the complaint, the High Court may, despite the presence of basic averment, quash the complaint because of the absence of more particulars about the role of the Director. It may do so, having come across some unimpeachable, uncontrovertable evidence beyond suspicion or doubt or totally acceptable circumstances, which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial, would be abuse of process of the Court.*

x) In the latest decision reported in ***Standard Chartered Bank vs. State of Maharashtra and others***[10], the Division Bench of Apex Court relied upon ***Gunmala Sales (P) Ltd.***'s case (9 supra).

xi) This High Court is concerned, in the decision reported in ***Narendra Urangi and others vs. Greenmint India Agritech Pvt. Ltd.***[11], a learned single Judge opined that bald averment in the complaint is not sufficient but a specific allegation is required as to how a Director of a company, who stands in a different footing to the Managing Director is liable.

Thus as can be seen, in decisions (i) (iii) (iv) (ix) and (x) it was held that to bring an offence under Section 141 pleading of basic averment is

[10] (2016) 6 SCC 62
[11] 2015 (3) Law Summary Pg.239

must and sufficient. Whereas in decisions (ii) (v) (vii) (viii) and (xi) it was held that basic averments are not sufficient and there should be specific averments against the accused showing as to how and in what manner he was responsible for the conduct of the business of the company. Thus there is a divergence of opinion. On a careful scrutiny of Section 141 and the aforesaid decisions, I am of the considered view that whether basic averments would suffice or specific averments too are required would depend upon the fact whether the complainant ascribes the accused guilty under Section 141(1) or 141 (2) of N.I. Act. For the purpose of offence under Section 141, the persons connected to an accused company are broadly divided into two categories—i)Managing Director/Joint Managing Director, authorized signatory of cheque and other Directors, Managers, Secretaries or officers who are in charge of and responsible to the company for the conduct of the business of the company and ii) those Directors, Managers, Secretaries and other Officers of the company who were not in charge and responsible to the company for the conduct of the business of the company. The first category of persons fall under Section 141 (1) and second category of persons fall under Section141 (2). The nature of the complaint allegations i.e. basic averments or specific averments depend upon the category of persons imputed. My view gets fortified from the decision in ***K.K.Ahuja***'s case(6 supra). The Apex Court classified the accused under Section 141(1) and 141 (2) for the purpose of deciding the sufficiency of the complaint averments for an offence under Section 141 of N.I. Act. It held thus:

"***Para-27*** The position under Section 141 of the Act can be summarized thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix `Managing' to the word `Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under Sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that Sub-section.

(iv) Other Officers of a company can not be made liable under Sub-section (1) of Section 141. Other officers of a company can be made liable only under Sub-section (2) of Section 141, be averring in the complaint their position and duties in the company and their

role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

So, point No.1 is concerned, following ***K.K.Ahuja***'s case(6 supra), it can be concluded that the nature and sufficiency of complaint allegations in respect of an offence under Section 141 of N.I. Act depend on the category of persons alleged i.e. 141(1) or 141(2).

11) **POINT No.2**: Having resolved point No.1 as above, it has now to be seen in each individual complaint whether allegations are levelled against petitioner/A3 in terms of Section 141 (1) or 141 (2) of N.I.Act and whether such allegations are sufficient to take cognizance or not.

12) In C.C.No.411/2012 (Crl.P.No.3147 of 2013); C.C.No.442/2012 (Crl.P.No.3148 of 2013); C.C.No.590/2012 (Crl.P.No.3149 of 2013); C.C.No.591/2012 (Crl.P.No.3158 of 2013); C.C.No.592/2012 (Crl.P.No.3160 of 2013); C.C.No.455/2012 (Crl.P.No.3216 of 2013); C.C.No.594/2012 (Crl.P.No.3219 of 2013); C.C.No.593/2012 (Crl.P.No.3220 of 2013); C.C.No.309/2012 (Crl.P.No.3225 of 2013); C.C.No.19 of 2013 (Crl.P.No.3814 of 2013); C.C.No.58/2013 (Crl.P.No.3817 of 2013); C.C.No.60/2013 (Crl.P.No.3818 of 2013); C.C.No.67/2013 (Crl.P.No.3819 of 2013); C.C.No.310/2012 (Crl.P.No.3820 of 2013); C.C.No.66/2013 (Crl.P.No.3837 of 2013); C.C.No.418/2012 (Crl.P.No.3859 of 2013); C.C.No.476/2012 (Crl.P.No.4108 of 2013); C.C.No.181/2013 (Crl.P.No.4114 of 2013); C.C.No.477/2012 (Crl.P.No.4120 of 2013); C.C.No.475/2012 (Crl.P.No.4121 of 2013); C.C.No.45/2013 (Crl.P.No.5284 of 2013);

C.C.No.36/2013 (Crl.P.No.5306 of 2013); C.C.No.185/2013 (Crl.P.No.5307 of 2013); C.C.No.16/2013 (Crl.P.No.5308 of 2013); C.C.No.368/2013 (Crl.P.No.8854 of 2013); C.C.No.335/2013 (Crl.P.No.13809 of 2013) complaints are filed against A1-company; A2-Managing Director and A3-Director. It is averred that A2 and A3 are Directors having day today control and supervision over A1-company and on their request the Complainant supplied yarn and towards part payment the accused have issued cheques which were bounced and hence the complaints are filed against A1 who issued cheque, A2 who signed the cheque and A3 who is having the control and supervision over the company. Hence A3 is concerned, as per compliant averments, she was in-charge of and responsible for the conduct of the business of the company in terms of Section 141(1) of N.I.Act. Since basic averments are made under Section141 (1) in terms of ***K.K.Ahuja***'s case(6 supra), the Magistrate has rightly taken cognizance against the accused including petitioner-A3. It is argued by the petitioner that she was only a non-executive Director between 07.12.2007 and 23.11.2012 and she was not in-charge of and responsible for the day today business activities of A1-company and she did not know about the issuance and dishonour of cheque. The petitioner sought to produce a copy of Form-32 wherein she was allegedly shown as non-executive Director. Refuting the same, the respondent too sought to produce copy of Form-32 which according to him, would show the petitioner was a Director. He also sought to produce some letters allegedly written by the petitioner to some trading parties in the capacity of Chairman to show that she was actively engaged in the day today business operations. It must be mentioned that neither party could produce unimpeachable and uncontrovertable evidence beyond doubt and this Court in a petition under Section 482 Cr.P.C. cannot make in depth enquiry on a question of fact which can be determined only after full-fledged trial. The parties are at liberty to establish their individual stand during trial and the trial Courts shall decide the cases on merits. Therefore, the above criminal petitions are liable to be dismissed.

13) In C.C.No.57/2013 (Crl.P.No.3816 of 2013); C.C.No.66/2013 (Crl.P.No.5118 of 2013); C.C.No.65/2013 (Crl.P.No.5119 of 2013) complaints are filed against A1-company; A2-Managing Director, A3-Director (and A4-Authorised signatory in C.C.No.57/2013). It is averred that as per the order placed by accused the complainant supplied cotton bales and in discharge of the sale price, the accused issued cheques which were bounced on presentation. It is averred that even after statutory notice the accused who are financially well-off and educated did not repay the amount. Hence the complaint. On a close scrutiny of averments and sworn affidavit of the complainant, it must be stated that the averments are not meeting the requirements of either Section 141 (1) or Section 141(2) of N.I.Act. Except mentioning the petitioner as Director of A1—company, there is no further clear averment in the complaint or sworn statement to the effect that she was at the time of commission of the offence in-charge of and responsible for the conduct of the business of the company. Therefore, the requirement under Section 141(1) of N.I.Act was not fulfilled as no basic averment is made. Further, there was no specific

averment as to consent or connivance or negligence on the part of petitioner-A3 in terms of Section141 (2) of N.I.Act. Hence, cognizance is vitiated since none of the requirements under Section 141(1) or 141(2) is fulfilled. Hence, Crl.P.Nos.3816, 5118 and 5119 of 2013 are bound to be allowed.

14a) In the result, Criminal Petition Nos.3147, 3148, 3149, 3158, 3160, 3216, 3219, 3220, 3225, 3814, 3817, 3818, 3819, 3820, 3837, 3859, 4108, 4114, 4120, 4121, 5284, 5306, 5307, 5308, 8854 and 13809 of 2013 are dismissed. However, learned counsel for petitioner would submit that petitioner/A3 is an aged lady of 74 years and residing at far off place in Tamilnadu State and it will cause any amount of hardship for her to attend the Court for every adjournment and therefore her presence in the aforesaid cases before the trial Court may be dispensed with. Learned counsel for respondent/complainant opposed the said request made by the petitioner. Having regard to the fact that the age and residence of the petitioner/A3 are not being disputed, her presence in C.C.No.411/2012; C.C.No.442/2012; C.C.No.590/2012; C.C.No.591/2012; C.C.No.592/2012; C.C.No.455/2012; C.C.No.594/2012; C.C.No.593/2012; C.C.No.309/2012; C.C.No.19/2013; C.C.No.58/2013; C.C.No.60/2013; C.C.No.67/2013; C.C.No.310/2012; C.C.No.66/2013; C.C.No.418/2012; C.C.No.476/2012; C.C.No.181/2013; C.C.No.477/2012; C.C.No.475/2012; C.C.No.45/2013; C.C.No.36/2013; C.C.No.185/2013; C.C.No.16/2013; C.C.No.368/2013; C.C.No.335/2013 is dispensed with except on the occasions when the trial Court specifically requires her attendance.

b) Crl.P.Nos.3816, 5118 and 5119 of 2013 are allowed and consequently, C.C.Nos.57, 66 and 65 of 2013 are dismissed against petitioner-A3.

As a sequel, miscellaneous applications pending, if any, in all the criminal petitions shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.01.2017

Scs/Murthy