

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

**CRIMINAL PETITION No.1256, 1257, 1261, 1262 & 1263 of
2017 & 16527, 16529, 16538 & 16539 of 2016**

COMMON ORDER:

All the quash petitions are to quash the proceedings of the respective cases taken cognizance by the learned Magistrate for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') respectively against the respective petitioners/accused, which are outcome of private complaint of the respective quash petition 1st respondent respectively viz., C.C.No.441, 438, 442, 440 & 439 of 2016 and in all the cases complainant is one and the same i.e., Poornima Cotton company, proprietary concern and among 6 accused, A.1 entity by name Sri Lakshmi Kantha Spinners Limited represented by its Managing Director C. Rameswara Reddy, said Rameswara Reddy individually as A.2 being Managing Director, by showing A.3 to A.6 i.e, C. Swami Reddy, C. Himabindu, C. Ramachandram & K. Gopal Reddy, as Directors of A.1 entity, but for to say among the said Directors A.3 or A.2 as the case may be are the drawers of the cheques in question on behalf of A.1 in all cases and so far as C.C.No.440 of 2016 out of 4 accused, the entity represented by its MD-C. Swami Reddy, C. Swami Reddy, C. Rameswara Reddy & C. Himabindu and said Swami Reddy is the drawer of the cheque and as all the cases involve common questions of law and fact, at the request of both sides these 9 cases are taken up together for common disposal from the common hearing.

Heard both sides at length and perused the material on record from the rival contentions by accused to quash the

proceedings and by learned counsel for the complainant to dismiss the petitions for nothing to quash.

Coming to C.C.No.441 of 2016, Crl.P.No.1256 of 2017 is filed by A.3 & A.4 and Crl.P.No.16527 of 2016 is filed by A.5 & A.6 among 6 accused supra from the private complaint of the 1st respondent proprietary concern supra, for the dishonour of cheque bearing No.457429 dated 30.12.2015 drawn on SBH, Sadashivpet, for Rs.16,00,000/- in favour of the complainant signed by A.3 on behalf of A.1 entity.

Coming to C.C.No.438 of 2016, Crl.P.No.1257 of 2017 is filed by selfsame A.3 & A.4 and Crl.P.No.16539 of 2016 filed by selfsame A.5 & A.6, in respect of cheque bearing No.457421 dated 10.12.2015 for Rs.16,00,000/- in favour of the complainant supra, issued by A.1 entity and signed by A.2 on its behalf.

So far as C.C.No.442 of 2016 concerned, Crl.P.No.1261 of 2017 is filed by selfsame A.3 & A.4 and Crl.P.No.16529 of 2016 filed by selfsame A.5 & A.6, in respect of cheque bearing Nos.494862 & 494863 dated 02.02.2016 for Rs.16,00,000/- each in favour of the complainant supra, issued by A.1 entity and signed by A.3 on its behalf.

So far as C.C.No.439 of 2016 concerned, Crl.P.No.1263 of 2017 is filed by selfsame A.3 & A.4 and Crl.P.No.16538 of 2016 filed by selfsame A.5 & A.6, in respect of cheque bearing No.457422 dated 15.12.2015 for Rs.17,00,000/- in favour of the complainant supra, issued by A.1 entity and signed by A.2 on its behalf.

So far as C.C.No.440 of 2016 concerned, it is out of 4 accused none other than the entity, C. Swami Reddy as Managing

Director, C. Rameswara Reddy and C. Himabindu and Crl.P.No.1262 of 2017 is filed by selfsame petitioners in Crl.P.No.1256 of 2017 i.e., A.3 & A.4 as A.2 & A.4 herein, in respect of cheque bearing No.426980 dated 03.01.2016 for Rs.20,00,000/- and cheque bearing No.426981 dated 05.01.2016 for Rs.17,00,000/- in favour of the complainant supra, issued by A.1 entity and signed by A.2-C. Swami Reddy on its behalf.

So far as the allegation common in all the complainant's cases in array of the accused either 6 or in one case 4 as the case may be concerned, in saying A.1 is the entity and A.2 its Managing Director and others are Directors of A.1 and in charge of and responsible for conduct of the business of A.1. The further common averments show apart from it, the drawer of the cheques on behalf of A.1 entity is either C. Rameswara Reddy or C. Swami Reddy as the case may be referred supra respectively. The further common averments are that the cheques in question are issued in relation to the transactions between the complainant and A.1 in business dealings for the huge outstanding amount fallen due in part discharge respectively. The further averments are that the accused despite demands failed to pay and the cheques were returned dishonoured and after intimation from Bank about the return of the cheques dishonoured, statutory notice even issued there is no reply from the accused in question.

In fact coming to the averments specifically to make the entity and its Managing Director by its status and other than drawer of the cheque either by the Managing Director or other Director as the case may be concerned, coming to the legal position with reference to the Section 141 of the Act, this Court in

Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another¹ by 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**² 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.**³ 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

¹ 2016 (1) ALD (Crl.) 177

² (2005)4 SCC 530

³ (2011)1 SCC 74

the mind or will. Others are directors and managers who represent directing the mind and will of the Company and control what they 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.I.**⁴. 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**⁵ 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 back

⁴ (2015)4 SCC 609

⁵ (2012)5 SCC 661

drop Section 141 of the N.I.Act has to be understood. Such a position is therefore because of statutory intendment making it a 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**⁶. 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**⁷ 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.**⁸ 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

⁶ (2005)8 SCC 89

⁷ (2000)1 SCC 1

⁸ (2008)13 SCC 703

subject to the averments in the petition and proof thereafter. For maintaining prosecution under Section 141 of the N.I.Act, arraying 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**⁹. The same question when again came for consideration before the two Judge bench in **Anil Gupta V. Star India Private Limited**¹⁰, **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**¹¹ 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

⁹ 1973 SCC 491

¹⁰ (2014)10 SCC 373

¹¹ (1987)3 SCC 684

N.I.Act by the Apex Court in **Saroj Kumar Poddar V. State**¹² referring to **S.M.S. Pharmaceuticals** supra apart from another expression, that for dishonour of cheque making of requisite 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**¹³ 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**¹⁴ 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**¹⁵ . Even other latest expression in **Poojari Ravinder Devi Dasani V. State of Maharashtra**¹⁶ reiterates the same reliance upon **National Small Industries Corporation** supra.”

¹² (2007)3 SCC 693

¹³ (2010)3 SCC 330

¹⁴ 2010(2) ALD (CrL.) 564 (SC)

¹⁵ 2013(2) ALD (CrL.) 331 (AP)

¹⁶ AIR 2015 SC 675

From the legal position supra, any stray sentence in the complaint is since not sufficient, but for to make liable the entity and its Managing Director by virtue of his status and the drawer of the cheques respectively in question if the drawer is any director or other person of the company, for to make others liable for what is required is to show how they are responsible for day to day affairs at the relevant time in relation to the alleged offence pertaining to the respective cheques in question.

Having regard to the above and in the result, the Crl.P.Nos.1257 & 1263 of 2017 and Crl.P.Nos.16527, 16529, 16538 & 16539 of 2016 are allowed by quashing the proceedings so far as against the petitioners/accused Nos.3 to 6. Whereas Crl.P.Nos.1256, 1261 & 1262 of 2017 are partly allowed by only quashing the proceedings against A.4-C.Hima Bindu. So far as against C.Swami Reddy, arrayed either as A.3 or A.2 as the case may be in C.C.No.441, 442 & 440 of 2016 concerned, the Criminal Petitions are dismissed as he is the drawer of the cheques in question in the above calendar cases.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.10.2017
ska