HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.14554 and 15324 of 2014 and 1035 of 2016

COMMON ORDER :

Heard the learned counsel for the respective petitioners, A5 and A6 in Crl.P.No.14554 of 2014, A3, A4 and A7 in Crl.P.No.15324 of 2014 and A8 in Crl.P.No.1035 of 2016, the learned Public Prosecutor representing the State and Sri N.Ranga Reddy, learned counsel for respondent No.2 and perused the grounds urged in the quash petition.

The petitioner are the accused in C.C.No.245 of 2013 on the file of the I Additional Chief Metropolitan Magistrate, Vijayawada, which is outcome of the private complaint of respondent No.2-Nalanda Institute of Consultancy for Education, that was maintained against eight accused including A1-M/s.Mootha Gopala Krishna Educational Society and the drawer of the cheque, representing A1, by its Chairman as A2 and with the averment that the other accused A3 to A8 are also members of A1 and are equally liable and responsible for administration, financial and other allied affairs, thereby, despite notice, they failed to pay and are liable.

The contentions in the grounds of the quash petition against the said averments in the private complaint that was taken cognizance by the learned Magistrate for the offence under Section 138 of the Act as per Section 142 of the Act, are that there are no allegations to sustain the cognizance order, particularly, against the petitioners as to they are responsible for day to day affairs and if so how and in the absence of which, mere giving of notice and their no response will not make them liable, thereby, the proceedings are liable to be quashed.

The learned counsel for the petitioners reiterated the same.

The learned counsel for respondent No.2-complainant by referring to the complaint averments material, which are referred supra that once the complaint makes an averment of their responsibility for the administration in a financial and other allied matters, it is suffice and there is nothing to interfere with the cognizance order of the Court, much less, to set aside the cognizance order by allowing the Criminal Petitions and hence, to dismiss the same.

Before coming to the facts, it is necessary to mention the expression of this Court in Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another[1], wherein at Para 5 held 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

[1] 2016 (1) ALD (Crl.) 177
[2] (2005)4 SCC 530

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 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

[3] (2011)1 SCC 74
[4] (2015)4 SCC 609

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 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

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[5] (2012)5 SCC 661
[6] (2005)8 SCC 89
[7] (2000)1 SCC 1
[8] (2008)13 SCC 703

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 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-

[9] 1973 SCC 491
[10] (2014)10 SCC 373
[11] (1987)3 SCC 684

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*[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*

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[12] (2007)3 SCC 693
[13] (2010)3 SCC 330
[14] 2010(2) ALD (Crl.) 564 (SC)

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."

From the above legal position, it is suffice to say that there are no specific allegations, much less, to show how the petitioners are responsible for day to day affairs and in the absence of which merely because they are members of A1-Society, represented by A2 as its Chiarman, they cannot be made liable.

Having regard to the above, all the Criminal Petitions are allowed quashing the proceedings insofar as the petitioners/A3, A4, A5, A6, A7 and A8 in C.C.No.245 of 2013 on the file of the I Additional Chief Metropolitan Magistrate, Vijayawada. The trial Court shall proceed with the matter against the other accused and dispose of the same expeditiously, since the case is of the year 2013.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:10-10-2017

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[15] 2013(2) ALD (Crl.) 331 (AP)
[16] AIR 2015 SC 675