THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8721 of 2017

ORDER:

This Criminal Petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against the petitioner/A.2 in C.C.No.671 of 2016 (arising out of the Crime No.57 of 2016) on the file of I Additional Judicial Magistrate of First Class, Tadepalligudem, West Godvaari District, for the offence punishable under Section 420 IPC and Sections 3 and 4 of the Agriculture Produce (Grading & Marking) Act, 1937 (for short, 'the Act').

2. L.W.1 (Mahawat Jawahar) is the *de facto* complainant in this case. This is a case of cheating and violating the provisions of the Act that occurred on 04.05.2016 at Food Fats & Fertilizers Limited, Prathipadu. The complainant reported that M/s. 3F Industries Limited, Prathipadu, Pentapadu Mandal, Guntur District, is unauthorizedly packing vegetable fat spread under the Ag-Mark insignia without having valid Certificate of Authorization (i.e., Ag-Mark). During inspection by the Authorized Officer of Director of Marketing and Inspection, Sub-Office, Guntur, he found A.1, being Director and Unit Head In-charge and A.2, being the Civil Engineer, General Manager, Production and Marketing of the said Company, are unauthorizedly packing, grading and marketing vegetable fat by using Ag-Mark insignia (symbol) on the packed products and thus cheating the Government and the public intentionally in a fraudulent manner and caused loss to the Government to a tune of Rs.56.00 lakhs. Basing on the report of the *de facto* complainant, the police registered the aforesaid crime

for the offences referred to above.

As per the instructions vide Memorandum C.No.54/Cr/SDO K/2016, dated 04.05.2016, issued by the Sub-Divisional Police Officer, Kovvur, the concerned police officer visited Pentapadu Police Station and handed over the CD file in the aforesaid Crime, wherein it is stated that while L.W.9 (Ch.V.Nagendra) was in the police station, the *de facto* complainant came to the police station and presented a report about the occurrence of the offence. During the course of investigation, L.W.10 (G.Madhu Babu), Inspector of Police, Tadepalligudem Rural, secured L.Ws.1 and 2, recorded their statements under Section 161 (3) Cr.P.C. He visited M/s. 3F Industries Limited situated at Prathipadu Village, Pentapadu Mandal, along with L.Ws.1 and 2 (Mahawat Jawahar and Achut Gorak Surwabi) and observed the scene of offence in the presence of L.Ws.7 and 8 (Bandi Padma and Gella Aharon) and seized 1884 boxes containing food products in a cold storage room, locked the room and affixed slip on the door duly signed by L.Ws.7 and 8 and counter signed by L.W.10. Thereafter, L.W.10 drafted rough sketch of the scene of offence. Then L.W.10 secured L.Ws.3 to 6, who are employees at Vanaspathi Product plant in M/s. 3F Industries Limited, Prathipadu Village, examined them and recorded their detailed statements under Section 161 (3) Cr.P.C.

On 03.05.2016 L.Ws.1 and 2 visited M/s.3F Industries Limited and verified the accurate position and asked the factory authorities to show the processing and packing unit, where the vegetable fats spread has completed. At the time of inspection of factory, the processing unit has not been working, but they saw cold storage and found that the packed vegetable fat spread products are stored in paper boxes. But they did not found either any Ag-mark or any licence from the competent authority. L.W.10 collected previous Agmark licence from the Administrative Block of the Company and on perusal of the same, found that the certificate of Authorization remain valid upto 31.03.2014. The specimen of the Trade Brand label 'MELLO' used only for production of products graded under Agmark. The said company has to renew the licence before the validity period i.e., on 31.03.2014. But, without renewing the licence, the accused are selling the products and thus committed the offence punishable under Section 420 IPC and Sections 3 and 4 of the Act.

Basing on the evidence colleted during the course of investigation, the Investigating Agency concluded that the petitioner and another running the business in a fraudulent manner at M/s.3F Industries Limited without having valid Certification of Authorization (i.e., Agmark Licence) and thereby inducing the public to purchase fat products and thus, cheated the public and caused loss to the Government to a tune of Rs.56.00 lakhs. Accused No.1, Om Orakash Goenka, is the Director & Unit Head In-charge, whereas the petitioner herein, who is A.2, is the General Manager, Production and Marketing of the said Company are liable for the offences referred to above.

3. The present petition is filed to quash the proceedings against the petitioner/A.2 in the aforesaid Calendar Case on the ground that unless M/s.3F Industries Limited Company is arraigned as an accused in the Calendar Case, the Managing Director and its Director cannot be prosecuted for the offences punishable Section 420 IPC and Sections 3 and 4 of the Act and that M/s. 3F

Industries Limited is a Company incorporated under the Companies Act and an artificial person and the acts done by the petitioner is only on behalf of the company. It is further stated that unless there is a specific allegation in the complaint that the Director and Managing Director of the Company are in-charge of day-to-day affairs of the company, no criminal liability can be fastened against them and hence, prayed to quash the proceedings against the petitioner.

4. During hearing, Sri Ch.Dhanamjaya, leaned counsel, representing Dr.J.V.S.H.Sastry, learned counsel for the petitioner/A.2, reiterated the contentions and placed reliance on three judgments reported in **N.Harithara Krishnan v J.Thomas**[1], **N.Srinivasan v State of Telangana and another**[2] and **Sunil Bharti Mittal v Central Bureau of Investigation**[3]. In all these three judgments, the Apex Court and this Court had an occasion to decide about the criminal liability of the Director of the company based on the principle of "alter-ego". Taking advantage of the principle laid down in the above judgments, the learned counsel for the petitioner requested the Court to quash the proceedings against the petitioner.

5. On the other hand, learned Public Prosecutor for the State of Andhra Pradesh, while supporting the contents in the charge sheet, contended that failure to implead the Company as an accused is a curable defect and such defect can be cured by impleading the company. He further contended that the petitioner filed Crl.M.P.No.2912 of 2016 in Crime No.57 of 2016 on the file of

[1] 2017 (2) ALD (Crl.) 845 (SC)
[2] 2017 (1) ALD (Crl.) 413
[3] (2015) 4 Supreme Court Cases 609

I Additional Judicial Magistrate of First Class, Tadepalligudem, for return of property. The learned Magistrate, after perusing the record, dismissed the petition. Aggrieved by the same, the petitioner filed Crl.R.P.No.97 of 2016 on the file of II Additional Sessions Judge, West Godavari District, and the same was allowed and the concerned police are directed to release the seized goods to the petitioner for interim custody. He further stated that in the first instance when the petitioner himself filed a petition before I Additional Judicial Magistrate of First Class, Tadepalligudem, for interim custody of the seized property, the same was dismissed and in revision before II Additional Sessions Judge, West Godavari District, the learned Sessions Judge, while allowing the petition observed that the petitioner, being General Manager of the Company is not responsible for the offences punishable under Sections 420 IPC and Sections 3 and 4 of the Act. He has also drawn the attention of this Court to paras 42 to 44 of the **Sunil Bharti Mittal's case (supra)** while placing reliance on the judgment reported in **U.P. Pollution Control Board v Dr.Bhupendra Kumar Modi and Another**[4], and contended that it is a curable defect and such defect can be cured by impleading the Company at appropriate stage and hence, on the ground that the Company was not impleaded as a party, the proceedings against the petitioner cannot be quashed and requested the Court to dismiss the petition.

6. The food products with Ag-mark packing was found in M/s.3F Industries Limited at Prathipadu Village, Pentapadu Mandal , during inspection by the concerned authorities and

[4] (2009) 2 Supreme Court Cases 147

finding of such food products with Ag-mark is not seriously disputed before this Court. But, the main contention of the petitioner before this Court is that in the absence of impleading the Company as an accused, the petitioner, who is a General Manager of the said Company, cannot be prosecuted for the offences punishable under Section 420 IPC and Sections 3 and 4 of the Act. In the charge sheet, the petitioner is arraigned as accused No.2, being the General Manager, Production and Marketing, of M/s. 3F Industries Limited. The petitioner, being Civil Engineer, General Manager, Production and Marketing of the company, is having control over the production and packing. The specific allegation in the charge sheet is that A.1, being Director, Unit Head In-charge, and the petitioner (A.2), being General Manager, Production and Marketing, of the said company are authorized for production, packing, Grading & Marking under the Ag-mark, as per the licence, which was expired on 31.03.2014 and the petitioner was authorized to produce Agricultural food products and in-charge of business of the Company i.e., M/s.3F Industries Limited, which is an artificial person. The contention of learned counsel for the petitioner is that in the absence of impleading the company, the Director of the said Company cannot be prosecuted and he placed reliance on a Judgment reported in **Aneeta Hada v. Godfather Travels and Tours[5],** wherein at paras 58 and 59, while deciding the liability of the Directors or its employees without impleading the Company, the Honourable Supreme Court had an occasion to decide the criminal liability of the Directors for the offence punishable under Section 138 with reference to Section 141 of the

[5] (2012) 5 Supreme Court Cases 661

NI Act, and held that for maintaining the prosecution under Section 141 of NI Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself on the basis of ratio laid down in **State of Madras v. C.V.Parekh**[6], which is a three-Judge Bench decision. Thus, the view expressed in **Sheoratan Agarwal v. State of M.P.**[7] does not correctly lay down the law and, accordingly, is hereby overruled. Similar decision in **Aneeta Hada's case (supra)** is overruled with the qualifier as stated in the Judgment. The decision in **U.P.Pollution Control Board's case (supra)** has treated to be restricted to its own facts as has been explained by the Court.

7. The principle laid down in the above judgments is applicable to the present facts of the case. M/s. 3F Industries Limited obtained licence from the concerned authorities under the Act, but though the licence was expired on 31.03.2014, still used the Ag-mark insignia (symbol) on packed product and thereby cheated the Government and public intentionally in fraudulent manner and caused loss to the Government to a tune of Rs.56.00 lakhs. Thus, the offence is only by the company, but not by its Managing Director. But, the company is not arraigned as an accused. In such case, the prosecution cannot be maintained against the petitioner. But, learned Public Prosecutor for the State of Andhra Pradesh contended that the defect is only a curable defect and that can be cured at any stage basing on the principle laid down in **Aneeta Hada's case (supra)** and hence, proceedings cannot be

[6] (1970) 4 SCC 352
[7] (1984) 4 SCC 352

quashed. He also placed reliance on the decision in **U.P.Pollution Control Board's case (supra).** The Apex Court referring the judgment in **U.P.Pollution Control Board's case (supra)**, which was filed by Special Leave and was directed against the judgment of the High Court of Allahabad, dated 16.05.1984, while setting aside, in its revisional jurisdiction, Order of the CJM, Ghaziabad, dated 03.11.1983, directed issue of process against the respondents therein on a complaint filed by the appellant therein - Pollution Control Board under Section 44 of the Water (Prevention and Control of Pollution) Act, 1974. The issue involved therein was whether the Chairman, Vice-Chairman, Managing Director and Members of the Board of Directors of M/s. Modi Industries Ltd., the Company owning the industrial unit called M/s. Modi Distillery could be proceeded against, on a complaint against the said industrial unit. The Single Judge of the High Court found that there was no sufficient ground against the respondents inasmuch as the allegations made in the complaint did not constitute an offence punishable under Section 44 for the admitted contravention of Sections 25 (1) and 26 read with Section 47 of the Act.

8. The facts narrated in M/s. Modi Distillery's case clearly show that the same is identical to the case in **U.P.Pollution Control Board's case** and the Apex Court taking note of the provisions particularly, Sections 25 (1), (2) and 26 as well as Sections 44 and 47 and the averments in the complaint after finding that *prima facie* materials are available and all the issues to be dealt with by the Judicial Magistrate at the time of trial, set aside the order passed by the learned Magistrate. The Court also of the view that,

no-doubt, it is true that the learned Single Judge of the High Court quashed the proceedings on the ground that there could be no vicarious liability saddled on the Chairman, Vice-Chairman, Managing Director and other members of the Board of Directors of the Company under Section 47 of the Act unless there was a prosecution of the Company i.e., M/s. Modi Industries Ltd. But, in the facts of **U.P.Pollution Control Board (supra)**, it is not in dispute that the Company has been shown as the first accused in the complaint apart from Chairman, Managing Director, Joint Manager Director, General Manager, Directors, General Manager, Commercial Manager and Company Secretary as well as their specific role in the day-to-day affairs and decision making process. The Court also relied on another judgment in **U.P.Pollution Control Board v. Mohan Meakins Ltd**[8] and finally concluded that it is only a curable defect and merely because the company is not impleaded as an accused, the proceedings against the petitioner cannot be quashed.

9. Undisputedly, in the present case, the Company i.e., M/s.3F Industries Limited was not arraigned as an accused, but its Director and General Manager were arrayed as A.1 and A.2. The Full Bench of the Apex Court in **Aneeta Hada's case** took a different view while referring to M/s. Modi Distillery's case, which is in **Mohan Meakins Ltd case (supra).** The Division Bench in **Dr.Bhupendra Kumar Modi's case,** placing reliance on the judgment of the M**/s. Modi Distillery's case referred supra, held that it is limited purpose of principle laid down therein has reject**ed. Therefore, on the basis of principle laid down in

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[8] (200) 3 SCC 745

Dr.Bhupendra Kumar Modi's case, this Court cannot take a contrary view than the view taken by the Full Bench in **Aneeta Hada's case.**

10. Even in the Agriculture Produce (Grading & Marking) Act, 1937, there was no provision to fasten vicarious liability on the Director, Managing Director or its employees. But, Section 4 deals with penalty for un-authorized marking with grade designation mark. According to this section, whoever marks any scheduled article with a grade designation mark, not being authorized to do so by rule made under Section 3, shall be punishable with imprisonment for a term not exceeding six months and fine not exceeding five thousand rupees. But, there is no identical provision to Section 141 of the NI Act in the Ag mark Act. In such case, the Company alone shall be made liable for prosecution along with its officials, who are dealing with day-to-day affairs and decision making in the position of the Company. The Apex Court in **K.Sitaram and another v. CFL Capital Financial Service Ltd. And another**[9], observed as follows:

> "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 that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation, in which an individual can be

[9] JT 2017 (6) SC 52

> implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically invoking such a provision.

11. In view of above principle, the acts or omissions of the accused are directly attributable to the company since the petitioner is not having control over the affairs of the company and he is acting on behalf of the company. Whether he had the *mens rea* or not is a question to be decided only during trial, but not at the stage of petition under Section 482 Cr.P.C. Even the principle is applied to the present facts of the case, the petitioner cannot be made liable in his individual capacity though the acts done by him are attributable to the company, in the absence of impleading the company as an accused in the main charge.

12. The contention of learned Public Prosecutor for the State of Andhra Pradesh is that it is a curable defect and such defect can be cured at any stage by placing reliance on a judgment reported in **U.P.Pollution Control Board's case (supra).** But, till date no steps have been taken to cure the defect, though it is curable. The Court cannot simply allow the prosecution to be continued though there are latches since it would cause an irreparable injury to the person, who is prosecuting for the offence on account of the proceedings. The Public Prosecutor also contended that when the petitioner himself claimed interim custody of the property as owner of the goods by filing Crl.M.P.No.2912 of 2016 before I Additional Judicial Magistrate of First Class, Tadepalligudem, under Section 251 Cr.P.C., the Court below dismissed the petition holding that petitioner is not entitled for the relief as prayed for, as the company is owner of the goods. Aggrieved by the said order, the

petitioner filed Crl.R.P.No.97 of 2016 before II Additional Sessions Judge, West Godavari, Eluru, under Section 397 Cr.P.C., and the learned Sessions Judge after considering the material on record, held that the revision petitioner is entitled for interim custody of the seized goods and directed the concerned police to release the seized goods subject to compliance of conditions. Thus, there is no justification in the argument advanced by learned Public Prosecutor, since opposed the said contention before the Magistrate and revisional Court by the prosecution. Now, the learned Public Prosecutor cannot take advantage of the situation. Therefore, at this stage, the order passed in revision petition and the contention of the public prosecutor cannot be accepted.

13. In view of my foregoing discussion, unless the company i.e. M/s. 3F Industrial Limited, though an artificial person, is arraigned as an accused, its Managing Director cannot be prosecuted for the offences punishable under Section 420 IPC and Sections 3 and 4 of the Act. Accordingly, it is answered in favour of the petitioner and against the respondent.

14. The other contention of learned counsel for the petitioner is that vicarious liability cannot be fastened to the petitioner, being General Manager of the Company, in the absence of any allegation that he is the person in-charge of the company is doing business. But, in the charge sheet, the specific allegation against the petitioner is as to how he is participating in day-to-day affairs of the business. The specific allegation is as follows:

> *"Sri Pantham Venkata Rama Rao, General Manager of Production Marketing-Vanaspati of 3F Industries Limited, Prathipadu Village in the said place have unauthorized produce, packing and Grading & Making under the Ag-mark. They have*

using Ag-Mark insignia (Symbol) on packed products (Mello brand of Vegetable Fat spread) and they intentionally cheated the Government authority & Public and violated the Rules of Agriculture Produce (Grading & Marking) Act, 1937."

15. The role attributed to the petitioner is with regard to the day-to-day affairs of the company and he is the person, who is authorized to conduct the business including the production (Grading & Marking) and packing. In such a case, the petitioner being the person responsible for day-to-day affairs of the company i.e., packing, marking etc, is liable for the acts of the company.

16. The law is well settled on this aspect in catena of decisions. The Apex Court in **Iridium India Telecome Ltd. v Motorola Inc**[10] held as follows:

> "A body corporate is a `person' to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention -- indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

[10] (2011) 1 SCC 74

17. In "***Motorola Inc' case*** (referred supra), the Apex Court further held that "the criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. *Mens rea* is attributed to corporations on the principle of `alter ego' of the company." If this principle is applied to the present case, the petitioner is acting on behalf of the company and having control over the business, *mens rea* is attributed to the petitioner on the principle of "alter ego" of the company.

18. There is no dispute that the company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents as held in "***Standard Chartered Bank v. Directorate of Enforcement***.7" At the same time, Public Prosecutor for State also placed reliance on the same judgment of Apex Court rendered in "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra), to the effect that "the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground

that they are incapable of possessing the necessary mens rea for the commission of criminal offences."

19. In view of the law declared by the Apex Court in **Motorol's case** (referred supra) it is clear that for the acts or omissions of staff of the petitioner company, by applying the principle of "alter ego" the company is liable for criminal acts.

20. In **Maksud Saiyed v. State of Gujarat and others**8 the Apex Court held as follows:

> "Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions
> constituting vicarious liability."

21. In ***Sardar Trilok Singh and others v. Satya Deo Tripathi***9 the Apex Court held as follows:

> "5…………… The question as to what were the terms of the settlement and whether they were duly incorporated In the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a documents is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bonafide right of seizing the truck on the respondent's failure to pay the third monthly installment in time. It was therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated rated version given by the respondent that the appellants went to his house with a mob aimed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not sake the matter out of the realm of civil dispute. No body on the side of the respondent was hurt. Even a scratch was cot given to any body.

22. In **Sunil Bharti Mittal v. Central Bureau of Investigation**10, it was held that "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 a cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so."

23. Based on the principles laid down in the above judgments, the Apex Court in a recent judgment rendered in "***K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another11"*** observed that "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 that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically invoking such a provision."

In view of the above principle, the acts or omissions of petitioner are directly attributable to the company since he is not having control over the affairs of the company at Pentapadu and he is acting on behalf of the company.

24. Learned counsel for the petitioner further placed reliance on a judgment of this Court reported in "***State Bank of Hyderabad, Hyderabad v. State of Andhra Pradesh"***(referred supra) wherein the Division Bench of this Court discussed about the liability of the

Company for the acts done by its officers. According to the principle laid down in the above judgment "any legal proceedings by or against a body corporate is required to be brought in the name of some person authorized for that purpose by the appropriate law. Normally, the legislative practice has been that whenever a Corporation is brought into existence, a statute, which brings that Corporation into existence, makes a specific provision in that regard, indicating the person authorized to represent the body corporate in legal proceedings. The complaint does not disclose whether the Branch Manager of Gunfoundry Branch of State Bank of Hyderabad is the appropriate person authorised by the law in whose name the proceedings could be initiated."

25. If this principle is applied to the present facts of the case, though this petitioner being in-charge of the production, packing, trading etc., using Ag-Mark signia (symbol) after expiry of licence period, such act is attributable to the company i.e., M/s.3F Industries Limited, which is not a party in the petition. The petitioner is claiming exemption on the ground of absence of *mens rea*. Therefore based on the allegations made in the charge sheet against the petitioner coupled with the law declared by the Apex Court in all the judgments, the petitioner being the Civil Engineer, General Manager of the company cannot come to know about Grading, Trading, Marking, packing, he is not responsible for day-to-day affairs of the company and he cannot be prosecuted for the offence punishable under Section 420 IPC and Section 3 and 4 of the Act. But, here, the acts of the petitioner are attributable to the company since he is acting on behalf of the company. Unless the

company is arraigned as an accused, this petitioner cannot be prosecuted for the offences. Though it is a curable defect since no steps have been taken till date by the respondent-State, this Court has no other option except to quash the proceedings against the petitioner/A.2 by applying the principle laid down in **Aneeta Hada's case (supra).**

26. In view of my foregoing discussion, I find that it is a fit case to quash the proceedings against the petitioner on the sole ground that M/s. 3F Industries Limited was not arraigned as an accused, though the acts are attributable to the company by principle of 'alter ego'.

27. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioner/A.2 in C.C.No.671 of 2016 (arising out of the Crime No.57 of 2016) on the file of I Additional Judicial Magistrate of First Class, Tadepalligudem, West Godvaari District, for the offences punishable under Section 420 IPC and Sections 3 and 4 of the Agriculture Produce (Grading & Marking) Act, 1937.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY,J

SEPTEMBER , 2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8721 of 2017

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