

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.1710 of 2018

ORDER :

The Criminal Petition is filed to quash the proceedings in S.T.C.No.27/ 2017 on the file of the learned I Additional Munsiff Magistrate, Mangalagiri, Guntur District.

2. The case is registered for the offence punishable under Sections 25 and 33 of the Legal Metrology Act, 2009 (for short, 'the L.M. Act') and Rule 15(1)(7) (a) & Rule 20(2) (4) and 23(3) and 25 of the AP Legal Metrology(E) Rules, 2011.

3. The sum and substance of the contentions in the quash petition are that there is nothing to show that the petitioners are responsible for the day-to-day affairs and there is specific authorization as contemplated by Section 49(1)(2) of the L.M. Act and intimated to the Director of Legal Metrology, New Delhi and no separate intimation for every District concerned authorities required, that was not considered and otherwise without array of the entity for the products, the array of the accused persons is unsustainable. A perusal of the wording of Section 49 of the L.M. Act is almost in pari-materia to Section 141 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') amended from time-to-time including by Act 26 of 2015. The only difference so far as Section 49(1) of the L.M. Act by keeping in juxta position to Section 141(1) of the N.I. Act is the use of the word in Section 141(1) as "as well as the company" and in Section 49(1)(b) as "and the company". It makes practically no difference in the respective wording as contended by the learned counsel for the petitioners from the company also to be made as a party from said wording. The three Judge Bench expression of the Apex Court in Aneeta Hada v. M/s.

Godfather Travels & Tours Private Limited¹ particularly at paragraph No.59 is very clear that for maintaining the prosecution arraigning of a company as an accused is imperative and 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. It was observed as under:

“We say so on the basis of the ratio laid down in State of Madras v. C.V.Parekh² which is a three Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal v. State of M.P.³ does not correctly lay down the law and accordingly, is hereby overruled. The decision in Anil Hada v. Indian Acrylic Limited⁴ is overruled with the qualifier as stated in para 51. The decision in U.P. Pollution Control Board v. Modi Distillery⁵ has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

4. Thus, it is very clear from the settled law supra that without array of the company, the persons responsible for day-to-day affairs are not to be made liable, for their liability is only vicarious with that of the company, from use of “as well as” and even from use of “and” respectively from the respective wording of the Sections 141(1) of the N.I. Act and 49(1) of the L.M. Act on keeping juxta position of the same and the expression in Aneeta Hada’s case supra reiterated by the subsequent two Judge Bench expression in Standard Chartered Bank v. State of Maharashtra⁶.

5. Having regard to the above, on the core point the prosecution is not sustainable. In the para-wise remarks submitted by the learned Public Prosecutor representing the respondent-complainant, it is sought the indulgence of the Court to implead. In this regard no purpose will be served for the reason when the very complaint and the cognizance are not sustainable, a subsequent impleadment will not cure the defect.

¹ (2012) 5 SCC 661

² (1970) 3 SCC 491

³ (1984) 4 SCC 352

⁴ (2000) 1 SCC 1

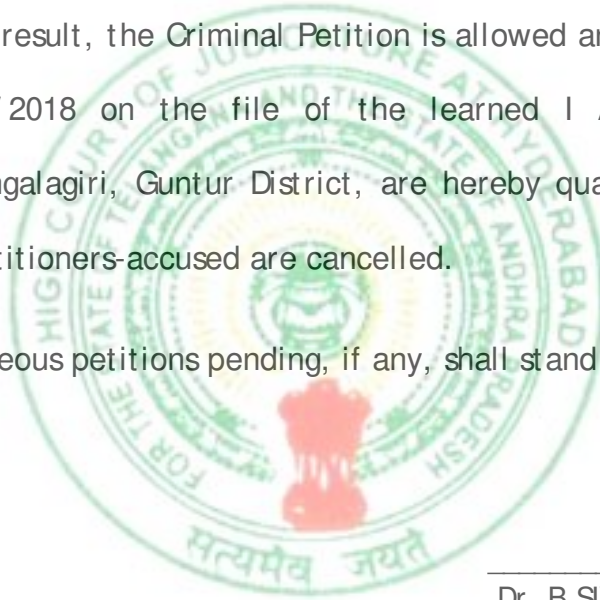
⁵ (1987) 3 SCC 684

⁶ 2016 6 SCC 62

6. Having regard to the above, without going into other merits, leave about the fact that there is no specific authorization or nomination of a particular individual so far as the State of Andhra Pradesh much less intimation even to the Director of Legal Metrology, New Delhi and in turn communication to the A.P. State for what the document filed is confined to Haryana State, that contention is not available; leave about the further fact that the persons arrayed as accused are responsible for the day-to-day affairs or not is also a disputed question of fact from the perusal of the material on record and those contentions now are not available to consider.

7. In the result, the Criminal Petition is allowed and the proceedings in S.T.C.No.27/2018 on the file of the learned I Additional Munsiff Magistrate, Mangalagiri, Guntur District, are hereby quashed and the bail bonds of the petitioners-accused are cancelled.

Miscellaneous petitions pending, if any, shall stand closed.



Dr. B.SIVA SANKARA RAO J,

Date:15.12.2018

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