THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.5301 of 2014

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.751 of 2012 pending on the file of the Special Judicial Magistrate of First Class for Trial of Cases under Prohibition and Excise Act, Mahabubnagar, registered for the offences punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') and under Section 420 IPC, against the petitioner/A2.

2. The second respondent filed a private complaint alleging that A3 is the Managing Director and A2 is one of the partners of A1 firm i.e., M/s.Vainqueur Corporate Services, situated at Hyderabad, which is dealing with data entry work. The accused used to take contracts of data entry and give sub-contracts to others to complete the assignment. Accordingly, the accused have given sub-contract of data entry work to the complainant in the month of August, 2010 by receiving a caution deposit of Rs.1,00,000/- through cheques, which were credited into their account No.304011014832 at ING Vysya Bank on 30.08.2010. Therefore, they assigned the data entry work to the complainant from the month of September, 2010 to December, 2010. The complainant has completed the said work within four months worth Rs.8,50,000/- as per the rates. The accused issued cheque bearing No.929605 dated 01.11.2010 drawn on Axis Bank, Hyderabad, for Rs.2,00,000/- towards work of September, 2010 and another cheque bearing No.929620

dated 18.12.2010 drawn on the same Bank for Rs.2,50,000/-towards the work of October, 2010. When the complainant presented those cheques for collection through HDFC Bank, Mahabubnagar Branch, they were returned unpaid due to insufficient funds and the same was informed to the accused. Thereafter, A2 transferred a sum of Rs.1,00,000/-from his account No.10141560000576 to the Account No.10141070007111 of the complainant at HDFC Bank, Mahabubnagar on 08.02.2011 and 10.02.2011. The accused also assured the complainant to pay the balance amount within short time. Since A2 is the son of brother-in-law of the complainant, he believed them and kept quite for some time. But the accused failed to pay the amount covered by the dishonoured cheques. In view of repeated demands, they issued two more cheques bearing Nos.929675 and 929676 on 30.05.2011 and 19.07.2011 respectively, for a sum of Rs.2,00,000/- drawn on Axis Bank Limited, Hyderabad, towards part payment of due amount and assured to pay the balance amount within short time. When the complainant presented the cheque bearing No.929675, the same was returned unpaid due to insufficient funds, on 30.05.2011. The said fact was informed by the complainant to the accused and as per their request, the complainant presented the cheques in the month of July, 2011, but they were returned unpaid on 14.07.2011 and 20.07.2011 respectively, for insufficient funds. Thereupon, the complainant got issued a legal notice to the accused on 01.08.2011. Though the accused received the same, they did not pay the amount. Hence, he filed a private complaint against the petitioner and two others for the offences punishable under Section 138 of the Act and under Section 420 IPC.

3. The present petition is filed to quash the proceedings on the ground that though the petitioner, who is one of the Directors of the company, is not taking part in the day-to-day administration of the company and in the absence of any allegations in the complaint with details as to how the petitioner is authorized in day-to-day affairs of the company, the complaint against the petitioner is not maintainable in view of Section 141 of the Act, since vicarious liability cannot be fastened to the Directors of the company and prayed to quash the proceedings against the petitioner.

4. During hearing, learned counsel for the petitioner has reiterated the said grounds.

5. Whereas the learned counsel for the second respondent Sri N. Naveen Kumar, would draw the attention of this Court to the allegations made in paragraph No.5 of the complaint to consider *prima facie* that the petitioner/A2 is also participating in day-to-day affairs of the company as he transferred a sum of Rs.1,00,000/- from his account to the account of the complainant towards discharge of the debt due and this allegation is sufficient to fasten the liability to the second respondent in view of Section 141 of the Act and prayed for dismissal of the petition.

6. Undisputedly, A1 is the Company being represented by its Managing Director A3, by name, Sri P. Uday Bhanu, and the

petitioner/A2 is one of the Directors of the Company and the cheques were issued by A1 represented by its Managing Director Sri P. Uday Bhanu, and the same were dishonoured on their presentation, with cheque return memos. Therefore, A1 represented by its Managing Director is the drawer or maker of the cheques as defined under Section 7 of the Act and therefore, the drawer alone is liable to be proceeded for the offence under Section 138 of the Act. But, in case of company, Section 141 of the Act will apply.

Section 141 of the Act reads as follows:

> Section 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.

17. Though the petitioner is one of the Directors of the company, merely because he has transferred a sum of Rs.1,00,000/- from his account to the account of the complainant, it is difficult to hold that the petitioner is actively participating in day-to-day affairs of the business of company. Mere payment by the petitioner being one of the Directors is not sufficient to fasten liability under Section 141 of the Act. While dealing with the vicarious liability of the Directors of the company, the Apex Court in **Sunil Bharti Mittal v. Central Bureau of Investigation**[1] is of the view that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of

[1] 2016(4) SCC 609

the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The Apex Court also held that when the company is accused, its Directors can be liable only if there is sufficient incriminating evidence against them coupled with criminal intent or attracts the doctrine of vicarious liability i.e., Section 141 of the Act. In **Pooja Ravinder Devidasanl v. State of Maharashtra and others[2],** the Apex Court held in paragraph No.27 as follows:

> It is settled law that to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

In the later judgment in **Ashoke Mal Bafna v. Upper India Steel Manufacturing and Engineering Company Limited[3],** the Apex Court followed the principle in **Pooja Ravinder's** case, referred supra.

18. Therefore, in view of the law declared by the Apex Court in the above judgments, I am of the considered view that the averments made in paragraph No.5 of the complaint are not sufficient to fasten the liability against the petitioner and in the absence of such details, the complaint against the petitioner, who is arrayed as A2, for the offence under Section 138 of the Act and under Section 420 IPC is

---

[2] AIR 2015 SC 675
[3] 2017(2) ALD (Crl.) 294 (SC)

not maintainable and consequently, the proceedings against the petitioner in C.C.No.751 of 2012 are liable to be quashed.

19. In the result, the Criminal Petition is allowed and the proceedings in C.C.No.751 of 2012 on the file of the Special Judicial Magistrate of First Class for Trial of Cases under Prohibition and Excise Act, Mahabubnagar, are quashed against the petitioner/A2. However, the trial Court is directed to dispose of said C.C., as early as possible, in any event, not later than four months from the date of receipt of a copy of this order. The second respondent is at liberty to resort to civil litigation to claim recovery against the petitioner/A2. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

13th June, 2018

sj