THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition Nos.3470, 3479, 4654, 4657, 4888,4894, 5562, 5572, 5607, 5616 and 5619 of 2016

COMMON ORDER :

Respective accused of C.C.No.16 of 2016 (old C.C.No.132 of 2014) on the file of the IV Junior Civil Judge, Guntur, outcome of private complaint of M/s Venkata Padmavathi Cotton Tradsers, rep. by its Managing Partner L.Srinivas Rao, in all against 10 accused viz: A.4 by name Vanagamudi Sular Subramaniam, is the quash petitioner in Crl.P.No.3470 of 2018; A.8 to A.10 by names Ramaiah Konar Navaneetha Krishnan(since died on 05.09.2017), Muthuraman Chidambaram and Amarnath Kaliraj are the petitioners in Crl.P.No.3479 of 2016; A.6-Ramnarayan Jagadeesan is the petitioner in Crl.P.No.4654 of 2016; A.5 and A.7 by names Kamalakannan Lakshmanan and Krishnaswamy Kaliraj are the petitioners in Crl.P.No.4657 of 2016; filed the quash petition seeking to quash the proceedings of C.C.No.16 of 2016.

2) Similarly, in C.C.No.820 of 2015 on the file of the V Addl.Junior Civil Judge, Guntur from the private complaint of M/s.Venkata Padmavathy Cotton Traders rep. by its Partner Sure Srinivasa Rao, against the ten self-same accused as in C.C.No.16 of 2016 and the A.5 and A.7 by names Kamala Kannan Lakshmanan and Krishnaswamy Kaliraj are the petitioners in Crl.P.No.5619 of 2016 and A.6 by name Ramnarayan Jagadeesan is the petitioner in Crl.P.No.5572 of 2018 who sought for quashing of the proceedings in C.C.No.820 of 2015 supra. So far as against the A.3,A.4, A.8 and A.9, the complainant withdrew the case by section 257CrPC petition No.1899 of 2016, dt.09.08.2016 and permitted by the trial Magistrate.

3) Similarly, in C.C.No.821 of 2015 on the file of the V Addl.Junior Civil Judge, Guntur, also outcome of a private complaint maintained by M/s.Sri Vijaya Sai Cotton Traders rep. by its Managing Partner Mr. Vemula Sambasiva Rao against the ten self-same accused as in C.C.No.16 of 2016 and the A.8 to A.10 by names Ramaiah Konar Navaneetha Krishnan(since

died) and Muthuraman Chidambaram and Amarnath kaliraj are the petitioners in Crl.P.No.4888 of 2018; A.5 and A.7 by names Kamala Kannan Lakshmanan and Krishnaswamy Kaliraj are the petitioners in Crl.P.No.5607 of 2016 sought for quashing of the proceedings in C.C.No.821 of 2015. So far as against A.3, A.4, A.8 and A.9, the complainant withdrew the case by Section 257 CrPC petition No.7909 of 2016,dt.09.08.2016 and permitted by the trial Magistrate.

4. Similarly, in C.C.No.820 of 2015 on the file of the V Addl.Junior Civil Judge, Guntur outcome of a private complaint filed by Venkata Padmavathi Cotton Traders rep. by its partner Mr.Sure Srinivas Rao supra, against self-same ten accused and the A.5 and A.7 by names Kamala Kannan Lakshmanan and Krishnaswamy Kaliraj are the petitioners in Crl.P.No.5616 of 2016; and A.8 to A.10 by names Ramaiah Konar Navaneetha Krishnan(since died), Muthuraman Chidambaram and Amarnath Kaliraj are the petitioners in Crl.P.No.4894 of 2016 who sought for quashing the proceedings in C.C.No.822 of 2015 supra. So far as against A.3,A.4,A.8 and A.9, the complainant withdrew the case by Section 257 CrPC petition No.1901 of 2016,dt.09.08.2016 and permitted by the trial Magistrate.

5. Similarly, in C.C.No.823 of 2015 on the file of the V Addl.Junior Civil Judge, Guntur outcome of private complaint filed by Venkata Sai Cotton Corporation rep. by its Managing Partner Mr. Kapalavai Guru Prasada Rao, against the ten self-same accused and the A.6 by name Ramnarayan Jagadeesan is the petitioner in Crl.P.No.5562 of 2016 who sought for quashing the proceedings in C.C.No.823 of 2015 supra. So far as against A.3, A.4, A.8 and A.9, the complainant withdrew the case by Section 257CrPC petition No.1902 of 2016 dt.09.08.2016 and permitted by the trial Magistrate.

6. The sum and substance of their contentions in the respective quash petitions are that they are innocent and falsely implicated and the

very reading of the averments show that no offences made out and they are not responsible for day-to-day administration, control and supervision of the affairs of the A.1-Entity to make them along with it vicariously liable for not responsible to day-to-day affairs as in charge for not the drawers of the cheques in question from the alleged credit cotton purchase respectively for the cheques issued by the Entity respectively and thereby the Calander Case proceedings respectively are liable to be quashed.

7. So far as the A.4 in all the cases concerned, the additional averment is that the A.4 resigned and relieved from the directorship on 06.02.2014 covered by Forum No.11/32 and the cheques issued were later to that on 21.02.2014. It is also the submission that in batch of the similar cases C.C.Nos.820, 821, 822 and 823 pending on the file of the V Addl.Junior Civil Judge, Guntur, the complainants withdrew the complaints against A.3, A.4, A.8 and A.9 stating that they came to know of no involvement of A.3, A.4, A.8 and A.9 in the affairs of the A.1-Company respectively and the Court recorded the memo on even date by order dt.09.08.2016 and further A.8-R.K.N.Krishnan, died on 05.09.2017 and the case against him is otherwise abated and the others A.9-Muthuraman Chidambaram and A.10-Amarnath Kaliraj, submitted resignation as Non-Executive Directors on 28.02.2014 and same was approved by the Ministry of Corporate Affairs in Form No.11/32 on 05.03.2014 for A.9 and for A.10-Amarnath Kaliraj resigned on 04.07.2014 and the resignation was accepted and approved in Form No.11/32 on 07.07.2014 and the cheques dated 21.02.2014 dishonoured on 21.05.2014 that was issued by A.1 signed on his behalf by A.2 and there are no sustainable allegations of any other accused are responsible and if so, how in the day-to-day affairs respectively in C.C.Nos.16 of 2016, 820, 821, 822 and 823 of 2018 on the file of the V AJCJ Guntur, All the A.3 to A.10 respectively are only mere Directors and not responsible for day-to-day affairs and there are no any worth allegations to

fix liability against any of them. The respective accused submitted their respective written synopsis in support of the same and the proceedings thereby sought to be quashed.

8. In this regard coming to the complaint other averments in C.C.No.16 of 2016 what all averred is that the A.1 is the company and A.2 is its Managing Director Narayanaswamy Jagadeeshan and A.3 to A.10 are the Directors of A.1. it is averred that the Directors are responsible for day-to-day control and supervision over affairs of A.1 and for business purpose of A.1-Entity at request of all the accused, the complainant supplied cotton for which it is payable within 30 days with interest on the credit purchase for which fallen due of amount of Rs.24,23,405/- besides interest thereon at 18%p.a. and the cheque bearing No.625453 issued by A.1 represented by A.2 as its drawer on 21.02.2014 for Rs.22,94,574/- with the consent and consultation of all the accused was retuned dishonoured on 21.05.2014 and A.2 sent a letter dt.07.06.2014 requesting some time for payment. The complainant issued statutory notice on 07.06.2014 to all the accused for payment of the said cheque amount dishonoured and they sent reply with false allegations. Thereby the accused in the above Calander Cases are liable to be punished.

9. In this regard coming to the complaint averments in C.C.No.820 of 2016 what all averred is that the A.1 is the company and A.2 is its Managing Director Narayanaswamy Jagadeeshan and A.3 to A.10 are the Directors of A.1. it is averred that the Directors are responsible for day-to-day control and supervision over affairs of A.1 and for business purpose of A.1-Entity at request of all the accused, the complainant supplied cotton for which it is payable within 30 days with interest on the credit purchase worth of Rs.1,44,51,240/-for which fallen due of amount besides interest thereon at 18%p.a. and the cheque bearing No.625462 dt.28.02.2014 for Rs.24,87,961/- was issued by the A.1 represented by A.2 with the consent

and consultation of all the accused retuned dishonoured. The complainant issued statutory notice on 14.06.2014 to all the accused for payment of the said cheque amount dishonoured but the accused in spite of receiving notice, neither replied nor made payment. Thereby the accused in the above Calander Cases are liable to be punished.

10. In this regard coming to the complaint averments in C.C.No.821 of 2015 what all averred is that the A.1 is the company and A.2 is its Managing Director Narayanaswamy Jagadeeshan and A.3 to A.10 are the Directors of A.1. it is averred that the Directors are responsible for day-to-day control and supervision over affairs of A.1 and for business purpose of A.1-Entity at request of all the accused, the complainant supplied cotton for which it is payable within 30 days with interest on the credit purchase for which fallen due besides interest thereon at 18%p.a. and the cheque bearing No.625456, dt.22.02.2014 for an amount of Rs.23,81,764/- was issued by the A.1 represented by A.2 with the consent and consultation of all the accused retuned dishonoured on 21.05.2014. The complainant issued statutory notice on 14.06.2014 to all the accused for payment of the said cheque amount dishonoured and the accused in spite of receiving notice, neither replied nor made payment. Thereby the accused in the above Calander Cases are liable to be punished.

11. In this regard coming to the complaint averments in C.C.No.822 of 2016 what all averred is that the A.1 is the company and A.2 is its Managing Director Narayanaswamy Jagadeeshan and A.3 to A.10 are the Directors of A.1. it is averred that the Directors are responsible for day-to-day control and supervision over affairs of A.1 and for business purpose of A.1-Entity at request of all the accused, the complainant supplied cotton worth of Rs.1,44,51,240/- for which it is payable within 30 days with interest on the credit purchase for which fallen due besides interest

thereon at 18%p.a. and the cheque bearing No.625455, dt.22.02.2014 for Rs.21,52,030/- was issued by the A.1 represented by A.2 with the consent and consultation of all the accused was retuned dishonoured on 20.05.2014. The complainant issued statutory notice on 14.06.2014 to all the accused for payment of the said cheque amount dishonoured but the accused inspite of receiving notice, neither replied nor made payment. Thereby the accused in the above Calander Case are liable to be punished.

12. The learned counsel for the complainant submits that once the complaint averments in C.C.No.16 of 2016 are very clear of all the accused 2 to 10 also responsible for day-to-day affairs of A.1-Entity, there is nothing to quash the proceedings and thereby the **quash petition** is liable to be dismissed save those against whom discharged (A.3, A.5, A.8 and A.9) by filing memo of withdrawal and one of them i.e. A.8 even died later.

13. Heard both sides in the respective petitions the common arguments and perused the entire material on record.

14. It is the undisputed fact that a mere Director by that status is not liable for the cheque not issued by any of them much less jointly but for A.1-entity represented by its Managing Director by virtue of his status even he is not the drawer of the cheque along with any other as drawer of the cheque in question u/sec.141 of the Negotiable Instruments Act(for short, 'the NI Act'), liable for the offence u/sec.138 of the NI Act and admittedly the A.2 to A.10 are Non-Executive Directors and there is nothing to show how and in what manner when they are not even drawers of the cheques in question liable vicariously along with the company under the principle of 'alter ego'. A mere allegations in the complaints respectively that at their request the credit supplies made or with their consent A.1 issued the cheques signed by the A.2 as its Managing Director not sufficient in the absence of showing how they are responsible for day-to-day affairs that too there is no any scrap of paper to say that they undertook to pay for the

credit purchase and to issue cheques for the said credit amounts on behalf of the company vicariously even from the cheque issued by the company to make any of A.2 to A.10 are liable. The legal position is very clear from the settled expressions of the Apex Court in this regard including from the 3 Judge bench expression in **Aneeta Hada v. M/s. Godfather Travels & Tours Private Limited**[1] and the same is reiterated by this Court in **Narendera Kurangi Vs. Greenmint Agritech Private Limited**[2], **Suresh Ananda Rao Pawar Vs.State of Andhra Pradesh**[3] **and Dasari Deepti Vs. State of Telangana**[4].

15. Having regard to the above, the Criminal Petitions are allowed by quashing proceedings against the A.4 to A.7, A.9 and A.10 in C.C.No.16 of 2016 (for A.3 withdrawn) on the file of the IV Addl.Junior Civil Judge, and against A.5 to A.7 and A.10 in C.C.Nos.820, 821, and 823 of 2015 among A.3 to A.10 on the file of the V Addl.Junior Civil Judge, and acquitting them by cancelling their bail bonds (for cases against A.3, A.4, A.8(died) and A.9 in these cases already withdrawn with permission by Court referred supra on 09.08.2016) and so far as against A.1 and A.2 in all cases concerned besides not parties to the quash petitions there are sustainable accusations.

Pending miscellaneous petitions, in these Criminal Petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:31.12.2018
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[1] (2012) 5 SCC 661
[2] (2016) 1 ALD Crl.177
[3] 2018 (2) ALT Crl.91
[4] 2017 3 ALT Crl.367