HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION NO.3718 of 2018

ORDER :

The petitioner is A5 among six accused, in the private complaint case filed by the 2nd respondent as complainant, for the offence under Section 138 of the Negotiable Instruments Act, 1881, for the alleged dishonour of 13 cheques respectively bearing Nos.010214, 010215, 010216, 010217, 010218, 010219 and 010220 each for Rs.5 lakhs, '7' in number, all in November, 2016, and for the other five cheques viz., bearing No.788619, for Rs.10 lakhs, 033416 and 596914 each for Rs.15 lakhs, 521898 for Rs.25 lakhs and 521941 for Rs.22 lakhs, all also of November, 2016, for a total amount of Rs.1,27,00,000/-, when deposited by the complainant through its banker Canara Bank, Prashanth Nagar Branch, Kukatpally, on Shyam Rao Vittal Cooperative Bank limited, Hyderabad, Punjagutta Branch, issued by A2-D.K.Sridhar, being Vice-President of A1-Devarakonda Educational Society (for short, "Entity"), were returned unpaid with endorsements, 'referred to Drawer' and 'funds insufficient' respectively. It is averred that the cheques issued by A2 were from the joint account of him and his wife, the petitioner-A5, in favour of the complainant which are for 25 lakhs, 22 lakhs and 10 lakhs respectively, among the above returned with endorsement payment stopped by drawer by cheque return memos dated 17.11.2016. It is averred in the complaint, at paragraph 6, that A2-Vice President-Sridhar of A1 Entity and authoritsed signatory and A3-Exdecutive Member, A4=Joint secretary, A5 being joint account holder along with A2, her husband, and A6 Treasurer of A1 entity as active members and incharge and responsible for the affairs of the A1 Entity all liable for the alleged offence under Section 138 NI Act and the same was taken cognizance in allotting calendar case number 206 of 2017. Said cognizance order, so far as the petitioner A5 concerned, is the impugnment in mainly saying that the petitioner is neither concerned with A1 entity in any manner admittedly form the compliant averments nor signatory to the said cheques, in question, along with A2 even issued and signed by A2 from the joint account of A2 and A5 and for the mere fact of the cheques issued from the joint account does not make the joint account holder liable without joint account holder also a co-drawer along with the other person of the joint account standing as drawer of the cheque with his signature and thereby the proceedings are liable to be quashed.

2. The 2nd respondent- complainant for the notice personally to be served ordered, when notice sent by registered post by the petitioner, even served as per the track record on 21.06.2017, co elated with the details of the registration number and the address as JNTU, Kukatpally location is a sufficient service from the true file though not acknowledgment, called absent. Hence, taken as heard.

3. Heard counsel for the petitioner/A5 and perused the entire material on record.

4. Now the cheques, in question, from the joint account of A2, A5 signed only by A2 and issued in favour of the complainant among the above referred cheques required to specify concerned are viz., a cheque for Rs.10 lakhs bearing No.788619, only signed by D.Sridhar A2 form the joint account of D.K.Sridhar and the petitioner A5, with no signature of the petitioner A5, similar is the case for the cheque bearing No.521898 for Rs.25 lakhs and for another cheque bearing No.521941 for Rs.22 lakhs.

5. The Apex Court in APARNA A.SHAH VS M/S SHETH DEVELOPERS P. LTD. & ANR[1], particularly, at paragraphs 14 to 18, held as follows:

> "14. In Jugesh Sehgal (supra), after noting the ingredients for attracting Section 138 on the facts of the case, this Court concluded that there is no case to proceed under Section 138 of the Act. In that case, on 20.01.2001, the complainant filed an FIR against all the accused for the offence under Sections 420, 467, 468, 471 and 406 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC) and there was hardly any dispute that the cheque, subject-matter of the complaint under Section 138 of the N.I. Act, had not been drawn by the appellant on an account maintained by him in Indian Bank, Sonepat Branch. In the light of the ingredients required to be fulfilled to attract the provisions of Section 138, this Court, after finding that there is little doubt that the very first ingredient of Section 138 of the N.I. Act enumerated above is not satisfied and concluded that the case against the appellant for having committed an offence under Section 138 cannot be proved.
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> 15. In S.K. Alagh vs. State of Uttar Pradesh and Others, (2008) 5 SCC 662, this Court held:

[1] (2013) 8 SCC 71

> 19. ……. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581)"

16. In Sham Sunder and Others vs. State of Haryana, (1989) 4 SCC 630, this Court held as under:

> "9. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

17. As rightly pointed out by learned senior counsel for the appellant, the interpretation sought to be advanced by the respondents would add words to Section 141 and extend the principle of vicarious liability to persons who are not named in it.

18. In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a Company, then Drawer Company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the N.I. Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic

person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub- section enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the N.I. Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

The Apex Court at paragraph 27 ultimately from that, concluded as follows:

"22) In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque."

6. Whatever the averment in the private complaint, at paragraph 3 of page No.4, in saying A2 in his personal capacity and in the capacity of authorized signatory to A1 and in his capacity as Joint account holder along with his wife-A5 (petitioner) had issued the account payee cheques supra.

It is also averred in paragraph 4 as the three cheques, in question, drawn from the joint account of A2 and A5 signed and issued by A2 were returned dishonoured. Undisputedly, from the above, but for to say A5 is joint account holder with A2 from which account the cheques were drawn with the signature of A2, A5 cannot be made liable when not a co drawer along with A2. Undisputedly, from the complaint averments, A5 is no way concerned with A1 Entity. Once such is the case, the question of any vicarious liability for A5 along with the principal A1 Entity does not arise. Leave about all the cheques not even drawn from the account of A1 entity but for some from the personal account of A2 and some from the account of A1 entity and some from the joint account of A2 and A5 supra.

7. Having regard to the above, the cognizance order of the learned Magistrate in taking cognizance against the petitioner - A5, when not drawer of the joint account along with A2 for the cheque issued from the joint account signed by A2, cannot be made liable and thereby, liable to be set aside.

8. Accordingly, the Criminal Petition is allowed quashing the proceedings insofar as A5 concerned by acquitting A5 and bail bonds of A5 cancelled.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

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JUSTICE Dr. B. SIVA SANKARA RAO

November 9, 2018
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