THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5344 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/A-4 to A6 in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad.

One K. Raja Venkateswara Rao, Proprietor of M/s R.V. Trading Co., Malakpet, Hyderabad, filed a private complaint under Section 200 Cr.P.C against Accused 1 to 6 initially before the VIII Additional Chief Metropolitan Magistrate, Hyderabad at Nampally in C.C.No338 of 2016 and later, it was transferred to IX Special Magistrate, Somajiguda, Hyderabad and re-numbered as C.C.No.95 of 2016.

The first respondent/complainant is the sole proprietor of M/s RV Trading Company and he is carrying on business of Finance and Money lending since 2007. The first accused is a private limited company incorporated under the provisions of the Companies Act and the second accused is its Managing Director, while Accused Nos. 3 to 6 are its directors. The first respondent/complainant submits that, all the accused are closely associated and all of them participated in the day-to-day activities of the company and they are all responsible for the day-to-day activities of the company.

It is submitted that Accused No.3-Mahender Yasala developed acquaintance with the first respondent/complainant, as his father owns shops in the Gunj where the complainant is doing business. The first respondent/complainant further contended that, with that acquaintance, Accused No.3 along with other accused Nos.2,4,5 & 6 representing A-1 approached the complainant and represented that they have secured a sub-contract work for 'Construction of Limited Height Subway in lieu of closure of Railway level crossing of L.C.No.KK-94 at KM 325/2-3 and LC No.KK-96 at KM 326/14-15 between Bodearapur – Dilimili on KK line under Aden/Jagadalpur section of DEN/West/WAT jurisdiction of Waltair Division' from M/s Millennium Constructions and that they were running short of funds to execute the said sub-contract work and requested the first respondent/complainant to finance an amount of Rs.25,00,000/- and promised to repay the said amount together with additional amount of Rs.15,00,000/- by 01.04.2015. The first respondent/complainant had considered the proposal of the accused and the terms mutually agreed by the parties have been reduced in the form of Memorandum of Understanding dated 30.07.2014 entered by the accused and the complainant.

It is submitted that, in the terms of the said MOU entered by complainant and accused, the complainant transferred the said amount of Rs.25,00,000/- to the account of the first accused company through Cheque No.000352 dated 30.07.2014 drawn on Bank of Baroda, Malakpet Branch. Accused Nos.2 & 3, representing Accused No.1- company acknowledged receipt of the said amount on behalf of the Accused No.1-company and issued a receipt dated 30.07.2014 in favour of the first respondent/complainant. It is submitted that, as per the MOU, the accused became liable to an amount of Rs.40,00,000/- to be paid to the first respondent/complainant on or before 01.04.2015. Accused Nos. 2 & 3 representing Accused No.1 and other accused have issued three cheques bearing Nos.000078 for Rs.12,50,000/-, No.000079 for Rs.12,50,000/- and Rs.15,00,000/- drawn on their Account No.9390200000391 with Bank of Baroda, Charminar Branch to the first respondent/complainant authorized him to encash the said cheques on 01.04.2015 and promised to arrange funds well in time to honour the same on presentation. Further, it is submitted that, later Accused Nos.2 to 6 orally requested the first respondent/complainant to wait for some time even after the agreed date of encashment of the said cheques, as they could not realize the expected funds and the first respondent/complainant agreed for the same. It is submitted that the first respondent/complainant presented the cheques in the first week of March 2016 with the concurrence and assurance of accused to honor the same and as per the assurance given by the accused, he presented the three cheques through his bankers M/s The Agrasen Co-operative Urban Bank Limited, Malakpet Branch for encashment and the said cheques were returned unpaid with the reasons 'Funds Insufficient' on 08.03.2016 and the same was intimated to the first respondent/complainant on 10.03.2016 from his bank. The first respondent/complainant contended that, first accused being company registered under Companies Act, Accused

No.2 being Managing Director and Accused Nos. 3 to 6 being Directors who are actively involved in the day-to-day affairs and activities of the first accused/company, are liable for prosecution under Section 138 of N.I. Act.

On receipt of summons, the petitioners/A-4 to 6 filed this criminal petition mainly on the ground that, the petitioners are only Directors and not participating in the day-to-day activities and business of the company and in the absence of any role played by the petitioners herein, being the Directors of the Company, the proceedings in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad, are liable to be quashed.

It is also contended that the notice issued in compliance of Section 138 of N.I. Act is silent as to the role played by these petitioners in the day-to-day activities of the company and their responsibility for the due payment of the cheques and thereby, they are not vicariously liable and prayed to quash the proceedings in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad.

This Court initially ordered notice to the first respondent/complainant and the notice was served on him and filed proof of service. But, none appeared for the first respondent/complainant.

During hearing, learned counsel for the petitioners reiterated the contentions raised in the petition, while placing reliance on the judgment of the Supreme Court in **Pooja Ravinder Devidasani v.**

State of Maharashtra and another[1] and judgments of this Court in **Nusun Genetic Research Ltd and others v. State of Telangana and another**[2], **Narendra Kurangi and others v. M/s Greenmint India Agritech Pvt. Ltd. and another**[3]. On the strength of the principles laid down in the above three judgments, learned counsel for the petitioners Sri K. Sai Babu requested to quash the proceedings against the petitioners/A-4 to A6 in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad.

Considering the contentions of the learned counsel for the petitioner and perusing the allegations made in the C.C.No.95 of 2016, the point that arises for consideration is:-

> ***"Whether the allegation made in the complaint that these petitioners being the Directors of the company participated in the day-to-day activities of the company, is sufficient to fasten vicarious liability against them. If not, whether proceedings in C.C.No.95 of 2016 are liable to be quashed against these petitioners?"***

P O I N T:

Admittedly, the first respondent filed a private complaint under Section 200 Cr.P.C against M/s R.R. Infra Avenues (India) Private Limited (A-1), Sri M. Sudhir Rao, Managing Director (A-2) and Sri Mahender Yasala, Director (A-3) and other Accused Nos. 4 to 6, for the offence punishable under Section 138 of N.I. Act. The facts of the case need no reiteration. However, it is apposite to

[1] (2015) 3 Supreme Court Cases (Cri) 378
[2] 2016 (2) ALT (Crl.) 35 (A.P)
[3] 2016 (2) ALT (Crl.) 410 (A.P)

extract paragraph no.1 of the complaint, which is relevant for deciding the real controversy in this case and it is extracted hereunder:

> "I am the complainant herein and prop. of RV Trading Company and I am carrying on business of Finance and Money lending since 2007 at the address mentioned in the cause title after obtaining necessary license from the competent authority. I am acquainted with the A3 who is the director of A1 company and A2 is the managing director and A4 to A6 are directors of A1 company and they are all responsible for day to day activities of the company. A3 along with the other accused have approached me and requested me to finance an amount of Rs.25,00,000/- as they have secured a sub contract from M/s Millennium Constructions and they were running short of funds to execute the said sub contract work and requested me to finance an amount of Rs.25,00,000/- and promised to repay the said amount together with additional amount of Rs.15,00,000/- by 01.04.2015."

The allegations in the last line of the paragraph extracted above is to the effect that these petitioners are also participating in the day-to-day activities of the company, as such, their responsibility for the day-to-day activities of the company indicates that the petitioners are also participating in the day-to-day affairs of the company. But, as to how they are participating in the day-to-day affairs of the business of the company was not explained in detail in the entire complaint by the first respondent. Apart from that, MOU is not between the company i.e all its Directors as one party and the first respondent herein. But, it is only between M/s R.R. Infra Avenues (India) Private Limited represented by its Managing director and Directors, and the second party i.e. the first respondent herein. Though the first party is referred as M/s R.R. Infra Avenues (India) Private Limited represented by its Managing

Director Sri Mareneni Sudhir Rao, MOU dated 30.07.2014 it was signed by A-1 & A-3 representing the first party whose signature cannot be identified. Receipt for Rs.25 lakhs was issued by two persons i.e A-2 & A-3 – Managing Director and Director respectively. The cheques were issued by the said two persons, who are also the drawers of the bank. Thus, A-2 & A-3 are the makers/drawers of the cheques issued which were dishonoured on its presentation by the payee bank. At best, A-2 & A-3 representing A-1 are liable for payment of the amount covered by dishonoured cheques, being the drawyer of the cheques, as defined under Section 7 of N.I. Act.

The main contention of the learned counsel for the petitioner is that, Section 141 of N.I. Act attaches liability on the Directors of the company only when they are actually participating in the day-to-day activities of the company. But, the law developed by the Courts is consistent that, to fasten liability on the Directors other than the Managing Director, there must be a specific allegation as to how they are participating in the business in the complaint itself. In the absence of details as to how they are participating in the business, the complaint against such Director is liable to be quashed.

In **Sunil Bharti Mittal v. Central Bureau of Investigation**[4] the Apex Court while dealing with corporate criminal liability and the principle that criminal intent of person(s) controlling company be imputed to company based on principle of 'alter-ego', held that

[4] (2015) 4 Supreme Court Cases 609

reverse application of principle is not permissible. The Supreme Court also held that when company is the accused, its Directors can be roped in only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory regime attracts the doctrine of vicarious liability.

In the recent judgment in **Pooja Ravinder Devidasani v. State of Maharashtra and another** (referred supra), the Suprme Court succinctly held in paragraph 27 as follows:

> "27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. 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."

The principle that emerged from the authoritative pronouncements of the Apex Court is that, when the company is the accused and to fasten liability to other Directors of the company are vicariously liable, the complaint must necessarily disclose the details as to how the other directors are participating in the day-to-day affairs of the company. Mere making a bald allegation that the Directors are participating in the day-to-day affairs of the company is of no use and in the absence of such details, the Directors cannot be fastened with any vicarious liability and the proceedings against the petitioners/A-4 to A-6 who are the Directors of the company, except as against Managing Directors are liable to be quashed.

If, the principle laid down in the above judgment is applied to the present case, which is a binding precedent on this Court, the proceedings against these petitioners who are the Directors of the company are not liable to be prosecuted for the offence punishable under Section 138 of N.I. Act.

Therefore, I find that it is a fit case to quash the proceedings against the petitioners/A-4 to A6 in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad, only on the ground that the complaint is bereft of the details as to how they are participating in the day-to-day affairs of the business of the company and as to how they are responsible for the affairs of the company to attract Section 141 of N.I. Act, as it is a statutory regime.

In **Ashoke Mal Bafna v. Upper India Steel Mfg & Engg co. Ltd[5],** the Supreme Court again considered the vicarious liability of the director of the company and reiterated the principle laid down in **Pooja Ravinder Devidasani v. State of Maharashtra and another** (referred supra). This Court also took similar view in **Nusun Genetic Research Ltd and others v. State of Telangana and another** (referred supra).

[5] 2017 Law Suit (SC) 1035

Hence, in view of the law consistently laid down by the Apex Court and this Court in the judgments referred supra, I find that it is a fit case to quash the proceedings against the petitioners/A-4 to A6 in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad.

In the result, criminal petition is allowed by quashing the proceedings against the petitioners/A-4 to A6 in C.C.No.95 of 2016 on the file of IX Special Magistrate, Erramanzil at Hyderabad.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:18.06.2018

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