HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5952 of 2018

ORDER:

The petitioner is A4 among 4 accused in the police final report in the form of charge sheet filed by Madhavaram Police Station of Judicial First Class Magistrate (committal Court), Yemmiganur, outcome of crime No.62 of 2017 of Madhavaram PS for the offences punishable under Sections 304 part-II, 338 IPC and Section 9(B)(1)(b) of the Explosive Act, 1884. The defacto complainant is LW.1 VRO of Madhavaram Village. Among 24 witnesses cited in the charge sheet including LWs.22 to 24 the police officials who registered the crime and investigated the case, LW.21 Assistant Director, FSL Hyderabad in opining of explosive composition found in item No.1 of the case properties, LW.20 the Assistant Civil Surgeon who conducted autopsy on the body of the deceased on 19.11.2017 and issued PM report, LW.19-CMO, Government General Hospital treated LW.3 eye witness and injured in the occurrence and issued wound certificate opining injuries serious in nature, said LW.3 is V. Raghavendra @ Arava Raghu, LW.4 is wife of deceased B.Mokaiah, LW.5 father of deceased, LW.6-Junior paternal uncle of deceased, LW.7-Aunt of deceased, LWs.8 & 9 water boy and security officer of Ispat Iron company to which A.4 is one of the Directors, A.3-General Manager, A.2 plant/factory manager, A.1 contractor engaged to remove the stones entrusted by A.2 & A.3 and from said blast the occurrence taken place and one injured and one died supra. LWs.10 & 11 circumstantial witnesses of the Madhavaram Village, LWs.12 to 16 are the witnesses to the inquest and scene observation, LWs.17 & 18 are the witnesses to the arrest of A.1 and disclosure statement of A.1 on 24.11.2017. The learned committal Magistrate taken cognizance in allotting PRC.No.5 of 2018 to commit the case to the Court of Session.

2. The sum and substance of the accusation from the police final report with reference to the investigation supra is that accused A.1 having no valid license to blast the stones in the Maruthi Ispat Iron Factory, Madhavaram, A.2 to A.4 having knew the fact well entrusted the work to A.1 to blast the stones. While so, on 18.11.2017 A.1 engaged deceased and injured LW.3 to the blast of the stones. It is while the work in progress from the blast of gilitin sticks the deceased sustained bleeding injuries, LW.3 also sustained bleeding injuries and in the way to Yemmiganur Government Hospital the deceased supra was succumbed from which the LW.1-VRO reported to police the occurrence in registration of the crime and investigation and filing of final report supra.

3. In the quash petition it is one of the contentions that petitioner-A4 by name Pramod Kumar Agarwal is the owner of the land S.No.139 of Madhavaram entrusted the drilling job of stone breaking in the land and the lease agreement was executed on 14.11.2017. He never entrusted the job permitting A.1 by using gilitin sticks, he did not use explosive, but by A.1

and for that acts of A.1 he cannot be implicated as co-accused merely because he is the owner of the land and the accusation is no way sustainable for there is no any negligence on his part even and continuation of proceedings against him are abuse of process of law.

4. Respondent No.2 served failed to attend. Heard learned counsel for the petitioner and the learned Public Prosecutor representing the 1st respondent-State.

5. As per the Form-4 license to work a factory issued by the Factories Department bearing No.42/11 with registration of 101064 for Maruthi Ispat and Energy Private Limited located at S.No.167 of Madhavaram Village with nearly 100 workers to be employed, occupier with full name mentioned Pramod Kumar Agarwal who is the petitioner-A4. Thus he is the occupier under the factories Act is responsible and not mere absent owner of the land. In the quash petition only copy of FIR and Section 161 Cr.P.C. statements and remand report and panchanama filed and not filed the factory license. It is not even shown there is any entity as a company to say for which he is mere director and not responsible for day to day affairs. No doubt the police final report speaks he is the Director of the factory and A.3 & A.2 are general manager and factory manager respectively. As referred supra in the Para 2 of the quash petition, he himself stated that he is the owner of the land and he has entrusted the drilling job for the stone breaking in the said land and lease agreement was executed on 14.11.2017

what he says is he never entrusted the job permitting A.1 to use the gilitin sticks. A.1 was working under the agreement of work entrusted by him is once the sum and substance of the quash petition but for saying he did not authorize to use gilitin sticks, once gilitin sticks used for the work of him even by A.1 under him including as a contractor he cannot avoid shouldering the responsibility even criminally.

6. What is the decision placed reliance of the Apex Court in seeking to quash viz., **Sunil Bharat Mittal Vs. Central Bureau of Investigation**[1] particularly placing reliance upon Paras 42 to 44 at page No.638 reads as follows:

> "42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.
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> 43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.
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> 44. When the company is the offendor, vicarious liability of the Directors cannot be imputed

[1] 2015 (4) SCC 609

automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

7. There the principle laid down is company primarily where accused to represent the corporate entity being artificial person through human agency as its Officers or Directors or Managing Director or Chairman. It is normally the intent and action of the said individual officer acts on behalf of the company to say company committed the offence with mens rea and there is no vicarious liability unless constituted specifically in provides so. An individual who is perpetrated to commission of an offence on behalf of the company can be made accused along with company provided there is evidence showing his active role with criminal intent and otherwise where the statutory regime itself attracts the doctrine of vicarious liability with a specific provision. It is in saying without impleading the

company as accused, the Director or Managing Director or Chairman under the guise of vicarious liability cannot be implicated. To apply the principle how far the facts to be considered in the quash petition he mentioned at Para 2 referred supra as owner of the land and entrusted the drilling job of stone breaking in the land by executed lease agreement on 14.11.2017 to A.1 though not authorized to use gilitin sticks. It is not mentioned by taking such a plea of he is only a Director and not responsible for day to day affairs or the factory is a company governed by the provisions of Companies Act much less registered as such. In the absence of factual foundation mere relying on the law no way to the advantage of the petitioner including from the array of the petitioner-A4 as director of the factory. In fact there is material as referred supra from the case diary shows he is occupier of the factory as per the very license responsible for anything in the factory.

8. Having regard to the above, without factual foundation in the quash petition there is nothing to quash the proceedings, hence this Criminal Petition rather than dismissal, disposed of if at all after committal and before hearing on charges remedy left open to file appropriate discharge application to consider on own merits.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.12.2018
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