HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9665 of 2017

ORDER:

The petitioner is A4 among four accused in S.T.C. No.663 of 2016 on the file of the learned II Additional Judicial First Class Magistrate at Tirupati, Chittoor District, taken cognizance for the offences punishable under Section 3(1)(zz)(xii), 26(2)(i) r/w 59(i) of the Food Safety and Standards Act, 2006 (for short, 'the Act'). Among four accused, the petitioner is Shashank Jain referred as nominee of M/s. Hindustan Unilever Limited, Malegaon, Nashik District.

2. The sum and substance of the accusation is that on 28.10.2015 at about 10.30 A.M. the complainant-Food Safety Officer visited M/s. Chandra Provisions, Shop No.38, H.T. Shopping Complex, Tirumala, Chittoor District, for inspection and collected the product suspected as sub-standard and sent one of the three samples to the Food Analyst, State Food Laboratory, Nacharam, Hyderabad, and received report on 13.11.2015 and the Analyst opined that the sample does not confirm to standards and thereby, adulterated and from that when addressed, the sanction order was issued on 24.09.2016. The sanction order Page 2 running in two pages speaks of the prosecution of A1-Gurrala Chandra Sekhar, A2-K.Venkatachalam Mani, A3-Pasuparthy Datthathreya and A4-Shashank Jain with array as nominee of M/s. Hindustan Unilever Limited and so far as A1 to A3 are concerned, A1 is the Food Business Operator-cum-Salesman, Chandra Provisions, A2 is the Proprietor of M/s. Chandra Provisions, A3 is the Managing Partner of M/s. Pasuparthy Enterprises. It is pursuant to the sanction, the private complaint filed and taken cognizance against the four accused for whom the sanction orders were obtained. It is pursuant to the cognizance order, when summons issued, the accused appeared and the petitioner-A4 therefrom impugned the proceedings saying without array of the company-M/s. Hindustan Unilever Limited the employee of the company cannot be made liable for that liability is vicarious along with the company, the person responsible to the day-to-day affairs or as nominee. In this regard Section 66 of the Act reads as follows:

> **66. Offences by companies.-**
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> (1) Where an offence under this Act which has been committed by 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 where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:
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> Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
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> (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall

also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

So far as the sub-section (1) of Section 66 of the Act is concerned, it is in para-materia to Section 141 of the Negotiable Instruments Act, 1881 amended from time-to-time including by Act 26 of 2015.

3. From the very wording in both, the person as well as the company, it is interpreted by the Apex Court's three Judge Bench expression in **Aneeta Hada v. M/s. Godfather Travels & Tours Private Limited**[1] particularly at Paragraph 59 that for maintaining the prosecution arraigning of a company as an accused is imperative and the other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.

4. Thus, it is very clear from the settled law supra that without array of the company, the persons responsible for day-to-day affairs including those nominees of the company cannot be made liable, but for to represent if at all the company made as accused, for their liability is only vicarious with the company. Said view was reiterated in **Standard Chartered Bank v. State of Maharashtra**[2]. Following the same by common order in Crl.P.No.2415 of 2018 & batch dated

[1] (2012) 5 SCC 661
[2] (2016) 6 SCC 62

31.10.2018, this Court in the cases relating to Legal Metrology Act, 2009 with reference to wording of Section 49(1)(b) of the Legal Metrology Act, 2009 in use of the words “and” similar to “as well as” under the Negotiable Instruments Act quashed the proceedings for non-array of the company in saying the officers’ responsibility arises vicariously along with the company and not independently.

5. Having regard to the above, this Criminal Petition is allowed by quashing the proceedings in S.T.C. No.663 of 2016 on the file of the learned II Additional Judicial First Class Magistrate at Tirupati, Chittoor District against the petitioner-A4. The bail bonds of the petitioner, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

12.11.2018
MVA