HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION Nos.588, 589, 590 and 591 of 2011

COMMON ORDER :

Criminal Petition Nos.588, 589, 590 and 591 of 2011, under Section 482 Cr.P.C., are filed by the petitioners/A.2 and A.3 to quash the proceedings in STC.No.452 of 2007 on the file of the V Additional Junior Civil Judge, Chittoor, Chittoor District; and STC.Nos.179, 87 and 109 of 2009 on the file of the Special Mobile Court, Chittoor, Chittoor District, respectively, registered against them for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for brevity "the N.I. Act").

Since the issue involved in these Criminal Petitions is one and the same, they are heard together and being disposed of by this common order.

The brief facts of the case of the petitioners are as follows:

The brief averments in the complaints lodged by respondent No.2 – complainants are that A.1 to A.3 are doing road contract works under the name and style of 'Vishnu Teja Constructions Private Limited'. Being the Managing Director of Vishnu Teja Constructions Private Limited, A.1 entered into contracts with the complainants under separate Memorandums of Understanding for laying road between Chittoor and Puttur. The accused appointed the complainants and others as Sub-contractors by entering into separate agreements with them. Accordingly, the complainants have completed the road work worth of Rs.76,26,600/- within the stipulated time, but the accused had not paid the amounts as per the agreements entered into by him. On the pressure of the complainants, A.1 gave cheque bearing No.006369, dated 09.11.2006 for an amount of Rs.10.00 Lakhs, cheque bearing No.006366, dated 09.11.2006 for an amount of Rs.10.00 Lakhs, cheque bearing No.006368, dated 09.11.2006 for an amount of Rs.15.00 Lakhs, and cheque bearing No.006367, dated 09.11.2006 for an amount of Rs.15.00 Lakhs, on behalf of Vishnu Teja Constructions Private Limited in the capacity of Managing Director. The complainants have presented those cheques through Canara Bank, Chittoor Branch, for collection, and they were returned with an endorsement by the Bank authorities as "Account was closed". The complainants got issued separate Notices on 26.12.2006 and 04.12.2006 to the accused. The accused gave reply denying the allegations made in those notices.

On these allegations, the learned Magistrates took the cases on file and issued process against the petitioners/A.2 and A.3 and the other accused - A.1.

Heard the arguments of Sri C. Masthan Naidu, learned counsel for the petitioners/A.2 and A.3 as well as Sri Bussa Rajendra, learned counsel for respondent No.2 - complainants and the learned Additional Public Prosecutor appearing for respondent No.1 – State.

Learned counsel for the petitioners submitted that even if the allegations in the respective complaints are taken at their face value, they do not constitute any offence, much less the offences under Sections 138 and 142 of N.I. Act. The contents of complaints reveal that the cheques issued by the Managing Director (A.1) on behalf of the company, whereas the complaints were lodged against the Partners in their individual capacity, without making the company as an Accused. It is argued that in the light of the provision under Section 141 of the N.I. Act, unless the Firm or Company is made a party, the Partners or the Directors of the Firm or Company cannot be made liable.

Placing reliance on the judgment of this Court dated 27.08.2014 in Crl.P.No.1861 of 2012 & batch, learned counsel for the petitioners submits that impleading the company as one of the accused is mandatory and prosecuting the Director or authorized signatory of the cheque without arraying the company, on whose behalf the cheque was issued, as an accused in the complaint, is held to be not maintainable.

In the judgment referred supra, it was held in paras-10 and 11 as follows:

> "10. From the above ruling of the Hon'ble Supreme Court, it is clear that impleading company as one of the accused is mandatory and prosecuting Director or authorised signatory of the cheque without arraying company on behalf of which cheque is issued as accused in the complaint is held to be not maintainable.
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> 11. On the above referred principle, the Hon'ble Supreme Court quashed complaints in which the company was not arrayed as accused and that principle is squarely applies to the three complaints on hand. Though Advocate for second respondent vehemently contended that since there are specific allegations against the directors in compliance of Section 141, this argument cannot be accepted as the petitioners cannot be held liable individually and they have to be held liable along with company to which they are representing, therefore, relying on the above referred decision of Hon'ble Supreme Court, I am of the view that continuation of all the three complaints against the petitioners would amount to abuse of process of Court, therefore, to meet the ends of justice, they are liable to be quashed."

Learned counsel for the petitioners placing reliance on K. SRIKANTH SINGH vs. NORTH EAST SECURITIES LTD.[1] submits that there are no allegations against the petitioners herein that they have participated in the day-today business

[1] (2008) 3 SCC (Crl) 391

of the Firm to make them vicariously liable for the issuance of cheques by A.1 in the capacity of Managing Director. Paras-4 and 5 of the said judgment read as under:

> "4. It is not in dispute that for showing a vicarious liability of a Director of a Company, upon the complaint it is incumbent to plead that the accused was responsible to the company for the conduct of the business of the Company. No such allegation having been made in the complaint petition, in our opinion, the High Court was not correct in passing the impugned judgment. The allegation contained in the complaint petition was that all the accused Directors participated in the negotiations for obtaining financial help for the accused No. 1, which in our opinion, would not give rise to an inference that the appellant was responsible for day-to-day affairs of the Company. An offence envisaged under Section 138 of the Negotiable Instruments Act contains several ingredients as has been held by a Three-Judge Bench of this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr., [2005] 8 SCC 89, in the following terms:-
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> > "10. ....What is required is that the persons who are sought to be made criminally liable under Section 141should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence. who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on

the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of "every person" the section would have said "every director, manager or secretary in a company is liable"....., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action."

5. Negotiation for obtaining financial assistance on behalf of the Company by its Directors itself is not an ingredient for the purpose of constituting an offence under Section 138 of the Negotiable Instruments Act. Furthermore, a vicarious liability on the part of a person must be pleaded and proved. It cannot be a subject matter of mere inference."

Placing reliance on the above judgment, learned counsel for the petitioners argued that unless vicarious liability on the part of the petitioners/A.2 and A.3 are alleged in the complaints, they would not be held liable.

Learned counsel for the petitioners also relied upon the decision in CHARANJIT PAL JINDAL vs. L.N. METALICS[2], wherein the Apex Court in para-11 held as under:

"From the aforesaid findings, we find that after analyzing all the provisions and having noticed the different decisions rendered by this Court, the three-Judge Bench arrived at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning a company as an accused is imperative. Hence in this case, we find no reason to refer the matter to the Larger Bench."

[2] (2015) 15 SCC 768

Placing reliance on the above judgments, learned counsel for the petitioners submits that unless the company is arrayed as an Accused, the Managing Director or the Managing Partners of the Company cannot be roped in the offence alleged against them.

Learned counsel for the petitioners also placed reliance on the judgment in MANNALAL CHAMARIA v. STATE OF WEST BENGAL[3], and contended that it is necessary for the complainant to state in the complaint that the person accused was incharge of and responsible for the conduct of the business of the company. Unless there is a specific averment to that effect, the accused cannot be held liable for the offence alleged against him. Para-9 of the said judgment reads as under:

> "9. The law on the subject is now very well-settled by a series of decisions rendered by this Court and it is not necessary to repeat the views expressed time and again. Suffice it to say, that the law has once again been stated in A.K.Singhania vs. Gujarat State Fertilizer Company Ltd.[1] to the effect that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138of the Negotiable Instruments Act, 1881, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the

[3] AIR 2014 SC 2240

business of the company at the relevant time. From the averment made in the complaint, which is reproduced above, it can safely be said that there is no specific or even a general allegation made against the appellants."

Learned counsel for the petitioners further submits that every person connected with the company cannot be held liable on behalf of the company, except those incharge of and responsible for conduct of the business of the company at the time of commission of the offence. In that regard, learned counsel placed reliance on NATIONAL SMALL INDUSTRIES CORPORATION LTD. v. HARMEET SINGH PAINTAL[4]. Para-39 of the said judgment reads as under:

"39. From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

[4] (2010) 3 SCC 330

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

Placing reliance on the above judgment, it is argued that unless the petitioners are incharge of the day-today management of the company or Firm or they were incharge of the company or Firm for conduct of the business of the company, they cannot be made vicariously liable under Section 141(1) of the N.I. Act. It was held in para-38 as under:

"38. But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in- charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable underSection 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act."

Placing reliance on the above decisions, learned counsel for the petitioners submits that there are no allegations against the petitioners that they are incharge of and responsible to the Firm for the conduct of the business of the Firm and for the day-today affairs of the company and their participation in the offence and in transacting the business at the relevant time, having knowledge and culpable intent in issuing cheques.

Learned counsel for respondent No.2 submits that the accused gave the alleged cheques for different sums of Rs.10.00 Lakhs and Rs.15.00 Lakhs, respectively, on behalf of Vishnu Teja Private Limited by its Managing Director and when the said cheques were presented for collection, the same were returned with an endorsement "Account closed". Therefore, the respective complainants got issued Notices to the accused demanding to pay the amounts due under the alleged cheques. The accused A.1 and A.2 gave reply notices denying the claims of the complainants and issuance of the cheques. The contents of complaints do not disclose that the petitioners 1 and 2, who are A.2 and A.3, have participated in the day-today activities of the company. It is argued that though it is not mentioned in the respective complaints about their participation in the day-today affairs of the Firm, they have admitted in the respective reply notices that they have participated in the day-today activities of the Firm.

In fact, copies of the said reply notices are not before this Court for consideration. Even otherwise, it is obvious that the complaints do not contain any averment with regard to participation of the petitioners/A.2 and A.3 in the business affairs of the Firm. It is also clear that the cheques were issued by A.1 in the capacity of Managing Director as per the averments in the complaints. Therefore, without impleading the Firm as one of the accused, the petitioners, who are Partners of the Firm, cannot be held liable. In any event, the petitioners/A.2 and A.3 are not the signatories of the alleged cheques and that A.1 alone is the signatory of the alleged cheques even as per the averments in the complaints, that too in the capacity of Managing Director of the Firm. There are no averments in the complaints to make the petitioners/A.2 and A.3 vicariously liable for the issuance of the alleged cheques by A.1 in the capacity of Managing Director of the Firm, without adding the Firm as an Accused.

In K. SRIKANTH SINGH's case (1 supra), it was clearly held that the 'vicarious liability' on the part of the person has to be pleaded and proved. In the instant case, the vicarious liability of A.2 and A.3 has not been pleaded in the complaints. In CHARANJIT PAL JINDAL's case (2 supra), it was held that under Section 141 of the N.I. Act, arraigning a company as an accused is imperative. In the instant case, the company is not made a party to the proceedings. In MANNALAL CHAMARIA's case (3 supra), it was held that a reading of the complaint should disclose that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time. In fact, in the instant case, there is no clear averment to the effect that A.2 and A.3 are responsible for the conduct of the business of the company at the relevant time. In para-39 of HARMEET SINGH PAINTAL's case (4 supra) also, the same ratio has been laid down.

Having regard to the above facts and circumstances of the case and in the light of the decisions referred supra, even if the allegations in the complaints are taken at their face value, the same do not constitute any offence against the petitioners (A.2 and A.3) under Sections 138 and 141 of the N.I. Act.

In the result, these Criminal Petitions are allowed. The proceedings against the petitioner Nos.1 and 2, who are A.2 and A.3 in STC.No.452 of 2007 on the file of the V Additional Junior Civil Judge, Chittoor, Chittoor District; and against the petitioner Nos.1 and 2, who are A.2 and A.3 in STC.Nos.179, 87 and 109 of 2009 on the file of the Special

Mobile Court, Chittoor, Chittoor District, respectively, are quashed.

As a sequel, miscellaneous petitions pending, if any, in these Criminal Petitions shall stand closed.

GUDISEVA SHYAM PRASAD, J

15.06.2018.
Msr

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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