

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.5737, 5738, 5745, 6364,7482, 7484,
7531 and 7536 of 2014

COMMON ORDER :

The self-same petitioner in all the Criminal Petitions is the accused in the cheque bouncing cases C.C.Nos.148 of 2014, 150 of 2014, 365 of 2014, 456 of 2014, 347 of 2014, 348 of 2014, 344 of 2014 and 346 of 2014 maintained by respective complainants/ 2nd respondents herein that were taken cognizance for the self-same offence punishable under Section 138 of the Negotiable Instruments Act(for short, 'the Act') by the respective learned Magistrates (II & V Addl.Judl.Magistrates of First Class, Nellore), at the post cognizance stage subsequent to the summons, impugning the very cognizance, these quash petitions are maintained.

Undisputedly, the cheques in question were drawn from the account of the Happy Estate Private Limited and the drawer is Entity – Happy Estates Private Limited represented by its Managing Director. Those were not individual cheques issued by the signatory but by the Company represented by him. Undisputedly, the Company was not arrayed as accused. It is the drawer if at all to be made liable along with the Managing Director also vicariously. Without adding the Company as a party, the question of adding Managing Director as a party does not arise as per the settled law from the 3JB expression of the Apex Court scanning the law in Aneeta Hada v. Godfather Travels & Tours (P) Ltd.¹ particularly from para-59. Thus without impleadment of the Entity, the question of vicarious liability of individual arrayed

¹ 2012 5 SCC 661

as accused does not arise. Thereby the cognizance taken by the respective learned Magistrates supra for the offence under Section 138 of the Act, in respective cases is unsustainable and liable to be set aside.

Accordingly, the Criminal Petitions are allowed by quashing the proceedings in C.C.Nos.148 of 2014, 150 of 2014, 365 of 2014, 456 of 2014, 347 of 2014, 348 of 2014, 344 of 2014 and 346 of 2014 on the file of the respective learned Magistrates (II & V Addl.Judl.Magistrates of First Class, Nellore). It is needless to say if at all any remedies available to the petitioner including to invoke Section 142(1)(b) proviso of the N.I.Act, it is left open.

Pending miscellaneous petitions, if any, shall stand closed.

Date:14.11.2018
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Dr. B.SIVA SANKARA RAO J,

