

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.10450 of 2018

ORDER :

The petitioner is A.1 among two accused in C.C.No.671 of 2016 on the file of I Addl.Judicial Magistrate of First Class, Thadepallygudem, West Godavari District, taken cognizance for the offences punishable u/ sec.420 IPC and u/ secs.3 & 4 of Agriculture Produce (Grading & Marketing) Act 1937, from the investigation done by police in Cr.No.57 of 2016, dt.04-05-2016 and on filing of final report. The same is impugned herein saying that the very registration of the crime, filing of final report and taking cognizance is unsustainable. It is one of the contentions that so far as the A.2 concerned on similar facts in the similar case another bench of this Court in CrI.P.No.8721 of 2017, by order dt.10-09-2018 quashed the proceedings. The learned Public Prosecutor opposed the same saying merely because of improper appreciation of prosecution case, the case so far as A.2 is quashed is not a ground to quash the proceedings so far as A.1 the petitioner herein is concerned.

Heard and perused the material on record.

Undisputedly, 3F Industries Limited, Prathipadu village is a company incorporated under the Companies Act. It is a juristic entity. A.1 is referred as Director and A.2 as General Manager/ Civil Engineer. The so called manufacturing or production activity is done by the company in the premises of the company. The Company is the prime accused. Once such is the case in the absence of impleadment of prime accused, the question of fixing vicarious liability to the others under the principle of *alter-ego*, does not arise for law no way provides for any specific provisions including under the Act for individual liability without impleadment of a company which is mandatory to fix liability on any of its officers responsible either by their

status or for day-to-day affairs as laid down in the Constitution Bench expression of Apex Court in *Aneeta Hada Vs. Godfather Travels & Tours private Limited*¹ reiterated the principle again by another Constitution Bench of the Apex Court in *Sunil Bharti Mittal Vs. CBI*² particularly at paras-42 to 44 and the same is also reiterated by subsequent expressions of 2 Judge Bench of the Apex Court in *Standard Chartered Bank Vs. State of Maharashtra*³ though the expressions in *Aneeta Hada* and *Standard Chartered Bank* supra is in relation to the offences under the provisions of Negotiable Instruments Act only and the expression in *Sunil Bharti Mittal* supra is in relation to IPC offences and other statutory offences.

Having regard to the above and in view of the expressions supra, for quashing the proceedings rightly against the A.2, the taking cognizance against the A.1 is also not sustainable for the company which is a juristic person and prime accused not a party to the final report.

In the result, the Criminal Petition is allowed by quashing the proceedings against the petitioner/ A.1 in C.C.No.671 of 2016 on the file of I Additional Judicial Magistrate of First Class, Thadepallygudem, West Godavari District and he is acquitted. His bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:06.12.2018

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¹ (2012) 5 SCC 661

² 2015 4 SCC 609

³ 2016 6 SCC 62