

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11937 of 2018

ORDER:

The petitioners are accused Nos.4 to 6 in CC.No.565 of 2016 on the file of Special Judicial First Class Magistrate, Guntur. It is outcome of the private complaint under Section 138 of the Negotiable Instruments Act filed by the 1st respondent proprietary concern that was taken cognizance by the learned Magistrate against 6 accused including the petitioners besides A.1 the company represented by its MD- A.2, A.3 to A.6 are mentioned as Directors.

In the complaint Paras 1 to 4 what all averred is A.1 is the company, A.2 is the Managing Director, A.3 to A.6 are Directors of A.1 and all of them are carrying on cotton spinning business in the name of A.1 and there was supply. From the account transaction maintained in the books of account for the amounts fallen due, the 2 cheques in question were issued on 30.10.2015 of each Rs.16 lakhs returned dishonoured. Besides the averment at Paras 1 & 2 what all mentioned in Para 3 from the middle that A.2 as MD of A.1 and A.3 to A.6 as Directors of A.1 and all in-charge and responsible for A.1 company for conduct of business in looking after day to day affairs of A.1 and A.2 issued the cheque to the knowledge of A.3 to A.6 with dishonest intention without having sufficient funds in the account that was dishonoured and thereby committed the offence.

Undisputedly A.1 company represented by A.2 as MD issued the cheque and not even from the personal account of A.2, leave about a stray sentence as to A.3 to A.6 being directors also responsible for day to day affairs does not show how responsible in the cheque transaction covered by its dishonour to commit the offence for which to fasten the liability. Mere stray sentence in the complaint is not sufficient to make them liable along with entity with vicarious liability from the settled expressions of the Apex Court as observed by this Court in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**¹ and also observed in CrI.P.No.1256 of 2017 and batch by common order dated 04.10.2017.

The contention of the learned counsel for the 1st respondent complainant that the complaint mentions that A.3 to A.6 as Directors are also responsible for day to day affairs and they got knowledge of the cheque issued on behalf of A.1 by A.2 is a sufficient averment to make them liable vicariously along with entity is untenable.

Having regard to the above, the cognizance against the petitioners/A.4 to A.6 for A.3 is not party herein no way survives to sustain but for against A.1 and A.2.

Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the accused in CC.No.565 of 2016 on the file of Special Judicial First Class

¹ 2016 (1) ALD (CrI.) 177

Magistrate, Guntur, accused are acquitted and the bail bonds of the accused, if any, shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.12.2018
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