

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.11370 and 11372 of 2017

COMMON ORDER:

The petitioners herein are A1 and A2 respectively in CC.No.792 of 2015 on the file of the XVIII Additional Chief Metropolitan Magistrate, Secunderabad (Crl.P.No.11370 of 2017) filed by one Y.Santosh Kumar for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') that was taken cognizance by the learned Magistrate from the private complaint filed also referring to Sections 415 and 420 IPC. However, the cognizance order dated 28.11.2014 of the learned Magistrate reflects not for the IPC offences but for Section 138 of the Act. The self same persons A1 and A2 in C.C.No.385 of 2016 on the file of the XX Additional Chief Metropolitan Magistrate, Secunderabad, outcome of the private complaint of one Y.Saibaba, taken cognizance of the self same.

2. It is impugning the said cognizance orders of the learned Magistrate for the respective offences in both the cases under Section 138 of the Act, the present quash petitions are filed.

3. Heard the learned counsel for the petitioners and the respective 1st respondent/ complainant and perused the

complaint averments, docket orders, sworn statements and the cheques in question.

4. A perusal of the cheques in question filed with the respective complaints viz in C.C.No.792 of 2015 is concerned, for Rs.5,00,000/- from the account of 'for SSR group', signed by partners, S.R Satish/ A1 and A.Ramesh/ A2, dated 30.06.2014 bearing No.817836 and for equal sum on 01.07.2014 bearing No.817837, that were returned dishonoured and in CC.No.385 of 2016, Rs.5,00,000/- cheque bearing No.817838 dated 02.07.2014 and another cheque dated 04.07.2014 for Rs.5,00,000/- bearing No.817839 respectively signed 'for SSR Group' by its partners S.R.Satish(A1) and A.Ramesh(A2).

5. The averments in the respective complaints concerned are that A1 and A2 approached the complainant for hand loans, they were lent and A1 and A2 are the authorized signatories of the four cheques in question issued each Rs.5,00,000/- supra and they promised to pay and failed to pay, when the cheques deposited, were returned dishonoured. They signed the cheques on behalf of the firm business they were running viz firm name, SSR Group, having fully well and sufficient knowledge of no funds in their accounts, and issued with malafide intention, which is feasible inception of the transaction and lending and giving

of the cheques to cheat the complainant by causing wrongful loss or gain, thereby liable.

6. It is not necessary for this Court to go into whether ingredients of the offence punishable under Section 415 or 420 IPC made out for the learned Magistrate from the sworn statements not taken cognizance for the IPC offences supra, but for, only for the N.I. Act offence under Section 138.

7. Now coming to the said offence, for which cognizance taken under Section 138 of the Act, it is from the cheque book of SSR Group, a partnership entity, undisputedly, from the complaint averments that were signed only on behalf of the entity by its partners/ accused. However, the vicarious liability of the partners or managing director or director of a company arises along with the company and when the principal offender of the company represented by any of the partner not made an accused, the question of taking cognizance against the individuals does not arise as per the settled expression of the Apex Court reiterated in *Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd*¹. Hence, the cognizance order of the learned Magistrate is unsustainable and quashed accordingly.

8. Accordingly, the Criminal Petitions are allowed quashing the proceedings against the petitioners/ A1 and A2

¹ (2012)5 SCC 661

in CC.No.792 of 2015 on the file of the XVIII Additional Chief Metropolitan Magistrate, Secunderabad and C.C.No.385 of 2016 on the file of the XX Additional Chief Metropolitan Magistrate, Secunderabad. However, it will not prevent the complainant if at all to file a complaint invoking Section 142 of the N.I.Act to decide on own merits for any delay to be condoned or not.

9. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.12.2018

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