

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 310 OF 2019

ORDER :

This Criminal Petition is filed by the petitioner/A-2 under section 482 of Cr.P.C., seeking to quash the Proceedings in C.C.No. 2246 of 2018 on the file of the Court of XXII-Metropolitan Magistrate at Medchal, Cyberabad.

2. Proof of service of second respondent/defacto complainant returned un-claimed is sufficient. Heard counsel for the petitioner/A-2 and learned Public Prosecutor representing the State.

3. In the present quash petition, which is the impugment of the cognizance taken against the petitioner/A-2 Lingaraj Shantalingappa Patil, Director along with A-1 Balagopal, Director, Sangem Health Care Private Limited [Company] from the report of one D. Babunath Nayak, Enforcement Officer of the Employees Provident Fund Organization, Kukkatpally, Hyderabad, for the offences punishable under section 406 and 420 of I.P.C. Neither in the report nor in the investigation material much less in the charge sheet, there is no reference to the Sangem Health Care Private Limited, the Company for fixing any vicarious liability against any of the Directors along with it as without the entity being made liable, the question of vicarious liability to the Officers even responsible for the day-to-day affairs either from the status or from the activities does not arise unless specifically provided by any special statute as

laid down by the Hon'ble Apex Court in **SUNIL BHARATHI MITTAL V/s. C.B.I.** ¹, more particularly from Paragraph Nos. 35 to 41 of the expression of the Constitution Bench leave it apart from the expression of the Apex Court in **EMPLOYEES STATE INSURANCE CORPORATION V/s. S.K. AGARWAL** ², while referring to '*the Act 1948*' particularly Section 217, it is observed that the "principal employer" as defined there-under from *Explanation* to section 2 and section 405 of I.P.C. also is the entity/company and the company itself owns the organization/factory of its employees at the Head Office and in the absence of Company, there is no question of vicarious liability to the employees within the meaning of '*employer*' to fasten the liability by relying upon the Division Bench expression of the Bombay High Court, which over-ruled the single bench expression of the Bombay High Court in 1980.

4. Having regard to the above and in the result the Criminal Petition is allowed by quashing the Proceedings in C.C.No. 2246 of 2018 on the file of the Court of XXII-Metropolitan Magistrate at Medchal, Cyberabad.

5. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO.

22/02/2019
I s L

¹) 2015 [4] S.C.C. 609

²) A.I.R. 1998 S.C. 2676



HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 310 OF 2019

[RESULT : ALLOWED]

Circulation No:
Date:22-02-2019
Court Master: I s L