HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.206 of 2018

ORDER:

The petitioner is 2nd accused among the three accused in CC.No.38 of 2016 outcome of the private complaint under Food Safety and Standards Act, 2006 (for short, 'the Act') of the 2nd respondent – Food Safety Inspector, Nizamabad (concerned) from which the learned I Metropolitan Magistrate, Municipal Court, Hyderabad, taken cognizance for the offences punishable under Sections 3(1)(zz)(iii)(vii), Sec.26(2)(i) of the Act r/w.Regulations 2, 3,6 of the Act punishable under Section 59 (ii) of the Act.

2. Summoning at the post cognizance stage, the petitioners/accused appeared and so far as the petitioner/A2 concerned, moved the trial Court Magistrate under Section 239 Cr.P.C. by filing an application seeking to discharge for no ground to frame charge in saying there is no sustainable specific accusation for the array of him of any role to make him vicariously liable along with any of the other accused. That petition was ended in dismissal by the impugned order dated 13.12.2017 in Crl.M.P.No.187/2017 by the learned Magistrate with observation particularly from paras 8 to 11. In so far as the present averment concerned, leave about invoking of section 42(iii) of the Act, how far to benefit, in the absence of showing prejudice caused be made a ground for discharge.

3. That he is a stranger but for Director of A3 entity and there is no specific allegation is the contention in seeking to discharge concerned,

the observation is it is a matter to be decided after full-fledged trial and premature to go into and express any opinion in discharge.

4. Section 66 of the Act which is almost in paramateria to Section 141 of the Negotiable Instruments Act necessary to reproduce herein for more clarity and the same reads as follows:

> ***"66. Offences by companies:- (1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:***
>
> ***Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person incharge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:***
>
> ***Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.***
>
> ***(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."***

5. The counsel for the revision petitioner placed reliance on the three bench expression of the Apex Court in [1]**S.M.S. Pharmaceuticals Ltd.Vs.Neeta Bhalla and Anr** particularly, paras 11 to 19 with the conclusion also by referring to one of the expressions under Food Adulteration Act reported in [2] **Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others** saying where the complaint does not disclose essential ingredients of the offence or no case against the accused with any proper averment in the complaint to face a trial, it is not sustainable. The conclusion at para 19 which is a case under Section 141 of the N.I. Act supra that it is necessary to specifically aver in a complaint that at the time the offence committed, the person accused was incharge of and responsible for the conduct of the business of the company which is an essential requirement from the very wording of Section 141 of the Act and has to be made in a complaint and without that, the requirements of Section 141 cannot be said to be satisfied.

6. In fact, the said principle is reiterated by catena of expressions [3]**Standard Chartered Bank Vs. State of Maharashtra** by referring to the expression in **S.M.S. Pharmaceuticals Limited Vs.Neeta Bhalla and Anr. supra,** [4]**Anita Hada Vs.God father Travels and Tours Pvt.Ltd** besides the earlier expression, including [5]**Sabitha Rammurthy & another vs**. **R.B.S.Channabasavaradhya and** [6]**Saroj Kumar Poddar Vs. State (NCT of Delhi) & Anr.** and [7]**K.K.Ahuja Vs.V.V.Kvora & another** that it is necessary to specifically aver in a complaint that at the time the offence was committed, the present accused was incharge of and responsible for conduct of business of the company and which averment has to be made in the complaint and without which the requirements of

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[1] **(2005) 8 SCC 89**
[2] **1983 SCC (1) page 1**
[3] **(2016) 6 SCC page 62**
[4] **(2012) 5 SCC 661**
[5] **(2006)10SCC 581**
[6] **2007(3) SCC 693**
[7] **(2009)10 SCC 48 2009**

the provision cannot be said to be satisfied as like to be depends on role one placed in force of the entity and not on his designation of status but for any specific provision by virtue of the status, there cannot be any vicarious liability. So far as **Anita Hada Vs. Godfather Travels and Tours Pvt.Ltd.** referred supra which is also another constitution bench of the Apex Court concerned, same is reiterated by expanding the conflicting expressions in **Anil Hada vs. Indian Acrylic Ltd.**[8]

7. Having regard to the above, there seems to be a specific averment in the complaint, including from the very wording of Section 66 of the Act 2006 supra to sustain the prosecution to fix any vicarious liability by virtue of that provision.

8. From this, now coming to the facts, a perusal of the whole complaint right from the cause title even running in four pages, it is no where mentioned what is the role of the petitioner/A2 and how he is vicariously liable for the A3 entity that too personally and not as a representative of the A3 entity of A3 to be made liable being a juristic person to represent by some human agency under the principle of *alter ego*. One such is the case, the very complaint so far as against the petitioner/A2 even in the cause title mentioned as licensee in the absence of showing how he is liable either individually or vicariously, the cognizance order is no way sustainable.

9. Having regard to the above and by following the expression of the Apex Court also in [9]**Sunil Bharti Mittal Vs. CBI;** another constitutional bench where also it categorically reiterated the expressions earlier to it referred supra in saying the allegation must be specific, in the absence of which, there can be no fastening of vicarious liability, the revision can be

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[8] 2000Cr.LJ 373
[9] **(2015) 4 SCC 609**

allowed and however, it is as made clear in Sunil Bharti Mittal Vs.CBI supra in the last paras, it is not a bar if at all there is a sustainable accusation from the evidence during trial on record if at all made out of liable has no cause to invoke Section 319 Cr.P.C. that too on lying of factual foundation as contemplated by the constitutional bench expression of the Apex Court in [10]**Hardeep Singh Vs. State of Punjab.**

10. With these observations, the revision is allowed.

11. Miscellaneous petitions, pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.19.03.2019
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[10] **(2014) 3 SCC 92**

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19th March, 2019

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