

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.4646 of 2017

ORDER :

The petitioner is the second accused among two accused by names Ramachandrani Mallikarjun Rao and Rangineni Upender Rao, for the offence punishable under Section 138 of Negotiable Instruments Act (for short, 'the N.I.Act'), taken cognizance from the private complaint of the second respondent Bharatha Laxman for the so called dishonour of the cheque bearing No.726170 for Rs.1,60,000/- dated 10.04.2009. It is from the said dishonour of the said cheque, on its perusal shows, issued by Spurthi Online Shopping Private Limited represented by the Managing Director – Ramachandrani Mallikarjun Rao (A1) and petitioner (A2) – Rangineni Upender Rao and not by any individual among the two accused A1 and A2, against whom the complaint filed without even impleadment of the drawer of the cheque - Spurthi Online Shopping Private Limited.

As per the expressions of the Apex Court in ***Aparna S.Shah v. Sheth Developers Private Limited and another***¹, unless the drawer of the cheque liable, unless there is any vicarious liability established for others along with the drawer to be made liable, that too with specific allegations how vicarious

¹(2013) 8 SCC 71

liability fastened under Section 141 of the N.I.Act. From the three Judge Constitution Bench of the Apex court in ***Aneeta Hada v. M/s.Godfather Travels and Tours Private Limited***², it is very clear that when the very drawer - the entity not accepted or carried as accused, the question of vicarious liability under Section 141 for any drawer or the Managing Director, as the case may be, does not arise. Though the Managing Director by virtue of his status along with the entity without any further specific allegations in the compliant of liable for day to day affairs, can be fastened with liability as per Section 141 of the Act.

Having regard to the above, A1 and A2, without impleadment of the drawer, the entity to which they are partners or Managing Directors and Directors, as the case may be, does not arise.

Accordingly and in the result the Criminal Petition is allowed and the proceedings in C.C.No.309 of 2013 on the file of Judicial First Class Magistrate, Suryapet are quashed and the bail bonds of accused if any are cancelled.

²(2012 5 SCC 661)

Miscellaneous petitions, if any pending, in this Criminal
Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 14.02.2019
vhb

