HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

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CRIMINAL PETITION NO.173 OF 2022

BETWEEN

Lakshmi Prameelakatari,
W/o.K.V.Rayapa Raju,
Aged 50 years, Occ:Housewife,
R/o.Villa No.32, Alluri Meadows Venkata Enclave,
White Fields, Hitech City, Hyderabad-81.

… Petitioner/Accused No.3

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court at Hyderabad.
& another.

… Respondents

Date of Judgment Pronounced:**07.09.2022**

SUBMITTED FOR APPROVAL:

THE HONOURABLE Dr.JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? (Yes/No)

2. Whether the copies of judgment may be marked to Law Reports/Journals? (Yes/No)

3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

Dr.JUSTICE CHILLAKUR SUMALATHA

*** <u>THE HON'BLE</u> Dr.JUSTICE CHILLAKUR SUMALATHA**

\+ CRIMINAL PETITION NO.173 OF 2022

% Dated 07-09-2022

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… Respondents

! Counsel for Petitioner : Sri Pavan Kumar Aditya

^ Counsel for Respondent No.1: 1.Sri Khaja Vizarath Ali

Counsel for Respondent No.2: 2.Sri Arshad Ahmed.

<GIST:

> HEAD NOTE:

? Cases referred

1. (2005) 8 Supreme Court Cases 89
2. 2002(1) ALD (Crl.) 225 (AP)

THE HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.173 OF 2022

ORDER:-

1. Seeking the Court to quash the proceedings that are pending against the petitioner, who is arrayed as Accused No.3 in STC.No.108 of 2021, on the file of the Court of IX Metropolitan Magistrate, Nampally, Hyderabad, the present Criminal Petition is filed.

2. Heard the submission of the learned counsel for the petitioner, learned Assistant Public Prosecutor as well as the learned counsel appearing for the 2nd respondent.

3. The matrix of the case as could be perceived through the contents of the complaint is that the 2nd respondent/ complainant and the 1st accused were having good business relationship. During the course of business dealings, the accused fell due an amount of Rs.1 crore. The accused assured payment of the said amount. Subsequently, the accused issued three cheques towards payment of outstanding due of Rs.1 crore. The 2nd respondent/complainant presented the said cheques for realization, but they were returned with an endorsement

"payment stopped by the drawer." A demand notice was issued for realization of the sum due, but in vain.

4. Making his submission, the learned counsel for the petitioner contended that the petitioner, who is arrayed as Accused No.3, has no role to play in the alleged transaction that happened between the 2nd respondent/complainant and the 1st accused. Learned counsel states that the 1st accused is a Private Limited Company named as M/s.Vinirrmaa Projects Private Limited and the 2nd respondent/complainant is also an enterprise with M/s.Crescent Enterprises and there were business dealings between those two even as per the averments of the complaint and thus, the petitioner has no role whatsoever to play. Learned counsel further submitted that the alleged cheques were not issued by the petitioner herein and a perusal of those cheques reveals that they were not signed by the petitioner. But the petitioner is arrayed as an accused which is most unjustifiable. Learned counsel further submits that as involvement of the petitioner either directly or indirectly is not found in the complaint, continuation of proceedings against her cannot

be permitted and therefore, the petitioner approached this Court seeking to quash the proceedings.

5. Resisting the submission thus made by the learned counsel for the petitioner, learned counsel for the 2nd respondent/complainant submits that the petitioner is the Managing Partner of the 1st accused and the Managing Director of the 1st accused company is her husband, who is arrayed as Accused No.2. Learned counsel further submits that the petitioner is looking after day to day affairs of the company in the capacity of the Director of the Company. Learned counsel also states that the Master Data shows that the petitioner is looking after the affairs and therefore, Section 141 of Negotiable Instruments Act, 1881, squarely attracts to the case facts and thus, quash of proceedings is not desirable.

6. In reply to the said submission, learned counsel for the petitioner contended that narrating the magic words in the complaint is not sufficient and there is no specific overact against the petitioner in the complaint and thus, the proceedings are liable to be quashed.

7. When a cheque is drawn by a person on an account maintained by him with his banker for payment of any amount to any person for discharge either in whole or in part in discharge of debt or other liability and when the said cheque is returned by the Bank unpaid either due to the amount standing in the credit of that account is insufficient to honour the cheque or that the amount of cheque exceeds the amount arranged to be paid, the person who had issued the said cheque would be held to have committed the offence punishable under Section 138 of the Negotiable Instruments Act.

8. In case the offence punishable under Section 138 of Negotiable Instruments Act, 1881, is committed by a company, Section 141 of the Negotiable Instruments Act says that such persons, who at the time of commission of offence was incharge or was responsible for conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence punishable under Section 138 of the Negotiable Instruments Act.

9. Section 141 of the Negotiable Instruments Act, 1881, reads as under:-

141. ***Offences by companies:-***

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge 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 nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any 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. Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

10. Though, normal rule in the case of criminal action, no vicarious liability can be tagged, Section 141 of Negotiable Instruments Act is an exception to the said Rule. The object for which Section 141 of Negotiable Instruments Act was legislated is to sustain credibility of commercial transactions. By the averments of Section 141 of Negotiable Instruments Act, it is clear that the persons who are at the helm of the affairs or connected with the day to day activities of the company or responsible for the conduct of business of the company can only be tagged as accused along with the company and they can only be held liable.

11. In the case on hand, the version of the petitioner is that she never involved in the business affairs of the company and she had no knowledge about the transactions that went on between Accused No.1-Company and the 2nd respondent/complainant. Making a submission that when there is no involvement of a person whatsoever in the affairs of the company, making the said person liable for the offence is unsustainable, learned counsel for the petitioner relied upon the decision of the

Hon'ble Apex Court in **SMS PHARMACEUTICALS LTD. Vs. NEETA BHALLA AND ANOTHER**[1] wherein their Lordships dealing with the applicability of Section 141 of Negotiable Instruments Act at Para 18 held as under:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

[1] (2005) 8 Supreme Court Cases 89

12. Further, making a submission that in order to fasten vicarious liability against a Director of the Company, there must be clean and unambiguous allegations that should be made in the complaint without which liability cannot be fastened, learned counsel for the petitioner relied upon a decision of the erstwhile High Court of Judicature of Andhra Pradesh at Hyderabad in the case between **Neeta Bhalla Vs.S.M.S. Pharmaceuticals Limited, Hyderabad and another**[2] wherein their lordships at Para 32 held as follows:-

> *"32. An analysis of the judgments referred to herein above would in clear terms reveal the legal position that in order to fasten vicarious liability against a Director of the Company there must be clear, specific and unambiguous allegations made in the complaint. It is not as if every director of the accused-company can be roped in automatically and be proceeded with for the offence committed by the company under Section 138 of the Act. The complainant can proceed against only such persons who at the time the offence was committed by the company were incharge of and were responsible to the company for the conduct of its business. Such persons could be directors, managers, secretary or the other officers of the company. Such persons 'incharge' must mean that they were in over all control of the day*

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[2] 2002(1) ALD (Crl.) 225 (AP)

to day business of the company or firm, as the case may be. A complaint based on wild imaginations is not a complaint at all in the eye of law. The accusation against each of the director/person/accused must be specified and unambiguous. The role played by each of the accused must be clearly stated in the complaint. The complaint if read as a whole, must clearly disclose the role played by each of the Directors of the company in case of an offence committed by the company under Section 138 of the Act. Any inartistic expression used in drafting the complaint cannot by itself be a ground for quashing the proceedings; but, at the same time, no complainant can be permitted to launch prosecution against all the Directors of the Company without there being a proper foundation in the complaint, itself, about the actual role played by them at the material point of time, when the offence is committed by the company. No prosecution would lie against a person or persons as the case may be on the simple accusation in the complaint that such person or persons were the Director, Executive Director or an officer of the company at the material time when the offence was committed by the company. But at the same time, it is equally well settled that this Court in exercise of its power under Section 482 Cr.P.C. would not normally undertake any roving enquiry to find out as to the truth or otherwise of the allegations and accusations made in the complaint. The Court cannot undertake any further enquiry if clear specific and unambiguous allegations are made against each of the persons arrayed as accused in the complaint *about the role played at the material time when the offence is committed by the company. Mere repetition of the words incorporated in Section 141 of the Act would not meet the requirement in law to rope any and every director, or other officer, manager, secretary of the company as the case may be. There must be something more clearly stated in the complaint. A bold allegation by merely repeating those magic words mentioned in Section 141 of the Act would not be enough. But in case where the complaint discloses the factual foundation against the persons arrayed as accused, the High Court in exercise of its inherent jurisdiction cannot interdict the further enquiry and trial."*

13. Mere narration that a person was a Director at the time of commission of offence by the company cannot automatically rope him with chain of accusation. Person naming as Director of the Company and the person actually conducting the business of the company and looking after day to day affairs of the company are different. Merely naming of a person as a Director of the company cannot make that person vicariously liable for the offence punishable under Section 138 of the Negotiable Instruments Act.

14. In the case on hand, there is absence of clear accusation against the petitioner in the complaint that is

filed by the 2nd respondent. Further, nowhere it is indicated that she was responsible for the business of the company or that the 2nd respondent/complainant at any time had business dealings or meetings with the petitioner herein. It is also not the case of the 2nd respondent that the petitioner was looking after the business of the company or had over all control of the day to day affairs of the company. Thus, in the light of the absence of any material, whatsoever, to show that the petitioner was actively involved in the management of the company and was looking after the affairs of the company, this Court is of the view that initiation of proceedings by the 2nd respondent against her is undesirable. Therefore, this Court is of the view that the proceedings, as prayed for, are liable to be quashed.

15. Resultantly, the Criminal Petition is allowed. The proceedings that are pending against the petitioner, who is arrayed as Accused No.3, in STC.No.108 of 2021 before the Court of IX Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

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

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Dr.JUSTICE CHILLAKUR SUMALATHA

Dt.07.09.2022
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THE HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.173 OF 2022

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