THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.10978, 10979, 10980, 10981 and 10990 OF 2022

COMMON ORDER:

1. Since the petitioner/A3 and the 2nd respondent/*defacto* complainant and also the grounds raised in all these petitions are one and the same, all the criminal petitions are being disposed by way of this Common Order.

2. Criminal Petition No.10978 of 2022 is filed to quash the proceedings against the petitioner/A3 in C.C.No.494 of 2021 on the file XI Additional Chief Metropolitan Magistrate at Secunderabad.

3. Criminal Petition No.10979 of 2022 is filed to quash the proceedings against the petitioner/A3 in C.C.No.488 of 2021 on the file XI Additional Chief Metropolitan Magistrate at Secunderabad.

4. Criminal Petition No.10980 of 2022 is filed to quash the proceedings against the petitioner/A3 in C.C.No.495 of

2021 on the file XI Additional Chief Metropolitan Magistrate at Secunderabad.

5. Criminal Petition No.10981 of 2022 is filed to quash the proceedings against the petitioner/A3 in C.C.No.489 of 2021 on the file XI Additional Chief Metropolitan Magistrate at Secunderabad.

6. Criminal Petition No.10990 of 2022 is filed to quash the proceedings against the petitioner/A3 in C.C.No.497 of 2021 on the file XI Additional Chief Metropolitan Magistrate at Secunderabad.

7. The 2nd respondent/*defacto* complainant filed complaint under Section 138 of the Negotiable Instruments Act stating that the services of their Company for transportation and freight regarding the imports of the shipments of A1 Company were availed at various locations. The complainant had duly and diligently transported and delivered all the material consignments. For the said reason, invoices were raised and duly accepted by the accused. In discharge of the total outstanding amounts, cheques were issued on behalf of A1 signed by A2. The said cheques when

presented for clearance were returned unpaid for the reason of ‘insufficient funds’ in all the cases.

8. Notice was issued and the company/A1 failed to repay the said amount, for which reason, complaints are filed for prosecution under section 138 R/W 141 of Negotiable Instruments Act.

9. Learned counsel appearing for the petitioner/A3 would submit that the petitioner is arrayed as accused No.3 and the averment against the Petitioner in all the complaints is as follows:

> 6. “The Accused No.1 is a Company and Accused No.2 & 3 are the Directors of the company and both Accused No.2 & 3 are in-charge of and liable to the Company for its day to day operations. The offence has been committed with the consent and connivance of Accused Nos.2 & 3 and therefore both Accused 2 & 3 are liable for the offence along with Accused No.1.”

10. Learned counsel submits that a vague allegation of being responsible for affairs of company is made, which is not sufficient to prosecute the petitioner. He relied on the judgment of Hon’ble Supreme Court in the case of Sunita Palita & others v. M/s.Panchami Stone Quarry arising out of

SLP (Crl.) No.10396 of 2019, dated 01.08.2022, wherein the Hon'ble Supreme Court held as follows:

> 20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company."

11. On the other hand, learned counsel appearing for the 2nd respondent submits that the law regarding vicarious liability of persons in a Company or Firm has been settled in the latest judgment of Hon'ble Supreme Court in the case of **S.P.Mani and Mohan Dairy v. Dr.Snehalatha Elangovan**[1], wherein it is held as follows:

> "46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are

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[1] 2022 SCC OnLine SC 1238

given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.

47. Our final conclusions may be summarised as under:

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to subsection (1) of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.)........

c.).......

d.) If any Director wants the process to be quashed by filing a petition under of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making

> him/her stand the trial would be an abuse of process of Court.”

12. Learned counsel submits that having discussed several judgments of Hon’ble Supreme Court, their Lordships in **S.P.Mani and Mohan Dairy v. Dr.Snehalatha Elangovan’s case (supra)** held that if any Director wants to succeed in Section 482 Cr.P.C application for quashing the proceedings, he/she must persuade by furnishing incontrovertible material or circumstances to show that they have nothing to do with the transactions in question.

13. Learned counsel further argued that the averment that this petitioner was also responsible for the day to day affairs of the company is sufficient to criminally prosecute her and the defence that she is not responsible for the transactions, can be assailed during the course of trial. For the said reason, the petition lacks *bonafides* and accordingly, prayed to dismiss the petitions.

14. Having perused the complaint, there are several transactions in between the Complainant Company and A1-Company. The complainant-company was apparently

interacting with A1 company for the payments to be made on the basis of invoices over a period of time. However, the outstanding in all the cases pertaining to two invoices dated 25.04.2019 for Rs.33,44,507/- and invoice dated 17.05.2019 for Rs.7,67,000/-. Against the partial discharge of the the outstanding towards two invoices, 16 cheques were issued for a total amount of Rs.34,84,619/-. The present five cases are filed aggrieved by the non payment of the amounts by the banks covered under the said sixteen cheques.

15. Section 141 is a penal provision creating vicarious liability. In the said circumstances, making bald cursory statement in a complaint that the Director, who is arrayed as an accused, was in charge of and responsible to the company for conduct of the business without anything more as to the role of such director may not be sufficient. The company may have number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate

fulfillment of the requirements under Section 141 of the Negotiable Instruments Act. Petitioner is wife and according to the Counsel she has nothing to do with the transactions of A1 company.

16. Though, there are constant transactions in between A1 company and the complainant company, there is not even a single occasion that has been mentioned by the complainant company to suggest that the petitioner/A3 herein, who is the wife of A2 had at any point of time either interacted with any of the personnel of the complainant company or in any manner paid any amounts or transacted the business in any manner on behalf of the A1-company. Several invoices were raised over a period of time. When there are several transactions in between the complainant company and A1 company and not a single instance given wherein the petitioner has in any manner interacted or transacted in any kind of business with the complainant company, it cannot be said that this petitioner/A3 was responsible for running the day today affairs of A1 company. The three Judge bench of the Hon'ble Supreme Court In **S.M.S.Pharmaceuticals Limited v. Neeta Bhalla and**

another[2], which was also considered in the case of **S.P.Mani's** case held as follows:

> "18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons 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 respondent falls within 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."

17. The circumstances in the present case clearly indicate that the petitioner was never involved in any of the ongoing business transactions in between the Complainant Company and A1. As held by the Hon'ble Supreme Court in S.P.Mani's case, 'acceptable circumstances' can form basis to quash the proceedings under section 482 CRPC in a

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[2] (2005) 8 Supreme Court Cases 89

criminal prosecution of a person made liable with the aid of section 141 NI Act. Viewed from any angle, the proceedings against the petitioner/A3, who is wife of A2 has to be quashed on the basis of material available on record.

18. In the result, proceedings against the petitioner/A3 in C.C.No.494 of 2021, C.C.No.488 of 2021, C.C.No.495 of 2021, in C.C.No.489 of 2021 and C.C.No.497 of 2021 on the file XI Additional Chief Metropolitan Magistrate at Secunderabad, are hereby quashed.

19. Accordingly, all the Criminal Petitions are allowed. Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 07.02.2023
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THE HON'BLE SRI JUSTICE K.SURENDER

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Dated: 07.02.2023

kvs