

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRL.P.NO.1063 OF 2013

BETWEEN

M/s Varsha Corporation Limited
rep. by its Managing Director,
Sri S.C.Jain, S/o.Late Sri Javerchand
Nopaji Jain,
Situated at “Varsha”, 13, Adarsh Society,
Ramachandra Lane (Extension),
Malad West, Mumbai- 400 064
& 4 others

... Petitioners/Accused 1 to 5

And

State of A.P. rep. by Public Prosecutor,
AP High Court, Hyderabad & another.

... Respondents/Complainants

Date of Judgment Pronounced: **18.02.2022**

SUBMITTED FOR APPROVAL:

THE HONOURABLE DR.JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may (Yes/No)
be allowed to see the Judgments?
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No)
see the fair copy of the Judgment?

DR.JUSTICE CHILLAKUR SUMALATHA

*** THE HON'BLE DR.JUSTICE CHILLAKUR SUMALATHA**

+ CRL.P.NO.1063 OF 2013

% Dated 18-02-2022

M/s Varsha Corporation Limited
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... Petitioners/Accused 1 to 5

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AP High Court, Hyderabad & another.

... Respondents/Complainants

! Counsel for Petitioners: Sri Sharad Sanghi

^ Counsel for respondents: 1.Public Prosecutor
2. Sri P.Krishna Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 2017 SUPREME COURT 2595
2. 2009(1) ALD(Crl.)200 (SC)
3. (2009) 9 Supreme Court Cases 682
4. 2020(2)ALD(Crl.)111(AP)
5. (2015)4 Supreme Court Cases 609
6. (2011)1SCC 74:(2010) 3 SCC (Cri) 1201
7. (2012)5SCC 661: (2012)3 SCC (Civ)350: (2012)3 SCC(Cri)241
8. (2014) 16 Supreme Court Cases 1
9. (1981) 2 SCC 335:1981 SCC (Cri) 453
10. (2006) 10 SCC 581 (2007) 1 SCC (cri) 621
11. (2011) 7 Supreme Court Cases 59
12. (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461 (2009) 3
SCC (Civ) 190
13. 1992 Supp (1) SCC 335:1992 SCC (Cri) 426
14. AIR 1992 SC 604

THE HONOURABLE DR.JUSTICE CHILLAKUR SUMALATHA
CRIMINAL PETITION No.1063 OF 2013

ORDER:

With a prayer to quash the proceedings that are pending against the petitioners in Crime No.376 of 2012 of Langer House Police Station, the present quash petition is filed invoking Section 482 Cr.P.C. The petitioners are arrayed as accused 1 to 5 in the First Information Report. The contents of the First Information Report also reveals that basing on the complaint filed by the 2nd respondent herein, who is a Senior Manager in Enso Secutrack Limited, against the petitioners herein before the Court of VI Additional Chief Metropolitan Magistrate, Nampally, the Criminal law was set into motion.

2. The complaint given was forwarded to the Station House Officer, Langer House Police Station, for investigation and report, whereby the case was registered.

3. Heard the submission of Sri Sharad Sanghi, who appeared for the petitioners. Also, heard the submission of Sri P.Krishna Reddy, who appeared for the 2nd respondent/*de facto* complainant. Further heard the submission of learned Assistant Public Prosecutor who

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represented the 1st respondent. In the light of the factual scenario as referred supra and the relief sought for, the point that emerges for consideration is,

Whether there exists any justifiable grounds to invoke the power granted under Section 482 Cr.P.C. and to quash the proceedings that are pending against the petitioners in Crime No.376 of 2012 of Langer House Police Station, Hyderabad, as prayed for.

4. The case of the 2nd respondent (hereinafter be referred as “the complainant”) is that, it is a Company duly incorporated under the Indian Companies Act, 1956 and is engaged in the business of manufacturing and trading of Cash Counting Machines, Cash Registering Machines, Electronic Security Systems, etc. There exists business relationship between the complainant and the petitioners (all the petitioners hereinafter be referred as “the accused”) since long time. The 1st accused used to supply machines from time to time basing upon the requirement and order placed by the complainant. The complainant used to send blank cheques without mentioning the date and amount. Sometimes, the complainant used to send cheques by

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mentioning only amount but without mentioning date. Taking advantage of the same, the accused played fraud. The complainant ordered some machines and while ordering those machines, it forwarded two cheques bearing Nos.164651 and 164652 drawn on ICICI Bank, Hyderabad. In addition to that, the complainant paid Rs.26,70,690/- and also transferred a sum of Rs.25,00,000/-. Further, there was an advance amount of Rs.1,70,690/- which was lying with the accused. However, the 1st accused, all of a sudden, raised invoices in the name of the complainant for a sum of Rs.1,49,17,500/- and Rs.89,00,000/- totaling Rs.2,38,17,500/-. The complainant received the same through courier. The said invoices were acknowledged by one of the Directors by name Sri Hanuman Mal Tater. By making false promise, the accused got the invoices signed. But indeed, no machines were delivered to the complainant. These acts clearly demonstrate that the accused's company intentionally took signature of the Director only to cheat the complainant. The 1st accused sent a communication to the complainant indicating that it is going to present the cheques. Immediately, the

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complainant sent a mail to the accused No.1 stating that they have not received any machines. The complainant also informed the 1st accused that in the absence of receipt of any goods, the question of honouring the cheques, does not arise. In addition to that, the accused's company was also informed that they are forced to inform their bankers to give "Stop payment instructions". But having knowledge of the same, a legal notice was issued under Section 138 of the Negotiable Instruments Act. However, the provisions of Negotiable Instruments Act does not attract in the light of the stand taken by the complainant. Thus, the accused's company and its Directors played fraud and cheated the complainant by not delivering the goods and presenting the cheques for encashment and thereby also committed criminal breach of trust with criminal conspiracy. The offences alleged to have been committed by the accused are under Sections 120-B, 406, 418, 420 and 468 IPC as per the contents of the First Information Report.

5. Submitting that the accused have not committed any offence, the learned counsel for the petitioners i.e. accused,

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contended that the case in Crime No.376 of 2012 of Langer House Police Station is a counterblast case to that of the case filed by the accused against the complainant under Section 138 of Negotiable Instruments Act. The learned counsel also stated that the complainant is due and liable to pay more than Rupees two crores to the complainant and for payment of the said amount, the complainant issued two cheques and when the said cheques were presented by the 1st accused i.e. the 1st petitioner herein for encashment, they got dishonoured and they were returned with an endorsement "Stop payment" and therefore, the 1st accused issued notice under Section 138 of the Negotiable Instruments Act demanding the complainant to pay the amount covered under those two cheques. But without paying the amount, taking aid of false allegations, the complainant lodged a private complaint before the Court of law and thereby, a case is registered against the petitioners/accused which is wholly unjustifiable. The complaint itself demonstrates that the dispute is purely civil in nature. For getting a civil remedy, criminal proceedings are set into motion. This is impermissible.

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6. Learned counsel for the petitioners also submitted that the petitioners 2 to 5, who are arrayed as accused 2 to 5, are the Directors of the 1st accused-company. Except their position as Directors, they never involved in the day to day affairs of the company of A1 and only to bring A1 to his terms, the complainant roped them into this case and therefore, the proceedings against them cannot be permitted to be continued. The learned counsel states that they cannot be tagged with the vicarious liability.

7. On the other hand, the learned counsel for the 2nd respondent i.e. the *de facto* complainant submits that the *de facto* complainant in good faith and having trust, in a routine manner and in the course of the business transactions, on request of the accused, forwarded two undated cheques and those cheques were issued as consideration for delivery of goods, but without delivering the goods, the cheques were presented for encashment and thereby, the petitioners with criminal conspiracy, caused criminal breach of trust and thus the

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petitioners/accused committed the offences alleged and hence, they are liable for prosecution.

8. The learned counsel for the 2nd respondent/*de facto* complainant further submitted that the company of A1 had delivered the machines which were ordered by the *de facto* complainant to another company by name Atco Digital Private Limited, Mumbai and thereby had also caused irreparable loss to the *de facto* complainant and therefore, the present application cannot be entertained. The learned counsel contends that the petitioners have approached this Court with unclean hands and indeed, the 1st accused and its Directors who are accused 2 to 5, have played fraud and cheated the *de facto* complainant.

9. The learned Assistant Public Prosecutor who is representing the 1st respondent, submitted that after registration of the case in the year 2013, stay was granted by this Court and therefore, the matter could not be investigated into and had it been investigated, the truth would have come to light. She also states that on merits, the petition is liable for dismissal.

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10. In the light of the aforementioned contentions and rival contentions, the crucial points that are liable to be discussed and decided are as follows:-

(i) *Whether the private complaint basing on which the case is registered, is a counterblast complaint. And if so, whether the proceedings arising there from, are liable to be quashed?*

(ii) *Whether basing on the principle of vicarious liability, criminal prosecution against the Directors i.e. accused 2 to 5 can be permitted to continue?*

(iii) *Whether a civil dispute and a civil liability can be permitted to be settled by launching a criminal prosecution?*

11. **Whether the private complaint basing on which the case is registered, is a counterblast complaint. And if so, whether the proceedings arising there from, are liable to be quashed:-**

The main ground urged and the plea taken by the accused are that when the cheques that were issued by the *de facto* complainant were dishonoured, A1 company issued a legal notice and thereafter, filed a complaint under Section 138 of the Negotiable Instruments Act against the

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de facto complainant and as a counterblast to the said complaint, the *de facto* complainant had filed a private complaint against A1 company and its Directors i.e. A2 to A5. The learned counsel submits that basing on the complaint filed by the first accused that the *de facto* complainant committed offence punishable under Section 138 of Negotiable Instruments Act, a case was registered, cognizance was taken and proceedings are pending against the *de facto* complainant in CC.No.576/SS/2012 before the Court of Metropolitan Magistrate, Boriwoli, Mumbai.

12. Opposing the said submission, the learned counsel for the *de facto* complainant submits that the said case under Section 138 of the Negotiable Instruments Act has nothing to do with the complaint given by the first accused and indeed, the alleged cheques basing on which proceedings are pending in the calendar case referred to by the accused, were given only as security and though it was intimated that "Stop Payment instructions" were issued to the banker, yet, they were presented and proceedings are launched, which is unjustifiable.

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13. The learned counsel for the *de facto* complainant also states that those cheques were issued for delivery of machinery and without delivering the said goods, the cheques given were presented for encashment and thereby, A1 and its Directors cheated the *de facto* complainant and committed criminal breach of trust with criminal conspiracy. A perusal of the material available on record goes to show that a complaint was filed that the *de facto* complainant herein committed offence punishable under Section 138 of the Negotiable Instruments Act before the Court of Metropolitan Magistrate, Borivoli, Mumbai, on 18.04.2012. The cheques in question are cheque Nos.164651 and 164652 both drawn on ICICI Bank, Hyderabad. The present complaint against the petitioners was filed before the Court of VI Additional Chief Metropolitan Magistrate, Criminal Courts, Nampally, on 04.07.2012. Therefore, it is very much clear that after 2 ½ months from the date of the complaint filed by the accused No.1 at the Court of Borivoli, Mumbai, the present complaint is filed by the *de facto* complainant before the

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Court at Hyderabad. The cheques in question are one and the same.

14. A meticulous perusal of the contents of the complaint filed by the 1st accused company under Section 138 of the Negotiable Instruments Act at Mumbai and the complaint filed by the 2nd respondent / *de facto* complainant before the Court at Hyderabad, goes to show that the 2nd respondent/*de facto* complainant projected his version which he ought to have projected as defence in the complaint given against him by the 1st petitioner/A1 before the Court at Mumbai. This does not mean that the 2nd respondent / *de facto* complainant is barred from giving a separate police report or lodging a complaint before the competent Court projecting his grievance against the accused. But having regard to the time it was filed and the contents mentioned therein, it undoubtedly strengthens the submission of the learned counsel for the petitioners that this is a counterblast case that is leveled to attack the complaint that was given by the 1st accused company that the 2nd respondent/*de facto* complainant has committed

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the offence punishable under Section 138 of the Negotiable Instruments Act. It is not the version of the 2nd respondent/*de facto* complainant that he had no knowledge of filing of complaint under Section 138 of the Negotiable Instruments Act before the Court at Mumbai by the time he filed the present complaint at Hyderabad. He himself makes a mention in the complaint that a notice as required under Section 138 of the Negotiable Instruments Act was issued regarding the dishonor of cheques which mean that the 1st accused company has indicated that it is going to initiate legal proceedings against the 2nd respondent/*de facto* complainant. Submitting that, in such a scenario, the proceedings levelled as a counterblast case cannot be permitted to be continued, the learned counsel for the petitioners relied upon catena of decisions.

15. The 1st decision is the one that is rendered by the Hon'ble Supreme Court of India in the case between ***Lovely Salhotra and Anr. v.State NCT of Delhi and Anr.***¹, wherein analyzing the scenario similarly placed, the

¹ AIR 2017 SUPREME COURT 2595

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Hon'ble Supreme Court at paras 5 & 6 observed as follows:-

“5. According to us, the F.I.R in question filed against the appellants-herein by Respondent No.2 is only an after-thought with the sole intention to pressurize the appellants not to prosecute their Criminal Complaint filed by them under Section 138 of the Negotiable Instruments Act, 1881.

6. Accordingly, we find that the order so passed by the High Court is not sustainable in the eyes of law and deserves to be set aside.”

16. The next decision that is relied upon is also the decision of the Hon'ble Supreme Court of India in the case between ***Eicher Tractor Ltd. and others v.Harihar Singh and another***². The factual scenario in the said case is as follows:

“On 05.02.2001, the appellant issued a legal notice under Section 138 of the Negotiable Instruments Act, 1882. On 12.04.2001, the trial Court after considering the complaint and the pre-summoning evidence, took cognizance and issued summons to the respondent. The respondent No.1 appeared and

² 2009(1)ALD(CrI.)200(SC)

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subsequently was released on bail. On 04.10.2002, the respondent No.1 filed a private complaint under Section 200 Cr.P.C. alleging that the officials of the petitioner No.1 had stolen the cheques.”

In the light of the said material particulars, the Hon’ble Apex Court at Para 10 of the judgment, made the following observations:-

“10. The factual scenario as noted above, clearly shows that the proceedings were initiated as a counterblast to the proceedings initiated by the appellants. Continuance of such proceedings will be nothing but an abuse of the process of law. Proceedings are accordingly quashed.”

17. The next decision relied upon is the one that is also rendered by the Hon’ble Supreme Court in the case between **M.N.OJHA AND OTHERS Vs. ALOK KUMAR SRIVASTAV AND ANOTHER**³. In the said decision, the Hon’ble Supreme Court discussing the powers to be exercised under Section 482 Cr.P.C. and the inference to be drawn, at Paras 33 to 35 held as follows:-

³ (2009) 9 Supreme Court Cases 682

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“33. This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realize and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously has been filed as a counterblast to the proceedings already initiated by the Bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation.

34. Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM on mere asking to do so by the complainant.

35. The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure though the case on hand required its interference in order to prevent abuse of the process by a Court subordinate to it. A

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clear case is made out requiring our interference to secure the ends of justice.”

18. Thus, the principles governing the field are very clear. When it is found that criminal law is set into motion as a counterblast to the proceedings already instituted by the opposite party and the sole motive to do so is to bring the other party to terms through putting the said party in fear, the Courts should not be mute and allow the criminal proceedings to continue. More particularly, the High Court which exercises wide and splendid power under Section 482 Cr.P.C., should not sit as a silent spectator. Though the High Court, being the highest Court of the State, should normally allow the parties to exercise their right of initiation and continuation of proceedings either civil or criminal, yet when such right is misused, the High Court should interfere by exercising its extraordinary jurisdiction and thereby, the proceedings are required to be quashed.

19. In the case on hand, this Court finds that the complaint was lodged by the 2nd respondent only as a

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counterblast to the complaint that was given by the 1st accused and therefore, it is unsustainable.

20. **Whether basing on the principle of vicarious liability, the criminal prosecution against the Directors i.e. accused 2 to 5 can be permitted to continue:-**

The 1st accused is a Company. The accused 2 to 5 are its Directors. On the ground that the accused 2 to 5 committed offences punishable under Sections 406, 418, 420 & 468 IPC with criminal conspiracy attracting Section 120-B IPC, case is registered against them too. The submission of the learned counsel for the petitioners/accused in this regard is that though accused 2 to 5 are the Directors of the Company i.e. A1, they never participated in the day to day affairs of the company and they have no involvement in the alleged transaction, but they were unnecessarily and malafidely arrayed as accused.

21. On the other hand, the learned counsel for the 2nd respondent/*de facto* complainant contends that as accused

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2 to 5 are Directors of A1, they are vicariously liable to the acts of A1 and indeed, all of them with a common intention, have committed the offences of cheating and criminal breach of trust. A meticulous perusal of the complaint goes to show that all the allegations are directed against A1 i.e. Company only.

21. Undoubtedly, the company does not act on its own. It has to be run by natural persons. But that does not mean that everyone working therein, the Directors and Managers, are responsible for each and every act of the company. To hold them responsible, it is for the person who alleges so to aver, assert and produce at least prima facie material that they are involved in the affairs of the company and the outcome of such involvement is the Commission of offence by the company and thus they are vicariously liable for the acts of the Company.

22. On this aspect, the learned counsel for the petitioners relied upon the decision of the High Court of Andhra Pradesh in ***Proddaturi Shobha Rani @ Shobha Rani and***

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another Vs.State of Andhra Pradesh and another⁴

wherein the facts in nutshell as narrated at Para 23 of the order are as follows:

“23. In the light of the above arguments when the complaint is perused, it is averred thus:

“A1 used to come over to Dharmavaram to receive the goods from the complainant on behalf of remaining partners and take the goods. Likewise, the complainant handed over the goods to the accused as mentioned in the invoice and goods is received by the accused personally. The complainant submits that the accused represented that they are highly reputed persons and they are having lakhs of properties and they are making huge profits. The accused have also promised to pay the entire bill amount within one month and thereby induced the complainant for the delivery of the goods.”

23. Dealing with the said factual scenario, the learned Judge at Paras 24 & 25 of the order held as follows:

“24. Thus, from the above, it was A1 who allegedly used to go to Dharmavaram and obtain

⁴ 2020(2) ALD(Crl.) 111 (AP)

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sarees from the complainant on credit basis on behalf of the firm. In the complaint, there is no whisper that the petitioners are the partners of the firm and they were actively participating in the business of the firm. Most importantly the complaint has not disclosed whether the petitioners personally approached the complainant and received the sarees on credit basis. In the absence of such crucial facts, it is legally impermissible to continue the criminal proceedings against the petitioners.

25. In similar circumstances, while quashing the proceedings against the appellant the Apex Court in Katta Sujatha's case (supra), held thus:

However, one thing is clear that the appellant was in no way involved in any of the transactions referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of Section 141 of the Act nor was there any other allegation made against the appellant that she had connived with any other partner in the matter of issue of cheque."

24. The next decision that is relied upon is that of the Hon'ble Supreme Court of India in the case between **SUNIL**

BHARTI MITTAL Vs. CENTRAL BUREAU OF INVESTIGATION⁵. In the said decision, the Hon'ble Apex Court discussing at length with regard to the principles governing the field, at Paras 40 to 44, held as follows:-

“40. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the “alter ego” of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment in Iridium India case⁶ is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are “alter ego” of the company.

41. In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and,

⁵(2015) 4 Supreme Court Cases 609

⁶ Iridium India Telecom Ltd.v.Motorola Inc.(2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201

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therefore, on this premise, acts of the company are attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a Director of a company can be held liable.

(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person.

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role

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coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporation such a provision.

44. *When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada⁷ the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such*

⁷ Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661: (2012) 3 SCC (Civ) 350⊗(2012) 3 SCC (Cri) 241

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a person was responsible for the acts committed by or on behalf of the company.”

25. The next decision that is relied upon is also that of the Hon’ble Supreme Court in a case between **POOJA RAVINDER DEVIDASANI Vs. STATE OF MAHARASHTRA AND ANOTHER⁸** wherein, the Court at Paras 19 to 21 of the order, held as follows:

“19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was incharge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v.Pratap Chand⁹)

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

⁸ (2014) 16 Supreme Court Cases 1

⁹ (1981) 2 SCC 335:1981 SCC (Cri) 453

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responsible for the conduct of the business of the company.

21. In **Sabitha Ramamurthy v. R.B.S.Channabasavaradhya**¹⁰, it was held by this Court that (SCC pp.584-85, para 7)

“7. ... it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company.”

¹⁰ (2006) 10 SCC 581 (2007) 1 SCC (cri) 621

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By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.”

26. The Court, also at Para 30, observed as follows:

“30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the NI Act, making a person vicariously liable has to ensure strict compliance with the statutory requirements. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.”

27. Thus, it is abundantly clear that when the allegation is that any of the Directors, Partners, Managers, etc. of a Company or a Firm, are involved in committing an offence

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along with the Company or a Firm which has a corporate or an artificial entity, there is every requirement to plead, aver and establish that the said individuals have the required knowledge/information or *mens rea* to commit such acts which thereby attracts the provisions of law and makes those individuals equally liable.

28. The above observation is due to the fact that the criminal liability encompasses in itself *actus reus* and *mens rea*. A Company or a Firm being an artificial juristic person cannot in itself have these two elements. Therefore, number of legislations makes a mention that every person, who at the time of the commission of offence or contravention of legislation, was incharge of and was responsible to the Company or the Firm for the conduct of the business as well as the company or the firm, shall be deemed to be guilty of such offence or contravention and thereby would be liable for punishment.

29. Corporate criminal liability is not unknown to Indian sub-continent. The said concept which was derived from the doctrine of “respondent Superior” though was largely

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applied in the western countries, is recognized both under criminal law and civil law jurisdictions of this country. Yet, to fasten such criminal liability, there is every requirement on part of the person who alleges, to establish the following aspects:-

- (i) *That the individual who is alleged to have committed the prohibited act, had acted on behalf of the Company/Firm,*
- (ii) *That his role to do so is coupled with the criminal intent unless law says otherwise.*
- (iii) *When the statutory regime itself envisages the doctrine of vicarious liability.*
- (iv) *Basing on the facts and circumstances of the case, the vicarious criminal liability appears apparent on the face of the record and thereby attracts the liability.*

30. Except in the above circumstances, corporate criminal liability is not expected to be tagged upon the Directors, Managers, etc. of the company. However, the above circumstances are not exhaustive and it depends on facts and circumstances of each case.

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31. In the case on hand, no such circumstances are projected to show that the petitioners 2 to 5 i.e. accused 2 to 5 with the required *mens rea* have participated with the company and committed the offences that are alleged by the *de facto* complainant. As earlier mentioned, even the complaint is silent about such involvement and participation. By the decisions that are referred supra, it is also very much clear that the verbatim reproduction of words of the section without clear statements of participation does not make the Directors vicariously liable. Therefore, this Court holds that the proceedings against the petitioners 2 to 5 cannot be permitted to be continued.

32. **Whether a civil dispute and a civil liability can be permitted to be settled by launching a criminal prosecution:-**

The learned counsel for the petitioner submitted that the dispute is purely civil in nature and the 2nd respondent/*de facto* complainant tried to give it a shape of criminality by quoting few provisions of IPC so as to bring the petitioners/accused to his terms. The learned counsel for the 2nd respondent/*de facto* complainant, disputing the

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same, contended that the petitioners/accused committed the offences of cheating and criminal breach of trust that too with criminal conspiracy and therefore, a complaint was given.

33. The learned Assistant Public Prosecutor in this regard submits that except through due investigation, the truth would not come to light.

34. Stating that in the similar set of circumstances, the Hon'ble Supreme Court of India quashed the proceedings, the learned counsel for the petitioners relied upon a decision of the Hon'ble Supreme Court in a case between **JOSEPH SALVARAJA Vs. STATE OF GUJARAT AND OTHERS**¹¹. Dealing with a case where the broadcast of a religious channel "GOD TV" in some of the areas is the core question and where the dispute arose regarding the payment of amount and where ultimately a complaint was lodged, the Hon'ble Supreme Court at Paras 17 & 18 of the order, observed as follows:-

¹¹ (2011) 7 Supreme Court Cases 59

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“17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra v.State of U.P.¹² relevant part thereof is reproduced herein below: (SCC p.505 para 27)

“27. ... A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

18. In fact, all these questions have been elaborately discussed by this Court in the most oftquoted judgment in State of Haryana v.Bhajan

¹² (2009) 7 SCC 495: (2009) 3 SCC (Cri) 461(2009) 3 SCC (Civ) 190

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Lal¹³ where seven cardinal principles have been carved out before cognizance of offences, said to have been committed by the accused, is taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the Court, at least after having gone through the FIR, which discloses only a civil dispute.”

35. The observations made by the Hon’ble Apex Court squarely applies to the facts of this case. Also, it is clearly indicated by this Court through the discussion that went on with regard to sustainability of a counterblast complaint, that the criminal proceedings cannot be permitted to continue for settling this case which can otherwise be settled in the course of other proceedings that are initiated earlier in time. Also, the dispute is purely civil in nature. Whether there is delivery of goods or not cannot be decided by a criminal Court. It is the core issue. Therefore, this Court is of the opinion that continuation of proceedings would amount to abuse of process of law. Thus, the case that is taken up for discussion is concluded by ultimately referring to a leading case on the subject.

¹³ 1992 Supp (1) SCC 335:1992 SCC (Cri) 426

The Hon'ble Apex Court in the case of **State of Haryana Vs.Bhajanlal**¹⁴ at Para 102, enunciated the following circumstances where the power under Section 482 can be exercised:

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

¹⁴ AIR 1992 SC 604

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(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

36. The present case squarely falls under illustration No.7. The criminal proceedings initiated by the 2nd respondent/*de facto* complainant as found by record are manifestly abuse of process of law.

37. Therefore, this Court ultimately considers that the proceedings are liable to be quashed as prayed for.

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Resultantly, the Criminal Petition is allowed. The proceedings that are initiated against the petitioners in Crime No.376 of 2012 of Langer House Police Station, Hyderabad, are thereby quashed.

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

DR.JUSTICE CHILLAKUR SUMALATHA

Dated:18.02.2022

Note: LR copy to be marked.
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THE HONOURABLE DR.JUSTICE CHILLAKUR SUMALATHA

CRL.P.NO.1063 OF 2013

Dated:18.02.2022

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