

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Petition No.9191 OF 2016**

Between:

Smt.Tirumala Urmila and others      ... Petitioners/Accused Nos.2,3,5& 6

And

Vala Jagan Mohan Rao and another      ... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 20.09.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments?   | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals       | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.P. No. 9191 of 2016**

% Dated 20.09.2023

# Smt.Tirumala Urmila and others ... Petitioners/Accused Nos.2,3,5& 6

And

\$ Vala Jagan Mohan Rao and another ... Respondent/Complainant

**! Counsel for the Petitioner:** Sri P.V.Vidyasagar

**^ Counsel for the Respondents:** Sri Shyam S.Agarwal for R1  
Public Prosecutor for R2

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> 2023 LiveLaw (SC) 622

<sup>2</sup> 2010 SCC 3330

<sup>3</sup> AIR 2015 SC 675

<sup>4</sup> 2017 Law Suit (SC) 1035

<sup>5</sup> 2008 (2) ALT CrI.336

<sup>6</sup> AIR 2019 SC 2518

<sup>7</sup> (2016) 6 SCC 78

<sup>8</sup> 2007 SCC Online Del 1569

<sup>9</sup> 280 (2021) DLT 158

<sup>10</sup> 2015 (2) ALD (CrI.) 253 (SC)

<sup>11</sup> (2007) 5 Supreme Court Cases 108

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION NO.9191 OF 2016****ORDER:**

1. This Criminal Petition is filed by the petitioners/A2,3,5 and 6 to quash the proceedings against them in C.C.No.636 of 2015 on the file of Junior Civil Judge-cum-Judicial Magistrate of First Class, Special Mobile Court, Medak.

2. Briefly, the case of the 2<sup>nd</sup> respondent/complainant is that these petitioners are partners in A1 partnership firm. In the course of business, for repaying amount outstanding to the 1<sup>st</sup> respondent, two cheques for Rs.45,60,000/- were given towards repayment. The said cheques, when presented for clearance were returned unpaid. Notice was issued, pursuant to which complaint was filed, since the accused failed to repay the amount covered by the cheques having received the notice.

3. Learned counsel for the petitioners would submit that there is no specific allegation against these petitioners. For the reason of being wife and children of A4, petitioners have been falsely implicated. They are sleeping partners and they have nothing to do with the day to day affairs of the firm. In the

complaint at para 11, except stating that these petitioners are partners of A1 partnership firm, being from the same family and involved actively in the day to day affairs of the company, there is nothing in the complaint to suggest that these petitioners were involved in any manner with the transactions in between A1 firm and the complainant.

4. Learned counsel for the petitioners relied on the judgment of Hon'ble Supreme Court in the case of **Ashok Shewakramani & others v. State of Andhra Pradesh & another**<sup>1</sup>. The Hon'ble Supreme Court while dealing with under Section 138 and 141 of Negotiable Instruments Act held as follows:

*“19. .... Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of subsection 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here Criminal Appeal No.879 of 2023 Page 11 of 14 nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the*

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<sup>1</sup> 2023 LiveLaw (SC) 622

*second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act.”*

5. He also relied on the judgments in the cases of; i) **National Small Industries Corporation Ltd., v. Harmeet Singh Paintal**<sup>2</sup>; **Pooja Ravinder Devidasani v. State of Maharashtra and another**<sup>3</sup>; **Ashok Mal Bafna v. Upper India Steel Manufacturing & Engineering Co., Limited**<sup>4</sup> and **K.Venkataramaiah and others v. Sri Katterao**<sup>5</sup>.

6. On the other hand, learned counsel appearing for the 1<sup>st</sup> respondent/complainant would submit that in the recent judgment of the Hon’ble Supreme Court in the case of **A.R.Radha Krishna v. Dasari Deepthi and others**<sup>6</sup>, it is held as follows:

*“10. A perusal of the record in the present case indicates that the Appellant has specifically averred in his complaint that the Respondent Nos.1 and 2 were actively participating in the day-today affairs of the Accused No.1 company. Further, the Accused Nos.2 to 4 (including the Respondent Nos.1 and 2 herein) are alleged to be from the same family and running the Accused No.1 company together. The complaint also specifies that all the accused,*

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<sup>2</sup> 2010 SCC 3330

<sup>3</sup> AIR 2015 SC 675

<sup>4</sup> 2017 Law Suit (SC) 1035

<sup>5</sup> 2008 (2) ALT CrI.336

<sup>6</sup> AIR 2019 SC 2518

*in active connivance, mischievously and intentionally issued the cheques in favour of the Appellant and later issued instructions to the Bank to “Stop Payment”. No evidence of unimpeachable quality has been brought on record by the Respondent Nos.1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court.”*

7. Learned counsel for the 1<sup>st</sup> respondent also relied on the judgments in the case of **Tamilnadu Print and Papers Limited v. D.Karunakar**<sup>7</sup>, **Nipam Kotwal, Director M/s.Digital Multiforms Limited & others v. Dominos Printech India Private Limited**<sup>8</sup>; **Shyam S.Bageshra v. State NCT of Delhi and others**<sup>9</sup>; **Krishna Texport and Capital Markets Ltd., v. Ila A.Agarwal and others**<sup>10</sup> and **N.Rangachari v. Bharat Sanchar Nigam Limited**<sup>11</sup>.

8. In the complaint, it is mentioned that loan was taken in the month of June, 2012 and the amounts were transferred by way of RTGS to an extent of Rs.38.00 lakhs and Rs.2.00 lakhs was paid in cash. There was no repayment of the amount, for which reason, complainant asked for payment. Accordingly, cheques in question were issued, signed by A4. The account in the bank was being run by A4 and accordingly cheque was also issued by A4.

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<sup>7</sup> (2016) 6 SCC 78

<sup>8</sup> 2007 SCC Online Del 1569

<sup>9</sup> 280 (2021) DLT 158

<sup>10</sup> 2015 (2) ALD (CrL.) 253 (SC)

<sup>11</sup> (2007) 5 Supreme Court Cases 108

The transaction is a loan transaction transferred to A1 firm's account. It is not mentioned in the complaint as to whom Rs.2.00 lakhs was paid in cash.

9. Petitioners being family members of A4, who, according to the learned counsel for the petitioners were also married and they are carrying on their own avocation, as such, they cannot be roped in only for the reason of being partners in the A1 firm.

10. The Hon'ble Supreme Court in **Ashok Shewakramani's** case (supra) held that a person cannot be roped in only for the reason of managing business and being busy with day to day affairs would be hardly relevant in the context of sub-section (1) of Section 141 of the Negotiable Instruments Act. The Hon'ble Supreme Court held that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and have to be read conjunctively in view of the use of word "and" in between. Giving a liberal construction, the Hon'ble Supreme Court held that the said averments will not substantively comply with sub-section (1) of Section 141 of the Negotiable Instruments Act.

11. Similarly, in the present case, in para 11 of the complaint, it is mentioned that these petitioners were actively involved in day today affairs of the firm and in-charge of the business. It cannot be said that in the present facts of obtaining loan from the accused at one instance and cheque being issued by A4, these petitioners can be mulcted with criminal liability with the aid of Section 141 of the Negotiable Instruments Act.

12. In the result, the proceedings against the petitioners/A2, A3, A5 and A6 in C.C.No.636 of 2015 on the file of the Junior Civil Judge-cum-Judicial Magistrate of First Class, Special Mobile Court, Medak, are hereby quashed.

13. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

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**K.SURENDER, J**

Date: 20.09.2023

Note: LR copy to be marked.

B/o.kvs



**THE HON'BLE SRI JUSTICE K.SURENDER**

**CRIMINAL PETITION NO.9191 OF 2016**

**Dt. 20.09.2023**

kvs