

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

Criminal Petition No.4470 OF 2018

Between:

Yala Sonia Reddy

... Petitioner

And

Bhavani Shankar Manne and another. ..Respondents/Complainants

DATE OF JUDGMENT PRONOUNCED :21.12.2023

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 |

K.SURENDER, J

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

+ CRL.P. No.4470 of 2018

% Dated 21.12.2023

Yala Sonia Reddy

... Petitioner

And

\$ Bhavani Shankar Manne and another Respondents/Complainants

! Counsel for the Petitioner: Sri C.Sharan Reddy

^ Counsel for the Respondents: Sri V.V.N.K.Sarath Saran for R1
Addl. Public Prosecutor for R2

>HEAD NOTE:

? Cases referred

(2019) 15 Supreme Court Cases 550

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos.4470 of 2018****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioner in C.C.No.27 of 2018 on the file of VII Metropolitan Magistrate at Hayathnagar (renumbered as STC.N.I.No.213 of 2021 on the file of Additional Junior Civil Judge-cum-VII Additional Metropolitan Magistrate at Hayathnagar) for the offences under Section 138 of the Negotiable Instruments Act.

2. According to the complainant/1st respondent, he worked in A1 company and towards outstanding of his salary, cheque for Rs.5,57,000/- was issued by A1 company signed by A2. This petitioner arrayed as A3 is Whole-Time Director and also CFO of the company. Since the cheque was dishonoured on presentation, notice was issued by complainant to accused. The accused failed to make good the payment covered by the cheque, after receiving legal notice as such complaint was filed.

3. Learned counsel appearing for the petitioner would submit that the petitioner was working as Chief Financial Officer and she was initially Whole-Time Director of the company. The Chief Financial Officer cannot be made responsible for the company's outstanding. Even in the complaint, there is nothing specifically mentioned regarding the petitioner being responsible on daily basis. For the said reasons, the proceedings have to be quashed.

4. On the other hand, learned counsel appearing for the respondent No.1 would submit that she is Whole-Time Director and the CFO. She is in fact responsible for the affairs of the company and specifically mentioned in the complaint. It cannot be said that while executing her duties as CFO, there is no vicarious liability. In support of his contention, he relied on the judgment of Hon'ble Supreme Court in the case of **A.R.Radha Krishna v. Dasari Deepthi and others**¹, wherein it is held as follows:

“7. Having heard the learned counsel for the parties and carefully scrutinising the record, we are of the considered opinion that the High Court was not justified in allowing the quashing petitions by invoking its power under Section 482

¹ (2019) 15 Supreme Court Cases 550

CrPC. In a case pertaining to an offence under Section 138 and Section 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under Section 482 CrPC must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under Section 482 CrPC when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See *Gunmala Sales (P) Ltd. v. Anu Mehta* [*Gunmala Sales (P) Ltd. v. Anu Mehta*, (2015) 1 SCC 103]]”

5. It is admitted that the petitioner was a Whole-Time Director and also the Chief Financial Officer. The said positions in the company would form the managerial personnel of the company. Any CFO, Company Secretary, Whole-Time Director are all paid by the company for their services as employees. The complainant/respondent was also an employee in the company. If the salary was due, the company would be liable including the Managing Director.

6. The cheque is signed by Managing Director/A2. Liability, if any, for payment of salary would be that of the company and

company represented by the Managing Director in the present case. Other employees, though in managerial positions, cannot be made liable for non-payment of salary to a co-employee. It is not mentioned in the complaint that this petitioner was entrusted with the amount for paying salaries and made responsible by the company-A1 for payment of salaries to co-employees. Further that she is liable for non-payment of salaries in her capacity as a whole time Director and CFO. In the present facts, petitioner cannot be proceeded against vicariously.

7. In the result, the proceedings against the petitioner in C.C.No.27 of 2018 on the file of VII Metropolitan Magistrate at Hayathnagar (renumbered as STC.N.I.No.213 of 2021 on the file of Additional Junior Civil Judge-cum-VII Additional Metropolitan Magistrate at Hayathnagar) are hereby quashed.

8. Criminal Petition is allowed.

K.SURENDER, J

Date :21.12.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.4470 of 2018
Dt.21.12.2023

kvs