

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

Criminal Petition No.2635 OF 2019

Between:

Asheesh Jain.

..Petitioner

And

The State of Telangana

Rep. by its Public Prosecutor

High Court of Telangana,through

SHO, Kanchanbagh and another

...Respondents/ Complainants

Criminal Petition No.2793 OF 2019

Between:

Sangeeta Jain

...Petitioner

And

The State of Telangana

Rep. by its Public Prosecutor

High Court of Telangana,through

SHO, Kanchanbagh and another

...Respondents/ Complainants

Criminal Petition No.2813 OF 2019

Between:

Rishabh Jain

...Petitioner

And

The State of Telangana

Rep. by its Public Prosecutor

High Court of Telangana,through

SHO, Kanchanbagh and another

...Respondents/ Complainants

DATE OF JUDGMENT PRONOUNCEMENT: 06.11.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|--|--------|
| 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**

+ CrI.P. No.2635 OF 2019

% Dated 15.11.2023

Asheesh Jain.

..Petitioner

And

\$ The State of Telangana

Rep. by its Public Prosecutor

High Court of Telangana,through

SHO, Kanchanbagh and another ...Respondents/ Complainants

+ Criminal Petition No.2793 OF 2019

Sangeeta Jain

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! Counsel for the Petitioner: M/s.NOMOS VISTAS THE LAWYERS

^ Counsel for the Respondents: Additional Public Prosecutor for R1

Ms.V.Umadevi for R2

>HEAD NOTE:

? Cases referred

¹ 2015 (12) SCC 781

² 2020 (3) SCC 240

³ 2021 AIR (SC) 5626

⁴ 2022 (7) SCALE 472

⁵ Criminal Petitions No.8025 and 8024 of 2021

⁶ 2002(1) ALD (CrI.) 225

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NOS.2635, 2793 AND 2813 OF 2019****COMMON ORDER:**

1. Criminal Petition No.2635 of 2019 is filed by A3, Criminal Petition No.2793 of 2019 is filed by A4 and Criminal Petition No.2813 of 2019 is filed by A1 in C.C.No.199 of 2017 on the file of the VII Additional Metropolitan Magistrate, Hyderabad. Since the petitioners are questioning the very same case, all the three petitions are disposed by way of this Common Order.

2. The *defacto* complainant filed complaint to the police on 20.02.2015. According to the complaint, MIDHANI (Mishra Dhatu Nigam Limited), Government of India Enterprises advertised calling for global tenders for supply of 1500 kgs of Ferro Tungsten Alloy with intention to import the same. M/s.Speciality Chemicals UK Limited of UK was the lowest bidder and accordingly purchase order dated 28.07.2014 was placed. One B.Andrew (named as A2 in the FIR) had signed the documents. According to the terms of purchase, country of origin of the material was China. A condition was imposed to submit a test certificate for getting shipping clearance by MIDHANI as M/s.Speciality Chemicals UK Limited was a new supplier.

3. M/s.Speciality Chemicals UK Limited nominated M/s.Rishabh Metals and Chemicals Private Limited of which A3 was the local Indian agent. On the basis of test certificate, material was dispatched on 23.10.2014 from China. Payment of Rs.28,43,035/- was made to M/s.Speciality Chemicals UK Limited through Andhra Bank. On 11.12.2014, MIDHANI received e-mail along with photographs of material stating that when the cargo was examined, the bags did not have any particular identification labels to confirm whether the right material was sent. The information was forwarded and A1 who was also a local representative of M/s.Speciality Chemicals UK Limited, who informed that the material was lying with the customs. On 16.12.2014, inspection was made and when analyzed the samples, the material was found to be limestone and not Ferro Tungsten. On 18.12.2014, accused were told that the shipment will not be cleared since it was limestone and asked to return the amount paid.

4. On 03.01.2015, MIDHANI forwarded the certificate which was provided by M/s.Speciality Chemicals UK Limited to the Chinese firm, which supplied the material. It was informed that the certificate was fake.

5. Having realized that MIDHANI was cheated, officials tried to contact Andrew, but there was no response. The accused A1 and A2 informed that M/s.Speciality Chemicals UK Limited was genuine and in fact their earlier their associate M/s.Siddharth Carbochem Products Limited had purchased Ferro Tungsten from China and they had made high seas sale in favour of M/s.Speciality Chemicals UK Limited and it is a genuine company and they have taken responsibility.

6. The office of M/s.Siddharth Carbochem Products Limited which originally sold the material to M/s.Speciality Chemicals UK Limited was located in the very same building where M/s.Rishabh Metals & Chemicals Private Limited and M/s.Siddharth Carbochem Products Limited were running business. Information was sought by the complainant and it was known that all the three petitioners were close relatives and directors in three companies. Suppressing the said information, each one has attributed different roles to one another and cheated MIDHANI. In fact, M/s.Siddharth Carbochem Products Limited, M/s.Speciality Chemicals UK Limited and M/s.Rishabh Metals & Chemicals Private Limited were run by these petitioners/accused. The petitioners have colluded and

falsely claimed that they were agents of M/s.Speciality Chemicals UK Limited.

7. For the said reason of all the three petitioners colluding and cheating MIDHANI by providing a fake certificate from China and sending limestone instead of Ferro Tungsten resulting in loss to MIDHANI, complaint was filed. MIDHANI had to pay customs duty on the material.

8. On the basis of the said complaint, the police investigated the case and filed charge sheet.

9. Learned counsel appearing for the petitioners would submit that complaints were also registered against M/s.Changsha Kangmei Mining Company Limited, China. The said company sent the material and these petitioners have nothing to do with the China company allegedly sending limestone. The companies which are M/s.Siddharth Carbochem Products Limited, M/s.Speciality Chemicals UK Limited and M/s.Rishabh Metals & Chemicals Private Limited and M/s.Changsha Kangmei Mining Company Limited, China were the companies that were involved in the transactions but none of the companies were made as accused. The prosecution is invalid and has to be quashed in view of the judgments of the Hon'le Supreme Court i.e. i) **Sharad Kumar**

Sanghi v. Sangita Rane¹; ii) Sushil Sethi and another v. State of Arunachal Pradesh and others²; iii) Dayle De'souza v. Government of India through Deputy Chief Labour Commissioner³Dilip Hriramani v. Bank of Baroda⁴; v) Nekkanti Venkata Rao v. Jakka Vinod Kumar Reddy⁵; vi) Neeta Bhalla v. SMS Pharmaceuticals Limited⁶.

10. On the other hand, it was argued on behalf of the respondents that there is no infirmity in the investigation or the charge sheet that was filed against the petitioners. It was these petitioners who had interacted with MIDHANI, as such, the petitioners are liable.

11. According to the complaint, the petitioners had interacted, deliberately made false claims and induced MIDHANI to part with the said amount for purchase of Ferro Tungsten. However, limestone was sent. The wrongful loss to MIDHANI was due to the fraudulent acts of the petitioners.

12. The acts attributed to the petitioners are in their personal capacities, though acting on behalf of the companies. A fabricated

¹ 2015 (12) SCC 781

² 2020 (3) SCC 240

³ 2021 AIR (SC) 5626

⁴ 2022 (7) SCALE 472

⁵ Criminal Petitions No.8025 and 8024 of 2021

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certificate was also provided to falsely claim limestone as Ferro tungsten.

13. Unless the statute specifies and classifies persons who can be made vicariously liable on behalf of an entity, there cannot be criminal prosecution. A company is a legal entity which can be prosecuted for the offences under IPC as laid down by the Hon'ble Supreme Court in Standard Chartered Bank's case. If a company is made accused in accordance with the provisions of any enactment, vicarious liability would arise in respect of the persons responsible for the transactions and being responsible for running the company on day to day basis, if specified in the enactment.

14. In the present case, it is the case of the defacto complainant that the petitioners have floated companies, running in the same building complex and cheated MIDHANI. In the said circumstances, the question of implicating the companies as accused does not arise. As already stated, for the offences under IPC, there cannot be any vicarious liability. When these petitioners have approached MIDHANI and in the process committed acts of fraud resulting in wrongful loss to MIDHANI, it cannot be said that the petitioners cannot be prosecuted without making the company as accused. According to the case of prosecution, except these petitioners no

one else approached MIDHANI on behalf of the company. If a person floats a company and cheats in the name of the company, it does not mean that such company has to be made an accused. In the present facts of the case there is no illegality in prosecuting the petitioners, without making the companies as accused.

15. In view of above discussion, all the three Criminal Petitions fail and accordingly dismissed.

K.SURENDER, J

Date: 15.11.2023

Note: LR copy to be marked.

B/o.kvs