

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

Criminal Petition No.3693 OF 2019

Between:

Maddukuru Balagangadhar Tilak
and another

... Petitioner

And

The State of Telangana
Rep. by its Public Prosecutor and another

...Respondents

DATE OF JUDGMENT PRONOUNCED :20.12.2023

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.3693 of 2019

% Dated 20.12.2023

Maddukuru Balagangadhar Tilak
and another

... Petitioner

And

\$ The State of Telangana
Rep. by its Public Prosecutor and another ... Respondents/Complainant

! Counsel for the Petitioners: Sri Chekuri Yadagiri

^ Counsel for the Respondents: Addl.Public Prosecutor for R1
Sri Srinivas Velagapudi for R2

>HEAD NOTE:

? Cases referred

¹ CDJ 2012 SC 309

² CDJ 2019 SC 257

³ (2022) 2 Supreme Court Cases 355

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.3693 of 2019****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioners/A1 and A2 in CC.No.1 of 2018 on the file of VIII Special Magistrate at Hasthinapuram, R.R.District for the offence under Section 138 of the Negotiable Instruments Act (for short, 'the Act').

2. It is alleged in the complaint that the 2nd respondent /complainant is into the business of manufacturing "Kraft Paper". During the course of business supplies were made and towards the outstanding payable, three cheques were issued in favour of the complainant by the firm namely Sree Venkata Sai Packaging Industries.

3. Learned counsel appearing for the petitioners would submit that cheques were issued by partnership firm but the partners only are made accused and not the partnership firm which is Sree Venkata Sai Packaging Industries. Failure to make the 'firm' as party to the criminal complaint, the

complaint cannot be proceeded against persons in charge of the firm.

4. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **Aneeta Hada & others v. M/s.Godfather Travels & Tours Private Limited & another**¹. Learned counsel also relied on the judgment of Supreme Court in the case of **Himanshu v. B.Shivamurthy & another**².

5. On the other hand, learned counsel appearing for the complainant relied on the judgment of Hon'ble Supreme Court in the case of **Bhupesh Rathod v. Dayashankar Prasad Chaurasia and another**³, wherein it was held as follows:

“21. If we look at the format of the complaint which we have extracted aforesaid, it is quite apparent that the Managing Director has filed the complaint on behalf of the Company. There could be a format where the Company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the Managing Director is stated first followed by the post held in the Company.”

¹ CDJ 2012 SC 309

² CDJ 2019 SC 257

³ (2022) 2 Supreme Court Cases 355

6. Learned counsel appearing for the complainant would submit that when the Hon'ble Supreme Court did not find fault with the name of the Managing Director appearing first and his description as the Managing Director of the company, for filing the complaint, similarly in the present complaint, the names of the partners are mentioned. However, the description reveals as partner of Sree Venkata Sai Packaging Industries. For the said reason of describing the petitioners as partners of Sree Venkata Sai Packaging Industries, it has to be inferred that the company is also made as accused in the complaint. Accordingly, the petition has to be dismissed.

7. Section 141 of the Negotiable Instruments Act makes a company/firm liable for dishonour of cheque if the cheque is drawn on behalf of the company/firm. Further, every person, who is responsible for the day to day affairs and also running of the company can be made vicariously liable along with the company/firm.

8. The Hon'ble Supreme Court in the above mentioned judgments i.e., **Aneeta Hada's case and Himanshu's case**

(supra) held that unless the company/firm is made as an accused, the other persons, who are responsible for the day to day affairs cannot be prosecuted, without the company being made as an accused.

9. The analogy of the learned counsel for the respondent on the basis of Bhupesh Rathod's case cannot be accepted. Only for the reason of description in the cause title that the petitioners are partners of partnership firm will not mean that the company has been arrayed as an accused. The firm/company as an entity has to be made as an accused separately. Only then the partners or Directors can be made vicariously liable. In the judgment of **Bhupesh Rathod's** case (supra), the Hon'ble Supreme Court while dealing with the complaint being filed on behalf of the company did not find fault with the Managing Director being named first and thereafter describing him as the Managing Director of the company. The same reasoning cannot be applied in cases of accused. Section 141 of Negotiable Instruments Act requires that a company has to be prosecuted and other persons

responsible be made vicariously liable. Prosecuting only the persons liable without making the partnership firm as a party, complaint is void.

10. For the said reasons, the petitioners succeed and the proceedings against the petitioners/A1 & A2 in CC.No.1 of 2018 on the file of VIII Special Magistrate at Hasthinapuram, R.R.District are hereby quashed.

11. Criminal Petition is allowed.

K.SURENDER, J

Date : 20.12.2023

Note: L.R copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.3693 of 2019
Dt.20.12.2023

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