

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRIMINAL PETITION No.1751 of 2023

BETWEEN

Reena Gorle D/o.Balaji Babu

... Petitioner/Accused No.3

And

M/s. TVN Enterprises,
Rep., by its Partner,
Sri Tadepalli Venkata Ramesh & another

... Respondents

Date of Judgment Pronounced: **25.07.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT. JUSTICE K. SUJANA

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 Reports/Journals? (Yes/No)
3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

JUSTICE K. SUJANA

*** THE HON'BLE SMT JUSTICE K. SUJANA**

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... Respondents

! Counsel for Petitioner : Sri P.Surya Narayana Murthy,

^ Counsel for respondents : Ms. Himangini Sanghi,
counsel for R.1

Sri S.Ganesh, Assistant
Public Prosecutor for R.2

<GIST:

> HEAD NOTE:

? Cases referred

1. (2005) 8 SCC 89
2. (2010)3 SCC 330
3. (2014) 16 SCC 1
4. CrI.P.No.173 of 2022
5. 2022 SCC Online SC 1238

THE HON'BLE SMT. JUSTICE K. SUJANA**CRIMINAL PETITION NO.1751 OF 2023****ORDER:**

Crl.P.No.1751 of 2023 is filed by the petitioner/accused No.3 under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against her in STC N.I.No.7039 of 2022 pending on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Secunderabad. The offences alleged against the petitioner are under Section 138, 141 and 142 of Negotiable Instruments Act (for short the 'N.I.Act').

2. The 1st respondent filed a complaint against accused No.1-M/s.Servomax Ltd., represented by its Directors and others including the petitioner/A.3 herein, alleging that the 1st respondent is in the business of purchase and sale of merchandise goods and A.1 to A.4 are in the business of manufacturing of stabilizers, Power and Distribution Transformers, Isolation Transformers, Power Conditioners, Control Panels etc. The A.2 representing the A.1-company approached the 1st respondent for supply of goods which are used in manufacturing of Stabilizers, Power Distribution

Transformers, Isolation Transformers, Power Conditioners, Control Panels etc, placed purchase orders on behalf of A.1. The 1st respondent would give 30 days credit period from the date of supply of goods. As per the order placed by A.2, the 1st respondent used to supply goods and issued invoices and A.2 made payments till December, 2019 and thereafter A.2 made payments in irregular manner. The outstanding amount to be paid by A.2 is Rs.1,00,49,270/-. Whenever, the 1st respondent insisted for payment of the above amount, A.2 took the shelter of Covid-19 pandemic and lock down imposed by the Government. The 1st respondent when insisted for repayment, A.2 issued three cheques bearing Nos.000040, 000042 and 000043 dated 08.08.2022, 10.08.2022 and 12.08.2022 respectively for a sum of Rs.11,15,180/-, Rs.11,78,236/- and Rs.17,00,209/- drawn on Standard Chartered Bank, Jubilee Hills Branch and assured that the remaining amount of Rs.60,55,645/- would be paid after the above three cheques are cleared. The 1st respondent when presented the said cheques in the Bank they were returned with an endorsement "funds insufficient". As such, the 1st respondent issued legal notice on 21.09.2022 and the same was acknowledged by A.2 on

22.09.2022. As, A.2 failed to repay the said amount, he filed the present complaint.

3. Heard Sri P.Surya Narayana Murthy, learned counsel for the petitioner, Ms. Himangini Sanghi, learned counsel appearing for the 1st respondent and Sri S.Ganesh, learned Assistant Public Prosecutor, appearing for the 2nd respondent-State.

4. The contention of learned counsel for the petitioner is that petitioner is not in-charge of regular day-to-day activities of A.1 Company. Even though, she is a Director of A.1 company, she is a sleeping and inactive Director and there is no allegation particularly referring to the petitioner herein in the entire complaint. The petitioner is unaware of the activities done by A.2 on behalf of A.1 Company. Mere mentioning the name of A.3 in the cause title as Director of A.1 Company is not sufficient without any documentary evidence. As petitioner is one of the Director of A.1 and in the entire complaint it is not specifically spelled out how and in what way she is in-charge of Director or was responsible to A.1-company for conducting of its business. He further contended that Section 141 of the N.I.Act deals with offences by Companies and its Directors. It is very clear from the above section that what is required is that the persons who are sought to be made “vicariously liable” for a

criminal offence, at the time the offence was committed, was in-charge of, and was responsible to the Company for the conduct of business of the Company. Every person connected with the Company shall not fall within the ambit of this provision, only those persons who were in-charge and responsible for the conduct of the business are only responsible. Mere holding the post of Director does not cast responsibility on the petitioner.

5. Learned counsel relied on the judgment in **SMS Pharmaceuticals Limited Vs Neeta Balla**¹, wherein the Apex Court decided the requirements under Section 141 of the N.I.Act. The liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, a person who comes under Section 141 of the N.I.Act, the complaint must disclose necessary facts which make a person liable. He also relied on the judgment in **National Small Industries Corporation Limited Vs Harmeet Singh Paintal and another**², wherein, it is observed that the primary responsibility is on the complainant to make specific averments

¹ (2005) 8 SCC 89

² (2010)3 SCC 330

as are required under the law in the complaint, so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction. Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of commission of offence, were in-charge of and were responsible for the conduct of business of the Company. Vicarious liability on the part of a person must be pleaded and proved and not inferred. If the accused is a Director or an officer of a Company who signed the cheques on behalf of the Company then also it is not necessary to make specific averment in the complaint. The person sought to be made liable should be in-charge of and responsible for the conduct of business of the Company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.

6. Learned counsel also relied on the judgment in **Pooja Ravinder Devidasani Vs State of Maharashtra and another**³, wherein it is observed that there must be specific averments against the Director showing as to how and in what manner

³ (2014) 16 SCC 1

he/she was responsible for conduct of business of the company. Further, the same was relied on by this Court in **Lakshmi Prameela Katari Vs The State of Telangana and M/s.Crescent Enterprises, rep., by its Managing Partner, Mohd. Habeeb⁴** wherein it is held that absence of clear accusation against the petitioner in the complaint and no where it was indicated that petitioner therein was responsible for the business of the company, allowed the said criminal petition. The petitioner herein is also only a Director and is not involved in day-to-day affairs of the Company and there are no specific averments against her in the complaint.

7. The contention of learned counsel for the petitioner is that petitioner is only a Director of the Company and she is not managing the affairs of Company. A.2 is the Managing Director and he is taking care of the Company affairs, whereas petitioner is made as accused without being any role in issuance of cheques. The petitioner is also made as party to the complaint but there are no specific averments in the complaint to show allegations against her. As such, he prayed the Court to quash the proceedings against the petitioner.

⁴ CrI.P.No.173 of 2022

8. On the other hand, learned counsel for the 1st respondent filed counter stating that there is no concept of sleeping or inactive Director. Even as per the Articles of Association, petitioner is designated as Executive Director. He also contended that the 1st respondent also initiated Section 9 of the Insolvency and Bankruptcy Code, 2016 before National Company Law Tribunal (NCLT) praying to initiate the CIRP process against the company. A.1 has also filed counter for which the petitioner herein is the authorized signatory and has filed affidavit stating that she is well aware of the transaction, and also had the knowledge of issuance of cheque, dishonor of cheque apart from that, I.A.No.402 of 2023 in C.P.No.361 of 2023 was filed by A.1 company wherein it was submitted that petitioner herein and one of the partner of the 1st respondent have communicated with each other with regard to continuation of contract. The judgments relied on by the learned counsel for the petitioner are not applicable as the accused/Director in the said judgments are not aware of the transaction and no specific averment is made against them in the complaint.

9. Learned counsel for the 1st respondent relied on the judgment in **S.P.Mani and Mohan Dairy Vs Dr.Snehalatha**

Elangovan⁵, wherein it is clearly mentioned that if it is proved that accused was aware of the transaction and specific averments are not made against the accused, then the accused shall stand equally liable as if they have signed the cheque. The petitioner herein is giving false statements on oath. Hence, prayed the Court to dismiss this petition.

10. Having regard to the rival submissions and the material on record, admittedly, petitioner is the Director of A.1 company, whereas, the contention of petitioner herein is that she is not managing the affairs of company and she had no knowledge of issuance of cheques and there are no specific allegations against this petitioner in the complaint.

11. On the other hand, learned counsel for the 1st respondent would submit that petitioner is holding 75% shares in the company and she is having knowledge about the transactions in the company and further on 28.01.2023 A.1-company filed counter in CIRP filed before the NCLT in which petitioner is also an authorized signatory and has filed affidavit stating that she is well aware of the transaction and also had knowledge of

⁵ 2022 SCC Online SC 1238

issuance of cheque and dishonor of cheque due to insufficient funds. As such, she is well aware of the fact that she is also liable for the offence under Section 138 of N.I.Act. Further, in MGT-7 filed by the petitioner before the Ministry of Corporate Affairs, it is mentioned that she is having more than 75% shares in the company and drawing gross salary from the company as Board of Director. He also referred to Section 141 of the N.I.Act, wherein it clearly states that every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

12. Learned counsel for the petitioner mainly contended that merely a person who is a Director of Company is not sufficient for holding him liable, he/she should have knowledge about day-to-day affairs of the company and that there must be in-charge of the company transaction.

13. On the other hand, learned counsel for the 1st respondent relied on the judgment in **S.P.Mani** (supra) wherein it was observed as follows :

“44. This Court in *Commr. v. Velliappa Textiles Ltd.* [*Commr. v. Velliappa Textiles Ltd.*, (2003) 11 SCC 405 : 2004 SCC (Cri) 1214] , introduced the concept of ego and alter ego in relation to the employee and the employer corporation. The Court elucidated this principle in the following words : (SCC p. 436, para 56)

“56. In order to trigger corporate criminal liability for the actions of the employee (who must generally be liable himself), the actor-employee who physically committed the offence must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the *alter ego* of the employer corporation or its directing mind. Since the company/corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. To this extent there are no difficulties in our law to fix criminal liability on a company. The common law tradition of *alter ego* or identification approach is applicable under our existing laws.”

45. Now, the logical question that would follow is who would be liable through the company for this offence? Can the company itself be prosecuted for this offence? Answering this question, Section 141 says, “*every person who was in charge of*” and “*was responsible to the company for the conduct of the business*” shall be deemed to be guilty of the offence. This concept of vicarious liability has been explained by this Court in *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] , as : (SCC p. 585, para 7)

“7. ... 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.* Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted.”

(emphasis supplied)

48. In a very recent pronouncement in *Sunita Palita v. Panchami Stone Quarry* [*Sunita Palita v. Panchami Stone Quarry*, (2022) 10 SCC 152 : (2023) 1 SCC (Civ) 612 :

(2023) 1 SCC (Cri) 91] , this Court, after referring to *K.K. Ahuja* [*K.K. Ahuja v. V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] referred to above, observed as under : (*Sunita Palita case* [*Sunita Palita v. Panchami Stone Quarry*, (2022) 10 SCC 152 : (2023) 1 SCC (Civ) 612 : (2023) 1 SCC (Cri) 91] , SCC pp. 164-65, para 29)

“29. ... when the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix “Managing” to the word “Director” makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties, in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

49. In yet one another recent pronouncement in *Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.* [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] , this Court after due consideration of the decisions in *S.M.S. Pharmaceuticals* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] ; *S.K. Alagh v. State of U.P.* [*S.K. Alagh v. State of U.P.*, (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] ; *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.* [*Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2010) 10 SCC 479 : (2011) 1 SCC (Cri) 68] , and *GHCL Employees Stock Option Trust v. India Infoline Ltd.* [*GHCL Employees Stock Option Trust v. India Infoline Ltd.*, (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414] , observed as under : (*Ashutosh Ashok Parasrampuriya case* [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] , SCC para 24)

“24. In the light of the ratio in *S.M.S. Pharmaceuticals* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are in-charge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not be open for the High Court to interfere under Section 482CrPC unless it comes across some unimpeachable, incontrovertible evidence

which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abused of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons.”

(emphasis supplied)

50. The principles discernible from the aforesaid decision of this Court in *Ashutosh Ashok Parasrampuriya* [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some *unimpeachable and incontrovertible evidence beyond suspicion and doubt.*”

14. In Para 58 of the above judgment it was observed that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she

will not be liable for punishment. The complainant is supposed to know only generally as to who were in-charge of the affairs of the company or firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company. The vicarious criminal liability can be inferred against the partners of the firm when it is specifically averred in the complaint about the status of partners “qua” the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal. It is also observed that how the High Court should exercise its power to quash the criminal proceeding when such proceeding is related to offences committed by the companies. The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the N.I Act is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties.

15. A perusal of the complaint in the instant case shows that though the allegations are mainly against A.2, the petitioner herein demanded A.2 to make payments for the dues and A.2 issued cheques which were returned due to in-sufficient funds. It is averred in the complaint that A.1 to A.4 are in the manufacturing business of Stabilizers, Power and Distribution Transformers, Isolation Transformers, Power Conditioners, Control Panels etc, whereas the petitioner's name was mentioned in the complaint and legal notice was issued on 21.09.2022 calling upon the accused to pay the due amount and the same was delivered to the accused on 22.09.2022. In the legal notice issued by the 1st respondent, it is mentioned that the act of issuing cheque and dishonor of the same amounts to criminal breach of trust and attracts civil as well as criminal action and also stated the names of A.3 and A.4 and all of them are directly involved in the day-to-day affairs of the company as Directors. Hence, notice was issued to all the Directors of the company and further learned counsel for the 1st respondent submitted that before the NCLT petitioner has also filed affidavit stating that she is aware of the transaction between the accused and complainant and has also acknowledged issuance of cheque which shows that

petitioner/A.3 is also aware of the fact of issuance of cheques and according to the 1st respondent petitioner is having 75% shares in the company and has actively participated in the business activities. Therefore, it cannot be said that there are no averments against the petitioner to proceed with the case. There are no merits in this petition and the same is liable to be dismissed.

16. Accordingly, the Criminal Petition is dismissed. The trial Court is directed to dispose of STC N.I.No.7039 of 2022 as early as possible. Miscellaneous petitions, if any, pending shall stand closed.

K. SUJANA, J

Date : 25.07.2024

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