

THE HONOURABLE SRI JUSTICE E. V. VENUGOPAL**CRIMINAL PETITION Nos. 9706, 9715, 9724, 9725, 9726
9727 and 9728 of 2015****COMMON ORDER:**

Since the issue involved in all these Criminal Petitions is one and the same, they are being heard together and disposed of by way of common order.

2. Criminal Petition Nos.9726, 9706, 9715, 9724, 9725, 9727 and 9728 of 2015 are filed seeking to call for the records and quash the proceedings against the petitioner herein in C.C.Nos.65, 66, 69, 71, 67, 70 and 68 of 2015 respectively on the file of the learned XXIV Special Magistrate at Erramanzil (for short, “the trial Court”) and pass such other order or orders.

3. Heard Ms. K. Annapurna Reddy, learned counsel for the petitioner, Mr. K. Rama Rao, learned counsel representing Mr. V. R. Avula, learned counsel for respondent No.1 and Mr. Vizarath Ali, learned Assistant Public Prosecutor appearing for the respondent state.

4. For the sake of convenience, the facts in Criminal Petition No.9796 of 2015 are discussed hereunder:-

5. The brief facts of the case are that respondent No.1 is the Company registered under the Indian Companies Act, 1956 and doing business in the name and style of M/s. Gangadhar Oil Refinery India Limited, dealing in manufacturing mineral oils, liquid paraffin, petroleum jelly, rubber process oils, industrial and automotive lubricants, transformer oils and supply of Indonesian Steam Coal and South African steam coal.

6. Accused No.3 is the Company registered under the Indian Companies Act, 1956 and doing business in the name and style of M/s. Bheema Cements Limited. Accused Nos.4, 5, 6, 7, 8 and 9 are the Chairman, Managing Director, Whole-time Director, Director, Director and Executive Director of the said Company respectively. Accused No.3 is one of the customers of respondent No.1 Company and for the sake of business, the Company used to purchase Indonesian steam coal and South African steam coal on credit from respondent No.1 by placing purchase orders. Accordingly, respondent No.1 Company used to supply the same from Visakhapatnam Port and Gangavaram Port to the plant of accused No.3 company at Ramapuram, Mellacheruvu Mandal, Nalgonda District, Andhra Pradesh. For the said supplies accused No.3 used to make part payments off and on by way of letter of credit/RTGS/PDC and maintaining the running account

with the client since 2011. Respondent No.1 company submits that after adjusting all the amounts paid by accused as per the ledger maintained by respondent No.1, an amount of Rs.4,08,75,201/- is due as on 30.10.2013.

7. On repeated demands made by respondent No.1, accused Nos.1 and 2 being the authorized signatories of accused No.3 issued the cheques bearing Nos. 029619, 029620, 029621, 029622, 029623 and 029624 dated 30.10.2013 for Rs.50,00,000/- respectively and cheque No. 029625 dated 30.10.2013 for Rs.51,12,983/- drawn on Corporation Bank, Large Corporate Branch (1090) Hyderabad in favour of respondent No.1 towards part payment of the outstanding balance amount due to respondent No.1.

8. On presentation, the said cheques were dishonoured with an endorsement "Insufficient Funds" vide cheque return Memos dated 01.11.2013. After intimation about the same, accused have made part payment of Rs.33,00,000/- and as per instructions given by the accused, respondent No.1 presented the said cheques for collection on 17.01.2014 through its Banker HDFC Bank Limited, cheques deposited in HDFC Bank, Jagadamba Branch, Visakhapatnam, but again, the said cheques were

returned with an endorsement "Account freezed/Blocked" vide cheque return memo dated 18.01.2014 and the said intimation was received by respondent No.1 from their Bankers on 10.02.2014. Even after the said dishonour of cheques, the accused again made some part payment for a sum of Rs.2,45,000/- on different dates.

9. Respondent No.1, aggrieved by the said dishonour of cheque filed C.C.No.65 of 2015 before the trial Court stating that the accused have committed the offence punishable under Sections.138 and 142 of the Negotiable Instruments Act, 1881 and accused Nos.1, 2, 4 to 9 are jointly and severally liable for the acts done by the accused No.3 Company and prayed to award the compensation of double the amount of cheque. As against the said C.C.No.65 of 2015, the present Criminal Petition is filed praying to quash the impugned proceedings.

10. Learned counsel for the petitioner submitted that the petitioner is not responsible for the activities of the company such as issuance of cheque to creditors. Though the petitioner entered into the rolls of the Company as Executive Director, none of the ROC records show the petitioner as Executive Director. The petitioner is neither a signatory to the cheque nor responsible to

the day to day activities of accused No.3. As such learned counsel submitted that the petitioner cannot be made liable for the cheque amount as alleged in the complaint. She contended that accused No.3 is due of arrears of salary to an extent of Rs.1,34,98,451/- to the petitioner and the same is on record vide letter dated 31.03.2014. Therefore, submits that the petitioner is passing through a financial crisis on account of non-payment of salary. However, learned counsel for the petitioner relied upon the decisions of the Hon'ble Supreme Court in **Sunita Palita & Others Vs. M/s. Panchami Stone Quarry¹, Dilip Hariramani Vs. Bank of Baroda²** and **Ashok Shewakramani & Others Vs. State of Andhra Pradesh and another³** to substantiate her contention. Therefore, seeks to allow the Criminal Petition.

11. Learned counsel for respondent No.1 filed counter affidavit stating that the petitioner is the Director of the accused No.3 Company and had been in active helm of affairs of the company for the reason that the purchase orders raised on behalf of accused No.3 were duly signed by petitioner. Therefore, the petitioner is jointly and severally liable for the acts of the accused No.3 Company. He further contended that the petitioner

¹ Arising out of SLP (Crl) No.10396 of 2019 dated 01.08.2022

² Arising out of SLP (Crl) No. 641 of 2021 dated 09.05.2022

³ Criminal Appeal No.879 of 2023 dated 03.08.2023

addressed a letter dated 26.11.2013 to the complainant claiming to be the Executive Director of accused No.3 Company admitting the liability. Further, petitioner admitted in CrI.M.P.No.2287 of 2015 in Crime No.212 of 2015 filed before the Court of learned Sessions Judge for Economic Offences, at Hyderabad that he worked as Executive Director in the year, 2014 and later became 20% share holder. Thereafter, resigned from his post on 31.01.2014 and the same was accepted and the petitioner was relieved on 31.03.2014. In fact, the cheque in question was issued on 30.10.2013. In view of the above, the contention of the petitioner that he was not connected with the affairs of the company is not tenable. It was submitted that the contention raised by the petitioner is a question of fact and decided during the course of trial. Therefore, seeks to dismiss the Criminal Petition.

12. Learned Assistant Public Prosecutor submitted that the petitioner was actively connected with the affairs of the company as on the date of issuance of cheque. Therefore, liable for the affairs of the company. Hence, seeks to pass appropriate orders.

13. A perusal of the record shows that this Court vide order dated 19.01.2016 dispensed with the appearance of the petitioner

before the trial Court up to 29.04.2016. The copy of cheque filed by the petitioner along with the Criminal Petition would clearly show that the cheque in question was issued on 30.10.2013 by the authorized signatory of the company with the active connivance of the petitioner, who was the then Executive Director of accused No.3 Company. As an Executive Director, the petitioner is responsible to the Company for the conduct and business of the Company.

14. While relying upon the records of Registrar of Company Affairs, learned counsel for the petitioner would submit that it is an established fact that the petitioner is not an authorized signatory for the affairs of accused Company as his name is not shown in the said records. Therefore, prosecuting the petitioner would render an abuse of process of law. This contention does not find any merit for consideration by this Court in the absence of any shield provided in the N.I.Act on that aspect. Moreover, it can be inferred that R.O.C. records doesn't authenticate the role of the Directors except that the recorded authorized signatories under R.O.C. records are designated to deal with the necessary provisions contemplated under the Companies Act with Registrar of Company Affairs and not on the affairs of the business

transactions of the legal entities particularly in relation to N.I.Act.

It is pertinent to mention Section 291 of Companies Act, 1956.

Section 291 of the Companies Act, 1956 provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the Company is authorised to exercise and do. A Company though a legal entity can act only through its Board of Directors. The settled position of law is that a Managing Director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the Company. But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company's business.

15. The Apex Court in **Sunil Bharti Mittal Vs. Central Bureau of Investigation**⁴ held that no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

16. Having regard to the submissions made by both the learned counsel and upon considering the decisions of the Hon'ble

⁴ (2015) 4 Supreme Court Cases 609

Supreme Court cited (*supra* 4) and **Standard Chartered Bank Vs. State of Maharashtra and Others⁵, A.K. Singhania Vs. Gujarat State Fertilizer Company Limited and another⁶, K. K. Ahuja Vs. V. K. Vora and another⁷** and upon perusing the letter CCL/MD/500/2005 dated 13.05.2005 issued by the Coromandel Cements Limited which is *erstwhile* Company of M/s. Bheema Cements Limited whereby, the petitioner has been promoted and re-designated as president with effect from 01.04.2005, clearly stating that he shall be part of Management and in charge of day to day running of the Company and all the Department Heads were to report to him and his main thrust areas would be finance, projects and any other specific assignments given from time to time, this Court is of the opinion that the petitioner is the Executive Director of accused No.3 company at the relevant point of time and he is responsible for the day-to-day affairs of the company when the alleged offence was committed. Hence, it can be averred that the petitioner herein being in active connivance in relation to the affairs of the company, mischievously and intentionally issued the cheque in question in favour of the Bank concerned. Therefore, the petitioner is also vicariously liable

⁵ (2016) 6 Supreme Court Cases 62

⁶ (2013) 16 Supreme Court Cases 630

⁷ (2009) 10 Supreme Court Cases 48

under Section 141 of N I. Act as he is responsible to the company for the conduct and business of the company and also in charge of business of the company. To put it differently, to be vicariously liable under sub-section (1) of Section 141, a person should fulfil the “legal requirement” of being a person in law (under the statute governing companies) responsible to the company for the conduct of the business of the company and also fulfil the “factual requirement” of being a person in charge of the business of the company.

17. In the present case on hand, if at all the petitioner is not liable as Executor Director, he has to aver and prove his case before the trial Court. The real truth would be elicited only upon completion of a full-fledged trial. But the petitioner, instead of facing trial, filed the Criminal Petition at a premature stage seeking to quash the impugned proceedings. Therefore, the Criminal Petition is devoid of merit and liable to be dismissed.

18. Therefore, the Criminal Petition No.9726 of 2015 is dismissed accordingly.

19. As the Criminal Petition No. 9726 of 2015 is dismissed. As a sequel to this order, other similar Criminal Petitions Nos. 9706, 9715, 9724, 9725, 9727 and 9728 of 2015 also stand dismissed.

Needless to mention, the petitioner is at liberty to workout remedies as available under law.

Miscellaneous Petitions, pending if any, shall stand closed.

Date:10.10.2023
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E.V. VENUGOPAL, J

THE HON'BLE SRI JUSTICE E. V. VENUGOPAL

**CRIMINAL PETITION Nos.9726, 9706, 9715, 9724, 9725,
9727 and 9728 of 2015**

Dated: 10.10.2023