REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 924 of 2011
[Arising out of SLP(Crl.) No. 1874 of 2008]

Rallis India Ltd. …....……Appellant

Versus

Poduru Vidya Bhusan & Ors. ……...Respondents

W I T H

Criminal Appeal No.925 of 2011
[Arising out of S.L.P. (Crl.) No. 3064 of 2008];

and

Criminal Appeal No.926 of 2011
[Arising out of SLP (Crl.) No. 3339 of 2008]

J U D G M E N T

Deepak Verma, J.

1. Leave granted.

2. This and the connected matters arise out of the order dated 27.07.2007 in exercise of the jurisdiction conferred under Section 482 of the Code of Criminal Procedure [for short, 'Cr.P.C.'], passed by learned Single Judge of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petitions No. 3085 of 2007, 3082 of 2007

and 3084 of 2007 all titled Poduru Vidya Bhushan and Others Vs. Rallis India Ltd. and Another,

whereby and whereunder Accused No. 4, 6 and 7 (arraigned as Respondents Nos. 1, 2 and 3 herein) have been discharged of the offences contained under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (hereinafter shall be referred to as 'Act').

3. For the sake of convenience, facts mentioned in SLP (Crl.) No. 1874 of 2008 are taken into consideration.

4. Appellant as Complainant filed a criminal complaint before the Chief Judicial Magistrate, Gautam Budh Nagar, Noida (U.P.) on 23.7.2004, under Sections 138 and 141 of the Act. It was alleged in the said complaint that cheques bearing nos.382874 and 382875 dated 31.03.2004 for Rs.15,00,000/- each drawn on Union Bank of India, Vijaywada Main Branch were issued by the accused persons. The said cheques, when presented to their banker, were returned as unpaid vide Cheques Return Advices dated 29.05.2004, with the remarks, 'Payment stopped by Drawer'. In the said complaint, the following specific plea is raised by the Appellant:

> "That the Accused No. 1 is a partnership firm and Accused No. 2 to 7 are partners thereof and Accused No. 3 is signatory of the impugned cheques and all partners are looking after day to day affairs of the accused firm and thus the liability as raised by them is joint and several."

5. It may be pertinent to mention here that the Appellant herein had filed substantially similar complaints before the Criminal Courts of competent Jurisdiction at Chandigarh, Vijayawada and Jammu & Kashmir as well. The partnership firm M/s Sri Lakshmi Agency was therefore, constrained to file T.P. (Crl.) Nos. 161-171 of 2005, which came to be

disposed of by this Court on 03.03.2006 and all criminal cases (excluding those pending in the State of Jammu & Kashmir) filed by Appellant against Respondents were directed to be tried by Competent Criminal Court at Hyderabad as a series of composite criminal complaints. Consequently all the complaints are now pending before XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, for disposal in accordance with law. The Respondents herein arrayed as Accused Nos. 4, 6 and 7 in the said complaints thereafter filed applications in the High Court of Judicature of Andhra Pradesh at Hyderabad under Section 482 of the Cr.P.C. for their discharge.

6. It was, inter alia, contended by the Respondents before the High Court as under :

> "That the aforesaid complaint depicted the applicants as the partners of M/s Sri Lakshmi Agencies.
>
> That the aforesaid averments is a false one. Particularly when the complainant M/s Rallis India Ltd. was fully aware that the applicants had severed their connections with M/s Lakshmi agencies much prior to the execution of the Memorandum of Understanding dated 31.03.2004 and also the issuance of the dishonoured cheques on 31.03.2004."

The learned Single Judge of the High Court after perusal of the record and hearing the parties found it fit and proper to discharge the Respondents. Hence this Appeal.

7. We have, accordingly, heard learned counsel, Mr. Ajay Dahiya for Appellant and Mr. G.V.R. Choudary, for Respondents at length and perused the record.

8. At the outset, learned counsel appearing for Appellant contended that in the light of the aforesaid averments having been made categorically in the original complaints, no case was made out for discharge of the Respondents. It was also contended that Respondents

have denied their vicarious liability for the offences under Section 138/141 of the Act, on the ground that they had retired from the partnership firm in 2001/2002, i.e., much prior to the issuance of the cheques in question in 2004. It is further contended by the learned counsel for the Appellant that the said denial cannot be accepted as it would be a matter of evidence to be considered by the Trial Court. Even the question whether or not they would be responsible for the impugned liabilities would be required to be answered only after the parties go to trial as it is disputed question as to when the Respondents had actually retired from the partnership firm, before the issuance of dishonoured cheques.

9. On the other hand, learned Counsel appearing for Respondents strenuously contended that the Appellant had failed to impute criminal liability upon the Respondents specifically, which is a matter of record and therefore, at the very threshold, High Court was justified in discharging them rather than directing them to face the Criminal prosecution unnecessarily. According to them, in this view of the matter, no

interference is called for against the impugned order and Appeals deserve to be dismissed.

10. To analyze the case before us in proper perspective, it is necessary to scrutinize all the Criminal Complaints one by one. On perusal of the complaints, we observe that the specific averment of vicarious criminal liability as mandated by the three Judge Bench of this Court in the case of S.M.S. Pharmaceuticals Limited Vs. Neeta Bhalla and Another, reported in 2005 (8) SCC 89, is contained in them in the form mentioned in Para 4 hereinabove.

11. Thus, in the light of the aforesaid averments as found by us in the Criminal Complaint, we are of the considered opinion that sufficient averments have been made against the Respondents that they were the partners of the firm, at the relevant point of time and were looking after day to day affairs of the partnership firm. This averment has been specifically mentioned by the Appellant in the complaint even though denied by the Respondents but the burden of proof that at the relevant point of time they were not the partners, lies specifically on them. This onus is required to be discharged by them by leading evidence and unless it is so proved, in accordance with law, in our opinion, they cannot be discharged of their liability. Consequently, High Court committed an error in discharging them. Also, at the cost of repetition, by virtue of their own submissions before the High Court (reproduced in Para 6 above), the Respondents have admitted the fact that the Appellant had referred to them in their capacity as partners

who were incharge of the affairs of the firm in the initial complaints. The question as to whether or not they were partners in the firm as on 31.03.2004, is one of fact, which has to be established in trial. The initial burden by way of averment in the complaint has been made by the Appellant.

12. 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, proviso to Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the

Court that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable of punishment. Needless to say, final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the 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 acquitted.

13. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless parties are given opportunity to lead evidence, it is not possible to come to definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the Respondents ceased to be the partners of the firm.

14. Before concluding the present discussion, we also take this opportunity to strike a cautionary note with regard to the manner in which High Courts ought to exercise their power to quash criminal proceedings when such proceeding is related to offences committed by 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 Act (which is *pari materia* with identical sections in other Acts like the Food Safety and Standards Act, the erstwhile Prevention of Food Adulteration Act etc. etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties. In the present case, there are several disputed facts involved – for instance, the date when the partnership came into being, who were the initial partners, if and when the Respondents had actually retired from the partnership firm etc.

15. Strictly speaking, the ratio of the SMS Pharmaceuticals (supra) can be followed only, after the *factum* that accused were the Directors or Partners of a Company or Firm

respectively at the relevant point of time, stands fully established. However, in cases like the present, where there are allegations and counter-allegations between the parties regarding the very composition of the firm, the above rule of 'specific averment' must be broadly construed. Indeed, it would be nothing short of a travesty of justice if the Directors of a Company of Partners of a Firm, who, having duped a third-party by producing false documents (like a fake partnership deed) or making false statements (that some others were in charge of the Company/Firm), at a subsequent stage, seek protection from prosecution on the ground that they were not directly indicted in the complaint – such a proposition strikes against one of the very basic tenets of the law of natural justice, which is, that none shall be allowed to take advantage of his own default. Of course, the above observation is of a general nature, and has no bearing on the present case, but nonetheless, the power to

quash a criminal proceeding with respect to an offence under Section 141 of the Act, must be exercised keeping this advisory note and caveat in mind.

16. On account of foregoing discussion, we are of the considered opinion that the impugned judgment and order passed by learned Single Judge exercising the jurisdiction conferred on him under Section 482 of the Cr.P.C. cannot be sustained in law. The same are hereby set aside and quashed. The trial court is directed to dispose of the Criminal complaints filed by Appellant at an early date, after giving opportunity of hearing to both sides, in accordance with law. However, the Trial Court would not be influenced by any of

the observations made hereinabove and would decide the matters in accordance with law. The appeals are allowed. Parties to bear their respective costs.

……J.
[Dalveer Bhandari]

……J.
[Deepak Verma]

New Delhi
April 13, 2011.