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SLP(Crl.)No. 631 OF 2002
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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO..855 OF 2002@@
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(Arising out of SLP(Crl.) No.631/2002)

Smt. Katta Sujatha .. Appellant

Vs.

Fertilizers & Chem.Travancore .. Respondents
Ltd. & Anr.

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Leave granted.

A complaint was filed in the Court of IV Additional Munsif Magistrate, Guntur that the Firm(respondent) and three other persons named therein as accused have committed certain acts which attract the provisions of Section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as the 'Act').

The complaint set out that a cheque had been issued on behalf of the Firm-1st accused by T. Satyanarana -3rd accused but did not specifically attribute any particular act done by 4th accused, who is appellant before us.

The trial Court having proceeded with the matter, a petition was filed under Section 482 of the Cr.P.C.

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for quashing the complaint. The said petition having been dismissed this appeal is filed by special leave. It is necessary to state that the Special leave petition filed by others has been dismissed by our order dated 15.2.2002. The contention urged before the High Court was that all of them are not responsible for the conduct of the business of the Firm and only T.Satyanarana-3rd accused was in charge of the Firm-first accused. Whether it is so or not, is not for us to examine at this stage of the matter. However,one thing is clear that the appellant was in no way involved in any of the transactions referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the Firm in terms of the Section 141 of the Act nor was there any other allegation made against the appellant that she had connived with any other partner in the matter of issue of cheque. In these circumstances the High Court ought to have examined the matter from this angle but on the other hand, the High Court merely stated that that all the accused are not only in charge but are responsible to the conduct of the business of the Firm. Indeed the same question has come up before this Court for examination in

State of Karnataka Vs. Pratap Chand & Ors. SCR 1981(3)@@
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200 wherein the question as who is a "person incharge" of
business of firm in the context of Section 18A, Drugs and
Cosmetics Act, 1940 was considered by this Court. This
Court explained the meaning by observing that the term
"person incharge" must mean that the person should be in
over all control of the day to day business of the
company or firm. The person should be a party to the
policy being followed by a company and yet not be
in-charge of the business of the company or may be
incharge of but not in over-all-charge or may be in
charge of only some part of business.

In short the partner of a firm is liable to be
convicted for an offence committed by the firm if he was
in charge of and was responsible to, the firm for the
conduct of the business of the firm or if it is proved
that the offence was committed with the consent or
connivance of, or was attributable to any neglect on the
part of the partner concerned.

To the same effect is the decision of this Court
in KPG Nayar Vs. Jindal Menthol Ltd.- 2000 (6) 578 and@@
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Anil Hoda Vs. Indian Acrylic Ltd. - JT 1999 9SCC 223.
Examined in the light of these decisions and the law
enunciated, we find no case as such has been made out for
proceeding against the appellant.

The appeal is allowed and the order of the High
Court is set aside so far as appellant before us is
concerned. Proceedings in the criminal case are quashed
in so far as appellant before us is concerned.

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[S. RAJENDRA BABU]@@
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[P.VENKATARAMA REDDI]

New Delhi,@@
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August 23, 2002.

