

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ LPA 668/2010

MORGAN TECTRONICS LTD Appellant
Through: Mr.Rajiv Aggarwal, Advocate

versus

STATE & ANR Respondents
Through: Mr.Vikas Pahwa, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER
% **17.09.2010**
CM No.16698/2010 (for exemption)

Allowed, subject to all just exceptions.

LPA 668/2010 and CM No.16697/2010

In this intra-court appeal, the challenge is to the order dated 11th August, 2010 passed by the learned Single Judge in WP(Crl) No.65/2000.

The writ petition was preferred under Articles 226 and 227 of the Constitution of India questioning the defensibility of the order passed by the learned Special Judge (CBI) whereby the learned Special Judge had framed the charges against the petitioner-company under Sections 420/468/471 read with 120-B of the Indian Penal Code (for short 'IPC').

It was contended before the learned Single Judge that the petitioner was a company and being a juristic person and, therefore, could not have *mens rea* necessary for committing an offence of criminal conspiracy as required under Section 120-B of the IPC. Before the learned Single Judge, reliance was placed on ***Kalp Nath Rai v. State***, AIR 1998 SC 201 and ***Standard Chartered Bank and others v. Directorate of Enforcement***, (2005) 4 SCC 530. The learned Single Judge adverted to the facts where from it is discernible that the company was availing certain credit facilities from the Indian Bank and at a particular time the Indian Bank refused to extend further credits to the company on the ground of RBI restrictions. Thereafter the company switched over to Punjab & Sind Bank and it falsified its accounts and presented the same before the Punjab & Sind Bank in order to obtain various credit limits and other facilities from the said bank. The company showed lesser liabilities and concealed the facts regarding true liabilities. Because of the said concealment of facts, the company and its officials induced the Punjab & Sind Bank to sanction credit facilities to the tune of Rs.618.51 lacs. Eventually, the company did not pay the amount and cheated the bank of more than 600 crores which resulted in the institution of a criminal case. The learned Single Judge referred to the decision in ***Assistant Commissioner v. Velliappa Textiles Ltd.***, 2003 (11) SCC 405 and came to hold that the petition did not merit

consideration.

Be it noted, while reproducing the paragraphs from ***Standard Chartered Bank*** case (Supra), the learned Single Judge erroneously referred to the decision in ***Velliappa Textiles*** (Supra) as if the same were stated in the said case.

Mr. Vijay Aggarwal, learned counsel for the petitioner, submitted that the learned Single Judge has fallen into grave error by relying on ***Standard Chartered Bank*** (Supra).

It is submitted by Mr. Aggarwal that the petitioner company being a juristic person cannot be prosecuted in the absence of *mens rea* unless there is an intent of strict liability. It is urged by him that the learned Single Judge has erroneously relied on the passages from the ***Standard Chartered Bank*** (Supra) which are really not applicable to the case. He has commended us to paragraph 8 of the said decision to highlight that the issue relating to *mens rea* was kept open and, therefore, the matter should have been appropriately addressed to by the learned Single Judge.

Resisting the aforesaid submissions, it is urged by Mr. Vikas Pahwa, learned counsel for the CBI, that the order passed by the learned Single Judge is absolutely defensible and does not warrant any interference.

To appreciate the submissions raised at the bar, we think it appropriate to

reproduce the paragraph six from the *Standard Chartered Bank*(Supra) wherein the Apex Court has observed as follows:

“ There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.”

Paragraph 8, on which the edifice has been built by Mr.Aggarwal, reads as follows:

“ Inasmuch as all criminal and quasi-criminal offences are creatures of statute, the amenability of the corporation to prosecution necessarily depends upon the terminology employed in the statute. In the case of strict liability, the terminology employed by the legislature is such as to reveal an intent that guilt shall not be predicated upon the automatic breach of the statute but on the establishment of the *actus reus*, subject to the defence of due diligence. The law is primarily based on the terms of the statutes. In the case of absolute liability where the legislature by the clearest intendment establishes an offence where liability arises instantly upon the breach of the statutory prohibition, no particular state of mind is a prerequisite to guilt. Corporations and individual persons stand on the same footing in the face of such a statutory offence. It is a case of automatic primary responsibility. It is only in a case requiring *mens rea*, a question arises whether a corporation could be attributed with requisite *mens rea* to prove the guilt. But as we are not concerned with this question in these

proceedings, we do not express any opinion on that issue.

The learned counsel for the appellant has laid immense emphasis on the last line.

In this context, we may refer with profit to paragraphs 30 to 32 of the said decision. They read as follows:

“30. As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants’ plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. The offences mentioned under Section 56(1) of the FERA Act, 1973, namely, those under Section 13; clause (a) of sub-section (1) of Section 18; Section 18-A; clause (a) of sub-section (1) of Section 19; sub-section (2) of Section 44, for which the minimum sentence of six months’ imprisonment is prescribed, are serious offences and if committed would have serious financial consequences affecting the economy of the country. All those offences could be committed by company or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences, if these offences involve the amount or value of more than Rs.one lakh, and that they could be prosecuted only when the offences involve an amount or value less than Rs.one lakh.

31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.

32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment (*sic* and fine). We overrule the views expressed by the majority in *Velliappa Textiles* on this point and answer the reference accordingly. Various other contentions have been urged in all appeals, including this appeal, they be posted for hearing before an appropriate Bench.”

D.M.Dharmadhikari, J, in his concurring opinion, has opined thus:

“ Section 56 of the Act provides for imposition of minimum prescribed sentence of imprisonment wherever possible and also fine. Such a construction of the provisions of Section 56 of the Act to make it workable cannot be said to be a construction impermissible only because the statute under construction is a penal statute. Section 56 cannot be so construed as to make it ineffective against companies and corporations. Merely because there is no specific mention in the section that in the event of breach committed by the companies and corporations, the punishment can only be in the nature of fine is no ground to read into the provision a fatal lacuna. The provision which is clearly applicable equally to natural and juristic persons, if construed reasonable in the manner indicated above, would be found workable and capable of fulfilling the object of the Act.”

Arun Kumar, J, in a separate concurring opinion, has stated thus:

“51. For the above reasons I reject the argument on behalf of the appellants that corporations cannot be prosecuted under Section 56 of FERA for the reason that mandatory punishment of imprisonment cannot be imposed on corporations. I would like to answer the reference accordingly resulting in the appeal being dismissed. The remaining matter be listed before an appropriate Bench for disposal.”

(Emphasis supplied)

On a perusal of the aforesaid paragraphs, we have no scintilla of doubt that a company can be prosecuted for the offence but what would be the eventual result in the criminal trial is another matter. What is contented before us is that the charge could not have been framed by the learned trial judge and the same could

not have been given the stamp of approval by the learned Single Judge. The aforesaid submission leaves us unimpressed.

In view of the aforesaid, we do not perceive any merit in the appeal and, accordingly, the same stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 17, 2010

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