IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Revn. No. 2999 of 2013 (O&M)
Date of decision : 24.02.2015

Punjab State Warehousing Corpn. ....Petitioner

versus

Jaswinder Singh ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.D.S Sukhija, Advocate
for the petitioner.

Mr. Ashok Kumar Arora, Advocate
for the respondent.

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RITU BAHRI , J.

Challenge in the present petition is to the judgment dated 06.06.2013 passed by learned Sessions Judge, Amritsar, whereby the appeal filed by the petitioner against the judgment dated 29.11.2012 passed by learned Chief Judicial Magistrate, Amritsar vide which the accused-respondent had been acquitted, was upheld and the appeal was dismissed.

An agreement was entered into between PSWC, Amritsar and M/s Liberty Rice Mills, Rajasansi, for custom milling of paddy for the year 1999-2000. 39179 bags of fine paddy weighing 2546-63 MT and 19738 bags of IR-8 Kommal paddy weighing 1282-97 MT were stored by PSWC against receipt. Those were required to be milled by M/s Liberty Rice Mills under supervision of Mangal Singh, Warehouse Manager, who had deposited 17965 bags weighing 16366 quintals, 46 kgs 500 grams of fine paddy with FCI upto 31.08.2000 whereas qua remaining 553 bags of rice weighing 525 quintals 36 kgs a cash guarantee of Rs.5,13,581/- was obtained as per instructions of head office. M/s Liberty Rice Mills agreed to give price of remaining paddy calculated to be Rs.38,96,705/-

but it had deposited a sum of Rs.5,00,000/- only upto 25.07.2002. This Rice mill did not mill the paddy as per Government Instructions and rather misappropriated the same. The physical verification of paddy stock lying in the premises of M/s Liberty Rice Mills was carried out on 21.06.2002 in the presence of various representative of mill, during the course of which as against book balance of 9698 bags of common paddy weighing 63039 MT and miller showed 281.105 MT rice i.e Rice Nakoo 118.560 MT, Rice unpolished 136.800 MT and rice finished 25.745 MT. However, that stock did not belong to PSWC. A report was accordingly prepared which was signed by proprietor/partner/representative of the miller on behalf of the Miller after verifying the shortage of stock, observing that no progress was there regarding delivery of rice by the Miller. As a result of total misappropriation/defalcation of balance of 9698 bags weighing 63039 MT, PSWC suffered a loss of Rs.87,80,553/- and thereafter, the F.I.R was registered.

After presentation of the challan, charges were framed against the accused under Section 420 IPC, to which he pleaded not guilty and claimed trial.

As many as 9 prosecution witnesses were examined and statement of the accused under Section 313 Cr.P.C was recorded, in which all incriminating evidence appearing agaijnst the accused was put to him but he denied the allegations contending that he is innocent and has been falsely implicated.

Both the Courts had examined the record and held that the respondent was merely attorney of M/s Liberty Rice Mills and is not a partner of the firm. Thus, the necessary ingredients of cheating were not made out against the accused, who was merely an attorney holder of the firm. The criminal liability cannot be fastened upon the respondent.

Another fact which both the Courts below had taken into consideration that Further the prosecution itself has moved an application dated 18.07.2008 under the signatures of DSP Vigilance Bureau, Range Amritsar for discharge of Jamit Singh and Gurinder Singh and Jaswinder Singh has been mentioned as attorney of the rice mills and Jamit Singh and Gurinder Singh as partners of the firm, which created a dent in the prosecution story. The application was accepted and Jamit Singh and Gurinder Singh were discharged.

Hon'ble the Supreme Court has considered the concept of vicarious liability in cases of M/s Thermax Ltd and others vs K.M. Johny and others, 2011(4) R.C.R Criminal 409 and S.K. Alagh vs. State of U.P and others, 2008(2) R.C.R (Criminal) 79 where complaint was filed against Managing Director of Company and company was not arrayed as an accused. Proceedings against Managing Director were quashed and it was held that in the absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. In paragraph 17, 18, 19 and 20 of S.K. Alagh's case (supra), it has been held as under:-

> "17. Indian Penal Code, save and except some provisions specifically providing therefore, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.
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> 18. A criminal breach of trust is an offence committed by a person to whom the property is entrusted.
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> 19. Ingredients of the offence under Section 406 are : "(1) a person should have been entrusted with property, or entrusted with dominion over property; (2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property

or willfully suffer any other person to do so; (3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

20. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. {See Sabitha Ramamurthy and Anr. v. R.B.S. Channabasavaradhya [(2006) 10 SCC 581]}.

Recently, Hon'ble the Supreme Court in a case of Maharashtra State Electricity Distribution Co. Ltd. And anr. vs. Datar Switchgear Ltd and others, 2010(4) RCR (Criminal) 848 has examined a case wherein a complaint was filed against the chairman of company and there was no averment in the complaint regarding role of a chairman in the commission of an offence. Thus, the complaint was quashed against the Chairman. In para 28 and 29 of the judgment, it has been held as under:-

28. A bare perusal of the complaint shows that the gravamen of the allegation is that a fabricated document containing the offending endorsement was tendered in evidence before the Arbitral Tribunal on behalf of MSEB by accused No. 6, who was

in-charge of Shirpur section. It is evident from the afore-extracted paragraphs of the complaint that other accused have been named in the complaint because, according to the complainant, MSEB-accused No. 1 was acting under their control and management. It bears repetition that the only averment made against appellant No. 2 is that appellant No.1, i.e. MSEB was acting under the control and management of appellant No. 2 along with other three accused. There is no denying the fact that appellant No. 2 happened to be the Chairman of 22 AIR 1964 SC 725. 1MSEB at the relevant time but it is a settled proposition of law that one cannot draw a presumption that a Chairman of a company is responsible for all acts committed by or on behalf of the Company. In the entire body of the complaint there is no allegation that appellant No. 2 had personally participated in the arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB and it was at his instance the subject interpolation was made in Exhibit C-64. At this stage, we may refer to the extract of a Board resolution, pressed into service by the respondents in support of their plea that appellant No. 2 was responsible for the conduct of business of appellant No. 1. The said resolution merely authorises the Chief-Engineer to file counter claim before the Arbitral Tribunal in proceedings between appellant No. 1 and respondent No. 1. It rather demonstrates that it was the Chief Engineer who was made responsible for looking after the interest of the appellant No. 1 in those proceedings. In this regard, it would be useful to advert to the observations made by a three judge bench of this Court in S.M.S. Pharmaceuticals (supra) :-

> "There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. A 1company may have managers or secretaries for different departments, which means, it may have more than one manager or secretary."

29. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC, incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh (supra) :-

> "As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be

vicariously liable for any offence committed by the Company itself. "

In M/s Thermax Ltd's case (supra), a complainant was engaged in the manufacturing of LPG storage tanks. He purchased raw material from accused-company. Complainant filed a criminal complaint after 9 years under Sections 406/420 IPC that company had supplied defective material. Magistrate directed the police under Section 156(3) Cr.P.C to investigate and report. The High Court upheld the Magistrate's order. Hon'ble the Supreme Court set aside both the orders and held that dispute pertains to contractual obligation. Breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Complainant roped in Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of a company who do not have any personal role. In paragraph 22, it has been held as under:-

> "22) It is useful to demonstrate certain examples, namely, Section 141 of the Negotiable Instruments Act, 1881 which specifically provides that if the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the 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. Likewise, Section 32 of the Industrial Disputes Act, 1947 provides that where a person committing an offence under this Act is a company, or other body corporate, or an association of persons, every director, manager, secretary, agent or other officer or person concerned with the management thereof

> shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. We have already noted that the offence alleged in the criminal complaint filed by respondent No.1 is under Sections 405 and 420 IPC whereunder no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the 3absence of specific details about the same, no person other than appellant No.1-Company can be prosecuted under the alleged complaint."

The consistent view of Hon'ble the Supreme Court is that the Managing Director or employee of company cannot be held vicarious liable for the fraud committed by the Company.

In the present case, no specific role has been attributed to the respondent. The prosecution at the initial stage itself made an application and got discharge two partners of the firm. The respondent is merely attorney of M/s Liberty Rice Mills and is not a partner of the firm.

Judgment dated 06.06.2013 passed by learned Sessions Judge, Amritsar and judgment dated 29.01.2012 passed by learned Chief Judicial Magistrate, Amritsar does not suffer from any infirmity or illegality and the same are upheld.

Finding no merits in the present revision, the same stands dismissed.

24.02.2015 (RITU BAHRI)
G Arora JUDGE