

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

% **Reserved on: 16th December, 2014**
Decided on: 6th May, 2015

+ **CRL.M.C. 3427/2011 and 12167/2011 (Stay)**

UDAY KOTAK Petitioner
Through: Mr. N.B. Joshi and Mr.Purushottam
Mishra, Advocates.
versus

G.D. FOODS MFG (I) PVT LTD. Respondent
Through: Mr.I.S. Alag and Mr.J.S. Lamba,
Advocates.

AND

+ **CRL.M.C. 3538/2011 and 12551/2011 (Stay)**

VIPIN VERMA Petitioner
Through: Mr. N.B. Joshi and Mr.Purushottam
Mishra, Advocates.
versus

G.D. FOODS MFG (I) PVT LTD. Respondent
Through: Mr.I.S. Alag and Mr.J.S. Lamba,
Advocates.

AND

+ **CRL.M.C. 3539/2011 and 12554/2011 (Stay)**

DEEPAK SHAKDHER Petitioner
Through: Mr. N.B. Joshi and Mr.Purushottam
Mishra, Advocates.
versus

G.D. FOODS MFG (I) PVT LTD. Respondent

Through: Mr.I.S. Alag and Mr.J.S. Lamba,
Advocates.

AND

+ CRL.M.C. 3540/2011 and 12557/2011 (Stay)

KOTAK MAHINDRA BANK LTD. Petitioner
Through: Mr. N.B. Joshi and Mr.Purushottam
Mishra, Advocates.
versus

G.D. FOODS MFG (I) PVT LTD. Respondent
Through: Mr.I.S. Alag and Mr.J.S. Lamba,
Advocates.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The petitioners seek quashing of the criminal complaint case No.161/1/2010 of 2009 titled as M/s. G.D. Foods Manufacturing (I) Pvt. Ltd. Vs. Kotak Mahindra Bank Ltd. & Ors., inter alia, on the grounds that a perusal of the complaint would show that only a civil dispute was made out. The allegations in the complaint do not make out the ingredients of offence punishable under Section 420 IPC. The learned Trial Court committed grave error in permitting the complainant to place on record selectively only one page of the Master Facility Agreement (MFA). The complete MFA would have given the contours of the entire transaction between the parties. The Trial Court also failed to appreciate the mandate of Section 202 Cr.P.C. and without conducting an enquiry issued summons despite the fact that the petitioners in Crl.M.C.3427/2011, Crl.M.C.3538/2011 and

CrI.M.C.3540/2011 are residents beyond the territorial jurisdiction of the Trial Court.

2. Respondent/ complainant filed a complaint case against the petitioners in the four petitions alleging that in the month of September-October 2007, the complainant company was approached by Shri Mayur Mehta, Senior Manager ECG and Shri Ajay Bhargava, Chief Manager ECG alluring the complainant company to stop its banking with its previous banker i.e. HDFC Bank Ltd. with a dishonest intention to entrap the complainant into their vicious circle of squeezing higher rate of interest. The Kotak Mahindra Bank Ltd. (hereinafter referred to as Bank) offered to charge interest @ 11% per annum after providing a margin of 5.50% to the existing Bank Prime Lending Rate (in short BPLR) which was 16.50% at that time. Enhancement of credit limits as enjoyed by the complainant company from HDFC was also offered. Thus the clear offer of the bank was that it shall charge the agreed interest @ 11% per annum ($16.50\% - 5.50\% = 11\%$) since the complainant company was already availing cash credit loan and term loan @ 11% per annum from its current bankers i.e. HDFC bank subject to the fluctuations of the BPLR, which is changed by the bank after considering the monetary policy declared by the Reserve Bank of India from time to time. The “In-Principle Offer” dated 15th October 2007 was given to the complainant containing the following interest clauses:

Part I	:	Cash Credit Limit
Pricing	:	PLR-5.5%P.A.floating linked to PLR
Part III	:	Term Loan Limit
Pricing	:	PLR-5.5%P.A. floating linked to PLR.

The “In-Principle Offer” also noted the pre-payment charges as under:

- “i. Pre-payment not allowed within twelve months of disbursement.
- ii. Pre-payment allowed with pre-payment charges of 1% for the period 13 to 18 months from the date of disbursement.
- iii. Pre-payment allowed freely after 18 months from the date of disbursement without any pre-payment charges.”

3. Since the complainant company objected to the pre-payment charges, the bank agreed to delete the same and issued a sanction letter dated 10th January 2008 having no pre-payment charges clause. Later on HDFC bank insisted for multiple banking for which both the banks agreed and thus the bank issued a multiple banking sanction letter dated 15th February 2008 which also did not contain any pre-payment charges clause. The bank got signed the already printed MFA on 16th February, 2008 after issuance of sanction letter dated 15th February, 2008. The MFA was subject to terms and conditions already mentioned in the sanction letter dated 15th February 2008 which did not have any such pre-payment charges and it was further clarified that in the event of their being a conflict between the sanction letter and the MFA, the sanction letter shall prevail over the MFA. Thus the complainant signed the MFA without going into each and every clause since the same was voluminous. The said MFA had a pre-payment charges clause in Para 6.2 which refers to the sanction letter. The complainant company received a letter dated 25th July 2008 whereby the agreed margin was reduced from 5.5% to 4.7% retrospectively with effect from 1st July, 2008. The complainant company had number of meetings with the accused but of

no avail. The complainant company had already deposited the title deeds of immovable property No. SP1516, RIICO Industrial Area, Distt. Alwar, Neemrana, Rajasthan under an equitable mortgage and it was pointed out that the action of the accused amounted to cheating, defrauding and extortion. The complainant company was thus not in a position to shift its banking to another bank without the release of title deeds and in this process the accused bank started charging penal rate of interest @ 15% per annum since the BPLR increased to 17.75 whereby the interest was to be charged after giving a margin of 5.50, which would have resulted into rate of interest at 12.25%. The accused bank further reduced the margin money from 4.57% to 2.75% thereby further cheating, defrauding the complainant company of the margin money by 2.75% since the sanction letter dated 15th February, 2008 provided the margin money at 5.50%. Complainant company held correspondences with the accused requesting that the margin should be maintained at the agreed rate of 5.50%. The complainant company also objected to the pre-payment charges of around ₹14 lakhs which were not part of sanction letters dated 10th January, 2008 and 15th February, 2008 respectively. The complainant company sent various communications to the accused of the criminal offences of cheating and extortion committed by them and for the release of the original title deeds. The accused company released the title deeds only after the complainant company was compelled to give in writing that it shall agree to bear all contractual obligations.

4. On this complaint of the respondent, the Magistrate after examination of Shri S.K. Saxena, A.R. of the complainant as CW-1 and on perusal of the

documents, summoned the petitioners for offence punishable under Section 420 IPC aggrieved wherefrom the present petitions have been filed.

5. Learned counsel for the respondent relies upon clause 6.2 relating to pre-payment of the MFA whereas learned counsel for the petitioners refers to clause 7.1 of MFA which are reproduced hereinafter.

“MASTER FACILITY AGREEMENT
dated 21st February 2008

.....

ARTICLE 6
REPAYMENT, PREPAYMENT CHARGES AND
COMMITMENT.

.....

6.2 PREPAYMENT

The borrower shall not without the prior written approval of the Bank (which approval may be given subject to such terms and conditions as may be stipulated by the Bank including payment of prepayment premium), prepay the outstanding principal amount together with interest due in full or in part before the due dates. The borrower shall give the bank at a minimum of 30 days' prior notice of its intention to prepay (i.e. repay ahead of the previously agreed tenor or repayment date) whole or part of the facilities subject to borrower's agreeing to bear the prepayment charges as provided hereinbelow.

In the event that the Bank accedes to the request for prepayment made by the borrower then the borrower shall be liable to pay to the bank prepayment charges at such rate as may be advised by the Bank at the time such prepayment request is made for prepayment of the facilities on the amounts repaid by the borrower to the bank ahead of previously agreed repayment schedule (or tenor or terms or dates of repayment) as contained in the

sanction letter/ individual facility sanction letter annexed as schedule II hereto for the individual facility to which such repayment relates.

6.3 COMMITMENT CHARGES

The borrower shall be liable to pay to the bank Commitment Charges for non-utilization of the facilities as follows:

- (a) When the amount outstanding under any individual facilities is lower than the limit granted for that individual facility;
- (b) On the differential amount between the individual facilities sanction limit for that individual facilities and the amount outstanding under that individual facility; and
- (c) at the rate of 2% p.a. for the period of such differential, computed on a daily basis.

ARTICLE 7

INTEREST/ COMMISSION/ CHARGES ETC.

7.1 RATE OF INTEREST

The Borrower shall be liable to pay to the Bank interest on the amounts due under the Individual Facility at the rate specified in the Sanction Letter/Individual Facility Sanction Letter annexed as Schedule II hereto, at monthly/quarterly rests and mentioned therein or as may be intimated by the Bank in writing from time to time and the Borrower shall not dispute the same.

7.2

7.3

7.4 RIGHT TO VARY RATE OF INTEREST ON OUTSTANDINGS

The Borrower hereby specifically agrees/agree that the Bank shall be entitled to change/vary the interest rates on account of any change as may be directed by Reserve Bank of India and/or any other regulatory/statutory body from time to time. The Borrower agrees/agree to pay

interest at such revised rates as aforesaid. It is agreed that it will not be necessary for the Bank to send intimation of change of rate of interest to the Borrower and a publication either in the newspaper or on the notice board will be sufficient and the Borrower will be deemed to have consented to such change.

Interest shall be charged on the outstanding(s) in the account opened in respect of the Facilities at such rate(s) as may be determined by the Bank from time to time at the Bank's sole discretion provided that the rate(s) shall be subject to changes in the Bank's Benchmark Prime Lending Rate and/or changes in interest rates prescribed by the Reserve Bank of India from time to time.

6. A perusal of clause 6.2 relating to pre-payment would show that it was subject to the sanction letter dated 15th February, 2008 which talked about the various facilities inter-se parties and notes as under:

“The Bank reserves the right to revoke or cancel the facility sanctioned and/or vary, alter, modify or rescind, amend or change at any time any one or more of the terms and conditions of the facility at its discretion with such notice as the Bank may deem reasonable and without assigning any reasons.

Please note that the provisions of this facility is at the total discretion of the Bank and any request for extension/enhancement/renewal of this facility/limit is at the discretion of the Bank and on fulfillment of such terms and conditions as prescribed by the Bank.

Please note that this Sanction letter forms an integral part of the Master Facility Agreement. It is clarified that the Bank shall be entitled to vary any of the Facilities sanctioned, by issue of such further letters to the Borrower as the Bank may deem fit. Such further letter(s) issued by the Bank modifying the Facility/Facilities shall be considered to be a part of this Sanction Letter and any reference to the

Sanction Letter shall be deemed to be a reference to such further letter(s) also. Also, may it be noted that in the event of there being a conflict between the Sanction Letter and the Master Facility Agreement, the Sanction Letter shall prevail over the Master Facility Agreement.”

7. As far as variation in the interest/ discounting rate is concerned, the common conditions in clause 29 of the sanction letter noted:

“29. The Bank shall be entitled to vary/change the interest/discounting rate (including any change as may be directed by Reserve Bank of India and/or any other regulatory/statutory body) from time to time or method of computation of such rate of interest/discounting or to charge an additional or penal rate by sending to the Borrower an intimation in this regard. Upon intimation of such charge/variation in the interest/discounting rates, the Borrower shall be deemed to have consented to such change. The Borrower agrees/undertakes to pay interest discounting charges at rates as may be revised from time to time.”

8. Though learned counsel for the respondent has sought to give restricted meaning to the facility but a perusal of the sanction letter would show that various facilities were offered but in the common conditions ultimately the bank reserved the right to vary/change the interest/discounting rate from time to time or method of computation of such rate of interest and the borrower was deemed to have consented to such a change. Thus it is clear that even as per the sanction letter the bank reserved its right to revoke or cancel the facility sanctioned and/or vary, alter, modify or rescind, amend or change at any time any one or more of the terms of the conditions of the facility at its discretion. In light of this agreement the contention of the respondent in the complaint that since the agreement ran into several pages it

signed without reading is of no avail to the respondent. In the entire complaint there is no allegation that the documents were got signed from the petitioner by force, coercion or playing fraud. The respondent/complainant having consented to such an offer, the claim that he was dishonestly allured into the offer and to stop its banking with its previous banker cannot be sustained. Thus, the mens rea as required for all offence punishable under Section 420 IPC is missing in the present case.

9. Further a bare perusal of the complaint would show that the allegation of allurement is against one Mayur Mehta, Senior Manager ECG and Ajay Bhargava, Chief Manager ECG. There is no allegation in the entire complaint that Uday Kotak petitioner in Crl.M.C. 3427/2011 either lured the complainant or that he was in conspiracy with the co-accused or that he committed any overt act. The only allegation against Uday Kotak is that after the complainant company objected to the pre-payment charges of around ₹14 lakhs it wrote letter to Uday Kotak accused No.2, however no reply was given by him. The allegation against Vipin Verma as stated though not mentioned in the complaint is that vide letter dated 10th June, 2009 Ex.CW-1/23 he asked for the pre-payment charges. Allegations against Deepak Shakhder though not mentioned in the complaint are that he was a signatory to the “In-Principle Offer” Ex.CW-1/1. It may be noted that the “In-Principle Offer” was never acted upon and as per the complainant the terms were varied according to the sanction letter. Further Deepak Shakhder neither signed the sanction letter nor the Master Facility Agreement. Though this Court need not go any further as on the facts noted above neither any act of cheating nor mens rea is made out, however as learned counsel for the

respondent has raised certain issues, thus it would be appropriate to deal with the same.

10. Learned counsel for the respondent relies on the decisions in the case of R.Kalyani Vs. Janak C. Mehta & Ors. (2009) 1 SCC 516; Vijayander Kumar & Ors. State of Rajasthan & Anr. (2014) 3 SCC 389; Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr. (2012) 5 SCC 424; Arvind Kejriwal & Ors. Vs. Amit Sibal & Anr 212 (2014) DLT 489; Rameshwara Jute Mills Ltd. Vs. Sushil Kumar Daga & Ors. (2009) Crl.LJ 2727; M/s. Thermax Ltd & Ors. Vs. K.M. Johny & Ors. 2011 (11) SCALE 128; Adarsh Gupta Vs. State 2010 Crl.LJ 3405 (DHC) and Narender Kumar Jain Vs. State of NCT of Delhi & Anr. 2010 Crl.LJ 3411 (DHC).

11. In R.Kalyani Vs. Janak C. Mehta & Ors. the Supreme Court while dealing with inherent powers of High Court under Section 482 Cr.P.C. in quashing a criminal complaint or proceedings held that High Court would ordinarily not exercise inherent jurisdiction to quash a criminal proceeding and in particular a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclose no cognizable offence. The Court would not look at any defence document except in very exceptional circumstances and will also not adjudicate in favour of the accused to hold absence of mensrea by going beyond allegations in the FIR. Even if the allegations disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. In Vijayander Kumar & Ors (supra) the Supreme Court noted that the real test is whether the allegations in the criminal complaint make out a criminal offence or not and it would not

be appropriate to quash criminal proceedings only because a civil remedy was also available to the informant/complainant. In Bhushan Kumar & Anr. (supra) relied upon by the respondent the Supreme Court held that Magistrate should not be faulted only on the ground that the summoning order was not a reasoned order. When an accused appears before the Trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case it is bounden duty of the Trial Court to go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code. However, the Supreme Court also noted that the contention of the appellant therein that a petition under Section 482 Cr.P.C. was not maintainable cannot be accepted in view of the decisions of the Supreme Court in Pepsi Foods Ltd. Vs. Judicial Magistrate (1998) 5 SCC 749; Dhariwal Tobacco Products Ltd. Vs. State of Maharashtra (2009) 2 SCC 370 and M.A.A. Annamalai Vs. State of Karnataka (2010) 8 SCC 524.

12. Thus the legal position that emerges on the decisions referred to above is that only if the complaint discloses of a cognizable offence the proceedings can continue, however if on the face value itself no cognizable offence is made out then the complaint is required to be quashed. It is also evident that even against a summoning order on the principles as laid down by the Supreme Court if the complaint on the face of it does not disclose the

commission of an offence, High Court in its jurisdiction under Section 482 CPC is required to quash the same.

13. It is well settled that penal provisions must be construed strictly and in case no vicarious liability is provided in the statute the same cannot be attributed. In Sham Sunder Vs. State of Haryana (1989) 4 SCC 630 the Supreme Court while dealing with a prosecution under Section 7 of the Essential Commodities Act held-

9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.

10. It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of

any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State.

14. Considering the vicarious liability of the Directors, Managing Director and Chairman of a corporate entity in penal offences, the Supreme Court in Sunil Bharti Mittal Vs. CBI 2015 (1) SCALE 140 reiterated that no vicarious liability can be attributed unless the statute specifically provided so. It was held-

“37. 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.

38. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

39. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming

fiction. Here also, the principle of “alter ego”, was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. This very principle is elaborated in various other judgments. We have already taken note of Maharashtra State Electricity Distribution Co. Ltd. (supra) and S.K Alagh (supra). Few other judgments reiterating this principle are the following:

1. Jethsur Surangbhai v. State of Gujarat (1984) SCC 297

“9. With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a

matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tehsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But that by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as item 3 is concerned, even Mr Phadke conceded that there is no direct evidence to connect the appellant.”

2. *Sham Sunder v. State of Haryana (1989) 4 SCC 630*

“9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no

vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.”

3. *Hira Lal Hari Lal Bhagwati v. CBI* (2003) 5 SCC 257

“30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e the Customs Act, 1962 the appellants have been thereinunder wholly discharged and the GCS granted immunity from prosecution.”

4. *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

5. *R. Kalyani v. Janak C. Mehta* (2009) 1 SCC 516

“32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be

created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created.”

6. *Sharon Michael v. State of T.N* (2009) 3 SCC 375

“16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company.”

7. *Keki Hormusji Gharda v. Mehervan Rustom Irani* (2009) 6 SCC 475

“16. We have noticed hereinbefore that despite of the said road being under construction, the first respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 IPC.

17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.

The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

18. In Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749 this Court held as under: (SCC p. 760, para 28)

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure.”

15. In view of the facts discussed above I am of the considered view that the allegations in the complaint and the documents placed on record by the complainant taken on their face value do not disclose dishonest intention in the minds of the accused at the inception nor the act of cheating, the complainant/respondent having signed the documents. Thus, the ingredients of Section 420 IPC are not made out. While coming to this conclusion this Court did not delve into the arena of appreciation of evidence but looked at the allegations as stated in the complaint and the documents of the complainant/respondent. Consequently, the petitions and applications are disposed of quashing criminal complaint and setting aside the order dated 29th August, 2011 summoning the petitioners for offence punishable under Section 420 IPC.

(MUKTA GUPTA)
JUDGE

MAY 06, 2015
‘ga’