THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE Nos.1620, 1628, 1638, 1639, 1640 and 1641 of 2017

COMMON ORDER:

Aggrieved by the orders dated 23.03.2017 passed in Crl.M.P.No.37 of 2017 in C.C.No.17 of 2014, Crl.M.P.No.38 of 2017 in C.C.No.18 of 2014, Crl.M.P.No.40 of 2017 in C.C.No.22 of 2014, Crl.M.P.No.39 of 2017 in C.C.No.21 of 2014, Crl.M.P.No.65 of 2017 in C.C.No.24 of 2014 and Crl.M.p.No.64 of 2017 in C.C.No.23 of 2014 by the Principal Special Judge for C.B.I. Cases, Visakhapatnam, the petitioner preferred these revision cases under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") and prayed to set aside the said orders dated 23.03.2017 and discharge the petitioner for the offences punishable under Sections 120-B, 420, 471 and 477 of Indian Penal Code (for short "I.P.C.")

The petitioner in all the revisions is arrayed as accused in all the cases, but with different serial number.

However, as the parties and allegations in all the revisions are one and the same, and the impugned orders passed by the trial Court are identical, I would like to dispose of all the revisions by way of common order.

For convenience sake, the facts as narrated in Crl.M.P.No.37 of 2017 in C.C.No.17 of 2014, which is subject matter of Crl.R.C.No.1620 of 2017 are taken into consideration.

Petitioner – company filed a petition before the trial Court under Section 239 Cr.P.C. prayed to discharge the petitioner for the offences punishable under Sections 120-B, 420, 471 and 477 of I.P.C.

The Management of IDBI Bank Limited, Asset Centre, Visakhapatnam, lodged a report dated 19.12.2011 against accused No.1 and Bank Panel Surveyor etc., but not against petitioner or its former Manager of Visakhapatnam Branch. Crime was registered against accused No.1 and others and petitioner was not cited as an accused in FIR but after investigation the respondent/CBI filed charge sheet against Bank Officials and shown the former Manager of petitioner as an accused in the body of charge sheet alleging that during the year 2009-2010, accused Nos.2 and 3 approached IDBI Bank for loan of Rs.75 lakhs against the mortgage of 26 plots covering an extent of 5668.71 sq.yds., of Timmapuram village, Denkada mandal, Vizianagarm District through M/s.Darshan Management represented by Accused no.6, being Direct Sales Associates of IDBI Bank and Singapurapu Phalguna Rao (Accused no.7) as a Manager of M/s.ONICRA Credit Rating Agency of India Ltd., field investigating agency has to verify the borrowers profile, information provided by the borrowers and submit the field investigation report to the Bank and in furtherance of criminal conspiracy, accused No.6, Muddala Srikanth, Unit Manager (Outsourcing staff) (accused No.8) and Singapurapu Phalguna Rao (Accused No.7) at the instance of accused No.1 without verifying the borrowers personal and business profile submitted positive reports to the bank in favour of borrowers and accused no.4 and B. Srinivasa Rao, Panel Valuer assessed the property mortgaged at inflated rates in order to facilitate accused No.2 and accused No.3 and accused No.1 by abusing his official position as a public servant without conducting any verification sanctioned Rs.75 lakhs to Accused Nos.2 and 3 and subsequently when fraud has come to light the bank again got revalued the said property through valuer K.Srinivasa Rao who valued the same at Rs.49,52,896/- and accused No.1 caused wrongful loss to the tune of Rs.79.74 laksh to the bank and corresponding wrongful gain to the accused persons and acts of accused No.2,3,4,5 and accused No.6 and Phalguna Rao (A.7) and Accused No.8 constitute office under Sections 120-B, 420, 471 and 477 IPC. To prove the said charge prosecution cited 9 Witnesses and filed 38 documents.

Petitioner is a registered company under the provisions of Companies Act and having its registered office at New Delhi and branches at various places in India and as such branch at Visakhapatnam which was closed in the year 2011. As per the charge sheet Singapurapu Phalguna Rao is shown as accused No.7 alleging that he has to verify the borrowers profile and also verify the information provided by borrowers and submit field investigation report to IDBI Bank and at various places in the body charge sheet Singapurapu Phalguna Rao, Manager of M/s.ONICRA Credit Rating Agency of India Ltd., has been shown as accused No.7. The specific allegation made against accused No.7 in the charge sheet is that in furtherance of criminal conspiracy Singupurapu Phalguna Rao without verifying the borrowers personal and business profile submitted a positive report to the Bank in favour of the borrowers. No where in the charge sheet allegation was made against M/s.ONICRA Credit Rating Agency of India Ltd., and its name is not at all shown as an accused in the body of charge sheet. However, in the accused column enclosed to the charge sheet it is mentioned as "M/s.ONICRA Credit Rating Agency of India Ltd., represented by Singupurapu Phalguna Rao, Manager." In the absence of any allegations, petitioner cannot be shown as accused and Singapurapu Phalguna Rao, former Manager in his individual capacity is to be prosecuted if the material is available against him. His acts shall not make his employer liable for prosecution. Further, there is nothing to suggest that Singupurapu Phalguna Rao was acting on the basis of directions of ONICRA Credit Rating Agency of India Ltd.

The Court issued summons and CBI served summons on S. Phalguna Rao who ceased to be an employee of the company in 2010 itself and he personally appeared before the Court in his individual capacity and engaged an advocate who filed a memo of appearance on behalf of S. Phalguna Rao but not on behalf of the company. In fact, petitioner company came to know about naming of the petitioner in list of accused very recently and in spite of lapse of many years no steps were taken by CBI to correct the name of accused no.7 in the list of accused though it is showing Singupurapu Phalguna Rao as accused no.7 at various places in the body of the charge sheet. Without any allegations against the company, which is juristic person, its name is not to be incorporated in the list of accused annexed to the charge sheet. No allegations were made by CBI to show that the residential addresses and the borrower address and bank account particulars furnished by borrower are false and Singapurapu Phalguna Rao submitted false information in his field investigation report to IDBI Bank. Infact, the reports submitted to IDBI Bank Ltd., would show that there are no infirmities. In fact, no allegations or contra evidence is placed by CBI to prima facie prove that the field inspection reports submitted by S. Phalguna Rao are false and in fact the reports submitted by S. Phalguna Rao are mere procedural and were ancillary to the other inspections such as valuation, title report of the mortgaged assets. In any case, petitioner cannot be saddled with any criminal liability.

The respondent filed counter denying material allegations *inter alia* contending that the petitioner along with the other accused conspired together and cheated IDBI Bank. Investigating agency cited 16 witnesses and filed 37 documents. Further, witnesses stated that the service agreement entered between IDBI Bank Ltd., and M/s.ONICRA Credit Rating Agency of India Ltd., with regard to Field Investigation of the loans for the years 2009-10 and 2010-11. Accused No.7 failed to comply with the terms and conditions of the Service Agreement and cheated IDBI Bank. L.W.3/Sri Vasu Kumar Masetty in his statement recorded under Section 161 (2) of Cr.P.C. stated that the certified copies of the Registers maintained by the Bank in respect of triggering and receipt of reports pertaining to Field Investigation Agency M/s.ONICRA Credit Rating Agency of India Ltd., has given positive reports in respect of Sri Y. Surya Narayana Reddy on 24.12.2009 without verifying the details of residence, office, bank statements and Income Tax returns of the borrowers.

L.W.4 - M. Ramu, AGM, in his statement recorded under Section 161 (2) of Cr.P.C. stated that the bank has triggered verifications for residence, office, bank statements and Income Tax returns of borrowers on 24.12.2009 and received positive reports from empanelled field investigation agency M/s.ONICRA Credit Rating Agency of India Ltd. As per the record, accused No.1 has interviewed the borrowers and recommended the case.

Further L.W10 - K. Srinivasa Rao in his statement recorded under Section 161 (2) of Cr.P.C. stated that the revalued value of the property is measuring 5668.71 sq.yds., was found to be Rs.49,42,896/- at the rate of Rs.800/- per sq.yd. Accused Nos.4 and 5, Panel valuers had given an inflated valuation reports on the property which is about 40 kms., from IDBI Bank Limited, Siripuram Branch, Visakhapatnam. Though Directorate of Town and Country Planning (DTCP) approved layout, plots were not earmarked or numbered, not even minimum infrastructure facilities were found and the layout is a Mango groove. The empanelled field investigation agency M/s.ONICRA Credit Rating Agency of India Ltd., without verifying gave positive reports to the bank.

The act of petitioner/accused No.7 in submitting false reports pertaining to the above said loan constitute a criminal offence against him U/s.120-B r/w 420, 471 & 477 A of I.P.C. as accused No.7 being manager of A.8 – petitioner company conspired with other accused and cheated the IDBI Bank. The charge sheet and its enclosures statement of witnesses and documents reveal *prima facie* material to proceed against petitioner and it is liable to face charges. Hence, prayed to dismiss the petition.

Upon hearing argument of both the counsel, all the six petitions were dismissed by Principal Special Judge for C.B.I. Cases, Visakhapatnam by impugned order dated 23.03.2017.

Aggrieved by the same, the present revisions are filed raising several contentions, main contentions are as follows:

(1) The Principal Special Judge for C.B.I. Cases, Visakhapatnam did not consider the law declared by the Apex Court with regard to maintainability of

prosecution against the petitioner-company and that the acts of the employee of the company would not fasten any vicarious liability on the company and such acts are not attributable to the company, thereby the petitioner-company cannot be arrayed as an accused.

(2) The Court below failed to see that to hold a company liable for any offence likes cheating and forgery, the acts of Management of the company in its administration is to be taken into consideration and not any act of an employee who is not authorised to do any act beyond the work assigned to him, therefore the petitioner cannot be proceeded for various charges.

(3) Section 120-B of I.P.C. is a charging section for the offence of criminal conspiracy and to attract the same, the ingredients of Section 120-A of I.P.C. are to be satisfied, but in the present case as per the material filed along with the charge sheet there is no scope for the company either to agree to do or cause to be done any illegal act or omission, hence the petitioner/company is not liable to be proceeded for serious offence punishable under Section 120-B of I.P.C.

(4) The agreement between the petitioner and IDBI Bank clearly excludes the criminal liability of the

company for any acts of wrongful, fraudulent or negligent acts or omissions by its facility staff, in such case in terms of the agreement, petitioner – company cannot be proceeded.

(5) The allegations made in the complaint would not constitute any offence punishable under Sections 120-B, 420, 471 and 477 of I.P.C. Therefore, the trial Court failed to consider the law laid down by the Apex Court with regard to liability of the company for the acts or omissions of its employees based on theory of vicarious liability and committed grave error and the trial Court failed to consider whether the allegations satisfied the ingredients of various offences referred above and committed serious error in dismissing the petitions.

Sri Raja Reddy Koneti, learned counsel for the revision petitioner, would contend that the petitioner is a credit rating agency entered into contract for verification of loan application of borrowers from the bank and Sri Singupurapu Phalguna Rao is the Manager of the branch at Visakhapatnam, but the act or omission of said Singupurapu Phalguna Rao is not attributable to the petitioner/company since the company is not vicariously liable for the acts of Singupurapu Phalguna Rao. It is also contended that the company has not arrayed as accused, but the allegations were made against Singupurapu Phalguna Rao, and the charge sheet failed to show the company representing by its Manager - Singupurapu Phalguna Rao in the column provided for names of the accused. The said Singupurapu Phalguna Rao himself prosecuting the proceedings in his individual capacity representing company, in such case the petitioner cannot be proceeded for any of the charges. Apart from that the allegations made in the charge sheet or material collected during investigation including the statements recorded under Section 161 of Cr.P.C. and other documents filed along with charge sheet under Section 173 of Cr.P.C. would not disclose any *prima facie* material against the petitioner to proceed against it, framing charges for various offences referred supra. In the absence of specific allegation, the prosecution can be said to be groundless since proceeding against the petitioner by issuing summons would have serious impact on the affairs of the company and to avoid unnecessary harassment to the company and its officials, requested to discharge the petitioner. In support of his contentions that the company is not vicariously liable for the acts or omissions committed by its employee, he placed reliance on several judgment viz., "***K.R.Purushothaman v. State of Kerala***[1]" "***Noor Mohammad Mohd.Yusuf Momin v. The State of Maharashtra***[2]" "***Mohd.Hussain Umar Kochra***

[1] 2005 Cri.L.J. 4648
[2] AIR 1971 SC 885

v. K.S.Dalipsinghji[3]" "***State Bank of Hyderabad, Hyderabad v. State of Andhra Pradesh***[4]" and "***Iridium India Telecom Ltd. v. Motorola Inc.***[5]"

Per contra, learned Special Pubic Prosecutor for C.B.I. supported the order of the trial Court while relying on some paragraphs in "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra) and prayed to dismiss the revision as there is prima facie material against the petitioner/company to proceed against it.

Upon considering various contentions raised by both the counsel, the point that arises for consideration is:

> ***"Whether the prosecution produced any prima facie material against the petitioner to proceed further by framing charges, if not, whether the petitioner is liable to be discharged for the offence punishable under Sections 120-B, 420, 471 and 477 of I.P.C."***

P O I N T:

The present revision is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory

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[3] AIR 1970 SC 45
[4] 2004 (1) ALD (Crl.) 206 (AP)
[5] (2011) 1 SCC 74

jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or lack of proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case? The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

According to section 239 of Cr.P.C. if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused, as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing on the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in “***P.Vijayan v. State of Kerala***[6]”

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[6] AIR 2010 SC 663

It is also contended that when the material available on record is groundless, the Court cannot proceed, since, it would amount to harassment. No doubt, 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 few witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate or Sessions Judge 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 or Sessions Judge is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate or Sessions Judge 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.

Admittedly, the petitioner entered into contract with the IDBI Bank Limited for verification of information provided by the borrowers and submission of field investigation report to the bank, so as to enable the bank to sanction loan or not. Basis for sanction of the loan is the report submitted by the petitioner represented by its employees. Based on such report, in the present case, Bank sanctioned loans to the borrowers. The petitioner allegedly colluded with the borrowers and other officials conspired together and submitted a positive report to the Bank so as to part with huge amount to the borrowers by the defacto complainant – Bank.

The main contention of the Sri Raja Reddy Koneti, learned counsel for the petitioner, is that the petitioner was no way concerned with the alleged conspiracy and no mens rea is attributable to the petitioner – company being a juristic person and that apart the company has no vicarious liability for the acts done by its employees and in criminal law, there is no role for the company's vicarious liability.

The trial Court adverted to the statements of witnesses recorded by investigating agency under Section 161 of Cr.P.C. L.W.3 – Vasu Kumar Masetty, Assistant Manager, IDBI Bank Limited, Vizag who clearly stated about the process of sanctioning loans based on the reports of Field Investigation Agencies i.e., petitioner and others with regard to 12 loans. Serial Nos.8 to 12 in the table are with regard to the loans of S. Shantha, Y. Suryanarayana Reddy, G. Ramesh, S. Kranthi Kiran and U. Venkata Satyanarayana, for which the petitioner company i.e., Field Investigation Agency gave positive reports.

Similarly, L.W.2 - K. Shanti Prakash, Assistant General Manager-cum-Centre Head, IDBI Bank Ltd., Vizag Retail Asset Centre, stated that Post Sanction Process involves some verification by outside agencies which are Field Verification (FI), RCU (Risk Containment Unit) Verification, Legal Verification, and Technical verification.

Petitioner is the agency, with which the defacto complainant entered into agreement for field verification reports based on the information submitted by the borrowers. Agreement between the petitioner and the complainant Bank is not in dispute.

Similarly L.W.4 – Musunuri Ramu, Assistant General Manager (Retail Recovery) IDBI Bank Limited, Vizag also stated in his statement recorded under Section 161 Cr.P.C. about the role played by the petitioner, more particularly regarding necessity and procedure for field verification. He also stated that field verification is conducted mainly to confirm the residence of the applicants, office or business establishment of the applicants, authenticity of the pay slips, form-16 and Bank statement submitted by the applicants and on receipt of the details from Bank, the Field Investigating agency conducts necessary visits as per the details provided and submits its report by way of Recommended, Refer or Not Recommended and on the positive verification report the Bank will be proceeded for sanction of the loan.

As there is no dispute regarding the agreement between the petitioner and IDBI Bank Limited, few terms of agreement are necessary for deciding the present controversy.

As per page No.3 of the agreement, the Bank agreed to pay the petitioner certain amount inclusive of charge as mentioned in Annexure – II of the agreement and company shall raise the bill by 10th of next month and any discrepancy in bill shall be raised within a week from the date of receipt of payment. Similarly at page No.4 of the agreement, the parties to the agreement specifically agreed that the services rendered and obligations performed by the company pursuant to the agreement shall be rendered and performed by the company with utmost care and diligence and shall be of the highest quality and standards. The further conditions at page No.7 as extracted by the trial Court is relevant for deciding *prima facie* liability of the company and again it is extracted hereunder.

> "Petitioner company shall be responsible and liable for and shall indemnify the Bank and keep the Bank indemnified and safe and harmless at all times against any and all claims, liability, damages or losses suffered by Bank directly or indirectly by reason of any wrongful, fraudulent or negligent doing of duties or act or omissions by the company or its Facility Staff."

In view of the relevant clause extracted above, the petitioner itself undertook responsibility for all the acts of facility staff; omissions and commission of facility staff. In such case, the act or omission done by Singupurapu Phalguna Rao, Manager of the Company, is attributable to the company only as he submitted positive reports with verification, which is found to be false later *prima facie*.

Learned counsel for the petitioner while contending that the terms and conditions of the agreement made clear that the company is not responsible for the loss, damage etc caused by acts or omissions of staff of the company and drawn the attention of this Court to Clause 8.2 and 8.3 of the agreement, which are as follows:

> "8.2. Notwithstanding anything stated elsewhere in this agreement, the company shall not be liable for any claims, losses, damages, costs, charges, expenses where the company has acted strictly and properly in accordance with the IDBI Bank's instructions and the provisions of this agreement.
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> 8.3. The company shall be responsible and liable for and shall indemnify the IDBI Bank and keep the IDBI Bank indemnified and safe and harmless at all times, against:-
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> a) Any and all claims, liability, damages, losses, costs, charges, expenses, proceedings and actions of any nature whatsoever made or instituted against or caused to or suffered by the IDBI Bank directly or indirectly by reason of-
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> i) any wrongful, incorrect, dishonest, criminal, fraudulent or negligent work, default, failure, misfeasance, bad faith, disregard of its duties and obligations hereunder, service, act or omission of or by the company and/or its said facility staff, and/or
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> ii) Any theft, robbery, fraud or other wrongful act or omission by the Company and/or any of its Facility Staff."

First sentence of clause 8.2 of the agreement extracted above made it clear that if the petitioner- company did not agree in the earlier terms, the company cannot be made liable. But in page No.7 of agreement, extracted in earlier paragraph, the petitioner company agreed to indemnify the Bank against any and all claims, damages or losses suffered by Bank directly or indirectly by reason of any wrongful, fraudulent or negligent dong of duties or act or omissions by the Company or its facility staff. Therefore, if the said clause in page No.7 of the agreement is not incorporated in the agreement, clause 8.2 would prevail and the petitioner company may disown its responsibility for the liability for the acts or omission done by facility staff. On the strength of clause 8.3, extracted above, the petitioner company cannot claim any immunity from prosecution or disown its liability for the acts or misdeeds of facilitating staff.

The main endeavour of the learned counsel for the petitioner is that the petitioner company is not liable being a juristic person for the acts of its employees and placed reliance on judgment of Apex Court rendered in "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra), wherein it is held that "in 19 Corpus Juris Secundum, para 1363 it has been observed as under:

> "A corporation may be criminally liable for crimes which involve a specific element of intent as well for those which do not, and, although some crimes require such a personal, malicious intent, that a corporation is considered incapable of committing them, nevertheless, under the proper circumstances the criminal intent of its agent may be imputed to it so as to render it liable, the requisites of such imputation

being essentially the same as those required to impute malice to corporations in civil actions."

Therefore, the Courts emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the "alter ego" of the company / body corporate, i.e., the person or group of person that guide the business of the company, would be imputed to the corporation.

If this principle is accepted, Singapurapu Phalguna Rao is a person representing the company and the acts or omissions done by him are attributable to the petitioner company on the basis of principle of "alter ego" of the company.

In "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra), the Apex Court placed reliance on "Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. 1944 1 All ER 119" wherein it is held as follows:

"A body corporate is a `person' to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention -- indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

In "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra), the Apex Court further held that "the criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. Mens rea is attributed to corporations on the principle of `alter ego' of the company." If this principle is applied to the present case, the said Singapurapu Phalguna Rao is a person acting on behalf of the company at Vizag and having control over the entire branch at Vizag, mens rea is attributed to the petitioner company on the principle of "alter ego" of the company.

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 as held in "***Standard Chartered Bank v. Directorate of Enforcement***.[7]"

At the same time, Special Public Prosecutor for C.B.I also placed reliance on the same judgment of Apex Court rendered in "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra), to the effect that "the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences."

In view of the law declared by the Apex Court in "***Iridium India Telecom Ltd. v. Motorola Inc.***" (referred supra) it is clear that for the acts or omissions of staff of the petitioner company, by applying the principle of "alter ego" the company is liable for criminal acts.

The contention of the petitioner is that the company being a juristic person will have no mental element to commit such offence, thereby the petitioner – company cannot be made liable for the offence punishable under Section 120-B of I.P.C. But in view of the law discussed above, the company is also liable for punishment for the acts done by its employees, though mens rea is required.

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[7] (2005) 4 SCC 530

In "***Maksud Saiyed v. State of Gujarat and others***[8]" the Apex Court held as follows:

> "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. <u>Indian 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.</u> 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."

In "***Sardar Trilok Singh and others v. Satya Deo Tripathi***[9]" the Apex Court held as follows:

> "5............... The question as to what were the terms of the settlement and whether they were duly incorporated In the printed agreement or not were all questions which could be properly and adequately decided in a civil court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a documents is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized

[8] 2008 (5) SCC 668
[9] 1979 (4) SCC 396

> the truck on 30-7-1973 from the house of the respondent they could and did claim to have done so in exercise of their bonafide right of seizing the truck on the respondent's failure to pay the third monthly installment in time. It was therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated rated version given by the respondent that the appellants went to his house with a mob aimed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not sake the matter out of the realm of civil dispute. No body on the side of the respondent was hurt. Even a scratch was cot given to any body.

In "***Sunil Bharti Mittal v. Central Bureau of Investigation***[10]" it was held that "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 a cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so."

Based on the principles laid down in the above judgments, the Apex Court in a recent judgment rendered in "***K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another***[11]**"** observed that "no doubt, a corporate entity is an artificial person which acts through its officers,

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[10] JT 2015 (1) SC 258
[11] JT 2017 (6) SC 52

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 that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically invoking such a provision." In view of the above principle, the acts or omissions of Singapurapu Phalguna Rao are directly attributable to the petitioner – company since he is having control over the affairs of the company at Vizag and acting on behalf of the company. Whether he had mens rea or not is a question to be decided only during trial, but not at the stage of petition under Section 239 of Cr.P.C.

It is difficult to conclude at this stage that the acts done by Singapurapu Phalguna Rao are not attributable to the company before recording evidence and whether the Company had any mens rea in commission of offence as it is a question of fact, which has to be decided by the Court only after full-fledged trial.

Learned counsel for the petitioner further placed reliance on a judgment of this Court reported in "***State Bank***

of Hyderabad, Hyderabad v. State of Andhra Pradesh" (referred supra) wherein the Division Bench of this Court discussed about the liability of the Company for the acts done by its officers. According to the principle laid down in the above judgment "any legal proceedings by or against a body corporate is required to be brought in the name of some person authorized for that purpose by the appropriate law. Normally, the legislative practice has been that whenever a Corporation is brought into existence, a statute, which brings that Corporation into existence, makes a specific provision in that regard, indicating the person authorized to represent the body corporate in legal proceedings. The complaint does not disclose whether the Branch Manager of Gunfoundry Branch of State Bank of Hyderabad is the appropriate person authorised by the law in whose name the proceedings could be initiated."

In the above said judgment the Division Bench of this Court further held that "No doubt the Corporations can also incur a criminal liability. For example various statutes do create a criminal liability on the part of the bodies corporate whenever such bodies corporate violate any law. But it must also be remembered that those very statutes which create the criminal liability against a body corporate do normally specify that either the officers or directors as the case may be of such body corporate to be prosecuted and punished in the case when an offence is committed by the body corporate. For example is Section 138 of the Negotiable Instruments Act, 1881. Section 138 of the Act makes it an offence to draw a cheque, which would not be honoured by the drawee Bank. In view of the fact that the bodies corporate are entitled to maintain Bank accounts and draw cheques, the Legislature made a specific provision under Section 141 of the Act, wherein it was stipulated that whenever an offence under Section 138 is committed by a company, every person who, at the time of the offence, is in-charge of, and is responsible to, for the conduct of the business of the company, shall be deemed to be guilty. Similarly, Section 9(A)(A) of the Central Excise and Salt Act, 1944 makes a special provision indicating the persons who are liable for punishment, whenever any offence under the said Act is said to have been committed by a company. So is the case with Section 17 of Prevention of Food Adulteration Act, 1954. The criminal liability of a body corporate (a company in that case) under the provisions of the Prevention of Food Adulteration Act, 1954 fell for consideration of the Full Bench of the Delhi High Court reported in Delhi Municipality v. J.B. Bottling Company 1975 Crl. L.J. 1148 (FB), and the Full Bench consisting of Justice Yogeswara Dayal (as he then was) held that, where only a corporal punishment is prescribed, an artificial body like a company cannot be prosecuted, since it cannot be punished."

In the above said judgment the Division Bench of this Court further held as follows:

> "................. By the same logic, the offences such as cheating by personation, etc., under Sections 416, 420, 471 and 474, in our view are incapable of being committed by a body corporate. An analysis of these provisions show that one of the essential ingredients of these offences is the existence of either a fraudulent or dishonest intention, which in our view can never be attributed to a body corporate."

This principle is contrary to the latest decision of Apex Court in "***K.Sitaram and another v. CFL Capital Financial Service Ltd. & Another***" (referred supra). Hence, the principle in "***State Bank of Hyderabad, Hyderabad v. State of Andhra Pradesh***" (referred supra) is no more good law.

Learned counsel for the petitioner Sri Raji Reddy Koneti, contended that there is a lot of different between Section 109 and Section 120-B I.P.C and under exceptional circumstances, it is difficult to hold a corporate body (a juristic person) guilty for the offence punishable under Section 120-B I.P.C. Learned counsel for the petitioner further contended that, to attract offences punishable under Section 120-B I.P.C, the prosecution should satisfy the following ingredients under Section 120-A I.P.C.

> **120A. Definition of criminal conspiracy:-** When two or more persons agree to do, or cause to be done:-
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Learned counsel for the petitioner placed reliance on the judgment of the Apex Court in "***Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra***" (referred supra), wherein, an identical issue came up for consideration and the Supreme Court clearly drawn distinction between Section 34, Section 109 and Section 120-B I.P.C. The Apex Court held that Section 34, I.P.C embodies the principle of joint liability in the doing of a criminal act, the essence of that liability 'being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109, I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B, I.P.C. criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference, must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.

As seen from the principle laid down by the Apex Court in the above judgment, there must be two or three persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120-B I.P.C. In the present case on hand, the Manager of the petitioner's company Singupurapu Phalguna Rao allegedly conspired with A.1 to A.3 and issued a positive report, more particularly about value of the property proposed to be marked and in pursuance of such meeting of minds, the Manger of the petitioner/company at Visakhapatnam along with officials of the bank conspired together and made the bank as defacto complainant, part with that huge amount which would seriously cause loss to the public exchequer, since the banks are dealing with public money.

In "***State v. R. Vasanthi Stanley***[12]", the Apex Court held that load on the criminal justice dispensation system is concerned it has an insegragable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that

[12] 2016 (6) SCJ 56

when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of.

The question before the Court in the above judgment in "***State v. R. Vasanthi Stanley***" (referred supra) is that the proceedings cannot be quashed when serious economic offence is committed by any accused which affects the State or institutional economic condition. Of course, the judgment in "***State v. R. Vasanthi Stanley***" (referred supra) is entirely on different footing. In the present case, the accused cannot be discharged, since it's Manager is responsible for this entire episode and issuing certificates and making the bank to believe such certificates and values mentioned therein to advance amounts to the borrowers. Therefore, the act of the Manager is attributable to the company, in view of the law declared by the Apex Court in the judgments referred supra. Therefore, the judgment relied on by the learned counsel for the petitioner in "***Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra***" (referred supra) is of no assistance.

In "***Mohd. Hussain Umar Kochra v. K.S. Dalipsinghji and another***" (referred supra) the Supreme Court formulated certain guidelines as to what constitute Criminal conspiracy as defined in Section 120-A of the I.P.C. it is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement and the breach attracted to it the provisions of Section 167(81) of is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.

In "***Lennart Schussler And Anr vs Director Of Enforcement & Anr***[13]", the Supreme Court held that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.

On the basis of the principle laid down in "***State of Maharashtra v. Som Nath Thapa***" (referred supra), knowledge of the accused is sufficient to constitute an offence. But, in "***Lennart Schussler And Anr vs Director Of Enforcement & Anr***" (referred supra), the view taken by the

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[13] 1970 AIR 549

Supreme Court was conspiracy will continue as long as the members of the conspiracy remain in agreement. Therefore, in the present case, Manager of the petitioner company allegedly was a member of the conspiracy and completed his act by issuing necessary certificates, as per the contract, but with false facts. Therefore, such conduct would *prima facie* constitute an offence punishable under Section 120-B I.P.C.

Learned counsel for the petitioner Sri Raji Reddy Koneti further relied on the judgment of the Supreme Court in "***K. R. Purushothaman v. State of Kerala***" (referred supra), wherein, the Apex Court in paragraph 12 of the judgment, held as follows:

> "In State through Superintendent of Police, CBI/SIT v. Nalini and Ors. [(1999) Cri.L.J.3124] it is observed by S.S.M. Quadric J. at paragraph 677:
>
> "In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from

> the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences"

Learned counsel for the petitioner also placed reliance on the judgment of the Supreme Court in "***Mohd. Hussain Umar Kochra v. K.S. Dalipsinghji and another***" (referred supra), which dealt with the ingredients of an offence punishable under Section 120-B I.P.C. But, the principle laid down in the above judgment is almost identical to the one in "***Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra***" (referred supra).

Viewed from any angle, at the stage of framing charges, the Courts are bound to verify the entire material produced by the prosecution and find out whether the material produced before the Court by the prosecution would *prima facie* constitute an offence to proceed against this petitioner. But, the material produced by the accused needs no consideration and when the material on record disclosed any offence, the Court can proceed against the accused and minute examination and credibility of the witnesses cannot be looked into at this stage. As discussed above, in the earlier paragraphs, framing of charges and proceedings against the company will have its own serious impact on the issues of the company (juristic person) discharging its functions through its employees. Further, mostly in terms of the contract, the company is liable for acts or omissions of its employees. Therefore, Singupurapu Phalguna Rao, acting as Branch Manager of the petitioner/company at Visakhapatnam and dischared its contractual obligations between the petitioner and bank. Therefore, whatever acts or omissions done by Singupurapu Phalguna Rao are binding on the petitioner company, as the company cannot act on its own, except through its directors or employees. Moreover, *mens rea* is only a question of fact to be decided and at this stage, it is difficult to conclude *prima facie* that the petitioner being a juristic person has no *mens rea* to commit any offence. At best, such mental element or *mens rea* can be established only after completion of trial. Therefore, the contention that the petitioner being a juristic person has no *mens rea* to commit crime is no ground to discharge the petitioner by exercising power under Section 439 Cr.P.C. Hence, the contention of the learned counsel for the petitioner Sri Raji Reddy Koneti would not stand to any legal scrutiny to discharge the petitioner for the offences referred supra.

Apart from that, when the Trial is commenced and major part of trial of the said Singupurapu Phalguna Rao is completed and the said Singupurapu Phalguna Rao being the Manager of the company is participating in the Trial through his counsel. But the contention of the learned counsel for the petitioner is that Singupurapu Phalguna Rao was removed from service and thereby the said Singupurapu Phalguna Rao cannot represent the company. If, that is the case, the petitioner can engage a counsel substituting the person who is representing the company for the present, subject to proof that Singupurapu Phalguna Rao was removed from service and proceeding with the Trial. But, representation of company by Singupurapu Phalguna Rao is not a ground to discharge the petitioner at this stage.

On the other hand, learned Special Public Prosecutor for C.B.I would contend that a corporate body can be proceeded even for the offences punishable supra, based on the same judgments which the learned counsel for the petitioner relied on, but different paragraphs. Moreover, the said view is supported by the law laid down in the judgments by the Supreme Court.

In view of the latest law declared by the Apex Court, considering the facts and circumstances, including the statements recorded by the police during investigation and the agreement between the bank and the company, the clause which I extracted above would *prima facie* disclose offence. Hence, I find that there is material to proceed against the petitioner and at this stage, the petitioner cannot be discharged for the offences punishable under Sections 120-B, 420, 471 and 477 of I.P.C.

The scope of revision is limited, as this Court has to test the propriety, legality and regularity of the proceedings of the subordinate courts. But, here, in this case, viewed from any angle, the order passed by the Special Judge for C.B.I cases, Visakhapatnam does not suffer from any illegality and irregularity. In such case, this Court normally would not venture to interfere with the findings recorded by the Trial Court for limited purpose of deciding petitions. Therefore, I find no ground to interfere with the reasons recorded by the Trial Court and liberty is given to the petitioners to substitute the employee who is concerned with the day-to-day affairs of the company at Visakhapatnam in the place of Singupurapu Phalguna Rao and proceed further with the Trial. In case, the entire or part of the trial is completed, the petitioners are at liberty to file an application to recall the witnesses under Section 311 Cr.P.C and proceed further in the Trial and on filing such application, the C.BI. Court may consider the request, in accordance with law.

With the above direction, all the criminal revision cases are dismissed, granting liberty as stated above.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

11.08.2017
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