HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition Nos.12931 and 12937 of 2018

COMMON ORDER:

The petitioners 1 to 3 in Crl.P.No.12931 of 2018 are A.5,A.6 and A.21 by names Smt. P.Indrani Prasad, Mahita Prasad Caddel and Smt. Sunita Prasad respectively and the petitioner by name Ponnapula Venkata Sanjeev in Crl.P.No.12937 of 2018 is A.20 in C.C.No.1070 of 2017 pending on the file of IX Metropolitan Magistrate, Kukatpally, Hyderabad taken cognizance for the offences punishable u/Sections 409, 418, 420, 467, 468, 471, 120-B and 109 IPC and Section 82 of the Registration Act (for short, 'the Act') outcome of Cr.No.366 of 2017 of Kukatpally Police Station, dt.25.05.2016 registered on the report of the 3rd respondent-District Registrar, Malkajigiri in both the Criminal Petitions. The respective petitioners are seeking to quash the Calander Case proceedings pending against them.

2. There are three respondents to the quash petitions viz: State of Telangana represented by the Asst.Commissioner of Police, Miyapur Division, the Station House Officer, Kukatpally Police Station and the District Registrar, Malkajigiri of Medchal District. The First Information Report was registered against M/s Trinity Infrastructures Limited (for short, 'the Trinity') represented by its authorized signatory P.S.Parthasaradhi and Suvishal Power Generators Limited (for short, 'the Suvishal') represented by its authorized signatory P.V.S.Sharma.

3. The gist of the First Information Report shows A.4-the Trinity executed 4 documents in favour of the Suvishal, by transferring the land belongs to the Government in S.Nos.20,28,100,101 of Miyapur village registered by the Sub Registrar, at Sub Registrar Office, Kukatpally by documents viz: 1) No.472/IV/2016 for S.No.101 of Ac.231.00guntas, 474/IV/2016 for S.No.20 of Ac.109.18guntas, 3) 475/IV/2016 for Sy.No.28

of Ac.145.26guntas and 476/IV/2016 for S.No.100 of Ac.207.00guntas violating provisions of the Act and thereby they cheated the Government. Hence to take action.

4. The police final report after investigation filed in September/ October 2017 and the rubber stamp put by filling gaps in the cognizance order of the learned Magistrate shows allotment of C.C.No.1070/2017 taken on file for the offences supra against the A.1 to A.3 in ordering to issue summons/NBWs against them. The charge sheet in fact shows 24 accused of whom A.1 to A.3 Rachakonda Sreenivasa Rao, Sub Registrar, Kukatpally, P.S.Parthasaradhi-authorized signatory of M/s Trinity-A.4 and the PVS Sharma-General Manager in Goldstone Infra Tech and authorized signatory of the Suvishal-A.7 and Director of the Trinity-A.4. The A.2 and A.3 it appears were granted bail by the Apex Court. The A.4 and A.7 are the companies. The A.5,A.6, A.8 to A.24 are shown in abscondence and in the original charge sheet supra mentioned of supplementary charge sheet will be filed against them and the supplemental charge sheet was filed against the A.4 to A.24 as referred supra but the petitioners respectively are the A.5,A.6 and A.20 and A.21.

5. The contentions in quash petitions respectively are that all the petitioners/A.5,A.6,A.20 and A.21 are permanent residents of USA and of whom A.5 is mother of A.6 and A.21 who are however only nominal Directors of A.4- the Trinity, and the A.21 is also nominal Director of A.7- the Suvishal. It is averred by them respectively that they are not at all involved in day-to-day affairs of the A.4-the Trinity and A.7-the Suvishal. It is averred that there is a civil dispute in relation to the lands supra in the crime supra and there is also another crime vide Cr.No.387 of 2017 later registered and A.4-the Trinity filed W.P.(Crl) No.116 of 2017 before the Apex Court to quash the FIRs on the ground of lands are not belongs to Government and the dispute relating to the lands is pending before the

Apex Court and the Apex Court passed an order dt.18.08.2017 that the Directors of the Company shall not be arrested pending investigation of the respective two crimes. The police who filed charge sheet alleged that the A.4-Trinity executed six registered documents bearing Nos. 472 to 477/IV/2016 transferring and assigning SANAD rights of the land under investigation in favour of A.7-the Suvishal and by virtue of that there is huge loss to the Government and there are no any allegations against the respective petitioners-A.5, A.6 and A.21 of A.4-the Trinity and the A.20 is the Director of A.7-the Suvishal as nominal Directors respectively, as to any part they played much less involved in any day-to-day affairs of the Company. The police after filing of the charge sheet against the A.1 to A.3 supra on 08.09.2017, in the C.C.No.1070 of 2017 issued Section 41-A, 91 and 160 CrPC notices to the respective petitioners, and they submitted their reply through their counsel on 20.12.2017 stating that so far as the petitioners respectively concerned are residents outside the country and nothing to do with the day-to-day affairs and administration of A.4 or A.7 for not involved in the alleged transactions of sale and purchase in any capacity nor even signatories to the documents of sale by the A.4 to A.7 and they filed proof of their passport. They are falsely shown as if they are in abscondence though they are residents of USA and they did not receive earlier any summons or notices. They are not at all involved in any offence in any manner in relation to said transactions between the A.4 and A.7 companies respectively to launch prosecution and to take cognizance against any of the Directors of the companies for the alleged offences under IPC and Registration Act supra for which there must be specific allegations and averments as to how they are responsible and in what manner and when and what role they played as per the law laid down and the principle of alter ego in crime to make responsible by several expressions of the Apex Court reiterating the same in the recent past in

Sunil Bharathi Mittal Vs. CBI[1] and Gunmala Sales Pvt. Ltd. Vs. Anu Mehta[2]. The supplemental charge sheet not made available by the time the quash petitions filed but secured later and filed and with no basis and even they submitted passports in reply to Section 41-A Cr.P.C. notice as permanent residents of USA that was ignored though they have nothing to do with the day-to-day management and dealings of A.4 and A.7 companies. There is no presumption of Directors and partners of entity all must know the transactions for which the criminal liability alleged in the absence of how and in what manner their specific role to be attributed with specific allegations. In fact, during October, 2014 to July, 2017 in relation to S.Nos.20,28,100 and 101 of Miyapur, there are about 1509 registrations took place and no cases were registered against all those vendors and vendees but of the present ones and the dispute is purely and predominantly civil in nature. The police failed to draw distinction between the civil and criminal wrongs and the learned Magistrate did not even apply his mind to the facts.

6. It is further contended in addition to the above against the supplemental charge sheet that the same is nothing but reiteration of original charge sheet showing mechanically investigation and what is alleged of A.12 to A.19 as executants of General Power of Attorney, (GPAs) by names Smt. Ameerunnisa Begum W/o late Rafiuddin Khan, Smt. Fakrunnissa Begum D/o Rafiuddin Khan, Smt Masratunnisa Begum, another daughter of Raffiuddin Khan, Mohd. Mushaiduddin Khan s/o late Mohd.Rafiuddin Khan, Mohd. Fasiuddin Khan, Mohd. Jakiuddin Khan, Mohd. Ezajuddin Khan and Mohd.Kareemuddin Khan s/o late Mohd. Khairasuddin Khan in saying, having no authority over the lands in Sy.Nos. 20, 28, 44, 45, 100 and 101 of the total extent of Ac.816.04 guntas in favour of A.2 P.S.Parthasaradhi, who is the Director and authorized signatory of A.4-

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[1] 2015 4 SCC 609
[2] 2015 (1) SCC 103

Trinity. The A.22 and A.23 by names Mohd. Shareef S/o late Mohd. Ismail and Mohd.Aleemuddin Khan are henchmen of A.4-Trinity supra stood as witnesses to the GPA. The A.5, A.6 and A.21 are the Directors of A.4-Trinity. The A.8-Syed Rafiuddin, A.9-Shankaramanchi Satyanarayana @ Satyam and A.20-P.Venkata Sanjeev are Directors of A.7-the Suvishal and A.2 as GPA Holder of A.4-Trinity executed six documents for those lands in favour of A.7-the Suvishal while A.10-Mohd.Imtiyaz Pasha and A.11-Peri Venkata Rama Murthy @PVR Murthy employees of A.4-Trinity and Gold Stone Infratech Limited, as attestors to the SANAD deeds. The A.24-R.Subramanyam, documentation employee of Legal Department of M/s A.4-Trinity and M/s Goldstone prepared said GPA and SANAD deeds. Thereby all the A.1 to A.24 conspired and executed alleged SANAD deeds to deprive the lands belong to Government worth several Crores and those SANAD deeds executed were on improper stamp duty and registration by the registering authority–the A.1 by entering in Book-1 in spite of Book-4 causing loss to the Government as if a patta land alleged in the documents as inherited by virtue of SANAD deeds given by Rasheeduddin Khan Bahadur in favour of Hazratha Khadriunnisa Begum and Dt.11th Zikabha 1297 Hizri/Firman to the legal heirs Kaisaruddin Khan and A.12 to A.19. It is also averred in the additional charge sheet that for the 41-A notice dt.14.12.2017, A.4 to A.24, the A.4 to A.14 and A.17 to A.24 Sent their written replies through their advocates on 18.12.2017 and 20.12.2017 but the A.15 and A.16 did not respond and A.5,A.6, A.20 and A.21-the petitioners herein stated in their replies through advocates that they are staying abroad and nothing to do with the day-to-day affairs of the A.4 and A.7 and not at all involved in the alleged transactions covered by the crimes and not signatories to any documents concerned.

7. It is mentioned in the additional charge sheet clearly at page No.4 middle that from that replies and from the further investigation it reveals

the A.5, A.6 and A.21 are the citizens of USA are Directors of A.4-Trinity and A.20 is citizen of USA of Director of A.7 and all are permanent residents of America and not residing in India and are not participated in the management and affairs of A.4 and A.7 companies and not parties to the sale transactions. Though the A.2 did not submit photostat copies of USA passport, they are arrayed as accused being Directors of the A.4 and A.7 though it is inadvertently mentioned in the earlier charge sheet as in abscondence from the proof they submitted it is mentioned to issue summons to them. It is also averred that the A.8 to A.20, A.22 to A.24 committed the offences which are punishable above 7 years and Non Bailable Warrants asked to be issued against them. It also referred in the additional charge sheet that the A.8 and A.9 claimed not participated in day-to-day affairs of the Company and not signed in the minutes of the company and A.10 and A.11 in their replies stated that they are only working employees and upon the request of A.2, they signed on the documents as witnesses and did not have knowledge or interest in the document or in respect of the land. The A.12 to A.14, 17 to 19 in their replies stated that the lis is pending before the Apex Court and the property belongs to them and also stated as the dispute is civil in nature. The A.22 and A.23 in their reply stated that they signed in the GPA as witnesses and have no knowledge or interest in the document or land in question and mere signing as witnesses in any document does not make them accused of crime. The A.24 stated in his reply of small employee of A.4 and his duty is to look after the Court cases and coordinating with the Advocates and not at all involved in day-to-day administration and affairs and not a party to the sale transactions. It is further stated that in the supplementary charge sheet the CFSL report Ramanthapur, Hyderabad, the red enclosed portions stamped and marked Q1 to Q49 vide Ex.1 to Ex.IV under various light conditions such as incident light, transmitted light, oblique light, Ultra Violet & Infra Red light using Video Spectral Comparator, stereo Zoom, Microscope and lenses of various magnifications reveals, the marks of tampering by way of obliterating the original printed matter with opaque fluid at places. It is also mentioned in the additional charge sheet from page 5 onwards that lands in Sy.No.100 and 101 of about 340 acres is classified as Poramboke Kancha in Setwar and Classer register and Pacca Book from 1323 Fasli, that four villages namely Kesarjawala, Wakalgam, Miyapur and Bahaddurpally were confirmed to be Jaagir villages as sub-grants of Paigah Vicar-ul-Umrah given to Mohd. Khaisaruddin Khan. Section 6 of Hyderabad (Abolition of Jaagirs) Regulation Act, 1358(Fasli) speaks all Jaagirs in erstwhile state of Hyderabad, taken over by the Government and transferred to "Deewani" and rights and liabilities of the Jaagirs were thereby lapsed in favour of Jaagir Administration (Government) and the commutation sum in respect of these four villages were determined provisionally in the award No.1495, dt.08.04.1958 passed to that effect and since commutation sum also paid to the Jaagirdar, the descendents of the deceased Jaagirdar cannot claim for release for the above said villages and change of entries in the village Revenue records. Since after the commencement of the abolition of Jaagirs regulation, the question of appointment or recognizing any person to be as Jaagirdar whether in succession to a deceased Jaagirdar or otherwise does not arise. As per Sethwar of 1323 Fasli and Pahanies for the years 1950 to 1954, the lands are recorded as Government lands classified and Poramboke Kancha. The name of one Rahimunnisa Begum is recorded as Khathedaar/Pattedar in the above pahanies wrongly though as per Rule 4 of the Nowkalsa village Rules, the name of the Jaagirdars or Hissadar or any relative of the Jaagirdar(or holder of Paigah) shall not be recorded in the village record unless the Jaagir or Paigah lands were personally cultivated by the Jaagirdar or the holder of the Paigah and any pattas existing in the concerned village records in contravention of the said Rule shall be cancelled and recorded in the name of the person who was actually held the land. During 1994-95, the Land Grabbing Cases (LGC) Nos.21 and 22/94 and 131 and 136/95 filed before Spl.Court between the private parties initially claiming the title as successive purchases to the claims as pattadars and the Special Court given notice and added the Government as co-respondent on 10.09.1996 and its orders on 31.12.1997 stating the applicants and the respondents excluding District Collector are the land grabbers and directed the Revenue Divisional Officer, Chevella to take possession. Aggrieved thereby the Writ Petition Nos. 889/98 and 6240/95 and batch were filed before the High Court on various grounds and those were dismissed on 16.04.2003 confirming the order of the Special Court under the Land Grabbing Act saying the entire land in S.Nos.100 and 101 of Miyapur village belongs to Government and not to any private individuals or Societies and question of effecting mutation and change in revenue records does not arise and as such the proceedings initiated and the orders passed by the Mandal Revenue Officer are frivolous in nature and remand order passed by the Joint Collector even impugned in the Writ Petitions is futile exercise for any private individual or society claiming any entry in any revenue record for any right in respect of the lands in S.Nos. 100 and 101 of Miyapur supra that belongs to Government for none others have any right and SLP filed against the judgments of the High Court in a batch of Writ Petitions is with status quo order dt.25.08.2003.

8. It is while so, the A.2-Director and authorized signatory of A.4-Trinity supra got registered the irrevocable GPA No.14/BK-IV/2016, dt.15.01.2016, from the executants-A.12 to A.19, the legal representatives of Mohd.Khairasuddin Khan who lost their claim in the batch of Writ Petitions supra with no right or title to claim thereunder and the A.1-Sub Registrar, Kukatpally conspired with the A.2, A.12 to A.19, A.22 to A.24

violated Section 22-A(1)(b) and Section 82 of the Registration Act in registration of the GPA and the documents cause prepared by the A.24 at the office of A.4 on the instructions of A.2 and the witnesses are the A.22 and A.23 supra with an intent to get release of compensation deposited by the Metro rail in L.A.O.P.No.376 of 2012 for Sy.No.20 and 28 of Miyapur and later to disburse the amount of 70% and 30% ratio between the A.4 and A.12 to A.19 and A.2 promised to pay certain share of the amount to the A.1 who manipulated the facts by causing loss to Government around 265 crores of stamp duty and registration fees and the District Registrar in his audit report as L.W.4 pointed out the same that the documents are with no mention of market value of property and consideration. It is further mentioned in the additional charge sheet that the name of Smt. Jilani Begum is recorded in the pahanies for the years 1950-51 onwards as Pattadar for the survey numbers supra including in pahanies upto the year 1977-78 and in between she executed sale agreement dt.04.06.1967 for S.Nos.20 and 28 of Miyapur in favour of Commercial and Industrial Finances Company represented by its Director-Mahesh Chand and he filed suit O.S.No.35 of 1962 on the file of I Addl.Chief Judge, City Civil Court, for specific performance that was decreed on 28.3.1963 directing smt. Jilani Begum to execute sale deed and Jeelani Begum filed CCCA No.17/1964 against the decree in O.S.No.35 of 1962 and the same was allowed. There were applications filed for permission to alienate to the defendant of the matter and permission to purchase by Commercial and Industrial Financial Company and the Court directed to dispose of said applications. The Tahasildar, Hyderabad West passed orders in Case No.A4/6634/68 and A3/9334/61,dt.28.10.1968, refusing to give permission to alienate and also to purchase the lands in question to Smt. Jilani Begum and the CIFCL respectively as he is not competent to grant the same under the provisions of the Hyderabad Tenancy and Agricultural Lands Act and the appeal filed before the Joint Collector was dismissed and the CRP No.217 of 1970 was filed before the High Court was also dismissed on 13.08.1970 and Civil Appeal Nos.1597 and 1598 of 1971 was filed before the Apex Court.

9. The learned Public Prosecutor on behalf of the respondents to the quash petition reiterated the facts covered by the Supplementary charge sheet supra mainly. The learned counsel for the respective petitioners reiterated the grounds urged in the quash petition with reference to the facts covered by the charge sheet and supplementary charge sheet supra.

10. Heard arguments of both sides and perused the written submissions of the learned counsel for the respective petitioners in the two petitions and perused the charge sheet and supplementary charge sheet and other material on record.

11. The GPA is in favour of A.2 executed by the A.12 to A.19 the so called original owners and legal representatives of Mohd.Kaisaruddin Khan from so called land Jaagirdars was abolished and acquired by the Government and the names of the legal representatives of the original Jaagirdars taken advantage of continuation manipulated to cause execute the GPA by the A.12 to A.19 in favour of A.2 in question is the main averment. So far as that one concerned, the quash petitioners who are A.5, A.6 and A.21-Directors of A.4-Trinity that too staying in abroad and admittedly from the supplementary charge sheet reference to it from their reply to the Section 41-A, 90 and 161 CrPC notices and from the investigation done confirmed the facts. A.21 is also one of the nominal Directors of A.7 at abroad. The six SANAD deeds/documents in question bearing Nos. 472 to 477/IV/2016 concerned obtained by the A.7 or executed in favour of A.7 by the A.4 represented by the A.4's authorized signatory-A.2 as the GPA holder supra of the sale deeds, dt.15.01.2016. The GPA reference to sale agreement and the sale agreement not registered is one of the charge sheet observations. If at all sale agreement

is produced or made use of u/sec.33 of the same Act, it can be impounded and if not used, the question of impounding does not arise and till then the questions as to any in loss of revenue therefrom stamp duty on the sale agreement does not arise so far as instead of under Book No.4 entry, in Book No.1 by A.1 as part of privy between the A.1, A.4 and A.5 represented by the respective persons if any of A.7 and A.4 companies under the principle of *alter ego* and therefrom in loss of Government revenue concerned, it is a matter if at all any offence made out only in between. There is no vicarious liability under IPC for the IPC offences so also under the Registration Act against several Directors of the company and it is only if at all any vicarious liability to be made out specifically by make a mention of how many of the Directors are responsible for the day-to-day affairs of the Company and how and in what manner and with what role therefrom any of such Directors committed any specific offences. The law is very clear in this regard from the 3 Judge Bench expression of the Apex Court in Sunil Bharati Mittal supra on the principle of *alter ego* and under what circumstances and when Director or person in charge only of the affairs of the Company can also be prosecuted along with the Company as accused, particularly from paras-37 to 48 that:

"(ii) Principle of "alter ego", as applied:

37. The moot question is whether the aforesaid proposition, to proceed against the appellants is backed by law? In order to find the answer, let us scan through the case law that was cited during the arguments.

38. First case which needs to be discussed is Iridium India (supra). Before we discuss the facts of this case, it would be relevant to point out that the question as to whether a company could be prosecuted for an offence which requires mens rea had been earlier referred to in a Constitution Bench of five Judges in the case of Standard Chartered Bank v. Directorate of Enforcement-(2005) 4 SCC 530. The Constitution Bench had held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite mens rea to prove the guilt. Para 8 reads as under:

"8. It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue."

39. In Iridium India (supra), the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit, we will reproduce paras 59, 60, 61, 62, 63 and 64 herein:

"59. The courts in England have 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 persons that guide the business of the company, would be imputed to the corporation.

60. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. 1972 AC 153: (AC p. 156):

"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 [pic]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."

61. The principle has been reiterated by Lord Denning in Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. in the following words: (AC p.172):

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp. 713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty."

62. The aforesaid principle has been firmly established in England since the decision of the House of Lords in Tesco Supermarkets Ltd. v. Nattrass. In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of law: (AC p. 170 E-G) "I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not

always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. 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. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company.

64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530 . On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6) "6. 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."

40. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

41. In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company is attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a direction of a company can be held liable.

(iii) Circumstances when Director/Person in charge of the affairs of the company can also be prosecuted, when the company is an accused person:

42. 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.

43. 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.

44. 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.

45. 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:

45.1. Jethsur Surangbhai v. State of Gujarat (1984 Supp SCC 207) "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 [pic]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 fertilizers 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."

45.2. 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."

45.3. 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."

45.4. 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."

45.5. 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."

45.6. Sharon Michael v. State of T.N-(2009) 3 SCC 375(SCC p.383.para 16)

"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."

45.7. Keki Hormusji Gharda v. Mehervan Rustom Irani (2009) 6 SCC 475 (SCC pp.480-81, paras-16 to 19)

"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 [pic]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."

46. It is stated at the cost of repetition that in the present case, while issuing summons against the appellants, the Special Magistrate has taken

shelter under a so-called legal principle, which has turned out to be incorrect in law. He has not recorded his satisfaction by mentioning the role played by the appellants which would bring them within criminal net. In this behalf, it would be apt to note that the following observations of this Court in the case of GHCL Employees Stock Option Trust v. India Infoline Ltd(2013) 4 SCC (Crl) 414(SCC p.516, paras 19 and 21):

"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. (Thermax Ltd. v. K.M. Johny followed) xx xx xx

21. In the instant case the High Court has correctly noted that issuance of summons against Respondents 2 to 7 is illegal and amounts to abuse of process of law. The order of the High Court, therefore, needs no interference by this Court."

47. We have already mentioned above that even if the CBI did not implicate the appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of first class (and in those cases where Magistrate of the second class is specially empowered to do so) may take cognizance of any offence under the following three eventualities:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts; and

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

This Section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression "taking cognizance" has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd & Ors(2008) 2 SCC 492(SCC p.499,para-19) in the following words:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of: and when used with reference to a court or a Judge, it connoted "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking Cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence...."

48. Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously

whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not".

It is more particularly from paras-43 and 44 supra, it is made clear from the above that merely because the Company is a vendor, vicarious liability of the Director cannot be imputed automatically in the absence of statutory provisions and otherwise there is to be specific act attributed to the Director or any other person allegedly in control and management of the Company and to the effect as such person so responsible for the acts by and on behalf of the Company. There is nothing from the statements of the witnesses covered by the gist of the police final report in the form of charge sheet and the additional charge sheet supra as to how these respective petitioners from mere Directors of A.4-Company for A.5, A.6 and A.21 and mere Director of A.7-Company for A.20 when not parties to the documents of GPA and SANAD deeds and not even attesters and not even persons responsible for day-to-day affairs that too when they are at abroad to be made liable that too the additional charge sheet having so referred including from their explanation to Section 41-A CrPC notice with proof in saying what they mentioned is found correct from the further investigation of they are no way responsible for day-to-day affairs, one word in making a mention as being Directors, they are also responsible with the company is not sustainable under law from what is discussed supra particularly in paras-43 and 44 supra of Sunil Bharti Mittal supra and the learned Magistrate as discussed in Sunil Bharti Mittal though bound to apply his judicial mind to take cognizance though not so many reasons need be given, from the above and in the factual matrix not applied his mind in taking cognizance against these petitioners also. It is premature to go into what offences made out against the A.4 and A.7 and who others other than the petitioners responsible for day-to-day affairs among the so called vendors and vendees consequent to the six SANAD deeds executed by so called GPA executed by the original persons among A.12 to A.19 in favour of A.2 represented the A.4-company and A7 it is decided respectively and with what knowledge and privy if any but for to consider how far there is any sustainable accusation against any of the petitioners for any offence to take cognizance by the learned Magistrate from the police final reports supra.

12. Having regard to the above and in the result, the quash petitions are allowed by quashing the proceedings against the respective petitioners i.e. A.5, A.6 and A.21 in Crl.P.No.12931 of 2018 and A.20 in Crl.P.No.12937 of 2018 in C.C.No.1070 of 2017 on the file of IX Metropolitan Magistrate, Kukatpally, Hyderabad. They are acquitted and their bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, in these Criminal Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21.01.2019
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