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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION (APL) NO. 219 OF 2020

1 Provincial Automobile Company Pvt. Limited, Station Road, in front of State Bank of India, Nagpur, Through Managing Director Shri Ashish s/o. Harshraj Kale

2 Provincial Automobile Company Pvt. Limited, Station Road, in front of State Bank of India, Nagpur, Through Senior Manager Shri Gurmeetsingh Suri;

3 Provincial Automobile Company Pvt. Limited, Station Road, in front of State Bank of India, Nagpur, Through General Manager (Sales) Shri Sharad Dwivedi;

4 Shri Ashish s/o. Harshraj Kale Managing Director, Provincial Automobile Company Pvt. Limited, Station Road, in front of State Bank of India, Nagpur;

5 Shri Gurmeetsingh Suri Senior Manager, Provincial Automobile Company Pvt. Limited, Station Road, in front of State Bank of India, Nagpur,

6 Shri Sharad Dwivedi General Manager (Sales), Provincial Automobile Company Pvt. Limited, Station Road, in front of State Bank of India, Nagpur, ...Applicants

Versus

M/s. Shriram Transport Finance Company Ltd. (Formerly known as STFC Limited), A company incorporated under the Companies Act, 1956, having its registered office at 123, Angappa Naicken Street, Chennai – 600 001 and having one of its Branch Office at Manumay Plaza, Ramdaspeth, Nagpur, Through Power of Attorney Mr. Sachin Balram Zade, aged about 40 years, r/o. Nagpur.	...Respondent

Mr. S.V. Manohar, Senior Advocate assisted by Mr. A.A. Naik and Mr. H.V. Thakur, Advocates *for the applicants.*

Mr. D.V. Mahajan, Advocate *for the respondent.*

CORAM:	**MANISH PITALE, J.**
Reserved on:	**18th August, 2021.**
Pronounced on:	**26th October,2021.**

ORDER:

1. The applicants have approached this Court invoking Section 482 of the Code of Criminal Procedure (Cr.P.C.) to seek quashing of a criminal complaint filed by the respondent (original complainant). In the said complaint, the Court of Judicial Magistrate First Class, Nagpur, issued process to the accused, including the applicants herein. A Revision application filed on behalf of the applicants challenging the said order of the Magistrate was dismissed. According to the applicants, the complaint is defective and it is not maintainable against them for the reason that vicarious liability is sought to be foisted on the applicants for offences under Sections 420, 467, 468, 471, 475 and 120-B of the Indian Penal Code (IPC), which is impermissible. According to the applicants, it is only the original accused No.4 i.e. the former employee of the company Provincial Automobile Company Pvt. Limited and original accused No. 5 who deserve to face proceedings in the aforesaid complaint.

2. The respondent is a finance company in the business of providing loan facilities for the purchase of vehicles. The respondent filed a complaint on 16/09/2016, being Regular Criminal Complaint No. 3704 of 2016, against the applicants and original accused Nos.4 and 5. The respondent claimed that the said accused persons had defrauded the respondent thereby committing the aforesaid offences for the reason that while the original accused No.5 applied for a loan to the respondent for purchase of a Mahindra vehicle i.e. TUV300, she in connivance with the other persons i.e. Officers of Provincial Automobile Company Pvt. Limited actually purchased the vehicle KUV100. The respondent claimed that the engine number and chassis number of the vehicle were falsely stated in the documents and that the applicants before this Court and also the original accused No.4 i.e. Manager of the said Company had played an active role by hatching a conspiracy with the original accused No.5 (purchaser of the vehicle), to commit the said offences.

3. According to the respondent, when the officials of the respondent went to the house of original accused No. 5, they came to know of the fraud committed by the accused persons. There was an exchange of communications between the applicants and the respondent, wherein the applicants blamed their own Manager i.e.

the accused No.4. Thereafter, the respondent claims to have visited the police station on 07/07/2016, for lodging a report, but when no action was taken in the matter the respondent was constrained to file the said complaint.

4. On 14/10/2016, the Magistrate issued process against all the accused persons for the aforesaid offences, upon perusing the complaint and verification of the respondent. Aggrieved by the same, the applicants filed Revision Application before the Court of District Judge. By judgment and order dated 30/11/2019, the Court of Adhoc District Judge-2 and A.S., Nagpur dismissed the Revision Application. As a result, the applicants along with the other two accused persons are facing criminal proceedings in the said complaint.

5. The applicants filed the present application, wherein on 26/02/2020, this Court issued notice and granted ad-interim stay of the proceedings in the criminal complaint as regards the applicants. The interim stay has continued to operate.

6. Mr. S.V. Manohar, learned Senior Counsel appearing for the applicants submitted that the complaint filed by the respondent itself deserves to be quashed for the reason that vicarious liability for offences under the IPC is unknown to law. It is further submitted that the contents of the complaint show that general, vague and omnibus allegations have been levelled against the applicants, which is unsustainable. It is further submitted that the Provincial Automobile Company Pvt. Limited has been shown as accused Nos.1 to 4 through its Officers i.e. Managing Director, General Manager and Managers, thereby demonstrating that the frame of the complaint itself is defective. It is submitted that communications exchanged between the officials of the said company and the respondent would show that the company took strict action against the original defendant No.4 i.e. the Manager who had connived with the original accused No.5 i.e. the purchaser to defraud both the respondent as well as the Provincial Automobile Company Pvt. Limited. The communications would show that the applicants demonstrated to the respondent about the possible involvement of some of the officials of the respondent also in the entire incident. According to the applicants, the respondent was more interested in the return of its money, indicating that the dispute between the parties was of civil nature and that the criminal complaint was filed before the Magistrate only as an arm twisting tactic.

7. The learned Senior Counsel relied upon the judgments in **S.K. Alagh v/s. State of Uttar Pradesh and others** [(2008) 5 SCC 662], **Maksud Saiyed v/s. State of Gujarat and others** [(2008) 5 SCC 668] and **Sharad Kumar Sanghi v/s. Sangita Rane** [(2015) 12 SCC 781].

8. On the other hand, Mr. D. V. Mahajan, learned Counsel appearing for the respondent submitted that there was no substance in the contentions raised on behalf of the applicant. By inviting attention to statements made in various paragraphs of the complaint, it was submitted that specific allegations were made against the applicants herein. The involvement of the applicants was obvious in the manner in which the respondent was defrauded and therefore, there was no question of the respondent seeking to foist vicarious liability on the applicants before this

Court. It was further submitted that the extent of involvement of each of the accused would become clear from further proceedings that would be undertaken and that the complaint did not deserve to be nipped in the bud.

9. It was submitted that the Magistrate had applied his mind while issuing process and the Court of Adhoc District Judge had correctly dismissed the revision application, thereby confirming the order of the Magistrate. It was submitted that the judgments upon which reliance was placed on behalf of the applicants were not applicable to the facts of the present case.

10. In the present case, it would be necessary to consider the contents of the complaint filed by the respondent to analyze the role ascribed to the applicants in respect of the incident in question. The exchange of communications between the parties is admitted and the same is already part of the record of the Magistrate. It needs to be considered as to whether the applicants as the Managing Director, General Manager and Senior Manager of the said company are justified in claiming that vicarious liability is sought to be foisted upon them, which is unsustainable in criminal law.

11. The material on record indicates that the original accused No.5 approached the said company i.e. Provincial Automobile Company Pvt. Limited, which has a dealership of Mahindra vehicles, for purchasing the vehicle TUV300. It appears that the processing of papers for grant of loan by the respondent was initiated on the basis that the vehicle TUV300 was to be purchased, while eventually the vehicle KUV100 was actually purchased by the original accused No.5. It appears that through the process of preparing the papers and applying for loan the details of the engine number and chassis number were not correctly stated and that this came to light when the officials of the respondent visited the place of the accused No.5 i.e. the original purchaser and found that the vehicle actually purchased was KUV100 and not TUV300.

12. The exchange of communications between the respondent and the applicants, particularly applicant No.3 / 6 would show that when the respondent informed the applicants about the said incident, the original accused No.4 i.e. Bhushan Hiwase was confronted and he confessed that he had connived with the original accused no.5 i.e. the purchaser, to indulge in the aforesaid activities. It appears that the original accused No. 4 was forthwith removed from his position as Manager in the Provincial Automobile Company Pvt. Limited and the applicants communicated to the respondent that they would take all necessary steps to take the matter further. It was emphasized by the applicants that the aforesaid incident had taken place due to the activities of the original accused No.4 -Bhushan Hiwase in his individual capacity and therefore, appropriate action could be taken in the matter. The communications addressed by the respondent to the said Provincial Automobile Company Pvt. Limited would show that the respondent was more interested in refund of the entire amount. The documents also show that the original accused No.4 -Bhushan Hiwase had tendered a cheque of rupees two lacs with the respondent for settling the matter, which the respondent refused to accept.

13. The material on record also shows that on 01/09/2016, a Manager of Provincial Automobile Company Pvt. Limited caused a First Information Report (FIR) to be registered against the said Bhushan Hiwase (original accused No. 4 in the present complaint), Anju Upadhyay (original accused No.5 in the present complaint) and her husband Santosh Upadhyay for offences under Sections 408, 468 and 471 read with 34 of the IPC. The said company as the informant/complainant gave details of the aforesaid incident and reported to the police that the said Bhushan Hiwase had defrauded the said company by taking booking for the vehicle TUV 300 and thereafter, when the loan was sanctioned by the respondent, actually sold the vehicle KUV100 to the purchaser. Proceedings in the said matter pertaining to the FIR are still pending. It is in this backdrop that on 16/09/2016, the respondent filed the aforesaid complaint before the Magistrate, claiming that the applicants along with the original accused Nos.4 and 5 had committed the said offences.

14. A perusal of the complaint would show that Provincial Automobile Company Pvt. Limited has been shown as an accused four times as accused Nos.1 to 4 and at each place the said company has been shown as represented by the Managing Director, General Manager, Senior Manager and Manager. It is for this reason that in the present application before this Court the applicants are original accused No.1 to 3 as shown in the original complaint and applicant Nos. 4 to 6 are the individuals working as Managing Director, General Manager and Senior Manager. The very frame of the complaint appears to be defective. The contents of the complaint would show that wherever there is a reference to accused Nos.1 to 4, it is stated in a general manner that they colluded with original accused No.5 in committing the said offences.

15. It is important that the offences alleged against the accused pertain to cheating, forgery, forgery of valuable security using forged documents as genuine and counterfeiting device or mark used for authenticating documents. The nature of the offences alleged under the IPC would require specific allegations against each of the accused persons as regards the role played by each of them. The complaint is also required to divulge how each of the accused persons acted in the manner alleged, from the very beginning with an intention to commit the said offences.

16. In the present case, such allegations are not found against the applicants herein. It is simply stated that the applicants are responsible for the manner in which the respondent stood defrauded.

17. In this regard, a perusal of the judgments on which the learned Senior Counsel for the applicant placed reliance i.e. **S.K. Alagh v/s. State of Uttar Pradesh and others, Maksud Saiyed v/s. State of Gujarat and others and Sharad Kumar Sanghi v/s. Sangita Rane** (supra) shows that the concept of vicarious liability is unknown to criminal law, except where special statutes create vicarious liability. Some of such statutes are The Negotiable Instruments Act, The Employees Provident Funds and Miscellaneous Provisions Act and The Essential Commodities Act. Insofar as IPC is concerned, vicarious liability cannot be foisted on the accused merely because they happen to be the Managing Director, Senior Manager and Manager of the aforesaid company. The allegations pertaining to the alleged offences have to be specific. Vague allegations against the accused only because they happen to be officials of the accused company cannot be permitted and as per the position of law laid down in the aforesaid judgments, such a complaint deserves to be quashed. In the case of **Maksud Saiyed v/s. State of Gujarat and others** (supra) it has been held as follows:

> *"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.*

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15. This Court in Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others [(1998) 5 SCC 749], held as under:

"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."

The learned Magistrate, in our opinion, shall have kept the said principle in mind."

18. In the present case, the respondent has not specifically stated in the complaint as to in what manner the applicants before this Court had indulged in activities that would indicate ingredients of the offences alleged against them or that they acted in such a manner with an intention from the very beginning to commit the said offences. In the absence of specific allegations, merely because the applicants happen to be the Managing Director, General Manager and Senior Manager of the company ought not to lead to a situation where they are made to face criminal proceedings on the complaint filed by the respondent. The role of the applicants is not specified in the complaint and at every place, it is generally stated that the applicants were responsible for the incident in question. The contents of the complaint fall short of even prima facie indicating ingredients of the said offences, in so far as the applicants before this Court are concerned. In the case of **Smt. Nagawwa v/s. Veeranna Shivalingappa Konjalgi and others** [(1976) 3 SCC 736], the Hon'ble Supreme Court has held that the complaint deserves to be quashed where allegations made in the complaint do not disclose the essential ingredients of an offence in so far as the accused seeking quashing of the complaint are concerned.

19. It is also laid down by the Hon'ble Supreme Court in the case of **Indian Oil Corpn. versus NEPC India Ltd. and others** [(2006) 6 SCC 736] that where a criminal complaint is used as a weapon of harassment, power under Section 482 of CrPC should be exercised for quashing such a complaint.

20. Applying the said position of law to the facts of the present case, insofar as the applicants before this Court are concerned, it becomes clear that the complaint does not deserve to proceed further against them. The concept of vicarious liability is unknown to criminal law, as regards the aforesaid IPC offences. It is evident that the respondent herein may have a grievance against the original accused Nos.4 and 5, but to foist criminal liability on the applicants, merely because they happen to be Managing director, Senior Manager and General Manager of the company, cannot be permitted. Therefore, the complaint deserves to be quashed in respect of the applicants before this Court. Consequently, the order of the Magistrate issuing process and the judgment and order of the Court of the Adhoc District Judge dismissing the revision application are also rendered meaningless and unsustainable.

21. In view of the above, the present application is allowed in terms of prayer clauses A, B and C. Consequently, the criminal complaint bearing Regular Criminal Case No.3704 of 2016, pending before the Court Judicial Magistrate First Class, Nagpur, is quashed, insofar as the applicants before this Court are concerned.

22. It is made clear that the observations made in this order ought not to be taken as any view expressed by this Court regarding the role of original accused Nos. 4 and 5.

MANISH PITALE, J.

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