

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.204 of 2021

Arising Out of PS. Case No.-244 Year-2020 Thana- RIGA District- Sitamarhi

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1. OM PRAKASH DHANUKA Son of Late Purshottam Lal Dhanuka Chairman cum managing Director, Riga Sugar Company Ltd. resident of Dhanuka Gram, P.O. and P.S. - Riga, District - Sitamarhi.
 2. Ram Kumar Pandey Son of Late Gajadhar Pandey General Manager (Commercial), Riga Sugar Company Ltd. resident of Riga Sugar Mill, Dhanuka Gram, P.O. and P.S. Riga, District - Sitamarhi.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY HOME DEPARTMENT, GOVERNMENT OF BIHAR
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Sitamarhi, Bihar.
4. The Superintendent of Police, Sitamarhi, Bihar.
5. The officer In Charge, Riga Police Station, Sitamarhi.
6. The Cane officer, Muzaffarpur.
7. The Cane Commissioner, Sugarcane Department, Government of Bihar, Patna.
8. The Bank of India, Kolkata Large Corporate Branch 5 BTM, Sarani, Kolkata- 700001 represented through its General Manager, Local Office at Sitamarhi, Bihar
9. The Union Bank of India, Head Office at 39, Vidhan Bhawan Marg, Nariman Point, Mumbai- 400021, through its General Manager having Local office at Sitamarhi, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Counsel Mr. Ashish Giri, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha AC to AAG -3 Mr. Kumar Alok, Advocate Mr. Sanjay Singh Thakur, Advocate Mr. Baua Jha, Advocate



CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 11-10-2023

1. Two petitioners have filed the present writ application for quashing of the F.I.R bearing Riga P.S. Case No. 244 of 2020 [Annexure-1] dated 18/08/2020 registered for the offences under Sections 406, 409, 420 & 34 of the I.P.C. and for quashing of entire prosecution against the petitioners including the order of cognizance dated: 16/04/2022 taken by the court of learned A.C.J.M.-VI, Sitamarhi in G.R. Case No. 2917 of 2020 under Sections 406, 420 & 34 of the I.P.C., which has been challenged by way of I.A. No. 1 of 2022.

2. The petitioner No. 1 is the Chairman -cum- Managing Director and the petitioner no. 2 is the General Manager (Commercial) of the Riga Sugar Company Limited [hereinafter referred to as the 'sugar company'].

3. The factual background of the case in brief is that in the year 2013 a tie-up arrangement was entered into by the bank for KCC loan in favour of sugarcane growers in which sugar company was a guarantor for the repayment. On 20-09-2013 a letter was issued by the Bank of India providing the procedure for KCC loan in favour of the sugarcane farmers at the instance of sugar company which became the guarantor and took the liability to re-pay the loan amount. Clause (vi) of the aforesaid



letter states that the loan was to be disbursed only as per the advice of the sugar company and in terms of clause (vii) the re-payment was to be made by the sugar company along with interest and other charges. Similar arrangement was again entered into with the bank on 07.07.2016 [Annexure-2A]. Agreement was also entered with the sugarcane growers and sugar company and in terms of the same the sugarcane growers / farmers authorized the sugar company to pay to the bank the sale proceeds of the sugarcane, which is sold by the farmers to the sugar company, as against re-payment of KCC advance / loan. Copy of the agreement is at Annexure-3 to the writ application.

4. The sugar company thus gave an undertaking to the bank with regard to recovery of advances meaning thereby that the sugar company undertook to pay the sale proceeds of the sugarcane to the bank itself against liability towards advance / loan given to the farmers / sugarcane growers. The sugar company executed a deed of guarantee for re-payment of the advance / loan. The guarantee agreement is at Annexures- 4 & 5 to the writ application.

5. The KCC advance / loan was paid to the farmers by the bank at the instance of sugar company. The sugar company



instead of directly paying the sugarcane prices to the farmers had to repay the loan / advance given to the farmers by the bank under KCC. Thus, it was an alternative arrangement of cane price payment as could be evident from the tripartite / tie-up arrangement between the company, bank and the farmers. The bank gave three lakh KCC loan / advance to the farmers. The farmers were not required to pay the loan amount but the sugar company had to re-pay the loan of the farmers on condition that the farmers had to give / supply sugarcane to the sugar company. In other words, the farmers appointed the sugar company to re-pay the loan amount on their behalf to the bank for sugarcane supply made by them to the sugar company. As per the arrangement the farmers would not claim the price of sugarcane from the sugar company as the said amount was to be paid to the bank as against re-payment of KCC advance / loan. This process was going on smoothly since 2013 and cane prices to the farmers were duly being paid to them by way of re-payment of KCC advance amount by the sugar company in terms of the above mentioned understanding.

6. According to the petitioners the said arrangement from the very beginning was within the knowledge of the State Officials and the Officers of the Cane Department, Government



of Bihar. The interest of the farmers, bank and the sugar company was duly protected by way of such arrangement as the cane prices were timely being paid to the farmers without casting any liability upon them. On 22.08.2016 the Cane Commissioner, Sugarcane Department, Govt. of Bihar through his letter enquired from the sugar company regarding the manner as to how KCC loan was shown as payment towards cane prices for the year 2015-16, which was immediately replied by the sugar company by its letter dated 23.08.2016 explaining therein the KCC arrangement and further stating that since the sugar company was under precarious condition and were undergoing losses, the bank denied to give capital loan and accordingly an alternative arrangement of KCC loan to the farmers with liability of the sugar company to repay the KCC loan amount was made. This benefitted the farmers as well as the bank. The said arrangement continued up to 2018 after which the sugar company pursuant to the direction of the Cane Commissioner, Govt. of Bihar started making payment of the prices of the sugarcane directly into the account of the farmers but dispute arose when the company failed to repay the loan amount and the account was declared N.P.A. The bank issued notice to the farmers and the allegation of fraud was made upon



the petitioners. According to the petitioners they have repaid the loan between 2013-18. The petitioners *vide* their letters dated: 02.01.2019, 13.07.2019, 17.07.2019, 14.08.2019, 23.11.2019, 06.03.2020 wrote to the G.M., Bank of India, Principal Secretary, Department of Sugarcane Industry and Cane Commissioner etc. intimating them that the sole liability for repayment of the loan was upon the company and hence demand notice could not be issued to the farmers.

7. The petitioners also requested that they may be permitted to pay some due amount. Annexure- 12 is a letter dated 13.05.2020 issued by the Department of Sugarcane Industry, Government of Bihar to the sugar company by which an explanation has been sought from the sugar company with regard to KCC loan and the same was replied by the sugar company through the Chief General Manager on 14/05/2020. A report dated 18.02.2020 was submitted by the Assistant Cane Commissioner that the sugar company had not taken any prior approval from the Sugarcane Department and the sugar company opened KCC loan account of the farmers who are 12,000 in number but actually the amount deposited in the loan account of the farmers were not the cane price payment but was repayment of KCC loan advance given to the farmers which is



around rupees sixty crores. Accordingly, Cane Commissioner vide letter no. 632 dated 08.06.2020 issued direction to the Cane Officer, Muzaffarpur to lodge an F.I.R. and charge sheet has been submitted on 30.10.2021 and cognizance has been taken on 16.04.2022.

8. Mr. Y.V. Giri learned senior counsel for the petitioners argued that entire prosecution against the petitioners is fit to be quashed as being an abuse of the process of law inter alia on the ground that prosecution is not maintainable against the officials of the sugar company in absence of sugar company not made a party inasmuch as no vicarious liability is there against the officials of the sugar company under the alleged offences. He further submits that upon bare perusal of the First Information Report no offence much less any offence under Sections 406, 420, 34 of the I.P.C. is made out against the petitioners as nothing in the entire investigation has come to show such ingredients for constituting the said offences qua the petitioners. This is out and out a civil dispute arising out of tie-up / tripartite agreement. The company has undergone liquidation in which the issue of KCC loan has also been taken note of and respective claims have been filed by the respondent- Banks. The issue stands covered under special enactment providing remedy for



such breach of agreement and hence general offence under the I.P.C. is not attracted. The order of cognizance and summoning is mechanical without application of judicial mind. Elaborating his argument learned senior counsel submits that the enquiry report which has been made the basis of the F.I.R. and is a part of the F.I.R. shows that the above arrangement / scheme of loan was entered into with the consent of the farmers. There is no role of the petitioners in the entire transaction but they have merely been made accused because they are holding post in the sugar company. The sugar company has not been made party and there is no allegation against them in individual capacity. They are not the signatory of the tri-partite or the tie- up arrangement. The sugar company being a juristic person having a legal entity entered into the agreement through its representatives hence it can be sued in its personal capacity which gives limb to the argument of the petitioners that no vicarious liability could be fastened against them. In absence of the sugar company being made a party prosecution against the petitioners who are the officials of the sugar company became untenable in the eyes of law.

9. Learned counsel relies upon the judgment of the Hon'ble Apex Court in this regard reported in Sharad Kumar



Sanghi vs Sangita Rane (2015) 12 SCC 781; Shiv Kumar Jatia vs State (NCT of Delhi) reported in (2019) 17 SCC 193 and (2020) 3 SCC 240.

10. He next argues that the dispute in hand is totally civil in nature in terms of the tie-up arrangement and agreement executed by the farmers, bank and sugar company. The sugar company being the guarantor to the bank and also the payer of loan amount of the farmers could be held liable for recovery under Public Debt Recovery Act or Bihar & Orissa Public Demand Recovery Act, 1914 and also there is special enactment i.e. Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 [hereinafter referred to as the 'Sugarcane Act'] wherein recovery proceedings as provided in terms of Section 43 read with Rule 32 and non payment has been made punishable under Section 52 of the Sugarcane Act. In support of this argument, learned senior counsel relies upon (2009) 7 SCC 526; (2017) 2 SCC 18 and (2012) 2 PLJR 413.

11. One of the financial creditor namely Anit Finevest Pvt. Ltd. has filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the N.C.L.T. bearing Case No. CP (IB) No. 68 / KB / 2021 against the sugar company in which the N.C.L.T. vide its order dated 05.08.2021 has admitted



the case and has directed for moratorium under Section 14. Further the Bank of India and the Union Bank Of India under Insolvency and Bankruptcy Regulation Code, 2016 have filed their claim which amongst other includes the KCC loan amount. In the said case notice has been issued along with agenda and resolutions proposed to be passed have been undertaken. Thus the contention is that since appropriate recovery proceedings under the Insolvency and Bankruptcy Code, 2016 have been initiated by the creditor against the sugar company accordingly continuation of the instant F.I.R. will amount to the abuse of the process of law. No criminal offence under the provisions of the I.P.C. gets attracted as such the continuation of the F.I.R. is bad in law and is wholly unjustified.

12. Learned counsel also argued that the essential ingredient of the offence as alleged in the F.I.R. as well as order taking cognizance is not made out against the petitioners. Section 409 & 406 of the I.P.C. is not made out as the petitioners are neither public servants or bank or merchant nor there is any criminal breach of trust as the petitioners were never entrusted with any property of the farmers or they ever misappropriated or converted such property for their own use either in official capacity or in their individual capacity. In fact



there is no allegation in the F.I.R. that any cane price payable to the farmers has been utilized by the present petitioners or such amount instead of being deposited in the account of the farmers has been deposited in the account of the petitioners.

13. Similarly, Section 420 I.P.C. is also not attracted as the petitioners have not entered into any agreement with the farmers nor they have cheated or dishonestly induced the farmers to deliver any property. This is not the case of the informant or the respondents that from the very inception the intention of the petitioners was to cheat the farmers rather the case is that the farmers have been duly paid the prices of the cane by the sugar company. There was no intention to cheat the farmers from the beginning. He has relied upon (2019) 2 SCC 401.

14. On the other hand, learned counsel appearing for respondent nos. 6 & 7 i.e. Cane Officer, Muzaffarpur and Cane Commissioner, Govt. of Bihar argued that upon application made by the Secretary of the sugarcane growers, the Cane Commissioner, Sugarcane Department, Government of Bihar constituted a three men committee to inquire into the matter who submitted their report before the Sugarcane Commissioner on 18-02-2020. As per the report, the sugar company opened



accounts of the farmers in lieu of making cane price payment but in actuality the amount deposited in the accounts of farmers were not against cane price payment but was KCC loan advance payment which is around sixty crores in favour of about 12,000 farmers. Now the situation is that the loan account has become N.P.A. and the bank is issuing notice to the farmers for recovery of the loan amount. Accordingly, Cane Commissioner vide letter dated 632 dated 08.06.2020 issued direction to the Cane Officer, Muzaffarpur to lodge an F.I.R. thereafter Riga P.S. Case No. 244 of 2020 has been registered, charge sheet has been submitted and cognizance has been taken. The sugar company is a habitual defaulter and also several cases are pending against it under Public Demand Recovery Act, 1914 before the Certificate Officer, Sitamarhi. Taking into consideration this fact the Department took a decision that sugar company has to make payment to the sugarcane growers directly into their account for the sugarcane prices. Even today huge amount is pending and the sugar company is closed for the last two crushing seasons. Some of the paragraphs of the case diary support the prosecution case. The sugar company management never took prior approval of the sugarcane industries department with regard to KCC loan.



15. On the other hand, learned counsel for the respondent nos. 8 & 9 / Banks argued that the Bank is not the complainant and has appeared on notice before this Court. They submit that the farmers were unaware about the loan and they were of the impression that payment to them is for the sugarcane which they have sold. The Bank was in tie with the sugar company to provide loan to the farmers. Loan was given for the expenses of the seeds, fertilizers and for growing of sugarcane. The loan was for cultivation of sugarcane and it was not for purchase of sugarcane. The loan amount given to the farmers was utilized by the petitioners. This amount was returned by way of repayment to the bank till 2017 but thereafter the company defaulted. The petitioners and their wife were guarantor in their individual capacity.

16. I have heard learned counsel for the parties and have perused the materials on record carefully. The basis of the First Information Report is the enquiry report submitted by Assistant Cane Commissioner, Bihar Patna and others dated 18.02.2020. In the enquiry report the enquiry committee has noted that the Bank of India produced M.O.U. and copy of the loan decision and stated that KCC loan process was initiated between 2013 to 2018 in which 3036 farmers were sanctioned a total loan



amount of rupees 4928.90 lakh and at present a sum of Rs. 36,08,53,328.00 with interest up to September, 2019 is due to the bank towards the loan amount. The report further says that the loan was granted to the farmers on the basis of a tie-up arrangement between the sugar company and the farmers for the purposes of growing sugarcane in which the farmers have also given their consent for grant of KCC loan. The sugar company is the guarantor of the loan given to the farmers and the farmers are the principal borrowers. From the M.O.U. of both the banks it is clear that farmers were given advance amount by way of loan for sowing and growing the sugarcane on the assurance / guarantee of the sugar company and the liability to pay the loan amount along with interest is upon sugar company. The sugar company has given written undertaking in this regard. The sugar company has accepted the liability and has reiterated the KCC loan amount given to the farmers shall be returned to the bank. The company is bound to repay KCC loan amount to the bank.

17. The report further describes that no guarantee was taken from the farmers at the time of payment of KCC loan. Though the regional offices of both the banks paid the KCC loan to the farmers on the basis of M.O.U. however no information in this regard in the past was given to the



Department nor any approval was taken by the sugar company. The KCC loan amount was credited in the bank account of the farmers. The report concluded that it is the responsibility of the sugar company under the M.O.U. to repay the KCC loan amount along with interest to the bank. On the basis of enquiry report, Cane Commissioner, Bihar directed for registration of F.I.R. and Cane Officer, Muzaffarpur has lodged the F.I.R. with the allegation that management of sugar company / occupier and the Director misappropriated and cheated to the Government by representing the repayment of KCC loan as the payment of cane prices to the farmers.

18. The F.I.R. was lodged on 18-08-2020 on the basis of enquiry report dated 18.02.2020 alleging that the sugar company kept the department in dark regarding payment of sugarcane price to the farmers whereas sugarcane price was being paid via re-payment of KCC loan with interest. It is also not disputed that between 2013 to 2018 arrangement of KCC loan / advance to the farmers by the bank and repayment of the same by the sugar company continued uninterruptedly. It is only due to loss suffered by the sugar company and loan account being declared N.P.A. due to non payment of loan amount with interest by the sugar company the present problem started after 2018-19. The



sugar company has gone in liquidation in accordance with Section 33 of Insolvency and Bankruptcy Code, 2016 where the banks have raised their claim against the sugar company in liquidation. During the course of argument learned senior counsel appearing for the petitioners has submitted that the sugar company being the guarantor is liable to pay the loan amount to the bank with interest and the matter is at present pending before N.C.L.T. under the Insolvency and Bankruptcy Code, 2016 in which moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 has been granted.

19. Upon perusal of the letter dated 22.08.2016 of the Cane Commissioner, Bihar, kept at Annexure- 6 it appears that the Cane Commissioner had enquired from the sugar company regarding the manner in which KCC loan was shown as payment against the cane price for the year 2015-16. The aforesaid letter of the Cane Commissioner was immediately responded by the sugar company by its letter dated 23.08.2016 explaining the KCC arrangement akin to cash credit account which was opened with the objective to pay cane price timely and faster without any liability of the farmers inasmuch as KCC arrangement did not cast any responsibility upon the farmers and that the repayment of loan and interest was purely the



responsibility of the sugar company. The same ground was reiterated in the sugar company's letter dated 03/ 09 / 2018. The aforesaid letters show that the Department was well informed by the sugar company regarding the KCC loan arrangement which goes to show that from the very beginning there was no intention on the part of the sugar company or its officials to deceive or cheat the Department, banks or the farmers. In terms of KCC loan arrangement it is evident that the sugarcane farmers authorized the Sugar Company to pay to the bank the sale proceeds of the sugarcane which in turn was sold by the farmers to the sugar company as against repayment of KCC advances. The sugar company by letter dated 13.07.2019 and 17-07-2019 intimated the bank as well as Principal Secretary, Department of Sugarcane Industry, Govt. of Bihar that the repayment was the sole responsibility of the sugar company and not of the farmers.

20. Chapter-V of the Sugarcane Act deals with payment of price of cane and other matters. Section 43 of the same talks about payment of price of cane and sub section (1) of Section 43 says that the occupier of a factory shall make such agreements for payment of price of cane as may be prescribed. Sub-section 5 of Section 43 stipulates that notwithstanding anything



contained in sub-section (2), sub section (3), sub section (4) the occupier of the factory or the Secretary or the Treasurer of the Co-operative Society or any other person in-charge of payment on behalf of such society or the owner of the unit shall be punished under Section 52 for failure to make payment of the price in time. Sub section (6) of Section 43 says that any arrears of the price of cane, with interest thereon, if any, shall be recoverable as public demand or arrear of land revenue. Proviso to Section 44 of the Sugarcane Act says that no deduction from the cane price shall be made without prior or due voluntary agreement of the concerned cane-grower. Section 50 of the Sugarcane Act deals with advance of loan by occupier of factory which says that occupier of a factory or any person working on his behalf or any bank may advance loan to a cane-grower or a co-operative society for such purposes connected with cultivation or supply of cane to the extent or the amount and the manner as may be prescribed. Chapter VI of the Sugarcane Act deals with miscellaneous provision and Section 52 of the same deals with penalty for offences committed under the Sugarcane Act and says that if any person contravenes or attempts to contravene or abets the contravention of any provision of this Act or the Rules or of any order made or direction given



thereunder or the terms and conditions of any licence, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both and in case of a continuing contravention with an additional fine which may extend to one thousand rupees for every day during which such contravention continues after conviction for the first contravention.

21. Upon close scrutiny of the provisions of the Sugarcane Act it appears that the occupier of a factory can make agreement for the payment of price of cane with prior approval and due agreement of the concerned cane growers. The failure to make payment to the cane growers is punishable under Section 52 of the Sugarcane Act. The provisions of advance / loan by occupier of a factory or any bank to a cane grower or a co-operative society for the purpose connected with cultivation or supply of cane to the extent of the amount and in the manner as may be prescribed is also permissible under the Sugarcane Act. The sugar company taking cue from the provisions of the Sugarcane Act entered into a tripartite / tie- up agreement for providing advance / loan to the farmers / cane growers for the purposes of cultivation of sugarcane and supply of cane to the sugar company in which sugar company became guarantor for



loan amount paid to the farmers as KCC advance. The farmers also voluntarily agreed to this arrangement / agreement and accepted the loan for the purposes of cultivation of sugarcane. The bank with open eyes sanctioned and disbursed the loan amount to the farmers. The loan amount with interest was being paid regularly for a substantial period of five years between 2013 to 2018 by the sugar company, however, subsequent failure on part of the sugar company or any breach of agreement cannot be said to be dishonest intention to deceive and cheat the Department. The Department was also informed in 2016 regarding this arrangement but it failed to take any action at that point of time and after the loan accounts having been declared N.P.A. and the loan amount became due, all these exercises have been undertaken by the Department. If there is some default in re-payment of loan, the same may constitute an offence under the Sugarcane Act. From perusal of the F.I.R. as well as enquiry report it is evident that no material has come to show that any property was entrusted to the sugar company or the petitioners which they dishonestly converted for their own use so as to satisfy the ingredients of Section 405 I.P.C., which is punishable under Section 406 I.P.C. Likewise Section 420 I.P.C. is also not made out.



22. In the present case admittedly the sugar company went for liquidation after loan account has been declared N.P.A. In order to recover the loan amount with interest the banks have filed petitions before N.C.L.T. The mere inability of the sugar company to return the loan amount to the banks cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown from the very inception. It is not disputed that the loan amount was paid regularly in the beginning for about five years.

23. In Hridaya Ranjan Prasad Verma & Ors. versus The State of Bihar & Another, reported in (2000) 4 SCC 168 the Hon'ble Supreme Court has held that distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention



at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.

24. Upon reading of the F.I.R. and the enquiry report which is the part of the F.I.R. on its face value without adding or subtracting anything in my considered view the basic essential ingredients of dishonest intention, misappropriation and cheating are missing. There is no allegation in the F.I.R. as well as in the enquiry report of cheating or dishonestly inducing the sugarcane farmers by the petitioners. The farmers voluntarily and willingly agreed to the arrangement / tie up agreement with the bank and the sugar company for advance of KCC loan for the purpose of cultivation of sugarcane and supply of it to the sugar company with further understanding that against the price of sugarcane payable to the cane growers by the sugar company the sugar company shall repay the KCC loan / interest disbursed to the farmers directly to the bank and the amount so paid to the bank was adjustable against the cane price payable to the farmers. These kinds of agreement / understanding is permissible under the various provisions of the Sugarcane Act.

25. Upon having heard learned counsel for the parties and



discussions held hereinabove on facts as well as on laws, I am of the view that no offence under Sections 406 & 420 of the I.P.C. is made out against the petitioners, therefore, continuation of the criminal proceedings against them is abuse of the process of law.

26. In Shiv Kumar Jatia versus State of NCT of Delhi reported in (2019)17 SCC 193 in paragraph no. 19 the Hon'ble Supreme Court has held as follows:-

“19. The liability of the Directors / the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, 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. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, 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. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.”

27. In absence of sugar company being made an accused vicarious liability of the petitioners for an offence alleged under the provisions of the I.P.C., who are Chairman cum Managing Director and General Manager (Commercial) of the sugar company would only arise provided any provision exists in that behalf in the statute. The statute must contain provisions fixing such vicarious liability. Even for creating vicarious liability it is incumbent on the part of the informant to make specific allegation which would make them vicariously liable but in the present case there is no such specific allegation against the petitioners who are Chairman cum Managing Director and General Manager (Commercial) respectively. The F.I.R. and the entire criminal proceedings against the petitioners is fit to be quashed on this ground also.

28. In the result, I come to the conclusion that continuance of criminal proceeding against the petitioners shall be in abuse of the process of law and as such to prevent abuse of the process of law and to secure the ends of justice the F.I.R. contained in Annexure - 1 as well as order taking cognizance



dated 16.04.2022 and the entire prosecution against the petitioners are hereby quashed.

29. The application stands allowed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	07-08-2023
Uploading Date	11-10-2023
Transmission Date	11-10-2023

