IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3180 of 2014

Indus Tower Ltd. & Anr.
-Vs-
The State of West Bengal and Anr.

For the Petitioners	: Mr. Sabyasachi Banerjee Mr. Ayan Bhattacharjee Mr. Anand Keshri Mr. Atish Ghosh Mr. Arindam Chandra
For the Opposite Party No.2/KMC	: Mr. Kusal Kumar Mukherjee
For the State	: Mr. Debasish Ray, Ld. P.P. Mr. Imran Ali Ms. Debjani Sahu
Judgment on	: 22.05.2026

Ananya Bandyopadhyay, J.:-

1. The revisional application has been presented before this Court seeking exercise of its inherent and supervisory jurisdiction for setting at naught the criminal proceeding being Case No.181 of 2014 pending before the Learned First Municipal Magistrate at Calcutta under Section 401A of the Kolkata Municipal Corporation Act, 1980, arising out of F.I.R. No.24 dated 31st March, 2014 and the charge-sheet no.69 dated 26th July, 2014 submitted in consequence thereof.

2. The pleadings reveal that the petitioner no.1 is a company incorporated under the Companies Act, 1956, maintaining its registered office at Bharti Crescent, 1, Nelson Mandela Marg, Vasant Kunj, Phase-II, New Delhi–110070, while conducting its operations within the State of West Bengal through its circle office situated at Unit No.801, 8th Floor, Godrej Waterside, Sector-V, Electronic Complex, Salt Lake, Kolkata–700091.
3. The petitioner company asserts that it possesses registration granted by the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India, as a Category-I Infrastructure Provider (IP-I) under Registration No.177/2008 dated 10th January, 2008. By virtue of such registration, the company claims authority to carry on the business of providing telecommunication infrastructure and allied assets, including mobile towers, for telecom operators holding licences under Section 4 of the Indian Telegraph Act, 1885.
4. The narrative advanced in the revisional application depicts the petitioner company as an enterprise engaged in the establishment, operation, maintenance and provisioning of telecommunication infrastructure forming part of the larger national communications architecture. According to the petitioners, the services rendered by telecom operators through such infrastructural facilities constitute essential public utility services intended for the benefit of the community at large. Reference has accordingly been made to the National Telecom Policies introduced by the Union of India in the years 1994 and 1999 and subsequently revised and republished in 2012. The petitioners contend that the activities undertaken by the company stand

nurtured within the policy framework evolved by the Union Government for expansion of telecommunications coverage and enhancement of communication facilities throughout the country.

5. It has further been stated that the petitioner no.1 carries on the business of providing shared telecom infrastructure services to licensed telecom operators and, for advancement of such commercial and infrastructural activities, installs both rooftop towers and ground-based towers in different locations.
6. The petitioner no.2 has been described as a citizen of India presently serving as the Chief Operating Officer of the West Bengal Circle of the petitioner no.1 company. The pleadings attribute to him the position of principal officer responsible for supervising and conducting the activities of the petitioner company within the territorial limits of the State of West Bengal.
7. The origin of the criminal prosecution has been traced to a complaint lodged on or about 28th March, 2014 before the Officer-in-Charge of Metiabruz Police Station alleging illegal and unauthorised erection of a mobile tower at premises no. Q-374/A, Panchanantala Lane (Mudiali Road), Kolkata–700024, situated within Ward No.136 under Borough XV of the Kolkata Municipal Corporation. The complaint referred to a detailed enquiry report submitted before the Executive Engineer (Civil), Building Department, Kolkata Municipal Corporation, Borough XV, concerning erection of a mobile tower upon the roof of a three-storeyed building owned by one Rajaram Neogy.

8. The complainant alleged that the petitioner company had undertaken construction and erection of the mobile tower at the aforesaid premises without obtaining municipal sanction and in transgression of the provisions of the Kolkata Municipal Corporation Act and the Rules framed thereunder. Apprehension was also expressed that continuance of the structure might expose human life and civic amenities, including water supply, drainage and sewerage systems, to serious peril and might further create conditions conducive to fire hazards.
9. The complaint requested the Officer-in-Charge of Metiabruz Police Station to treat the same as a First Information Report under Section 401A of the Kolkata Municipal Corporation Act, 1980. Pursuant thereto, an F.I.R. came to be recorded by Nirmal Kumar Ghosh, Inspector of Kolkata Police, and Rajarshi Dey, Sub-Inspector attached to Metiabruz Police Station.
10. The petitioners have further stated that upon culmination of investigation, a charge-sheet dated 26th July, 2014 came to be submitted before the Learned Metropolitan Magistrate, Kolkata under Section 401A of the Kolkata Municipal Corporation Act, thereby initiating the criminal proceeding which forms the subject matter of challenge in the present revisional application.
11. Learned Advocate appearing on behalf of the petitioners assailed the very foundation of the criminal proceeding by contending that the allegations embodied in the complaint and the First Information Report, even if accepted in their entirety, fail to attract the ingredients of Section 401A of the Kolkata Municipal Corporation Act, 1980. According to the petitioners, the statutory provision is directed against construction of a new building or addition of

floors raised in breach of the municipal enactment and the Rules framed thereunder, whereas the accusation in the present case merely relates to installation of a mobile tower upon the roof of an existing structure. It was submitted that neither the complaint nor the First Information Report contains any allegation concerning erection of a new building or addition of any floor by the petitioner company and, therefore, invocation of Section 401A of the Act stands wholly misplaced.

12. The petitioners further contended that a mobile tower cannot, either in its ordinary connotation or within the statutory framework of the Kolkata Municipal Corporation Act, be equated with a “building”. Drawing attention to Section 2(5) of the Act, learned counsel submitted that the definition of “building” contemplates a structure enclosing or intended to enclose land, signs or outdoor display structures. A mobile tower, according to the petitioners, possesses none of those attributes and remains merely a metallic installation incapable of being treated as a building within the legislative meaning of the expression.

13. Elaborating such submission, learned counsel argued that the petitioner company merely transports component parts of a mobile tower and assembles the same at a designated site. Such activity, according to the petitioners, constitutes installation simpliciter and does not partake the character of construction or erection of a building. It was urged that the distinction between “installation of a tower” and “construction of a building” has substantial legal significance and the prosecution has attempted to

obliterate that distinction by mechanically bringing the case within the fold of Section 401A of the Act.

14. The petitioners also placed reliance upon the official materials available on the website of the Kolkata Municipal Corporation, particularly the "Schedule of Fees and Charges for Installation of Tower/Antenna/Pole for the year 2012–13". Learned counsel submitted that the said Schedule itself contemplated regularisation of installation of tower, antenna or pole upon payment of prescribed charges and specifically stipulated a regularisation fee of Rs.3,00,000/- in cases where there was installation without sanction. Referring to such municipal prescription, it was argued that the Corporation itself treated the matter as one capable of administrative regularisation upon payment of fees and not as conduct inviting criminal prosecution under Section 401A of the Act.

15. Proceeding further, learned counsel for the petitioners submitted Section 401A became operative only where the construction in question endangered, or was likely to endanger, human life, municipal property, water supply, drainage, sewerage systems or road traffic, or gave rise to fire hazards. The complaint in the present case, according to the petitioners, merely reproduces the language of the statute and records a speculative apprehension without any factual foundation, technical assessment or supporting material demonstrating how the alleged installation posed any genuine peril to public safety or civic infrastructure.

16. It was emphatically argued that the allegations contained in the complaint are bereft of factual particulars and do not disclose commission of any

cognizable offence either by the petitioner company or by its officers. Learned counsel submitted that installation of a telecom tower upon the roof of an existing building cannot, by any permissible interpretative process, be transformed into construction of a building within the meaning of Section 401A of the Kolkata Municipal Corporation Act. The prosecution, according to the petitioners, rests upon a legally fragile premise and continuation of the criminal proceeding would amount to misuse of the judicial process.

17. The petitioners accordingly contended that the criminal case has been initiated beyond the permissible statutory sphere, without jurisdictional foundation and upon allegations that fail to satisfy the essential ingredients of the penal provision invoked. It was, therefore, urged that the proceeding pending before the Learned Municipal Magistrate deserves to be quashed in exercise of the revisional and inherent powers of this Court.

18. Learned Advocate representing the opposite party/respondent no.2 resisted the revisional application by contending that the materials collected during investigation disclose a prima facie case under Section 401A of the Kolkata Municipal Corporation Act, 1980 and that the petitioners, particularly petitioner no.2, cannot evade criminal accountability by invoking technical interpretations of statutory terminology.

19. It was submitted that petitioner no.2 functioned as the Chief Operating Officer of the West Bengal Circle of M/s. Indus Tower and remained directly responsible for installation and management of telecommunication infrastructure for cellular operators within the State. According to the respondent, the petitioner company had obtained permission to establish

ground-based as well as rooftop towers; nevertheless, in the present instance, the tower at the concerned premises had been erected without obtaining the requisite sanction from the competent municipal authority.

20. Learned counsel drew attention to the written complaint and the inspection conducted by the complainant authority at premises no. Q-3742/A, Panchanantala Lane, Mudiali Road, Kolkata–700024 within Ward No.136 under Borough XV. During such inspection, the complainant allegedly detected erection of a mobile tower upon the roof of the premises without municipal approval. It was further submitted that a detailed enquiry report concerning such erection had thereafter been forwarded to the Executive Engineer (Civil), Building Department, Kolkata Municipal Corporation, Borough XV on 28th March, 2014, relating to installation of the mobile tower atop a three-storeyed building belonging to Rajaram Neogy, arrayed as another accused in the proceeding.

21. The respondent further submitted that notices under Section 401 of the Kolkata Municipal Corporation Act had been issued to Shri Rajaram Neogy as well as to the Director of M/s. Indus Tower Ltd. requiring response from the concerned parties. According to learned counsel, neither the company nor petitioner no.2 furnished any reply to such notice. Consequent thereto, a written complaint was lodged before the Officer-in-Charge of Metiabruz Police Station, culminating in registration of Metiabruz Police Station Case No.24 dated 31st March, 2014 under Section 401A of the Kolkata Municipal Corporation Act.

22. Emphasis was laid upon the circumstance that petitioner no.2 admittedly proceeded with installation of the tower despite absence of a “No Objection Certificate” from the municipal authority. Learned counsel submitted that the pleadings of the petitioners themselves disclose deposit of charges relating to installation of tower, antenna and pole, yet no formal prayer for grant of “NOC” had ever been made before the competent authority. Such omission, according to the respondent, furnished substantial material demonstrating conscious departure from the statutory procedure governing erection of telecom infrastructure within municipal limits.

23. The respondent further contended that the challenge launched by the petitioners proceeded upon a misconceived invocation of the doctrine of vicarious liability. Learned counsel argued that petitioner no.1, being a juristic entity, acted through its officers and managerial representatives, and petitioner no.2 functioned as the sole operational authority supervising day-to-day affairs of the company within the State of West Bengal. In matters relating to installation of telecom towers, the responsibility, according to the respondent, principally rests upon the officer exercising operational control over such activities. The investigation, it was submitted, revealed that petitioner no.2 acted beyond the permissible regulatory framework and thereby exposed himself to criminal prosecution in his personal capacity.

24. Fortifying the submission further, learned counsel argued that the present case does not involve classical vicarious liability arising out of a master-servant or employer-employee relationship. The principle that criminal liability based upon vicarious responsibility could arise only where the

statute expressly contemplated such consequence was emphasized. Since the Kolkata Municipal Corporation Act, 1980 contains no specific provision embodying vicarious criminal liability, petitioner no.2 cannot claim exoneration merely because petitioner no.1 company has not been arraigned as an accused in the charge-sheet.

25. It was also submitted that the charge-sheet reflected petitioner no.2 operated beyond the supervisory restraint of petitioner no.1 and that the prosecution against him rest upon his own acts and omissions rather than upon any derivative liability. Learned counsel maintained that the materials collected during investigation revealed deliberate departure from municipal requirements governing erection of towers and that the proceeding had progressed beyond the preliminary stage, investigation having already culminated in submission of charge-sheet.

26. The Learned Advocate for the respondent accordingly urged that the revisional application lacked legal merit and that no persuasive ground had been demonstrated warranting quashing of the criminal proceeding at its present stage.

27. The controversy brought before this Court traverses a narrow yet jurisprudentially significant question touching the amplitude of Section 401A of the Kolkata Municipal Corporation Act, 1980 and the extent to which the penal provision may be invoked in relation to installation of a mobile telecommunication tower upon the roof of an existing structure.

28. The prosecution has its genesis in a complaint lodged before Metiabruz Police Station alleging erection of a mobile tower at premises no. Q-374/A,

Panchanantala Lane (Mudiali Road), Kolkata–700024 within Ward No.136 under Borough XV of the Kolkata Municipal Corporation. The gravamen of the accusation rests upon the assertion that the petitioner company erected such tower without obtaining sanction from the municipal authorities and thereby attracted the penal consequences contemplated under Section 401A of the Kolkata Municipal Corporation Act, 1980.

29. The petitioners, on the other hand, contend that the statutory provision invoked in the present prosecution bears no application to the factual canvas disclosed in the complaint, the First Information Report or the charge-sheet. According to the petitioners, installation of a telecom tower upon the roof of an existing building neither constitutes construction of a building nor addition of floors within the legislative contemplation of Section 401A of the Act.

30. The central issue, therefore, is not merely factual. The matter calls for a careful ascertainment of the statutory architecture of Section 401A and the legislative intention embedded therein.

31. Section 401A of the Kolkata Municipal Corporation Act was incorporated to address situations where erection or construction carried on in breach of municipal sanction assumes a dimension hazardous to civic order, public safety, drainage systems, sewerage, water supply, road traffic or allied municipal infrastructure. The provision is couched in penal language and therefore invites strict construction. Criminal liability cannot be permitted to travel beyond the precise statutory boundaries carved out by the legislature.

32. The complaint forming the substratum of the prosecution repeatedly employs the expression “erection of mobile tower at the roof of the building”. Significantly, nowhere in the complaint, the First Information Report or the chargesheet is there any allegation regarding construction of a fresh building, vertical extension by addition of floors, structural expansion of the existing premises or conversion of the building into a form alien to the sanctioned plan.
33. The prosecution narrative itself, therefore, proceeds upon the premise that what was installed was a telecommunication tower over an already existing rooftop.
34. This distinction acquires decisive legal significance.
35. The expression “building” as defined under Section 2(5) of the Kolkata Municipal Corporation Act contemplates a structure enclosing or intended to enclose land and includes signs and outdoor display structures. A mobile telecom tower, by its very character and engineering composition, does not answer such description. It remains a metallic infrastructural installation erected for transmission and reception of telecommunication signals. Equating such installation with construction of a building would amount to judicial enlargement of a penal statute, a course impermissible in criminal jurisprudence.
36. The materials placed before this Court further revealed that the Kolkata Municipal Corporation itself maintained a separate regulatory mechanism governing installation of tower/antenna/pole and prescribed a “Schedule of Fees and Charges for Installation of Tower/Antenna/Pole for the year 2012–

13". The said Schedule specifically contemplated regularisation fees in respect of installations without sanction. Such administrative framework demonstrated that the Corporation itself treated installation of telecom towers as a distinct municipal subject requiring regulatory compliance and payment of charges rather than as construction of a new building attracting automatic penal prosecution under Section 401A of the Act.

37. The existence of a regulatory and regularisation mechanism possesses substantial interpretative value. Where the statutory authority itself creates a separate administrative channel for regularisation of installation of towers and antennas, invocation of the penal provision relating to construction of buildings must rest upon demonstrable allegations satisfying the exact statutory ingredients. Mere absence of sanction, divorced from the structural ingredients contemplated under Section 401A, cannot mechanically transform a regulatory lapse into a criminal offence.

38. Equally significant is the nature of the allegations relating to public danger. The complaint merely records an apprehension that the tower "might collapse", "might endanger human life" or "might create fire hazard". Such recitals remain entirely bereft of technical material, engineering assessment, structural report or scientific evaluation. No material has been placed demonstrating compromise of drainage systems, sewerage, municipal property, water supply, road traffic or structural stability of the building.

39. The complaint substantially reproduces the phraseology of the statute without furnishing factual particulars capable of constituting the offence

alleged. Criminal prosecution cannot rest upon conjectural apprehension clothed in statutory language.

40. The submissions advanced on behalf of the respondent concerning absence of NOC and non-reply to notices issued under Section 401 of the Act also fail to advance the prosecution case beyond the realm of regulatory deviation. Even assuming the allegations to be factually accurate, such circumstances may expose the petitioners to municipal consequences contemplated under the regulatory framework governing telecom installations; nevertheless, those allegations do not satisfy the ingredients of Section 401A unless the primary requirement of construction contemplated under the provision is first established.

41. The argument relating to vicarious liability likewise fails to rescue the prosecution from its inherent legal fragility. Criminal liability in municipal penal statutes must arise from explicit statutory prescription. The prosecution cannot derive sustenance merely from the official position held by petitioner no.2 within the company when the foundational offence itself remains absent.

42. This Court is not oblivious to the importance of municipal regulation in matters concerning civic safety and urban planning. Metropolitan governance demands scrupulous adherence to statutory procedure. Yet, fidelity to statutory discipline applies equally to prosecuting agencies. Penal jurisdiction cannot be expanded through interpretative elasticity merely because a municipal deviation is alleged.

43. The revisional jurisdiction of this Court exists precisely to prevent continuation of criminal proceedings where the allegations, accepted at their highest, fail to disclose commission of the offence alleged. Permitting such prosecution to continue despite patent absence of statutory ingredients would reduce criminal process into an instrument of coercive pressure rather than adjudicatory discipline.

44. The complaint, the First Information Report and the charge-sheet, read in their entirety, disclose installation of a mobile tower upon the roof of an existing building without municipal sanction. They do not disclose construction of a building within the meaning of Section 401A of the Kolkata Municipal Corporation Act. A further aspect of considerable significance emerges from the materials placed before this Court, namely, the identity of the person upon whom the primary statutory obligation rested in relation to the premises in question and the extent to which criminal liability could at all be attributed to the present petitioners.

45. The prosecution case itself records that the mobile tower had been installed upon the roof of a three-storeyed building belonging to one Rajaram Neogy. The building owner, therefore, remained the person having dominion over the premises, control over structural access and authority concerning utilisation of the rooftop area upon which the installation was undertaken. In matters concerning municipal sanction relating to structural use of premises, rooftop utilisation and compliance with building regulations, the owner or person in control of the immovable property occupies a position of central statutory responsibility.

46. The complaint itself acknowledges that notices under Section 401 of the Kolkata Municipal Corporation Act had been served upon Shri Rajaram Neogy as owner of the premises. Such circumstance assumes considerable importance because it demonstrates that the municipal authorities themselves recognised the building owner as the principal person answerable in relation to the alleged deviation concerning the structure.

47. The materials on record do not disclose that the petitioners held ownership rights over the premises, possessed authority to alter the sanctioned character of the building or exercised municipal control over the structural composition of the property. The petitioner company functioned merely as a telecom infrastructure provider engaged in installation of telecommunication equipment pursuant to commercial arrangements entered into with property owners and telecom operators. The prosecution has failed to demonstrate that the petitioners assumed the legal character of builders, developers or persons raising construction within the meaning of Section 401A of the Act.

48. Equally notable is the absence of any allegation that the petitioners carried out addition of floors, extension of the building structure or alteration of the sanctioned building plan. The accusation remains confined to installation of a telecom tower upon an already existing rooftop belonging to a third-party owner. In such factual setting, fastening criminal liability upon the petitioners under a penal provision directed against construction of buildings would amount to displacement of the statutory focus from the owner and person in control of the premises to an infrastructure service

provider whose role remained technologically operational rather than structurally proprietary.

49. The individual roles attributed to the petitioners also deserve careful scrutiny.

50. The Learned Advocate representing the petitioners relied on the decisions enumerated as follows:-

i. The Hon'ble Supreme Court in the case of ***M.D M/S CASTROL INDIA LIMITED VS STATE OF KARNATAKA***[1], has held the following:-

> *"**6**. Section 74 of the Standards of Weights and Measures Act, 1976 which is in the following terms engrafts the principle of vicarious liability for offences committed by a Company.*
>
> *"74. Offences by companies and power of court to publish name, place of business, etc. of companies convicted - (1) If an offence under this Act is committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."*
>
> ***7**. In the present complaint petition, there is no averment or statement whatsoever that the appellant as the Managing Director of the Company was responsible or incharge of the conduct of the business of the Company in respect of which the offence in question has been alleged to have been committed. Neither there is any averment to the effect that the appellant is otherwise connected or responsible for commission of any of the acts on the basis of which the offence(s) is alleged to have been committed.*

[1] (2018) 17 SUPREME COURT CASES 275

***8**. It will not be necessary to burden this order by a detailed reference to numerous pronouncements of this Court interpreting similar provisions of other statutes holding that a clear and categorical statement to the above effect is required to be made in the complaint petition to proceed against an officer of the Company so as to determine his vicarious liability for the offence committed by the company. In the present case the Company is not even arrayed as an accused.*

ii. The Hon'ble Supreme Court in the case of ***STATE OF HARYANA VS BRIJ LAL MITTAL & ORS[2].***, has held the following:

***"8**. "… It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfills both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a baid statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business."*

***9**. In Delhi Municipality vs. Ram Kishan [(1983) 1 S.C.C.1] while dealing with the applicability of Section 17(1) of the Prevention of the Food Adulteration Act, 1954, which is in parimateria with Section 34(1) of the Act, on similar facts, this Court observed as under:*

(15) "So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence, Various liability being and incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper not a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High

[2](1998) 5 SUPREME COURT CASES 343

Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

iii. The Hon'ble Kerala High Court in the case of ***GOVIND M.S AND OTHERS VS THE STATE OF KERALA REPRESENTED BY THE SECRETARY***[3], has held the following:-

*"**11**. Even if it is accepted that the petitioners were directors of the first accused company at the relevant time, vicarious liability cannot be attributed upon them for the offences under the Indian Penal Code allegedly committed by the first accused company.*

...

***13**. In MaksudSaiyed v. State of Gujarat: (2008) 5 SCC 668, the Supreme Court has held as follows:*

"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".

***14.** In S.K.Alagh v. State of U.P : AIR 2008 SC 1731, the Apex Court has held as follows:*

"As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. ..... Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company".

[3] 2019 SCC OnLine Ker 5292

15. *In KekiHormusjiGharda v. MehervanRustomIrani : AIR 2009 SC 2594, it has been held as follows:*

"Indian Penal Code, save and except some matters does not contemplate any vicarious liability on the part 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".

16. *In Sunil Bharti Mittal v. Central Bureau of Investigation : AIR 2015 SC 923, the Supreme Court has held as follows:*

"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. 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. 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".

17. *In Shiv Kumar Jatia vs State: AIR 2019 SC 4463, the Supreme Court has reieterated the principle as follows:*

"An individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused".

18. *The principles on the point can be summarised as follows: Indian Penal Code does not contain any provision for attributing vicarious liability upon the directors of a company, when the offence is committed by the company. In the absence of any provision laid down under the statute, a director of a company or an employee cannot be held to be vicariously liable for an offence committed by*

> *the company itself. Vicarious liability of the director of a company would arise provided there is specific provision in the statute. Statute must contain provision fixing such vicarious liability. Even then, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability upon the directors of a company. When the company is the offender, vicarious liability of the directors cannot be imputed automatically, in the absence of any statutory provision to that effect. 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. There is no vicarious liability in criminal law unless the statute takes that also within its fold. A director of a company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent."*

51. Petitioner no.1 is a corporate entity functioning as a registered Infrastructure Provider (IP-I) under the Department of Telecommunications, Government of India, engaged in the business of establishing and maintaining telecom infrastructure across various locations for licensed telecom operators. The company itself neither owned the premises in question nor stood accused of raising any new building or structural expansion upon the property.

52. Petitioner no.2 has been arrayed in the proceeding solely because he functioned as the Chief Operating Officer of the West Bengal Circle of the petitioner company. The prosecution materials, however, remain conspicuously silent regarding any overt act personally attributable to him demonstrating that he directed construction of a building, sanctioned alteration of the premises or consciously engaged in any activity attracting the ingredients of Section 401A of the Act. Mere designation in a managerial capacity cannot substitute the statutory ingredients of criminal liability.

53. The respondent sought to contend that petitioner no.2, being the operational head of the company within the State, bore responsibility for the installation. Yet, even if such assertion is accepted in its broadest amplitude, the same does not resolve the fundamental legal deficiency underlying the prosecution. Operational supervision over installation of telecom equipment cannot metamorphose into criminal culpability under a statutory provision dealing with construction of buildings unless the foundational ingredients of the offence are first established.

54. The prosecution also attempted to rely upon the doctrine of vicarious liability. Such argument, however, encounters a formidable legal barrier. Criminal liability founded upon vicarious responsibility cannot arise in absence of express statutory incorporation. Section 401A of the Kolkata Municipal Corporation Act contains no legislative mandate creating derivative criminal responsibility upon corporate officers merely by virtue of their designation. In absence of such statutory prescription, criminal culpability must rest upon direct and specific acts constituting the offence alleged.

55. The charge-sheet placed before this Court likewise does not disclose any material demonstrating active participation of petitioner no.2 in raising construction of a building or causing structural alteration of the premises. The materials merely indicate installation of telecom infrastructure at the site. Such allegations may invite municipal regulatory action; nevertheless, they fall far short of constituting the penal offence invoked in the prosecution.

56. Thus, viewed from every juridical angle, the prosecution appears to have proceeded by conflating the role of the building owner with that of the telecom infrastructure provider and by attributing criminal liability to corporate functionaries without establishing the statutory ingredients necessary for invocation of Section 401A of the Kolkata Municipal Corporation Act, 1980. Corporation Act, 1980. The prosecution therefore suffers from a foundational legal infirmity striking at the very root of jurisdiction and to allow the criminal proceeding to continue will result in the abuse of process of law.
57. Accordingly, the revisional application succeeds.
58. The proceeding being Case No.181 of 2014 pending before the Learned First Municipal Magistrate at Calcutta arising out of Metiabruz Police Station Case No.24 dated 31st March, 2014 under Section 401A of the Kolkata Municipal Corporation Act, 1980 together with the charge-sheet no.69 dated 26th July, 2014 and all consequential proceedings arising therefrom stand quashed.
59. Interim orders, if any, stand dissolved.
60. In view of the above discussions, the instant criminal revisional application being CRR 3180 of 2014 is allowed.
61. Accordingly, the instant criminal revisional application being CRR 3180 of 2014 stands disposed of along with connected application/s, if any.
62. There is no order as to costs.
63. Case Diary, if any, to be returned forthwith.
64. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

65. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)