



Judgment

apl451.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION APL NO.451 OF 2024

Liladevi Santoshkumar Bhoot,
aged: 60 years, occupation: business,
r/o Devrankar Nagar, Badnera Road,
Amravati. **Applicant.**

:: VERSUS ::

State of Maharashtra,
through PSO Hinganghat,
district Wardha. **Non-applicant.**

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Shri Anil Mardikar, Senior Counsel assisted by Shri
V.R.Deshpande and Shri D.P.Singh, Advocates for the
Applicant.

Shri N.B.Jawade, APP for the NA No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 11/02/2026

PRONOUNCED ON : 25/02/2026

JUDGMENT

1. Heard learned Senior Counsel Shri Anil Mardikar for
the applicant and learned APP Shri N.B.Jawade for non-
applicant No.1/State. **Admit.** Heard finally by consent.

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2. By this application, the applicant is challenging order of rejection of discharge application below Exh.61 in RCC No.193/2013 dated 28.4.2023 passed by learned JMFC, Court No.1, Hinganghat and confirmed by learned Additional Sessions Judge, Hinganghat in Criminal Revision Application No.8/2013 dated 24.11.2023.

3. Brief facts, necessary for disposal of the application, are as under:

The applicant along with three other persons namely Yog Navalkumar Bhoot, Anupkumar Prakashchand Bhoot, and Pushpadevi Navakumar Bhoot are Directors of “M/s.Deegee Orchards Pvt.Ltd.” (the company), situated at Bela, Hinganghat, district Wardha. From the years 2005-2012, as per the allegations, the applicant and other Directors of the company by joining hands with each other had supplied false and fabricated information by giving false declaration in Form-F and submitted the same with the Sales Tax

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Department and thereby defrauded the Government with amount of Rs.10.12 Crores. It is further alleged that with the help of the said false and fabricated documents, the co-accused including the applicant obtained refund of Rs.2,18,67,678/- from the Government. The informant conducted an enquiry in the office of the company and it revealed to him that fraud is committed by giving false and fabricated documents.

On the basis of the said report, the police have registered the crime against the applicant and the other co-accused.

During investigation, the Investigating Officer has collected documents and recorded relevant statements of witnesses and after completion of the investigation, submitted chargesheet against the applicant.

Being aggrieved and dissatisfied with the same, the applicant preferred an application for discharge before

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learned JMFC at Hinganghat and learned JMFC at Hinganghat, after considering the record, rejected the application.

Being aggrieved and dissatisfied with the same, the applicant has filed Revision Application No.8/2013 and the same is also dismissed.

Hence, the present application.

4. Learned Senior Counsel for the applicant submitted that the alleged incident is of Financial Years 2005-2006 to 2011-2012. The Financial Year 2005-2006 commences from 1.4.2005 and ends on 31.3.2006. The applicant has already resigned in December 2005 itself. Thus, when the alleged false information and the false documents were provided to the Government, the applicant was not in the business with the company. The fact of resignation of the applicant from the Director of the company was also communicated to the Registrar of the Companies who maintains record of the

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Directors of Company. Section 75 of the Maharashtra Value Added Tax, 2002 (the said Act) categorically states about the liability of the Directors for offences committed by the company. In view of Section 75 of the said Act, when an offence is committed by a business entity, every person, who at the time, the offence is committed, was incharge of and was responsible to the business entity for conduct of the business as well as the business entity shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to Section 75(1) of the said Act, states that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Thus, he submitted that the FIR or the entire investigation papers nowhere shows that the applicant at the time when the

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offence was committed was responsible to the conduct of the business entity.

He submitted that in various decisions, regarding *pari materia* provisions under the various enactments, it is held that a director may be vicariously liable only if the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company's liability. Mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. There must exist something to show that such actions of the Director stemmed from their personal involvement and arose from actions or conduct falling outside.

Thus, he submitted that vicarious liability of the Directors cannot be imputed automatically in the absence of any statutory provision to this effect. There has to be a

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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. On the basis of the above submissions, he submitted that there is no *prima facie* case against the applicant to show that she was incharge of and looking after the day-to-day business of the company and, therefore, she is vicariously liable for committal of the said offence.

5. In support of his contentions, learned Senior Counsel for the applicant has placed reliance on following decisions:

(1) Criminal Appeal No.11/2025 (Sanjay Dutt and ors vs. The State of Haryana and anr) decided by the Supreme Court on 2.1.2025;

(2) Sunil Bharti Mittal vs. Central Bureau of Investigation, reported in (2015)4 SCC 609;

(3) Karnataka Emta Coal Mines Limited vs. CBI, 2024 SCC OnLine SC 2250; and

(4) Keki Hormusji Gharda and ors vs. Mehervan Rustom Irani and anr, reported in (2009)6 SCC 475.

6. *Per contra*, learned APP for the State strongly opposed the said contentions and submitted that during the investigation, it was revealed that there was evasion of taxes for Rs.29,62,363/- for the Financial Year 2005-2006 when the applicant was one of Directors of the company. Thus, this material is sufficient in order to frame the charge against the applicant. Moreover, framing of charge is the stage where the court has to look at *prima facie* material against the accused persons. He submitted that Section 75 of the said Act is very specific and clear attributing the role of the offender, which speaks that every person who at the time of commencement of offence, was incharge of and was responsible to the business entity for the conduct of the business, shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly. He submitted

that, admittedly, the applicant was the Director at the relevant time and she was looking after the business during the period of her Directorship. The alleged offence of evasion of tax was committed and, therefore, she is responsible for the act committed by the company. He submitted that the provisions of the said Act are to be considered in the light of the object of the Act. In view of that, the application deserves to be rejected.

7. In support of his contentions, learned APP for the State has placed reliance on following decisions:

(1) Commissioner of Central Excise, Nagpur vs. Universal Ferro and Allied Chemicals Limited and anr, reported in (2020)5 SCC 332;

(2) Hotel and Restaurant Assn. And anr vs. Star India (P) Ltd. and ors, reported in (2006)13 SCC 753;

(3) Iridium India Telecom Limited vs. Motorola Incorporated and ors, reported in (2011)1 SCC 74;

(4) **Madhumilan Syntex Ltd. and ors vs. Union of India and anr**, reported in (2007)11 SCC 297, and

(5) **Standard Chartered Bank and ors vs. Directorate of Enforcement and ors**, reported in (2005)4 SCC 530.

8. Before entering into the merits of the case, it is necessary to see the settled law as far as considerations for discharge applications are concerned.

9. The Hon'ble Apex Court, in the case of **Union of India vs. Prafulla Kumar Samal and anr**, reported in **MANU/SC/0141/1978**, has held as under:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out,

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court

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will be, fully justified in framing a charge and proceeding with the trial, and

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.”

10. Thus, it is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

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11. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao**, reported in MANU/SC/1113 2023, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors**, reported in (2014) 11 SCC 709 and **The State of Maharashtra vs. Som Nath Thapa**, reported in (1996) 4 SCC 659 and **The State of MP Vs. Mohan Lal Soni**, reported in (2000) 6 SCC 338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu vs. N.Suresh Rajan and ors**, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

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"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the

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accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure do not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for

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discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

13. In the light of the above settled principles of law, the case of the prosecution is to be looked into to ascertain that, whether there is any *prima facie* case against the applicant to frame the charge against her.

14. The applicant is charged for offences under Sections 406, 409, 420, 467, 468, and 471 read with 34 of the IPC and under Section 74(1)(b)(c)(e) of the said Act and under Section 10(a) of the CGST.

15. As per allegations in the FIR and the entire chargesheet, the applicant along with other co-accused had supplied false and fabricated information by giving false declaration form and submitted the same with the Sales Tax

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Department for the years 2005-2012 and thereby defrauded the Government with amount Rs.10.12 Crores. It is further the case of the prosecution that with the help of the said false and fabricated documents, the applicant along with other co-accused persons obtained refund of Rs.2,18,67,678/- from the Government and thereby cheated the Government.

16. Thus, the allegation of cheating at the instance of the applicant including other co-accused persons was from the Financial Year 2005-2012. However, as per the applicant, she has resigned from the company as Director of the company on 10.12.2005. Thus, it is very clear that from 1.4.2005 to 10.12.2005 she was holding the post of Director of the company. There is no dispute as to the fact that she worked as Director of the company, till 10.12.2005 i.e. till she resigns from the post of Director of the company.

17. Before entering into the merits of the case, it is necessary to see the relevant provisions.

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18. Section 75 of the said Act deals with, “offences by business entity, which is reproduced as under for the purposes of reference:

“75. Offences by Business entity.

(1) Where an offence under this Act or the rules made thereunder has been committed by a business entity, every person who at the time the offence was committed, was in charge of, and was responsible to, the business entity for the conduct of the business of the business entity as well as the business entity 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 any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or rules made thereunder has been committed by a business entity

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and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the business entity, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.- For the purpose of this section, -

(a) "business entity" means a body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

(3) Where an offence under this Act has been committed by a Hindu Undivided Family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and on conviction, punished accordingly: Provided that, nothing contained in this sub-section shall render the Karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due

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diligence to prevent the commission of such offence: Provided further that, where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any adult member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and on conviction, punished accordingly.”

19. Now, a question is, whether the applicant is responsible for affairs of the company in absence of any averments in the FIR or the entire chargesheet that she was looking after the day-by-day affairs of the company.

20. Learned APP for the State vehemently submitted that the provisions are to be looked into in view of the object of the said Act.

In support of his contentions, he placed reliance on the decision in the case of **Commissioner of Central Excise, Nagpur vs. Universal Ferro and Allied Chemicals Limited and anr supra** wherein it is observed that, “it is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute.”

It has further been held that, “the conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute.”

It is further held that, “the first principle of interpretation of plain and literal interpretation has to be adhered to. We are therefore of the considered view, that the narrower scope of the term ‘sale’ as found in the Sale of Goods Act, 1930 cannot be applied in the present case. The term ‘sale’ and ‘purchase’ under the Central Excise Act, 1944,

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if construed literally, it would give a wider scope and also include transfer of possession for valuable consideration under the definition of the term 'sale'."

Learned APP for the State submitted that the similar observations are made by the Hon'ble Apex Court in the case of **Hotel and Restaurant Assn. And anr vs. Star India (P) Ltd. and ors *supra***, wherein it is held that, "it is furthermore well known that the definition of a term in one statute cannot be used as a guide for construction of a same term in another statute particularly in a case where statutes have been enacted for different purposes."

21. There is no dispute as far as legal position regarding application and interpretation of the statute is concerned. At the same time, after considering provisions of Section 75(1) of the said Act, it specifically states that where an offence under this Act or the rules made thereunder has been committed by a business entity, every person who at the time

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the offence was committed, was in charge of, and was responsible to, the business entity for the conduct of the business of the business entity as well as the business entity shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

22. Thus, Section 75(1) of the said Act states that every person who at the time the offence is committed, was incharge of and was responsible to the business entity for conduct of the business as well as the business entity shall be deemed to be guilty of the offence. It means that while the company has been held liable for the wrongful acts, the liability of its Directors is not automatic. It depends on specific circumstances, particularly the interplay between the director's personal actions and the company's responsibilities.

23. In catena of decisions, it is held that a director may be vicariously liable only if the company itself is liable in the first

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place and if such director personally acted in a manner that directly connects their conduct to the company's liability.

24. In the case of **Sanjay Dutt and ors vs. The State of Haryana and anr** *supra*, the Hon'ble Apex Court has observed that, "mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. There must exist something to show that such actions of the director stemmed from their personal involvement and arose from actions or conduct falling outside the scope of its routine corporate duties. Thus, where the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. 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."

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25. Similarly, in Special Leave Petition (Criminal) No.12390/12391/2022 (**Susela Padmavathy Amma vs. M/s.Bharti Airtel Limited**) decided on 15.3.2024, the Hon'ble Apex Court by referring catena of decisions in the cases of **State of Haryana vs. Brij Lal Mittal and others (1998)5 SCC 343**; **SMS Pharmaceuticals Ltd. vs Neeta Bhalla and another (2007)9 SCC 481**; **Pooja Ravinder Devidasani vs. State of Maharashtra and another (2014) 16 SCC 1**; and **State of NCT of Delhi, through Prosecuting Officer, Insecticides, Government of NCT, Delhi vs. Rajiv Khurana, reported in (2010)11 SCC 469** has held that, "every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant

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time, will not be liable for an offence under Section 141 of the N.I. Act.”

26. In the case of **Sunil Bharti Mittal vs. Central Bureau of Investigation** *supra*, also the Hon’ble Apex Court has held that, “when the company is offender, vicarious liability of the Directors cannot be imputed automatically in the absence of any statutory provisions to this effect. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In **Aneeta Hada vs. M/s.Godfather Travels & Tours Pvt.Ltd.**, reported in 2008 AIR SCW 3608 the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also,

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the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

27. Thus, question requires to be answered is that, when a company is liable for criminal offences committed by its Directors/Managers/Officers and other employees, while conducting business, whether vicarious liability is attributable to all.

28. It has been consistently held by the Hon’ble Apex Court that in absence of any specific allegation of vicarious liability against any Director or Managing Director or such other Official of company and in absence of company being

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arrayed as party, proceeding initiated against such Director of Managing Director or any Officer of the company is liable to be quashed.

29. Thus, it is a trite law that commission of offence by the company is *sine qua non* to attract the vicarious liability of others involved in the company. Thus, so-called vicarious liability of the Directors cannot be imputed automatically. Whether such liability is statutorily prescribed in a particular statute or not and or in absence of any statutory provision to this effect, if it is to be included under the IPC either way, the prosecution would have to weigh averments with regard to the specific role played by the accused director or partner and demonstrate that such director or partner was incharge of the affairs of the company and directly imprecible connected to the crime alleged.

30. Thus, in the case of **Sanjay Dutt and ors vs. The State of Haryana and anr** *supra*, the Hon'ble Apex Court held that,

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“at the same time, wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. When it comes to penal provisions, vicarious liability of the managing director and director would arise provided any provision exists in that behalf in the statute. Even where such provision for fastening vicarious liability exists, it does not mean that any and all directors of the company would be automatically liable for any contravention of such statute. Vicarious Liability would arise only if there are specific and substantiated allegations attributing a particular role or conduct to such director, sufficient enough to attract the provisions constituting vicarious liability and by extension the offence itself.”

It has further been held that, “it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an

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individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening criminal liability on an officer of a company, there is no presumption that every officer of a company knows about the transaction in question.”

31. In the light of the above settled principles of law, the facts of the present case are to be considered.

32. As per the allegations in the FIR, the applicant along with other co-accused submitted declaration form by giving false and fabricated information and submitted the same with the Sales Tax Department for the years 2005-2012 and thereby defrauded the Government with amount of Rs.10.12

Crores. It is further alleged that during period of 1.4.2005 to 10.12.2005 there was evasion of taxes for Rs.29,62,363/-. The prosecution has placed reliance on various documents. After going through the entire chargesheet, it nowhere reveals that the applicant was not only Director but also she was looking after business and day-to-day activities of the company and she was Director and incharge of the business entity at the relevant time. The general allegation is levelled against her that she is one of Directors.

33. A plain reading of the FIR reveals that the allegations are made against all Directors of the company. The case of the applicant is that she is Non-Executive Director of the company and she has not actively participated in the day-to-day affairs of the company. Perusal of statements recorded during the investigation also nowhere reveals that the applicant was actively participating in day-to-day affairs of the business entity. It is indeed a *prima facie* to be established that the applicant is incharge of the company and was looking

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after day-to-day business of the company. In absence of averments that she was active Director and looking after day-to-day business of the company, no vicarious liability can be attracted against her. The vicarious criminal liability of Directors/Partners of the company would arise provided any provision exists in that behalf in the statute. The statute must contain provision fixing such vicarious liability. Even for the said purpose, it would be obligatory on the part of the prosecution and the investigating agency to make requisite allegation and collect evidence in support thereof, which would attract provision constituting vicarious liability. The question of making a company liable for criminal offences committed by its Directors and other employees while conducting business is of utmost importance in criminal law jurisprudence.

34. The Hon'ble Apex Court in various decisions has developed "doctrine of attribution." As per this doctrine, in the event of an act or omission leading to the violation of

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criminal law, the *mens rea* (guilty mind) is attributed to those who are the “directing mind and will” of the corporation. Although this doctrine was developed in the United Kingdom and has been in use in India since many years, the Hon’ble Apex Court in **Iridium Indian Telecom Limited v. Motorola Inc, reported in (2011)1 SCC 74]** has resolved the debate and it is held that criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs and where the degree of control is such that a body or body of persons can be said to be its “directing mind and will” thereby the Apex Court resolved the position regarding criminal liability of corporation. The immediate result of this position of law was that Directors, Partners, Officers, employees started getting arrayed as party to criminal proceeding on the basis that they were the “mind and will” of the company/firm/corporation.

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35. The issue arose for consideration was that, in a number of cases of this nature, proceedings were initiated against such persons without even adding the company as accused in the complaint.

36. It was observed by the Hon'ble Apex Court that in absence of any specific allegation of vicarious liability against the Managing Director or such other officials of the company, and in the absence of the company being arrayed as party, the proceedings initiated against such Managing Director or any officer of the company were liable to be quashed.

It has also been settled that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make a specific averment or requisite allegations to demonstrate how the persons, so accused, is vicariously liable for the offences.

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37. Thus, now, it is settled law that the commission of offence by the company is *sine quo non* to attract the vicarious liability of others involved in the company.

38. Thus, the so-called vicarious liability of the Directors cannot be imputed automatically.

39. Whether such liability is statutorily prescribed in a particular statute as is in the present case and or in absence of any statutory provisions to this effect, if it is deemed to be included under the IPC either way the prosecution would have to make averments with regard to the specific role played by the accused or Directors or Partners and demonstrate that such Directors or Partners were 'incharge of the affairs of the company' and directly connected with the crime alleged.

40. In the present case, there is no single averment either in the FIR or in the entire chargesheet that in what manner the applicant was responsible for day-to-day activities of the

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company. Even, if it is accepted that being a Director, the present applicant is responsible for the offence under Section 420 of the IPC, to prove the offence of “cheating”, dishonest intention requires to be proved. The offence of “cheating” comprises of two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person.

41. Thus, basic ingredients of the offence is deceiving any persons and there has to be intention since inception.

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42. Now, question is whether, the allegations in the FIR are sufficient to constitute the alleged offence against the applicant.

43. The applicant is charged for offences under Sections 406, 409, 420, 467, 468, and 471 read with 34 of the IPC and under Section 74(1)(b)(c)(e) of the said Act and under Section 10(a) of the CGST.

44. Thus, in order to constitute a criminal breach of trust under Section 406 of IPC:

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

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(ii) Legal contract touching the discharge of trust.

45. Similarly to constitute an offence under Section 420 of IPC there has to be (1) Deception of any person, either by making a false or misleading representation or by other action or by omission; (2) Fraudulently or dishonestly inducing any person to deliver any property, or (3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

46. In both the aforesaid Sections, *mens rea* i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

47. On the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. If it is a case of the Complainant that offence of criminal breach of trust as

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defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of IPC, punishable under Section 420 of IPC.

48. The learned Counsel for the Applicants relied upon the judgment of **Delhi Race Club (1940) Limited & Ors., Vs. State of Uttar Pradesh & Anr., (2024) 10 SCC 690**, wherein the Hon'ble Apex Court has held in para 39 which read as under:

“39. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in **Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823** as under:

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“4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the

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proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.”

49. Thus, there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

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50. In the light of the above facts and circumstances of the case, as already observed, there is no specific allegations against the applicant as to evasion of tax or submission of the false document. There is no averment that she was incharge and looking after day-to-day affairs of the business entity. Therefore, she is not vicariously liable to the offence committed by the business entity.

51. As far as the offences under Sections 406 and 420 of the IPC are concerned, there is no specific averments that the property was entrusted with her and she has committed criminal breach of trust. There is nothing on record to show that there was intention since inception on her part and, therefore, the offence of cheating is also not made out against her.

52. It is now well settled that the extra-ordinary powers under Article 226 of the Constitution of India or inherent power under Section 482 of the Code can be exercised by the

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High Court either to prevent abuse of the process Court otherwise to secure the ends of justice. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. Where the allegations do not disclose ingredients of the offence alleged and where the uncontroverted allegations made in the FIR or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where the criminal proceeding is manifestly attended with mala fide and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution or under Section 482 of the Code may be exercised.

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53. Admittedly, while exercising powers under Article 226 of the Constitution of India or under Section 482 of the Code, the Court does not function as a court of appeal or revision; inherent jurisdiction under Section 482 of the Code, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid under Section 482 of the Code itself. It is to be exercised to do real and substantial justice, for the administration of which alone it exists. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

54. By applying the above test, admittedly, the allegations made in the FIR, nowhere disclose that the applicant was incharge of the business entity and looking after day-to-day business and she has actively participated in the business activities. In absence of any material against her, vicarious liability would not be attracted against her merely because

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she is Director as the vicarious liability of the Director cannot be impugned automatically.

55. In view that, this is a fit case wherein the powers under Section 482 of the Code can be exercised.

56. In this view of the matter, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) The applicant is discharged of offences under Sections 406, 409, 420, 467, 468, and 471 read with 34 of the IPC and under Section 74(1)(b)(c)(e) of the Maharashtra Value Added Tax, 2002 and under Section 10(a) of the CGST in connection with Crime No.224/2012 in RCC No.193/2013.

(3) The order rejecting discharge application below Exh.61 in RCC No.193/2013 dated 28.4.2023 passed by learned JMFC, Court No.1, Hinganghat and order confirming the same by

Judgment

apl451.24

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learned Additional Sessions Judge, Hinganghat in Criminal
Revision Application No.8/2013 dated 24.11.2023 are hereby
quashed and set aside to the extent of the applicant

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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