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

CRIMINAL APPLICATION (APL) NO. 849 OF 2025

1. Girish S/o. Pesulal Dewani, Aged:57 years, Occ: Business, R/o Plot No.461, New Colony, Nagpur, Maharashtra- 440013.
2. Kishor S/o. Pesulal Dewani, Aged: 69 years, Occ: Business R/o-A-1 Ajanta, Byramji Town, Chhindwara Road, Nagpur, Maharashtra.
3. Lokchand S/o. Sawaldas Dewani Aged: 39 years, Occ: Business R/o. A-1 Ajanta, Byramji Town, Chhindwara Road, Nagpur, Maharashtra.
4. Anil S/o. Tirthadas Dewani Aged: 52, years, Occ: Business R/o. R/o. 60, Shah Dupare Layout, Khushi nagar, Nagpur, Maharshtra- 440014.

5. Sanjay S/o. Pandurang Abruk, Aged about 48 years, R/o. Amba Colony, Amravati.

APPLICANTS

// V E R S U S //

1. State of Maharashtra through Police Station Officer, Gadge Nagar Police Station, Amravati
2. The Collector, Amravati, Maharashtra
3. State Excise Department, Amravati

NON-APPLICANTS

-

Mr. Shyam Dewani, Advocate a/w Mr. Sahil S. Dewani, Advocate for the applicants.
Mr. Nikhil Joshi, APP for non-applicants /State.

CORAM : URMILA JOSHI PHALKE, J.

DATED :23.03.2026

ORAL JUDGMENT :

1. Heard.

2. **ADMIT**. Taken up for final disposal with the consent of learned counsel for the parties.

3. By this application by invoking the jurisdiction under Section 482 of the Code of Criminal Procedure applicants seeking quashing of the First Information Report in connection with crime No.124/2018 registered at Police Station Gadge Nagar District Amravati for the offences punishable under Sections 77(b), 78(e), 79, 82, 83 and 90 of the Maharashtra Prohibition Act, 1949 (for short, 'the Act of 1949') and the consequent proceeding arising out of the same bearing SCC No.4489/2021

which is pending in the Court of 5th Joint Civil Judge, Junior Division and Additional Chief Judicial Magistrate, Amravati.

4. The FIR was lodged at the behest of the incharge Sub Inspector State Excise Department, Amravati on an allegation that liquor license holder i.e. M/s King Wine which has FL-I license in their name had violated the condition of license. The present applicants who are the partners in M/s. King Wine had in fact stocked and also sold beer which was expired thereby violating the condition of license and also committed an offence under Maharashtra Prohibition Act, (for short, 'the Act of 1949') therefore show cause notice issued by the Collector to the said license holder and said show cause notice was duly served on the company thereby seeking explanation as to why the action should not be taken for stocking the expired liquor and as to why their license should not be cancelled. Thereafter in response to the show cause notice the applicants have given their explanation and had admitted their fault and company has also deposited the amount of fine of Rs.50,000/- imposed on them by applying Section 104 of the Act of 1949 and after completion of the

investigation the charge-sheet was submitted against the present applicants.

5. Heard learned counsel for the applicants who submitted that on perusal of the FIR and entire charge-sheet nowhere it reveals that any specific role is attributed to the present applicants. The vicarious liability is unknown to the criminal law. No specific role is mentioned as far as the role of the present applicants as the directors is concerned. He submitted that in view of the settled law Directors cannot be held liable in absence of any allegations against them. He further submitted that the company has not been made a party and therefore, the allegations are restricted to the extent of the company and therefore, the present applicants cannot be held vicariously liable for the acts committed by the company. In support of the his contention he placed reliance on the decision of this Court in ***Criminal Application No.716/2025 (Mukesh s/o Hari Butani vs. State of Maharashtra thr. the Inspector***) decided on 03.02.2026 and in ***Liladevi Santoshkumar Bhoot vs. State of Maharashtra*** reported in ***Law Finder Doc. ID No.2858661***.

6. Per contra learned APP strongly opposed the said contention and submitted that merely because the fine amount is deposited is not sufficient to exonerate the applicants from the liability which is a criminal liability. He submitted that considering the recitals of the FIR present applicants are the directors of the said company are liable for the violation of the Rules and the provisions of sections 77 (b), 78(e), 79, 82, 83 and 90 of the Act of 1949 and therefore, application deserves to be rejected.

7. Before entering into the merits of the matter it is necessary to refer Section 77(b) which deals with the penalty for misconduct by licensee which reads as under:-

> Whoever, being the holder of a licence, permit, pass or authorisation granted under this Act or a person in the employ of such holder or acting with his express or implied permission on his behalf-
>
> (b) wilfully does or omits to do anything in contravention of any rule regulation or order made under this Act.
>
> On conviction, be punished for each offence with imprisonment for a term which may extend to six

months or with fine which may extend to five thousand or both.

Section 78 (e) also deals with penalty for misconduct by licensed vendor or manufacturer which reads as under:-

Whoever, being the holder of a licence for the sale or manufacture of any intoxicant under this Act, or a person, in the employ of such holder or acting with his express or implied permission on his behalf

(e) sells any intoxicant which is not of the nature, substance and quality demanded by the purchaser or keeps or exposes for sale any intoxicant which is not of the nature, substance and quality authorized by the terms of the licence to be kept for sale by the holder of the licence shall or conviction be punished for each such offence with imprisonment for a term which may extend to one year and with fine which may extent to ten thousand rupees.

Section 82 deals with breach of licence, permit, etc. to be an offence which is reproduced for the reference.

(1) In the event of any breach by the holder of any licence, permit, pass or authorization granted under this Act or by his servants or by any person acting with his express or implied permission on his behalf of any of the terms or conditions of such licence, permit, pass or authorization such holder shall, in addition to the cancellation or suspension of the licence, permit, pass or authorization granted to him be punished, on conviction, with imprisonment for a term which may extend to six months or with fine which may extend to [five thousand rupees] or with both, unless it is proved that all due and reasonable precautions were exercised by him to prevent any such breach.

(2) Any person who commits any such breach shall, whether he acts with or without the permission of the holder of the licence, permit, pass or authorization be liable to the same punishment.

And 83 deals with Penalty for conspiracy, whereas section 90 deals with penalty for offence not otherwise provided for which reads as under:-

> Whoever is guilty of any wilful act or intentional omission in contravention of the provisions of this Act, or any rule, regulation, or order thereunder or of any licence, permit, pass or authorization granted under this Act, and if such act or omission is not otherwise made an offence under this Act shall, on conviction, be punished with the imprisonment for a term which may extend to six months or with fine which may extend to [five thousand rupees] or with both.

8. Admittedly, the show cause notice was given to M/s King Wine, whereas the offence is registered against only the applicant No.5 i.e. Sanjay Pandurang Abruk who is the employee of the company. He was looking after the day to day affairs of the said company. Thus, admittedly the crime was not registered against the present applicant Nos.1 to 4 but the charge-sheet was filed against the present applicants. On perusal of the entire recitals of the FIR admittedly no specific role is attributed by the

present applicants or nature of their work is not mentioned in the said FIR. The entire charge-sheet on perusal nowhere reveals any specific role attributed by the present applicant Nos.1 to 4. Even considering the role of the applicant No.5. Section 79 would come into play which reads as liability of licensee for acts of servants it clarify that the the holder of a licence, permit, pass or authorisation granted under this Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employment or acting with his express or implied permission on his behalf under the provisions of this Act as if he himself had committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence. Thus, even if any act is committed by the servant or the employee the responsibility or the liability is of the company.

9. Learned counsel for the applicants rightly pointed out that in catena of decisions it is held that the vicarious liability is unknown much less criminal liability. This aspect is also considered in the case of ***Mukesh Hari Butani vs. State of Maharashtra thr. the Inspector*** by this Court and while addressing

this issue it is held that “the company itself is not made accused. Further facts and circumstances of the record shows that the Glaxo Smithkline Consumer Healthcare Limited in view of the order passed by the National Company Law Tribunal, Mumbai was merged and amalgamated with another company. The present applicant is made an accused in his capacity as an independent Director of Glaxo Smithkline Consumer Healthcare Limited without specifying his role or without specifying how he is concerned with the day-to-day affairs of the said company.”

10. This aspect is more and in detail dealt with in the case of ***Liladevi Santoshkumar Bhoot vs. State of Maharashtra*** wherein there is reference to the decision of the Hon’ble Apex Court in the case of ***Sanjay Dutt vs. State of Haryana in Criminal Appeal No.11/2025 decided on 02.01.2025*** wherein 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.

11. Similarly, in ***Special Leave Petition (Criminal) No.12390/12391/2022 (Susela Padmavathy Amma v. 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 v. Brij Lal Mittal and others (1998)5 SCC 343; SMS Pharmaceuticals Ltd. v. Neeta Bhalla and another (2007)9 SCC 481, Pooja Ravinder Devidasani v. State of Maharashtra and another (2014) 16 SCC 1, and State of NCT of Delhi, through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana,*** reported ***in (2010)11 SCC 469*** wherein it has been 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 time, will not be liable for an offence under Section 141 of the N.L. Act.

12. In the case of ***Sunil Bharti Mittal v. 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 that effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. ***In Aneeta Hada v. 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, 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."

13. 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. 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 comapny and in absence of company being arrayed as party, proceeding initiated against such Director of Managing Director or any Officer of the company is liable to be quashed.

14. 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 in-charge of the affairs of the company and directly impredecible connected to the crime alleged.

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

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

17. As per the allegations in the FIR the applicant Nos. 1 to 4 are the Directors and applicant No.5 is the employee. The FIR came to be lodged against the applicant No.5 who was found in the premises when the raid was conducted and the stock of expired liquor was found in the premises of the company. A plain reading of the FIR reveals that the allegations are made against the company whereas company is not made an accused in the said FIR. The case of the prosecution is that applicant No.1 was found when the raid was conducted. However, in the absence of averments that the present applicants were the active Directors of the company and looking after the day to day affairs of the company, no vicarious liability can be attracted against them. 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.

18. Thus, in view of the settled law the applicants have made out the case for quashing of the FIR as well as quashing of the entire proceeding as company is not made an accused. Admittedly, while exercising powers under Section 482 of the Code, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the 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. 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.

19. By applying the above test, admittedly, the allegations made in the FIR, nowhere disclose that the applicants

were incharge of the business entity and looking after day-to-day business and they were actively participated in the business activities. In absence of any material against them, vicarious liability would not be attracted against them merely because they are the Directors or the employee as the vicarious liability of the Director cannot be impugned automatically.

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

21. Hence, I proceed to pass the following order:-

ORDER

(i) The Criminal Application is allowed.

(ii) The First Information Report in connection with crime No.124/2018 registered at Police Station Gadge Nagar District Amravati for the offences punishable under Sections 77(b), 78(e), 79, 82, 83 and 90 of the Maharashtra Prohibition Act, 1949 (for short, 'the Act of 1949') and the consequent proceeding arising out of the same bearing SCC No.4489/2021 pending in the Court of 5th Joint Civil Judge, Junior Division and Additional Chief Judicial Magistrate, Amravati is quashed and set aside against the present applicants.

22. The criminal application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

manisha