THE ASSISTANT COMMISSIONER, ASSESSMENT-II, BANGALORE AND ORS. A

v.

M/s. VELLIAPPA TEXTILES LTD. AND ORS.

SEPTEMBER, 16, 2003

B

[S. RAJENDRA BABU, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.]

Income Tax Act, 1961 :

Section 279—Prosecution—Launching of—Sanction—Grant of— C *Opportunity of hearing—Affording of—Whether mandatory—Held : (per curium) : No opportunity of hearing need be given to the accused before grant of sanction—Hence, sanction given by the Commissioner of Income Tax not vitiated on account of want of opportunity of hearing—Administrative Law.* D

Sections 276C, 277 and 278B—Prosecution of a company—Launching of —Punishment—Imprisonment and fine—Held : (per majority) : Court not empowered to impose only a fine—Imprisonment coupled with fine mandatory—Hence, company could not be prosecuted under Ss. 276C, 277 r/w S. 278B—(per minority) : Company could be awarded a sentence E *of fine only without a sentence of imprisonment—Hence, company could be prosecuted under Ss. 276C, 277 r/w S. 278B.*

Maxims :

"Judicis est jus dicere, non dare". F

Respondent No. 1 was a company registered under the provisions of the Companies Act, 1956 and respondent No. 2 was its Managing Director. They were sought to be prosecuted under Sections 276C, 277 and 278 read with Section 278B of the Income Tax Act, 1961. The G **respondents challenged the prosecution proceedings by filing a petition under Section 482 of the Code of Criminal Procedure, 1973 in the High Court on the following grounds :**

(a) That the sanction granted by the Commissioner of Income Tax under Section 279 of the Act was invalid as the same was given without H

affording any opportunity to the respondents.

(b) That the first respondent was a company, a juristic person, and therefore, incapable of being punished with a sentence of imprisonment, which was mandatory under the provisions of Sections 276C and 277 and, therefore, prosecution under these Sections against a juristic person like a company was not maintainable.

The High Court relying upon an earlier Division Bench decision of the same Court in *P.V. Pai* v. *R.I. Rinawma,* ILR 1993 Kar. 709 held that as the company was a juristic person, it could not be punished with imprisonment and, therefore, its prosecution was unpurposeful. The High Court further held that since the sanction to prosecute the respondents had been granted without affording them any opportunity of hearing, the principles of natural justice were violated and the order granting sanction was invalid. The petition was allowed and the proceedings of the complaint case were quashed. Hence the appeal.

On behalf of the appellants it was contended that in law there was no requirement of affording an opportunity of hearing before grant of sanction; that when the statute specifically provided penal liability of the company, there could be no legal impediment in launching of prosecution against it, even if the substantive sentence of imprisonment could not be awrded; and that as Section 276C of the Act provided for both, a substantive sentence and a fine, the punishment of fine only could be imposed upon a company.

Allowing the appeal against the first respondent and dismissing the appeal against the second respondent by majority, the Court

HELD : *Per curium :* 1. The sanction given by the Commissioner of Income Tax is not vitiated on account of want of opportunity of hearing. [773-C-D]

Per Rajendra Babu, J. :

1. The constitution of a modern company consists of two documents usually bound up as one-the memorandum and articles of association. A company's authority always remains circumscribed by

the object clause of its memorandum and it cannot contain anything unlawful. Anything done outside the object and powers of the company is *ultra vires*. With regard to criminal activities, the agents are beyond their authority and corporate capacity. Company is thus a potentially complex organization, which is assimilated into the pre-existing individualistic framework of the law by pursuit of fiction and analogy with a natural person. [773-G-H, 774-A]

2.1. In order to trigger corporate criminal liability for the actions of the employee (who must generally be liable himself), the actor-employee who physically committed the offence must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the *alter ego* of the employer-corporation or its directing mind. Since the company/corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. To this extent, there are no difficulties in our law to fix criminal liability on a company. The Common Law tradition of *alter ego* or identification approach is applicable under our existing laws. [774-B-D]

2.2. However, the problem crops up in *mens rea* offences. *Mens rea* and negligence are both fault elements, which provide a basis for the imposition of liabililty in criminal cases. *Mens rea* focuses on the mental state of the accused and requires proof of a positive state of mind such as intent, recklessness or willful blindness. Negligence, on the other hand, measures the conduct of the accused on the basis of an objective standard, irrespective of the accused's subjective mental state. Criminal liability of a company arises only where an offence is committed in the course of the company's business by a person in control of its affairs to such a degree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the company. And it is not possible to attribute element of *mens rea* to a juristic person, which requires a positive act of omission or commission. Since this cannot be attributed to a juristic person, it is difficult to accept the proposition of 'punishing a company' wherein *mens rea* element is necessary. It is all the more difficult in the event

of a mandatory punishment that leads to imprisonment. [774-D-G]

3.1. Corporate criminal liability cannot be imposed without making corresponding legislative changes. For example, the imposition of fine in lieu of imprisonment. [775-A]

3.2. Under the present Indian law, it is difficult to impose fine in lieu of imprisonment though the definition of 'person' in the Indian Penal Code includes a 'company'. To bring such a fundamental change in the criminal jurisprudence is a legislative function. Only the Parliament can do it. [775-E-F, 776-C]

Per Srikrishna, J :

1. It is a basic principle of criminal jurisprudence that a penal statute is to be construed strictly. If the act alleged against the accused does not fall within the parameters of the offence described in the statute the accused cannot be held liable. There is no scope for intendment based on the general purpose or object of law. If the Legislature has left a lacuna, it is not open to the Court to paper it over on some presumed intention of the Legislature. [777-C]

CST v. *Parson Tools and Plants* [1975] 4 SCC 22, relied on.

Prem Nath L. Ganesh v. *Prem Nath, L. Ram Nath*, AIR (1963) Punj. 62, cited.

2.1 The maxim "Judicis est jus dicere, non dare" pithily expounds the duty of the Court. It is to decide what the law is and apply it; not to make it. [777-G]

2.2. The question of criminal liability of a juristic has troubled Legislatures and Judges for long. Though, initially, it is supposed that a Corporation could not be held liable criminally for offences where *mens rea* was requisite, the current judicial thinking appears to be that the *mens rea* of the person-in-charge of the affairs of the Corporation, the *alter ego,* is liable to be extrapolated to the Corporation, enabling even an artificial person to be prosecuted for such an offence. [777-G, H, 778-A]

3. The function of the court of law is *jus dicere* and not *jus dare*, and, therefore, the court of law cannot justify an interpretation of a Section in tune with any recommendations, even when the words of the Section are plain and unambiguous. [781-B]

M.V. Javali **v.** *Mahajan Borewell & Coy,* **[1997] 8 SCC 72,** *P.V. Pai* **v.** *R.L. Rinawma,* **ILR (1963) Kar. 709;** *Kusum Products Ltd.* **v.** *S.K. Sinha* **v .** *ITO,* **(1980) ITR 804;** *Modi Industries Ltd.* **v.** *B.C.G.,* **(1983) 144 ITR 496;** *Municipal Corporation of Delhi* **v.** *J.B. Bottling Coy.,* **(1975) Crl. LJ 1148 and** *Oswal Vanaspati & Allied Industries* **v.** *State of U.P.,* **(1993) 1 Crl. LJ 172, overruled.**

4.1. Where the Legislature has granted discretion to the court in the matter of sentencing, it is open to the court to use its discretion. Where, however, the Legislature, for reasons of policy, has done away with this discretion, it is not open to the court to impose only a part of the sentence prescribed by the Legislature, for that would amount to re-writing the provisions of the statute. [781-G-H]

P.V. Pai **v.** *R.L. Rinawma,* **ILR (1963) Kar. 709,** *Kusum Products Ltd.* **v.** *S.K. Sinha* **v.** *ITO,* **(1980) 126 ITR 804,** *Modi Industries Ltd.* **v.** *B.C.G.,* **(1983) 144 ITR 496,** *Municipal Corporation of Delhi* **v.** *J.B. Bottling Coy.,* **(1975) Crl. LJ 1148 and** *Oswal Vanaspati & Allied Industries* **v.** *State of U.P.* **(1993) 1 Crl. L.J. 172, overruled.**

4.2. The legislative mandate is to prohibit the Courts from deviating from the minimum mandatory punishment prescribed by the statute. [782-F]

5.1. The Court should be slow in interpreting a penal statute in a manner, which would amount to virtual re-writing of the statute to prejudice the accused. [782-G]

5.2. A court cannot breach a *casus omissus* and no canon of construction permits the court to supply a lacuna in a statute; nor can courts of law fill up the lacuna in an ill-drafted and hasty legislation. Whether the omission is intentional or inadvertent is no concern to the court. [783-B]

A *Tarak Chandra* v. *Ratanlal,* **AIR (1957) Cal. 257, approved.**

Bristol Guardians v. *Bristol Waterworks Coy.* **(1914) AC 349, referred to.**

6. While interpreting a penal statute, if more than one view is
B **possible, the court is obliged to lean in favour of the construction, which exempts a citizen from penalty than the one which imposes the penalty. [783-F]**

Tolaram Rehumal v. *State of Bombay,* **AIR (1954) SC 496;** *Bijaya*
C *Kumar Agarwala* v. *State of Orissa,* **[1966] 5 SCC 1;** *Sanjay Dutt* v. *State,* **[1994] 5 SCC 410 and** *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjaya,* **[1990] 4 SCC 76, relied on.**

State of Maharashtra v. *Jugmander Lal,* **AIR (1966) SC 940,** *State*
D *of Maharashtra* v. *Syndicate Transport Coy. Pvt. Ltd.,* **AIR (1964) Bom. 195,** *Tuck & Sons* v. *Priester,* **[1887] 19 QBD 629 and** *London & Nosn Eastern Railway* v. *Berriman,* **(1946) 1 ALL ER 255, referred to.**

7. This Court cannot, in the garb of construction of the penal provisions of Sections 276C, 277 and 278 of the Income Tax Act, 1961
E **impose a punishment of fine in a situation, which calls for no punishment by a virtual re-writing of the statute. [784-F]**

United States v. *Union Supply Coy* **54 Lawyers Ed. 87 (215 U.S. 50), referred to.**

F **8. The respondent-company cannot be prosecuted for the offences under Sections 276C, 277 and 278 read with Sections 278 since each one of these Sections requires the imposition of a mandatory term of imprisonment coupled with a fine leaves no choice to the Court to impose only a fine. [785-C]**

G *R.* v. *I.C.R. Haulage Ltd.,* **(1944) 1 All E.R. 691, referred to.**

Per Mathur, J. :

1. The sanction to prosecute is undoubtedly an important matter
H **and it constitutes a condition precedent to the institution of the**

prosecution. For a valid sanction, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction, but this is not essential. If the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must, in the course of the trial, prove by extraneous evidence that those facts were placed before the sanctioning authority and the authority after applying his mind to the relevant facts had accorded the sanction. The authority giving the sanction should *prima facie* consider the evidence and all other attending circumstances before he comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. But he is not required to hold any inquiry to satisfy himself as to the truth of facts alleged. [788-F-H, 789-A]

2.1. If some one has committed an offence, he must be prosecuted and if found guilty, must be punished in accordance with law. Compounding of an offence is not a right of the accused nor is it his unilateral act. It can only be done with consent of the authorities enumerated in the provisions. No additional right can be created in favour of an accused to enable him to save himself from the "disgrace and ignominy of the prosecution". [789-C-D]

P.V. Pai v. *R.L. Rinawma,* ILR (1993) Kar. 709, overruled.

2.2. By grant of sanction the competent authority under the Income Tax Act, 1961 only becomes empowered to institute the complaint before the Court. In many other situations, the order of sanction has the effect of lifting the embargo on the power of the Court to take cognizance of the offence. An order of sanction, by itself, does not have the effect of a conviction or imposing a penalty causing any injury of any kind on the accused. The accused will get full opportunity to defend himself in the trial and the trial will take place in accordance with the procedure established by law. [789-E-G]

R. v. *Raymond,* (1981) 2 All ER 246, referred to.

Wiseman v. *Borneman,* (1971) AC 207, *Cooper* v. *Wandsworth Board of Works,* (1963) 14 CBNS 180, *Pearlberg* v. *Varty,* (1972) 2 All ER 6, cited.

A *R.* v. *Raymond,* (1981) 2 All ER 246, referred to.

Adiministrative Law : David Foulkes (Seventh Ed.) p. 285, referred to.

B 3. The grant of sanction is purely an administrative act and affording of opportunity of hearing to the accused is not contemplated at that stage. The legal position is, therefore, clear that no opportunity of hearing was required to be afforded to the respondents before grant of sanction by the Commissioner of Income Tax and the view to the contrary taken by the High Court is clearly erroneous in law. [790-G, 791-D]

C *Superintendent of Police (C.B.I.)* v. *Deepak Chowdhary,* [1995] 6 SCC 225, relied on.

D 4.1. It is true that a company cannot be made to undergo a substantive sentence of imprisonment. However, there is no reason why it should not be awarded a sentence of fine only in the event it is found guilty of having committed the offence. The Court trying a criminal offence has to perform two functions. The first is to determine whether the accused is guilty of having committed the crime, as described in the Statute. This conclusion has to be reached on the basis of the E evidence, oral and documentary produced before the Court. The second function is to award a sentence for the offence for which the accused has been found guilty. [799-C-D]

F 4.2. The Court has very wide discretion in a mtter of awarding sentence. The discretion undoubtedly has to be exercised on sound judicial principles having regard to various factors. This will include the nature of the crime, the manner and method of commission thereof, the position and condition of victim and also matters attributable personally to the accused like his age, health, social background, mental condition etc. [799-E-F]

G 5.1. Even after a person has been convicted and sentenced, it is not absolutely mandatory that he must undergo the whole sentence awarded to him by actually spending that period in jail. Taking into custody and ensuring incarceration in jail for the specified period after H pronouncement of judgment of conviction and sentence of an accused

is in the realm of execution of sentence. Non-compliance or breach in the matter of execution of sentence can have no bearing on the trial or conviction of the accused or the sentence awarded by the Court. [800-B-C]

5.2. The mere fact that a company cannot be sent to jail or made to undergo imprisonment cannot lead to an inference that it should not be prosecuted at all. In the event of its conviction, an appropriate fine can be imposed upon it, which is also one of the punishments provided under Sections 276C and 277 of the Income Tax Act, 1961. [800-D-E]

S.M. Badsha **v.** *ITO,* **168 IT 332, (Ker);** *Shri Singhvi Brothers* **v.** *Union of India,* **187 IT 215 (Raja);** *Kusum Products Ltd.* **v.** *S.K. Sinha,* **126 IT 804 (Cal) and** *P.V. Pai* **v.** *R.L. Rinawna,* **ILR (1993) Kar. 709, overruled.**

New York Central & Hudson River Railroad Coy. **v.** United States, **53 Lawyers Ed. 613;** *Director of Public Prosecutions* **v.** *Kent and Sussex Contractors Ltd.,* **(1944) 1 All ER 119;** *H.L. Bolton Coy.* **v.** *T.J., Graham & Sons,* **(1956) 3 All ER 624;** *Carrying Co. Ltd.* **v.** *Asiatic Petrolem Co. Ltd,* **4 (1915) AC 705;** *Tesco Supermarkets Ltd.* **v.** *Nattrass,* **(1971) 2 All ER 127 and** *Canadian Dredge & Dock* **v.** *R.,* **(1985) 11 RCSC 662, cited.**

American Jurisprudence : **2nd paras 1434 and 1435,** *Anonymous :* **12 Mod 559, 88 Eng Reprint, 1164, 19** *Corpus Juris Secundum :* **paras 1358 and 1363;** *Halsbury's Laws of England :* **Vol. 9(2) para 1184 and Vol. 11(1) para 35 and** *Corporate Criminal Liability :* **A Comparative Perspective by Guy Stessens Vol. 43 (1994) International & Comparative Law Quarterly p. 493, referred to.**

6. If a company is not to be prosecuted only on the ground that substantive sentence cannot be awarded to it, the provisions of Section 10-B Essential Commodities Act and Section 35 Drugs and Cosmetics Act would never come into operation, clearly defeating the legislative intent and the purpose for which they have been enacted. [801-B-C]

Municipal Corporation of Delhi **v.** *J.B. Bottling Co.,* **(1975) Crl. L.J. 1148 (Del.);** *Oswal Vanaspati & Allied Industries* **v.** *State of U.P.,* **(1993) 1 Company Law Journal (all)(FB) and** *Manian Transports,* **v.** *S. Krishnamurthy,* **(1991) 72 Company Cases 746 (Mad.), approved.**

A *U.S. Supreme Court in United States* v. *Union Supply Coy.*, **54 Lawyers Ed. 87 (215 U.S. 50, referred to.**

7. Proof of *mens rea* or guilty mind is not absolutely essential in every case. *Mens rea* or knowledge is not essential ingredients. [803-A]

B *P.K. Tejani* v. *M.R. Dange,* **AIR (1974) SC 228;** *Sarjoo Prasad* **v.** *State of U.P.,* **AIR (1961) SC 631;** *Ashu Jaiwant* **v.** *State of Maharashtra,* **(1975) SC 2175;** *State of M.P.* **v.** *Narayan Singh,* **AIR (1989) SC 1789 and** *Radhey Shyam Khemka* **v.** *State of Bihar,* **[1993] 3 SCC 54, relied on.**

C

8. For framing of charges in respect of acts and omissions, *mens rea* is not an essential ingredient; the concerned statute imposes a duty on those who are in-charge of the management to follow the statutory provisions and once there is a breach or contravention, such persons D **become liable for punishment. [803-B-C]**

9. Courts would be shirking their responsibilities of imparting justice by holding that the prosecution of a company is unsustainable merely on the ground that being a juristic person it cannot be sent to jail to undergo the sentence. Companies are growing in size and have E **huge resources and finances at their command. In the course of their business activity, they may sometimes commit breach of the law of the land or endanger others' lives. More than four thousand people lost their lives and thousands others suffered permanent impairment in Bhopal on account of gross criminal act of a multinational corporation.** F **It will be wholly wrong to allow a company to go away scot-free without even being prosecuted in the event of commission of a crime only on the ground that it cannot be made to suffer a part of the mandatory punishment. [804-C-E]**

G *M.V. Jevali* **v.** *Mahajan Borewell & Co. & Ors.,* **[1997] 8 SCC 72, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Apeal No. 142 of 1994.

H From the Judgment and Order dated 29.3.93 of the Karnataka High

Court in Crl. P. No. 1502 of 1992. A

T.L.V. Iyer, G. Venkatesh Rao and B. Krishna Prasad for the Appellants.

S.C. Birla for the Respondents. B

The following Orders of the Court were delivered :

I have very carefully gone through the judgments of my learned Brethren Srikrishna, J. and Mathur, J. C

On the first aspect that sanction given by the Commissioner of Income Tax is not vitiated on account of want of opportunity of hearing, I respectfully agree with my Brethren Srikrishna J. and Mathur, J. On the remaining aspect of the case, two questions arise for consideration : D

(1) Whether a company can be attributed with *mens rea* on the basis that those who work or are working for it have committed a crime and can be convicted in a criminal case?

(ii) Whether a company is liable for punishment of fine if the E provision of law contemplates punishment by way of imprisonment only or a minimum period of punishment by imprisonment plus fine whether fine alone can be imposed?

On the answer to first of these questions my Brethren Srikrishna, J. F and Mathur, J. are agreed. However, with great respect to both of them, I wish to take a different view.

The constitution of a modern company consists of two documents usually bound up as one—the memorandum and articles of association. A G company's authority always remains circumscribed by the object clause of its memorandum and it cannot contain anything unlawful. Anything done outside the object and powers of the company is *ultra vires.* With regard to criminal activities, the agents are beyond their authority and corporate capacity. Company is thus a potentially complex organization. Which is H

A assimilated into the pre-existing individualistic framework of the law by pursuit of fiction and analogy with a natural person.

In order to trigger corporate criminal liability for the actions of the employee (who must generally be liable himself), the actor-employee who B physically committed the offence must be the *ego,* the centre of the corporate personality, the vital organ of the body corporate, the *alter ego* of the employer corporation or its directing mind. Since the company/ corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of C the corporation, the very ego and centre of the personality of the corporation. To this extent there are no difficulties in our law to fix criminal liability on a company. The Common Law tradition of *alter ego* or identification approach is applicable under our existing laws. But the problem crops up in *mens rea* offences. *Mens rea* and negligence are both D fault elements, which provide a basis for the imposition of liability in criminal cases. *Mens rea* focuses on the mental state of the accused and requires proof of a positive state of mind such as intent, recklessness or willful blindness. Negligence, on the other hand, measures the conduct of the accused on the basis of an objective standard, irrespective of the E accused's subjective mental state. Criminal liability of a company arises only where an offence is committed in the course of the company's business by a person in control of its affairs to such a degree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the company. And it is not possible to attribute F element of *mens rea* to a juristic person, which requires positive act of omission or commission. Since this cannot be attributed to a juristic person, it is difficult to accept the proposition of 'punishing a company' wherein *mens rea* element is necessary. It is all the more difficult in the event of mandatory punishment that leads to imprisonment. However, I need not dilate on this aspect of the case and reserve that answer for consideration G in a more appropriate case.

On the second question, there is divergence of opinion between my learned Brethren. While I respectfully and reluctantly disagree with the view of my learned Brother Mathur, J., I respectfully agree with the view H of my learned Brother Srikrishna, J. and add as follows :

Corporate criminal liability cannot be imposed without making corresponding legislative changes. For example, the imposition of fine in lieu of imprisonment. Such legislative changes took place in Australia, France (Penal Code of 1992), Netherlands (The Economic Offences Act, 1950 and Article 51 of Criminal Code), and Belgium (in 1934. *Cour de Cassation* recognized the punishment of a corporate body by making it a subject of Belgian Criminal Statute). Germany practices a sort of administrative sanction to deviant corporations and doesn't recognize criminal liability of corporations. In United States the punishment of corporate crime is based on the doctrine of 'Respondent Superior', whereby agent's conduct is imputed to the corporation. This was envisaged in the Model Penal Code (1962) proposed by the American Law Institute and many States subsequently enacted this Model Code. The Canadian Federal Criminal Code was amended as far back as in 1909 whereby a fine could be substituted for a sentence of imprisonment, made the corporate criminal liability possible, Section 718 of the Canadian Criminal Code Imposes fine to corporate offenders and Section 720 provides special enforcement procedure for fines on corporations. The European Council in 1988 made a recommendation to the member states to carry out necessary amendments in their respective criminal statutes to ensure corporate liability. Whereas, the United Kingdom follows the *alter ego* or identification approach to fix corporate liability in criminal cases.

In my considered view, under the present Indian law it is difficult to impose fine in lieu of imprisonment though the definition of 'person' in the Indian Penal Code Includes 'company'. Brother Srikrishna, J. in his opinion has discussed two Reports of Law Commission of India in this regard. It is also worthwhile to mention that our Parliament has also understood this problem. The proposed India Penal Code (Amendment) Bill, 1972, clause 72(a) reads as hereunder :

> "cl. 72(a)(1) — In every case in which the offences is punishable with imprisonment and fine, and the offender is a company, it shall be competent for the Court to sentence such offender to fine only.
>
> (2) — In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the

A offender is a company, it shall be competent for the Court to sentence such offender to fine only.

Explanation : For the purpose of this section, 'company' means any body corporate and includes a firm or other association of individuals."

B

The Bill, in fact, was not passed but lapsed.

To bring such a fundamental change in the criminal jurisprudence is a legislative function. Only the Parliament can do it.

C

Hence, agreeing with Brother Srikrishna, J. I would dismiss the appeal as regards 1st respondent and allow the appeal as regards 2nd respondent.

D **SRIKRISHNA, J. :** I have had the benefit of perusing the erudite judgment of learned brother Mathur, J. I, however, find myself unable to agree with one aspect of the judgment and the resultant outcome.

The facts have been succinctly stated in the judgment of brother Mathur, J. Hence it is not necessary to elaborate them, except to recapitu-
E late them very briefly. The first respondent is a limited company which, along with its Managing Director, was sought to be prosecuted under Sections 276C, 277 and 278 read with Section 278B of the Income Tax Act (hereinafter referred to as 'the Act'). The respondents challenged the prosecution by a petition under Section 482 of the Criminal Procedure
F Code and urged the following grounds in support:

(1) That the sanction of the Commissioner of Income Tax granted under Section 279 of the Act is vitiated for failure to observe the principles of natural justice inasmuch as no opportunity of hearing was given to the
G respondents before the sanction was given.

(2) The first respondent is a company, a juristic person, and therefore, incapable of being punished with a sentence of imprisonment, which is mandatory under the provisions of Sections 276C and 277. Hence, the prosecution under these Sections against a juristic person like a company
H is not maintainable, even if by reason of Section 278B some other persons

connected with it and responsible for running the business of the company A can be held liable for the offence.

As far as the first contention is concerned, I respectfully agree with the view taken in the judgment of brother Mathur, J and the reasons given in support. It is only with regard to the second contention, that I am unable B to agree with the views expressed in the judgment.

It is a basic principle of criminal jurisprudence that a penal statute is to be construed strictly. If the act alleged against the accused does not fall within the parameters of the offence described in the statute the accused cannot be held liable. There is no scope for intendment based on the C general purpose or object of law. If the Legislature has left a lacuna, it is not open to the Court to paper it over on some presumed intention of the Legislature. The doctrine of *casus omissus*, expressed in felicitous language in *CST* v. *Parson Tools and Plants,* [1975] 4 SCC 22, is:

D

> "If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engraving on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks E to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of legislature", (At p 65 in *Prem Nath L Ganesh* v. *Prem Nath,L. Ram Nath,* AIR (1963) Punj 62, Per Tek Chand, J.). The primary function of a court of law being *jus dicere* and not *jus dare.*" F
>
> *(Emphasis supplied)*

The maxim *"Judicis est jus dicere, non dare"* pithily expounds the duty of the Court. It is to decide what the law is and apply it; not to make it.

G

The question of criminal liability of a juristic person has troubled Legislatures and Judges for long. Though, initially, it was supposed that a Corporation could not be held liable criminally for offences where *mens rea* was requisite, the current judicial thinking appears to be that the *mens rea* of the person in-charge of the affairs of the Corporation, the H

A *alter ego,* is liable to be extrapolated to the Corporation, enabling even an artificial person to be prosecuted for such an offence. I am fully in agreement with the view expressed on this aspect of the matter in the judgment of brother Mathur, J. What troubles me is the question whether a Corporation can be prosecuted for an offence even when the punishment B is a mandatory sentence of imprisonment.

That in India the situation has not been free from doubt is evident from two reports of the Law Commission of India which recommended specific amendments in order to get over this difficulty. The Law Commission of India in its 41st report at paragraph 24.7 recommended as C under :

> "24.7 – As it is impossible to imprison a corporation practically the only punishment which can be imposed on it for committing an offence is fine. If the penal law under which a corporation is to be prosecuted does not provide for a sentence of fine, there will D be a difficulty. As aptly put by a learned writer, -
>
> > "Where the only punishment which the court can impose is death, penal servitude, imprisonment or whipping, or a punishment which is otherwise inappro- E priate to a body corporate, such as a declaration that the offender is a rogue and a vagabond, the court will not stultify itself by embarking on a trial in which, if the verdict of guilt is returned no effective order by way of sentence can be made".
>
> F In order to get over this difficulty we recommend that a provision should be made in the Indian Penal Code e.g. as section 62 in Chapter III relating to punishments, on the following lines:-
>
> > "In every case in which the offence is only punishable G with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the Court to sentence such offender to fine only".

Again, the Law Commission of India in its 47th report vide paragraph H 8.3 recommended as under :

"8.3 – In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the Penal Code also, but it is likely to arise more frequently in the case of economic laws. We, therefore, recommend that the following provision should be inserted in the Penal Code as, say, Section 62 :

"(1) In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.

(2) In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.

(3) In this section, 'corporation' means an incorporated company or other body corporate, and includes a firm and other association of individuals."

The Law Commission's recommendations focussed on the fact that the law as it exists renders it impossible for a court of law to convict a Corporation where the statute mandates a minimum term of imprisonment plus fine. It would not be open to the court of law to hold that a Corporation would be found guilty and sentenced only to a fine for that would be re-writing the statute and exercising a discretion not vested in the court by the statute. It is precisely for this reason that the Law Commission recommended that where the offence is punishable with imprisonment, or with imprisonment and fine, and the offender is a corporation, the Court should be empowered to sentence such an offender to fine only. These recommendations have not been acted upon, though several other recommendations made by the 47th Report of the Law Commission have been accepted and implemented by Parliament vide the Taxation Laws (Amendment) Act, 1975. Hence, the state of law as noticed by the Law Commission continues.

A A number of judgments of High Courts as well as one judgment of this Court were cited at the bar which render the situation more complex and perhaps necessitated reference of the matter to a larger Bench. This Court speaking through a Bench of two learned Judges in *M.V. Javali* v. *Mahajan Borewell & Company & Ors.*, [1997] 8 SCC 72 made the B following observations vide paragraphs 6 and 8:

> "6 – From a plain reading of the above section it is manifest that if an offence under the Act is committed by a company the persons who are liable to be proceeded against and punished are: (i) the company, (which includes a firm); (ii) every person, who at the C time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business; and (iii) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom D the offence has been committed. The words "as well as the company" appearing in the section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in categories (ii) and (iii), who are for all intents and purposes vicariously liable for the offence, are not arraigned, for it is the company which is primarily guilty of the E offence.
>
> xxx xxx xxx xxx
>
> 8. Keeping in view the recommendations of the Law Commission F and the above principles of interpretation of statutes we are of the opinion that the only harmonious construction that can be given to Section 276-B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on a company, fine will be the only G punishment. We hasten to add, two other alternative interpretations could also be given : (i) that a company cannot be prosecuted (as held in the impugned judgment); or (ii) that a company may be prosecuted and convicted but not punished, but these interpretations will be dehors Section 278-B or wholly H inconsistent with its plain language."

Though, *Javali* (supra) refers to the recommendations of 47th report of the Law Commission of India dated 28.2.1972 in support of its view, I find it difficult to agree with its reasoning. The report of the Law Commission indicates a lacuna in the law and suggests a possible remedy by amending the law. Since the function of the court of law is *jus dicere* and not *jus dare*, the court of law cannot read the recommendations of the Law Commission as justifying an interpretation of the Section in tune with them, even when the words of the Section are plain and unambiguous. Though *Javali* (supra) also refers to the general principles of interpretation of statutes, the rule of interpretation of criminal statutes is altogether a different cup of tea. It is not open to the court to add something to or read something in the statute on the basis of some supposed intendment of the statute. It is not the function of this Court to supply the *casus omissus*, if there be one. As long as the presumption of innocence of the accused prevails in this country, the benefit of any lacuna or *casus omissus* must be given to the accused. The job of plugging the loopholes must strictly be left to the legislature and not assumed by the court.

The judgment of the Karnataka High Court under appeal relies on its earlier judgment in *P.V.Pai* v. *R.L. Rinawma,* ILR (1993) KAR 709. To similar effect are the views of the *Calcutta High Court in Kusum Products Ltd.* v. *S.K. Sinha, ITO, Central Circle-X, Calcutta* (1980) 126 ITR 804, *Modi Industries Ltd.* v. *B.C. Goel,* (1983) 144 ITR 496.

The judgment of the Full Bench of the Delhi High Court in *Municipal Corporation of Delhi* v. *J.B. Bottling Company,* (1975) Crl.L.J. 1148 followed by the judgment of the Full Bench of the Allahabad High Court in *Oswal Vanaspati & Allied Industries* v. *State of U.P.,* (1993) 1 CLJ 172 take the view that where a statute imposes a minimum sentence of imprisonment plus fine, since the court cannot imprison a juristic person like company, it has the option of imposing fine only. With great respect, I am unable to subscribe to this view. Where the legislature has granted discretion to the court in the matter of sentencing, it is open to the court to use its discretion. Where, however, the legislature, for reasons of policy, has done away with this discretion, it is not open to the court to impose only a part of the sentence prescribed by the legislature, for that would amount re-writing the provisions of the statute.

A Prior to the substitution of Section 276C, 277 and 278 by the Taxation Laws (Amendment) Act, 1975 with effect from 1.10.1975 in the present form, there was no minimum sentence of imprisonment provided for. The intention of the legislature in imposing a minimum term of imprisonment for offences punishable thereunder was to do away with the Court's B discretion of only imposing of a fine and make the punishment more stringent.

The Law Commission in its 47th Report recommended (Chapter 18, pg. 157) that the punishment under sections 276B, 276C, 276E, 277 and 278 should be increased. It further recommended, "there should be a C provision for minimum imprisonment and minimum fine'. These recommendations were implemented vide the Taxation Laws (Amendment) Act, 1975. In fact, at the time of introduction of the amendment bill, the Finance Minister Shri C. Subramaniam stated:

D "To those who make a lot of money through infringement of laws, monetary penalties do not really serve as deterrents. The provisions relating to prosecutions for tax offences are, therefore, proposed to be tightened up. The Select Committee has further recommended that in order to make the provisions relating to prosecution more effective, the discretion vested in courts to E award monetary punishment as an alternative to rigorous imprisonment or to reduce the term of imprisonment below the prescribed minimum should be taken away. I welcome these changes and commend them to the house."

F Hence, it is apparent that the legislative mandate is to prohibit the Courts from deviating from the minimum mandatory punishment prescribed by the statute. If, in spite of the amendment, the situation is seen as before, then I fail to see the purpose of the amendments made by the Taxation Laws (Amendment) Act, 1975.

G I am of the view that the Court should be slow in interpreting a penal statute in a manner which would amount to virtual re-writing of the statute to prejudice to the accused.

As Loreburn,J. observed in *Bristol Guardians* v. *Bristol Waterworks* H *Company* (1914) AC 379, 388:

> "After all, it is not our function to repair the blunders that are to be found in legislation. They must be corrected by the legislature." A

A court cannot breach a *casus omissus* and no canon of construction permits the court to supply a lacuna in a statute; nor can courts of law fill up the lacuna in an ill-drafted and hasty legislation. B

This was echoed by the Full Bench of the Calcutta High Court in *Tarak Chandra* v. *Ratanlal,* AIR (1957) Cal. 257 thus:

> "It is true that one must not expect in a statute the completeness and elaboration of a deed, and where the minimum required to make a particular meaning which is obviously intended is found, C effect must be given to such meaning. But courts cannot dispense with even the minimum. Even where such minimum is absent, courts must declare the deficiency and let it have its effect rather than strain themselves to make it good. Thereby, not only will the courts prevent themselves from taking up the functions of the D legislature but the legislature may also profit because it may take care to avoid such deficiencies in future."

Whether the omission is intentional or inadvertent is no concern of the court. E

The observations in *Tolaram Relumal & Anr.* v. *The State of Bombay,* AIR (1954) SC 496 , *Bijaya Kumar Agarwala* v. *State of Orissa,* [1996] 5 SCC 1, *Sanjay Dutt* v. *State through CBI, Bombay(II),* [1994] 5 SCC 410, *Niranjan Singh Karam Singh Punjabi, Advocate* v. *Jitendra Bhimraj Bijjaya & Ors.,* [1990] 4 SCC 76 make it clear that while interpreting a penal statute, if more than one view is possible, the court is obliged to lean F in favour of the construction which exempts a citizen from penalty than the one which imposes the penalty. The observations of Lord Esher, MR in formulating, "the settled rule of construction of penal Sections", that "if there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable G constructions, we must give the more lenient one." (See *Tuck & Sons* v. *Priester,* [1887] 19 QBD 629 and *London & Norm Eastern Railway* v. *Berriman,* (1946) 1 ALL ER 255.

In *State of Maharashtra* v. *Jugmander Lal,* AIR (1966) SC 940 this court held that the expression, "shall be punishable for imprisonment and H

A also for fine" means that the court is bound to award a sentence comprising both imprisonment and fine and the word "punishable" does not mean anything different from "shall be punished", punishment being obligatory in either case. The judgment of the Bombay High court in *State of Maharashtra* v. *Syndicate Transport Company Pvt. Ltd.,* AIR (1964) Bom. B 195 also supports this view.

The view taken by me also finds support from the Australian jurisdiction. Faced with the same situation, the legislature in Australia enacted Part 2.5 of the Commonwealth Criminal Code Act, 1995 to specifically provide: "a body corporate may be found guilty of any offence, C including one punishable by imprisonment." This provision has to be read with Section 4B(3) of the Crimes Act, 1914 which provides : "where a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times D the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence." This was a case of the legislature stepping in to supply the *casus omissus*. The legislature in Australia has expressly empowered the court to exercise a discretion to impose only fine even where a mandatory term of imprison- E ment is prescribed, if the accused is a Corporation.

Contrasting the situation in India, against the background of the two reports of the Law Commission referred to, with the situation in Australia, drives home the point. I am of this view that this Court cannot, in the garb of construction of the penal provisions of Section 276 (C), 277 and 278, F impose a punishment of fine in a situation which calls for no punishment by a virtual re-writing of the statute.

The argument that the term "person" has been defined in Section 2 (31) of the Act, so as to include a company, does not impress me. All G definitions in the Act apply "unless the context otherwise requires". For reasons which I have indicated, the context does indicate to the contrary, while reading of the word "person" in the concerned Sections.

The judgment of the U. S. Supreme Court in *United States* v. *Union* H *Supply Company* 54 Lawyers Ed. 87 (215 U.S.50) referred to in the

judgment of brother Mathur, J seems to support the view that "the natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that, if one of them is impossible, it does not mean, on that account, to let the defendant escape." Apart from this, I see no other reasoning contained therein. With respect, I am unable to agree with the view taken in the judgment in *United States* v. *Union Supply Company* (supra). The situation in India was considered by two Law Commissions whose recommendations I have referred to earlier. I have already discussed that import.

For the aforesaid reasons, I am of the view that the first respondent company cannot be prosecuted for offences under Sections 276C, 277 and 278 read with Section 278B since each one of these Sections requires the imposition of a mandatory term of imprisonment coupled with a fine and leaves no choice to the Court to impose only a fine.

The following observations of Stable, J. in *R.* v. *I.C. R. Haulage, Ltd.*, (1944) 1 All. E.R. 691 made in similar situation are of relevance :

> "Where the only punishment which the court can impose is death, for this purpose the basis of this exception is being that the court will not stultify itself by embarking on a trial in which, if the verdict of guilt is returned, no effective order by way of sentence can be made."

Hence, in my judgment, the High Court was justified in quashing the prosecution as far as the first respondent is concerned. I would therefore, dismiss the appeal as far as the first respondent is concerned and allow the appeal with regard to the prosecution against the second respondent.

G.P. MATHUR, J. : 1. This appeal by special leave has been preferred against the judgment and order dated 12.4.1993 of High Court of Karnataka by which the petition preferred by the respondents under Section 482 Cr. P.C. was allowed and the criminal complaint filed against them under Section 276C, 277 and 278 read with Section 278B of the Income Tax Act (hereinafter called "the Act") was quashed. Liberty was, however, granted to the appellants to institute fresh prosecution against respondent no.2 after affording him an opportunity of hearing before according sanction under Section 279(1) of the Act.

A 2. The respondent no. 1 in the appeal, M/s. Velliappa Textiles Ltd., is a company registered under the provisions of Companies Act and respondent no. 2 Shri C. Velliappa is its Managing Director. For the A.Y. 1985-86 the company filed its return of income tax for the period ending 30.6.1984 showing an income of Rs. 43,940/-. The company had claimed B deduction of Rs. 9,16,442/- on account of depreciation and investment allowance, etc. on the ground that two new machines worth Rs. 14,79,589/- were purchased and installed during the previous year relevant to A.Y. 1985-86. The company was asked to produce documentary evidence in support of purchase and installation of the machines but it failed to do so and accordingly the assessing officer disallowed the assessee's claim. After C the matter had been remanded by the CIT(A) in the appeal preferred by the assessee, the Assessing Officer made inquiries from M/s. Lakshmi Machine Works Ltd., Coimbatore from whom the machines had allegedly been purchased and from M/s. Voltas Ltd. who had allegedly installed the same. The inquiries revealed that the machines had actually been dis- D patched to the assessee company on 2.7.1984 and 12.7.1984. The documents produced by M/s. Voltas Ltd. showed that the machines had been installed after the close of the accounting period ending 30.6.1984. When the aforesaid facts were brought to the notice of the assessee company, their authorised representative made a statement that the claim made by them E regarding depreciation and other allowances be disallowed. Subsequent thereto, the Commissioner of Income Tax, Bangalore, by his order dated 26.3.1992 accorded sanction for filing of a criminal complaint under Section 276C, 277 read with Section 278B of the Act against the company and its Managing Director (respondents in the appeal). The respondents F then filed a petition under Section 482 Cr.P.C. in the High Court for quashing the proceedings of the complaint case which had been instituted against them in the Special Court for Economic Offences at Bangalore. Two pleas were raised before the High Court. The first was that the assessee (respondent no. 1) being a company which is a juristic person, it is not liable for criminal prosecution. The second plea was that the sanction G granted by the Commissioner, Income Tax, under Section 279 of the Act was invalid as the same was given without affording any opportunity of hearing to them. The High Court relying upon an earlier Division Bench decision of the same Court in *P.V. Pai* v. *R.L. Rinawma,* ILR (1993) Kar. 709 held that as the company is a juristic person, it cannot be punished H with imprisonment and, therefore, its prosecution was unpurposeful. The

High Court further held that since sanction to prosecute the respondents had been granted without affording them any opportunity of hearing, the principles of natural justice were violated and the order granting sanction was invalid. On these findings, the petition was allowed and the proceedings of the complaint case were quashed. However, liberty was given to the appellants to accord fresh sanction for prosecution of respondent no. 2 alone after giving him an opportunity of hearing and thereafter to take appropriate action in accordance with law.

3. Mr. T.L.V. Iyer, learned senior counsel for the appellants has submitted that though in law there is no requirement of affording an opportunity of hearing to a person accused of having committed an offence before grant of sanction but in the present case such an opportunity had in fact been given and the High Court has committed a factual mistake in proceeding on the basis that no such opportunity was given by the Commissioner, Income Tax before according sanction for the prosecution of the respondents. He has also submitted that when the statute specifically provides penal liability of the company, there can be no legal impediment in launching prosecution against it, even if the substantive sentence of imprisonment cannot be awarded. Shri Iyer has submitted that as Section 276C of the Act provides for both, a substantive sentence and a fine, the punishment of fine can be imposed upon a company and as such the view taken by the High Court for quashing the proceedings of the case against the company is wholly erroneous in law. Shri S.C. Birla, learned counsel for the respondents has submitted that the view taken by the High Court was correct and there was no ground warranting interference with the same.

4. A copy of the order passed by the Commissioner of Income Tax on 26.3.1992 granting sanction under Section 279(I) of the Act has been filed as Annexure A to the Petition. In para 7 of the order it is clearly mentioned that in response to the show cause notice as to why the provisions of Section 276C, 277 read with Section 278 should not be initiated, the assessee filed its explanation dated 9.1.1991 and 9.3.1992. It is further mentioned that the explanation offered by the assessee company was not satisfactoy. Learned counsel for the respondents has not disputed th correctness of the aforesaid statement which clearly shows that an opportunity of hearing was given to the respondentss before according

A sanction for their prosecution. The High Court misread the order granting sanction and clearly erred in quashing the proceedings on an erroneous view that the Commissioner of Income Tax did not afford any opportunity of hearing to the respondents before according sanction for their prosecution.

B 5. At this stage, I consider it appropriate to clarify the legal position regarding grant of sanction for launching prosecution. Section 279 of the Act lays down that a person shall not be proceeded against for the offences enumerated in the Section except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority. There are similar provisions in many other statutes which put an embargo C on the power of the Court to take cognizance of the offence except with the previous sanction of the competent authority provided in the Statute like Section 197 Code of Ciminal Procedure, Section 19 Prevention of Corruption Act or Section 20 Prevention of Food Adulteration Act. The basic idea behind such provision is to save persons from frivolous or D malicious prosecutions instituted by private persons, who may do so on account of business rivalry or feeling hurt on account of any action taken by a public servant in discharge of his official duty. Any one can set the machinery of law into motion by either lodging an F.I.R. or filing a complaint in Court. The Magistrate can take cognizance of the offence E under Section 190(1)(b) Cr.P.C. in the former case if the police, after investigation, submits a charge-sheet and in the latter case under Section 190(1)(c) Cr.P.C. In order to protect persons from unnecessary prosecutions and consequent harassment that a provision for sanction is made. The sanction to prosecute is undoubtedly an important matter and it constitutes F a condition precedent to the institution of the prosecution. For a valid sanction, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction, but this is not essential. If the facts constituting the offence charged are not shown on the face of the G sanction, the prosecution must, in the course of the trial, prove by extraneous evidence that those facts were placed before the sanctioning authority and the authority after applying his mind to the relevant facts had accorded the sanction. The authority giving the sanction shout *prima facie* consider the evidence and all other attending circumstances before he H comes to a conclusion that the prosecution in the circumstances be

sanctioned or forbidden. But he is not required to hold any inquiry to satisfy himself as to the truth of facts alleged. A

6. The main reason given in *P.V. Pai* v. *R.L. Rinawma,* ILR (1993) Kar. 709 for holding that an opportunity of hearing should be given to an accused before grant of sanction is that under Section 279(2) of the Act any offence under Chapter XXII may, either before or after the institution of proceedings be compounded by the Board, or a Chief Commissioner or a Director General authorised by the Board in this behalf and, therefore, if an opportunity is given to an assessee before grant of sanction, he may offer for composition in order to save himself from the "disgrace and ignominy of the prosecution". It is difficult to agree with the reasoning of the High Court. If some one has committed an offence, he must be prosecuted and if found guilty, must be punished in accordance with law. Compounding of an offence is not a right of the accused nor it is his unilateral act. It can only be done with consent of the authorities enumerated in the provision. No additional right can be created in favour of an accused to enable him to save himself from the "disgrace and ignominy of the prosecution". B C D

7. The High Court has also held that the principles of natural justice would apply at the stage of according sanction under Section 279 of the Act and as the sanction was granted without affording an opportunity of hearing, the same was invalid. It may be pointed out that by grant of sanction the competent authority under the Act only becomes empowered to institute the complaint before the Court. In many other statutes the order of sanction has the effect of lifting the embargo on the power of the Court to take cognizance of the offence. An order of sanction, by itself does not have the effect of a conviction or imposing a penalty causing any any injury of any kind on the accused. The accused will get full opportunity to defend himself in the trial and the trial will take place in accordance with procedure established by law. In Administrative Law by David Foulkes (Seventh Ed.) page 285, the law on the applicability of the principles of natural justice viz. afffording an opportunity of hearing at a stage anterior to actual commencement of the proceedings before the Court or Tribunal has been stated as under : E F G

> "Where the administration is merely initiating a procedure or seeking to establish whether a *prima facie* case exists, the courts H

A will not be likely to extend the statutory procedure at least where it gives a full opportunity to be heard leter in the proceedings. In *Wiseman* v. *Borneman*, (1971) AC 297 a tribunal's function was to decide whether, on the basis of documents submitted to it by the taxpayer and by the Inland Revenue, there was a prima facie
B case for the Revenue to recover unpaid tax. The House of Lords held that the taxpayer was not entitled to see and answer the statements in the Revenue's documents to the tribunal. But some of the judgments suggest that procedure would not have been adequate if the tribunal had been entitled to pronounce a fnal judgment : in that case the courts could supplement it as in *Cooper*
C v. *Wandsworth Board of Works*, (1963) 14 CBNS 180. Likewise, in *Pearlberg* v. *Varty*, (1972) 2 All ER 6 the taxpayer was not entitled to be made heard before a Commissioner gave leave for an assessment of tax to be made against him. The opportunity to be heard would come later. A comparison was made with a
D decision to prosecute and the Attorney-General's consent to prosecution. Thus in *Wiseman* v. *Borneman* Lord Reid Said :

> "Every public officer who has to decide whether to pros-ecute or raise proceedings ought first to decide whether there is a *prima facie* case but no one supposes that justice requires
E that he should first seek the comments of the accused or the defendant on the material before him. So there is nothing inherently unjust in reaching such a decision in the absence of the other party."

F .....

In *R.* v. *Raymond*, (1981) 2 All ER 246 it was held that the rule requiring a hearing was inapplicable to the process of preferring a bill of indictment : the defendant would have an opportunity of being heard at his trial."

G 8. The grant of sanction is purely an administrative act and affording of opportunity of hearing to the accused is not contemplated at that stage. An identical question has been considered by this Court with reference to Section 6 of Prevention of Corruption Act, 1947 in *Superintendent of Police (C.B.I.)* v. *Deepak Chowdhary & Ors.*, [1995] 6 SCC 225 and it
H was held as under in para 5 of the reports :

> ".....The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. *Prima facie*, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice."

The legal position is, therefore, clear that no opportunity of hearing was required to be afforded to the respondents before grant of sanction by the Commissioner of Income Tax and the view to the contrary taken by the High Court is clearly erroneous in law.

9. The next question which requires consideration is whether prosecution of a company is unsustainable as it being a juristic person no substantive sentence of imprisonment can be awarded to it. Section 276C of the Act lays down that if a person willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under the Act, he shall without prejudice to any penalty that may be imposable on him under any provision of the Act, be punishable in a case where the amount sought to be evaded exceeds one hundred thousand rupees with rigorous imprisonment for a term which shall not be less then six months but which may extend to seven years and with fine and in any other case rigorous imprisonment for a term which shall not be less then three months but which may extend to three years and with fine. Section 277 contains a similar provision and makes false verificatiion an offence which is punishable with sentence and fine. Section 2(31) of the Act defines a "person" and it includes a company and this provision is exactly similar to Section 3(42) General Clauses Act. Section 278B of the Act is important and it reads as under :

> "278B. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was

A 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 offene and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render
B any such person liable to any 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.

C (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company 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 company, such director, manager, secretary or other officer shall also be
D deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - ..... (omitted)"

It may be mentioned here that many other statutes which make a
E provision for offences by companies contain exactly similar provisions. Reference may be made to Section 35-H wealth Tax Act, Section 14-A Employees Provident Fund and Miscellaneous Provisions Act, Section 141 Negotiable Instruments Act, Section 34 Drugs and Cosmetics Act, Section 10 Essential Commodities Act, Section 6 Indian Merchandise Act, Section
F 38 Narcotic Drugs and Psychotropic Substances Act and Section 17 Prevention of Food Adulteration Act. Section 276C of the Act uses the word "willfully" and Section 277 uses the expression "which he either knows or believes to be false, or does not believe to be true". Following *S.M. Badsha* v. *Income Tax Officer,* 168 ITR 332; *Shri Singhvi Brothers*
G v. *Union of India,* 187 ITR 215 and *Kusum Products Ltd.* v. *S.K. Sinha,* 126 ITR 804, which are decisions by Kerala, Rajasthan and Calcutta High Courts respectively, the High Court in *P.V. Pai* v. *R.L. Rinawma* (supra) held that *mens rea* being an essential ingredient for an offence of false statement in a verification under Section 277 of the Act, only an actual person who does any of the acts indicated in the Section with a specific
H knowledge or intent can be made liable for the said offence. The High

Court further held that although under Section 2(31) the definition of "person" is wide enough to include a company or any juristic person, the word "person" could not have been used by Parliament in Section 266B or 277 of the Act in that sense because imprisonment has been made compulsory for an offence under the Sections and as a company or juristic person cannot be sent to prison, it is not open to a Court to impose a sentence of fine only and not to award any substantive sentence if the Court finds a company guilty under the Section. If the Court does so, it would be altering the very scheme of the Act and usurping the legislative function.

10. Business was previously being carried on by individuals and joint families and the concept of Company came to our country under the British rule. It will, therefore, be apposite to briefly notice the legal position in England and United States. The general belief earlier was that corporations could not be held criminally liable. As the presence and importance of corporations grew, initially the Courts extended corporate criminal liability from public nuisance to all offences that did not require criminal intent. However, in the year 1909 the U.S. Supreme Court in *New York Central & Hudson River Railroad Company* v. *United States,* 33 Lawyers Edn. 613 clearly held that a corporation is liable for crimes of intent. This is what the Court said at page 622 of the Reports :

> "It is true that there are crimes which, in their nature, cannot be committed by corporations. But there is a large class of offences, of which rebating under the Federal statutes is one, wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. If it were not so, many offences might go unpunished and acts be committed in violation of law where, as in the present case, the statute required all persons, corporate or private, to refrain from certain practices, forbidden in the interest of public policy.
>
> .....
>
> We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, and

A can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has entrusted authority to act in the subject-matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act. While the law should have regard to the B rights of all, and to those of corporations no less than to those of individuals, it cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that interstate commerce is almost entirely in their hands, and to give them immunity from C all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the subject-matter and correcting the abuses aimed at."

D In 19 American Jurisprudence 2nd para 1434 dealing with the topic on criminal liability of corporations it has been stated as under :

"Lord Holt is reported to have said (Anonymous, 12 Mod 559, 88 Eng. Reprint, 1164) that "a corporation is not indictable, but the particular members of it are." On the strength of this E statement it was said by the early writers that a corporation is not indictable at common law, and this view was taken by the courts in some of the earlier cases. The broad general rule is now well established, however, that a corporation may be criminally liable. This rule applies as well to acts of misfeasance as to those of F nonfeasance, and it is immaterial that the act constituting the offence was *ultra vires*. It has been held that a *de facto* corporation may be held criminally liable.

As in case of torts the general rule prevails that a corporation may be criminally liable for the acts of an officer or agent, G assumed to be done by him when exercising authorized powers, and without proof that his act was expressly authorized or approved by the corporation. A specific prohibition made by the corporation to its against violation of the law is no defence. The rule has been laid down, however, that corporations are liable, H civilly or criminally, only for the acts of their agents who are

> authorized to act for them in the particular matter out of which the unlawful conduct with which they are charged grows or in the business to which it relates." A

11. In para 1435 of the same volume it is stated that there is a conflict of judicial opinion as to whether a specific or malicious intention may be imputed to the corporation on behalf of which an act is done in order to render it criminally responsible therefor but in most cases it has been held that a corporation may be indicted for a crime to which a specific intent is essential. B

Similar statement is made in 19 Corpus Juris Secundum para 1358 that corporations are liable to criminal prosecution for crimes punishable by fine. Regarding the crimes where the guilty mind or *mens rea* is essential, the law has been stated as under in paragraph 1363 : C

> "A corporation may be criminally liable for crimes which involve specific element of intent as well for those which do not, and, although some crimes require such a personal, malicious intent, that a corporation is considered incapable of committing them, nevertheless under the proper circumstances the criminal intent of its agent may be imputed to it so as to render it liable, the requisites of such imputation being essentially the same as those required to impute malice to corporations in civil actions." D E

12. The law on the subject in England also has come round to the position that a company can be prosecuted for the acts done by its responsible officers. This question was considered in considerable detail in *Director of Public Prosecutions* v. *Kent and Sussex Contractors Ltd.*, (1944) 1 All ER 119. The respondents here were a limited company and an officer thereof. Both were charged with offences under the Defence (General) Regulations in that with intent to deceive, they produced documents and furnished information for the purposes of the Motor Fuel Rationing Order which were false in material particulars. The returns were signed by the transport manager of the company. The respondents contended that the offences charged required for their commission an act of will or state of mind which a body corporate could not have. It was held by Macnaughten, J : F G H

A "..... A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention - indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but B circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward C a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

D Lord Denning in *H.L. Bolton Company* v. *T.J. Graham & Sons,* (1956) 3 All. E.R. 624 at 630 explained the position more succinctly in the following manner :

"A company may in many ways be likened to a human body. E They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent F the directing mind or will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal G fault of the company. That is made clear in Lord Haldane's speech in *Lennard's Carrying Co. Ltd.* v. *Asiatic Petroleum Co. Ltd.*, 4 (1915) A.C. 705 at pp. 713, 714. So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers H will render the company themselves guilty."

In a decision by House of Lords in *Tesco Supermarkets Ltd.* v. *Nattrass,* (1971) 2 All E.R. 127, Lord Reid, while considering the question of commission of an offence by a company, ruled as under : A

> "I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company bing vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability." B C D E

In Vol. 9(2) Halsbury's Laws of England para 1184, the law on the point has been stated as under :

> "A corporation may not be found guilty of criminal offences, such as treason or murder, for which death or imprisonment is the only penalty, nor may it be indicted for offences which cannot be vicariously committed, such as perjury or bigamy. Subject to these exceptions, a corporation may be indicted and convicted for the criminal acts of the directors and managers who represent the directing mind and will of the corporation and control what it does. The acts and state of mind of such persons are, in law, the acts and state of mind of the corporation itself. A corporation may not be convicted for the criminal acts of its inferior employees or agent unless the offence is one for which an employer or principal may be vicariously liable. F G H

A Wherever a duty is imposed by statute in such a way that a breach of the duty amounts to a disobedience of the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence for which a corporation may be indicted, whether or not the statute refers in
B terms to corporations."

Vol. 11(1) Halsbury's Laws of England para 35 deals with the capacity of a corporation to commit a crime. It has been stated that in general a corporation is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory
C offences including those requiring *mens rea*. Criminal liability of a corporation arises where an offence is committed in the course of the corporation's business by a person in control of its affairs to such a dgree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the corporation. So, the position
D in England is that corporations are liable for criminal prosecution even where the offence requires a criminal intent.

13. The decisions of Canadian Courts regarding the criminal liability of corporations have developed in a way very analogous to the English case
E law and indeed in some instances based on it. The Courts have used *alter ego* doctrine to attribute *mens rea* offences to corporations and this doctrine was finally established by a decision of the Canadian Supreme Court in *Canadian Dredge & Dock Company* v. *R.*, (1985) 11 RCSC 662 that not only the Board of Directors would be seen as the directing mind of a company but also the Managing Director or any other person to whom
F authority has been delegated by the Board and it suffices that the act has been committed by a person on behalf of and within the capacity of the corporation. Under the Regime of the 1992 French *Code penal* the general part of the *Code* lists in detail all the possible sanctions that can be applied to corporations. Corporations can be fined to five times the maximum for
G individual offenders. For repeated offence the maximum is 10 times. Besides fines, numerous other types of sanctions are possible : dissolution of the corporation, disqualification from carrying on specific economic activities, closing down plants that have been used to commit the offence charged, publication of the judgment. Corporations can even be temporar-
H ily placed under judicial supervision. It is generally accepted that the

amount of the fine should be such as to encompass the proceeds from crime and needs to have a deterrent effect as to hold otherwise would create a *de facto* incentive for crime. Under the German law heavy fines are provided for corporate crimes and there is a specific provision that the amount of fine should be increased if they are less than the ill gotten gains. (See article - Corporate Criminal Liability : A Comparative Perspective by Guy Stessens in Vol. 43 (1994) International & Comparative Law Quarterly page 493.)

14. Section 276C and 277 of the Act provide both substantive sentence of imprisonment and fine. It is true that a company cannot be made to undergo a substantive sentence of imprisonment. However, there is no reason why it should not be awarded a sentence of fine only in the event it is found guilty of having committed the offence. The Court trying a criminal offence has to basically perform two functions. The first is to determine whether the accused is guilty of having committed the crime, as described in the Statute. This conclusion has to be reached on the basis of the evidence, oral and documentary produced before the Court. The second function is to award a sentence for the offence for which the accused has been found guilty. Sub-Section (2) of Section 235 Cr. P.C. lays down that if the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law. The Court has very wide discretion in a matter of awarding sentence. The discretion undoubtedly has to be exercised on sound judicial principles having regard to various factors. This will include the nature of the crime, the manner and method of commission thereof, the position and condition of victim and also matters attributable personally to the accused like his age, health, social background, mental condition, etc. While convicting a person under Section 326 IPC, the Court has wide discretion to award any sentence which can extend from one day to imprisonment for life having regard to the facts and circumstances of the case. There are statutory provisions which indicate that even where a person is convicted and sentenced, it is not necessary that he must be sent to jail to undergo the sentence. Section 360 Cr.P.C. empowers the Court to release a person on probation if he is over 21 years of age and has been convicted of an offence which is punishable for a term of seven years and in a case where the person convicted is under 21 years of age or is a woman, the benefit of release

A on probation can be given if he or she is convicted of an offence not punishable with death or imprisonment for life. There are also statutory enactments for premature release of prisoners. The appropriate Government has also the power to commute the sentence and release a prisoner. These provisions show that even after a person has been convicted and B sentenced, it is not absolutely mandatory that he must undergo the whole sentence awarded to him by actually spending that period in jail. Taking into custody and ensuring incarceration in jail for the specified period after pronouncement of judgment of conviction and sentence of an accused is in the realm of execution of sentence. Non-compliance or breach in the matter of execution of sentence can have no bearing on the trial or C conviction of the accused or the sentence awarded by the Court. There is no way in which a Court may compel the parties to actually comply with a decree of restitution of conjugal rights. The remedy provided viz. attachment and sale of the property of the judgment debtor or payment of periodical sum provided in Order XXI Rules 32 and 33 CPC is hardly a D substitute for husband and wife living together and performing their marital obligations. That does not mean that a decree for restitution of conjugal rights should not be passed. Therefore, the mere fact that a company cannot be sent to jail or made to undergo imprisonment cannot lead to an inference that it should not be prosecuted at all. In the event of its conviction, an E appropriate fine can be imposed upon it which is also one of the punishments provided under Sections 276C and 277 of the Act.

15. It should be borne in mind that reputation of a person is always a matter of great importance to him. Reputation is not built or acquired in a day but it takes long years and sustained good work, conduct and sound F integrity which builds up the reputation of a person. In the business world the companies or corporations also acquire a reputation by producting good products and fair dealings. The conviction of a company for an offence by itself is bound to affect its reputation and in the long run may affect its business interests. Section 10-B Essential Commodities Act lays down G that where a company is convicted under the Act, it shall be competent for the Court convicting the company to cause the name and place of business of the company, the nature of the contravention and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in newspapers. Section H 35 Drugs and Cosmetics Act contains similar provision and it lays down

that if any person is convicted of an offence under the Act, the Court on the application of the Drug Inspector shall cause offender's name, address, offence of which he has been convicted and penalty which has been inflicted upon him to be published at the expenses of such person in newspapers or in such other manner as the Court may direct and the expense of such publication shall be recoverable from the person convicted. If a company is not to be prosecuted only on the ground that substantive sentence cannot be awarded to it, provisions of Section 10-B Essential Commodities Act and Section 35 Drugs and Cosmetics Act would never come into operation, clearly defeating the legislative intent and the purpose for which they have been enacted.

16. The publication in newspapers about prosecution and conviction of a company is bound to bring bad name to the company and lower its image before public at large. Section 278A of the Act makes second conviction punishable with more severe punishment. A company may be black listed or may be denied licences with the result that its manufacturing activity may come to stand still which may have great financial repercussion on it.

17. Within few months of the decision in *New York Central & Hudson River Railroad Company* (supra), a similar controversy came up for consideration before the U.S. Supreme Court in *United States* v. *Union Supply Company,* 54 Lawyers Ed. 87 (215 U.S. 50). Section 6 of relevant Statute required wholesale dealers in particular commodities to keep certain books and to keep certain returns and further provided "any person who willfully violates any of the provisions of this Section shall, for each offence, be fined not less than fifty dollars and not exceeding five hundred dollars and imprisoned not less than thirty days nor more than six months." The District Court quashed the indictment on the ground that the Section was not applicable to corporation. In a writ of error, Justice Holmes, who spoke for the Court, pointed out that "if the defendant escapes, it does so on the single ground that, as it cannot suffer both parts of the imprisonment, it need not suffer one." The judgment under challenge was reversed with the following observation :

> "It seems to us that a reasonable interpretation to the words used does not lead to such a result. If we compare Section 5, the

application of one of the penalties rather than of both is made to depend, not on the character of the defendant, but on the discretion of the judge; yet, there, corporations are mentioned in terms. See *Hawke* v. *E. Hulton & Co.,* (1909) 2 KB 93, 98. And, if we free our minds from the notion that criminal statutes must be construed by some artificial and conventional rule, the natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that, if one of them is impossible, it does not mean, on that account, to let the defendant escape."

18. This question has also been examined by some of the High Courts. In *Municipal Corporation of Delhi* v. *J.B. Bottling Co.,* (1975) Crl. L.J. 1148 a Full Bench of Delhi High Court held that the conviction of a company under Section 16 Prevention of Food Adulteration Act and award of fine only would be perfectly valid even though it cannot be sentenced to imprisonment which was the mandatory requirement of law. Similar view was taken by a Full Bench of Allahabad High Court in *Oswal Vanaspati & Allied Industries* v. *State of U.P.,* (1993) 1 Company Law Journal 172 and it was held that a company cannot enjoy immunity from prosecution on the ground that mandatory punishment of imprisonment cannot be awarded to it. In both these cases it was held that the company can be prosecuted and if found guilty a sentence of fine alone can be awarded. In *Manian Transports* v. *S. Krishnamurthy,* 1991 (72) Company Cases 746 it was held by a learned Single Judge of Madras High Court that a company or firm can be prosecuted under Section 276C and 277 of the Act and if convicted a sentence of fine alone could be awarded. I am of the opinion that the view taken in these cases is the legally correct view.

19. Proof of *mens rea* or guilty mind is not absolutely essential in every case. In *P.K. Tejani* v. *M.R. Dange,* AIR (1974) SC 228, a Constitution Bench held that in food offences strict liability is the rule. In *Sarjoo Prasad* v. *State of U.P.,* AIR (1961) SC 631 and *Ashu Jaiwant* v. *State of Maharashtra,* AIR (1975) SC 2175 it was clearly held that *mens rea* in the ordinary or usual sense of term is not required for proof of offence under Section 7 P.F. Act and it is enough if the articles sold or distributed contravene any provision of the Act or the Rules. Same

principle applies for offences under Section 7 Essential Commodities Act, namely, *mens rea* or knowledge are not essential ingredients. (See *State of M.P.* v. *Narayan Singh,* AIR (1989) SC 1789. In *Radhey Shyam Khemka & Anr.* v. *State of Bihar,* [1993] 3 SCC 54 it has been held that there is a basic difference between offences under the Penal Code and acts and omissions which have been made punishable under different Acts and Statutes. It has been further held that for framing charges in respect of those acts and omissions, in many cases, *mens rea* is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable for punishment.

20. In *M.V. Javali* v. *Mahajan Borewell & Ors.,* [1997] 8 SCC 72 this Court after examining the question of maintainability of prosecution against a company and the nature of sentence to be imposed on it and the individuals liable for the offence, held as under :

> "From a plain reading of Section 276-B of the IT Act, it is manifest that if an offence under the Act is committed by a company the persons who are liable to be proceeded against and punished are : (i) the company (which includes a firm); (ii) 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; and (iii) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom, the offence has been committed. The words "as well as the company" appearing in the section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in categories (ii) and (iii), who are for all intents and purposes vicariously liable for the offence, are not arraigned, for it is the company which is primarily guilty of the offence.
>
> Even though in view of Section 278-B, a company can be prosecuted and punished for an offence committed under Section 276-B (besides other offences under the Act), the sentence of imprisonment which has got to be imposed thereunder cannot be imposed, it being a juristic person. This apparent anomalous

A situation can be resolved only by a proper interpretation of section. Keeping in view the recommendation contained in paras 8.1 and 8.3 of 47th Report of Law Commission of India and principles of interpretation, the only harmonious construction that can be given to Section 276-B is that the mandatory sentence of
B imprisonment and fine is to be imposed where it can be imposed, namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on a company, fine will be the only imprisonment."

21. Courts would be shirking their responsibility of imparting justice
C by holding that prosecution of a company is unsustainable merely on the ground that being juristic person it cannot be sent to jail to undergo the sentence. Companies are growing in size and have huge resources and finances at their command. In the course of their business activity they may sometimes commit breach of the law of the land or endanger other's lives.
D More than four thousand people lost life and thousands others suffered permanent impairment in Bhopal on account of gross criminal act of a multinational corporation. It will be wholly wrong to allow a company to go away scot free without even being prosecuted in the event of commission of a crime only on the ground that it cannot be made to suffer part
E of the mandatory punishment.

In view of the discussion made above, I am of the opinion that the view taken by the High Court is wholly erroneous in law. The appeal accordingly deserves to be allowed and the judgment and order of the High Court is liable to be set aside.

F

ORDER

In accordance with the majority view, the appeal is dismissed as regards 1st respondent and it is allowed as regards prosecution against the second respondent.

G

V.S.S. Appeal dismissed.