

SHARAD KUMAR SANGHI

A

v.

SANGITA RANE

(Criminal Appeal No. 1584 of 2007)

FEBRUARY 10, 2015

[DIPAK MISRA AND ADARSH KUMAR GOEL, JJ.]

B

Code of Criminal Procedure, 1973 – ss.482, 200 – Complaint u/s.200 alleging case of cheating against the appellant-Managing Director of the Company – Cognizance taken and summons issued – Magistrate holding that prima facie sufficient grounds exists for registration of complaint against the accused Company – Application seeking quashing of proceedings in criminal case, dismissed by High Court – On appeal, held: Allegations which find place against the Managing Director in his personal capacity are absolutely vague and principally the allegations are against the company – When a complainant intends to proceed against the Managing Director of a company, it is essential to make requisite allegation to constitute the vicarious liability – When a company has not been arrayed as a party, no proceeding can be initiated against it – Thus, criminal proceedings initiated against the appellant quashed.

C

D

E

Allowing the appeal, the Court

HELD: The complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. The allegations which find place against the Managing Director in his personal capacity are absolutely vague and in fact, principally the allegations are against the company. There is no specific

F

G

H

- A allegation against the Managing Director. When a complainant intends to proceed against the Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. When a company has not been arrayed as a party,**
- B no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes. Such an order could not have been passed. The order passed by the High Court is sensitively vulnerable and is set aside and the criminal proceedings initiated by the**
- C respondent against the appellant are quashed. [Paras 9, 11, 13] [149-G; 151-G; 152-A-B]**

- Maksud Sajjad vs. State of Gujarat* 2007 (9) SCR 1113: (2008) 5 SCC 668; *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.* 2005 (3) Suppl. SCR 371 : (2005) 8 SCC 89; *S.K. Alagh v. State of UP* 2008 (2) SCR 1088: (2008) 5 SCC 662; *Maharashtra State Electricity Distribution Company Ltd. v. Datar Switchgear Ltd.* 2010 (12) SCR 551: (2010) 10 SCC 479; *GHCL Employees Stock Option Trust v. India Infoline Ltd.* 2013 (5) SCR 276: (2013) 4 SCC 505; *Aneeta Hada v. Godfather Travels and Tours Private Limited* 2012 (5) SCR 503: (2012) 5 SCC 661 – referred to.

Case Law Reference

- | | | | |
|----------|-------------------------|--------------|---------|
| F | 2007 (9) SCR 1113 | Referred to. | Para 9 |
| | 2005 (3) Suppl. SCR 371 | Referred to. | Para 9 |
| | 2008 (2) SCR 1088 | Referred to. | Para 10 |
| G | 2010 (12) SCR 551 | Referred to. | Para 10 |
| | 2013 (5) SCR 276 | Referred to. | Para 10 |
| | 2012 (5) SCR 503 | Referred to. | Para 11 |

- H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1584 of 2007**

From the Judgment and Order dated 30.11.2006 of the High Court Madhya Pradesh, bench at Jabalpur in M. Cr. C. No.1922 of 2002

Sidharth Luthra, Buddy A. Ranganna Dhan, A. V. Rangam, D. V. Raghu Vamsy for the Appellant.

Akshat Shrivastava, Manjeet Kirpal for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Calling in question the legal validity of the order dated 30.11.2006 passed by the learned Single Judge of the High Court of Madhya Pradesh at Jabalpur in M.Cr.C.No.1922 of 2002 whereby the learned Judge had declined to exercise the power under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing of the proceedings in Criminal Case No.895 of 2001 pending in the court of Judicial Magistrate First Class, Betul which has been registered under Section 420 of the Indian Penal Code against the appellant, the present appeal has been preferred by special leave.

2. Bereft of unnecessary details, the facts which are necessary to be stated are that the appellant is the Managing Director M/s. Sanghi Brothers (Indore) Ltd., Indore which is a registered company duly incorporated and registered under the Companies Act, 1956 and is engaged in the business of automobile sale, finance and shipping etc. having branches at various places including the city of Bhopal. The respondent-complainant obtained a quotation from the Bhopal Branch for purchase of a TATA Diesel vehicle model SFC 709/38 LB in the month of April 1998 and the vehicle was delivered to the respondent on 01.05.1998 on payment of the price deposited at Bhopal vide Bank Draft issued from the State Bank of India, Sarni, Betul. The respondent faced difficulty with the vehicle and eventually he came to know in the month of August 2000 that a different engine number was made in the invoice that

A was issued to him than the engine that was put in the chasis. On further enquiry, he found that there is a letter issued by Tata Engineering and Locomotive Company (TELCO) on 7.11.2000 that in the course of transit from the company to Bhopal, the said vehicle had met with an accident as a result of which the engine was replaced by another engine. Coming to know of this, the respondent filed a complaint under Section 200 of the Cr.P.C. alleging that M/s Sanghi Brothers (Indore) Ltd., Indore being represented by the Managing Director, Sharad Kumar Sanghi, had suppressed the information and deliberately cheated the respondent.

3. The learned Magistrate, after following the procedure as contemplated under Section 202 of the Cr. P.C., took cognizance of the offence to which we shall advert to at a later stage.

4. After cognizance was taken and summons were issued, the appellant filed a revision before the learned Sessions Judge, Betul which was dismissed on 27.02.2002.

5. Being aggrieved by the aforesaid order, he preferred an application under Section 482 of the Cr.P.C. before the High Court. It was contended before the High Court that the learned Magistrate had no territorial jurisdiction; that there was no deceit by the respondent; that the company was not made an accused in the complaint and, therefore, the complaint was not maintainable; and that there was no *mens rea*. The High Court, as is manifest from the order impugned, repelled all the submissions and dismissed the application for quashment.

6. We have heard Mr. Sidharth Luthra, learned senior counsel for the appellant and Mr. Akshat Shrivastava, learned counsel for the respondent.

7. It is not in dispute that the vehicle was purchased by the respondent on 01.05.1998. The invoice contained a different engine number than the engine that was fitted into the vehicle.

The respondent lodged the complaint on 08.05.2001. To satisfy ourselves whether there has been any specific allegation against the appellant, we have carefully perused the complaint filed under Section 200 of the Cr.P.C. The English translation of the complaint has been brought on record. The original complaint which is in Hindi has also been filed. The allegations made against the appellant read as follows :

“That the proprietor of M/s Sanghi Brothers Indore accused Sharad S/o Sohan Sanghi negligently prepare the accidental vehicle no.709 L.M. & projected the same as new to deliver the complainant causing gain to self and loss to the complainant which is punishable U/s 420 of the I.P.C.”

8. Barring the aforesaid allegation, there is no allegation against him. In the initial statement made under Section 200 of the Cr.P.C., the complainant after narrating the facts, has stated thus :

“Sanghi Brothers Limited run by Mr. Sharad Sanghi committed cheating with the Applicant by delivering accidented vehicle in place of a new one and caused gross financial loss. Applicant is operating the vehicle after borrowing loan from Bank and the vehicle is not worth operating at present due to said defects. I have filed the Photostat copies of the concerning documents in the case.”

9. The allegations which find place against the Managing Director in his personal capacity, as we notice, are absolutely vague. When a complainant intends to proceed against the Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In *Maksud Sajjad vs. State of Gujarat*¹, it has been held, thus:

¹(2008) 5 SCC 668

A “Where a jurisdiction is exercised on a complaint
petition filed in terms of Section 156(3) or Section 200
of the Code of Criminal Procedure, the Magistrate is
B required to apply his mind. The Penal Code does not
contain any provision for attaching vicarious liability
on the part of the Managing Director or the Directors
of the Company when the accused is the Company.
The learned Magistrate failed to pose unto himself the
C correct question viz. as to whether the complaint
petition, even if given face value and taken to be correct
in its entirety, would lead to the conclusion that the
respondents herein were personally liable for any
D offence. The Bank is a body corporate. Vicarious
liability of the Managing Director and Director would
arise provided any provision exists in that behalf in
the statute. Statutes indisputably must contain
E provision fixing such vicarious liabilities. Even for the
said purpose, it is obligator on the part of the
complainant to make requisite allegations which would
attract the provisions constituting vicarious liability.”

E In this regard, reference to a three-Judge Bench decision
in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and
Another***² would be apposite. While dealing with an offence
under Section 138 of the Negotiable Instruments Act, 1881,
F the Court explaining the duty of a Magistrate while issuing
process and his power to dismiss a complaint under Section
203 without even issuing process observed thus:-

G “... a complaint must contain material to enable the
Magistrate to make up his mind for issuing process. If
this were not the requirement, consequences could be
far-reaching. If a Magistrate had to issue process in
every case, the burden of work before the Magistrate
as well as the harassment caused to the respondents

H ²(2005) 8 SCC 89

to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words “if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding”. The words “sufficient ground for proceeding” again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed.”

A

B

C

After so stating, the Court analysed Section 141 of the Act and after referring to certain other authorities answered a referent and relevant part of the answer reads as follows:-

D

“It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.”

E

10. The same principle has been reiterated in **S.K. Alagh v. State of UP**³; **Maharashtra State Electricity Distribution Company Ltd. v. Datar Switchgear Ltd.**⁴; and **GHCL Employees Stock Option Trust v. India Infoline Ltd.**⁵

F

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a

G

³(2008) 5 SCC 662

⁴(2010) 10 SCC 479

⁵(2013) 4 SCC 505

H

A party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes. It has been so held by a three-Judge Bench in ***Aneeta Hada v. Godfather Travels and Tours Private Limited***⁶ in the context of Negotiable Instruments Act, 1881.

C 12. At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22.10.2001, had opined, thus :-

D “It appears prima-facie from the complaint filed by the complainant, documents, evidence and arguments that accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima-facie sufficient grounds exist for registration of a complaint against the accused U/s. 420 of I.P.C. and is accordingly registered.”

F 13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.

• 14. The appeal stands allowed accordingly.

Nidhi Jain

Appeal allowed

H ⁶ (2012) 5 SCC 661