IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 446 OF 2022

M/S. J.R. CREATIONS ADVERTISERS PVT. LTD. & ORS.

VS

M/S. R.P. TECHVISION INDIA PVT. LTD.

For the Petitioner	**:**	**Mr. Rajib Mullick, Adv.**
		Ms. Sonia Mukherjee, Adv.
For the Opposite Party	**:**	**Mr. Jaydeep Biswas, Adv.**
		Mr. Debapriya Majumder, Adv.
Reserved On	**:**	**31.07.2026**
Judgement on	**:**	**29.09.2026**
Uploaded on	**:**	**29.09.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. The instant application under Section 482 of the Code of Criminal Procedure 1973 has been filed by the petitioner for quashing of the proceeding pending before the Learned Metropolitan Magistrate, 7th Court, Calcutta being complaint case no CS 1651/2018, under Section 420 of the Indian Penal Code.

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Brief Fact of the case

2. A complaint case was filed on 8th January, 2018 alleging against the petitioner for committing offences under Section 418/419/420/400/465/468/384/500/196/120B of the Indian Penal Code since the petitioner filed a case against the complainant and its responsible officers for allegedly committing an offence punishable under Section 138 of the Negotiable Instruments Act. The Learned Magistrate examined the complainant and took cognizance of only offence under Section 420 of the Indian Penal Code and directed to issue summons in terms of Section 204 of Cr.P.C. Hence this Revisional application has been filed to quash the entire proceeding.

Submissions

3. The Learned Advocate representing the petitioner submits that in discharge of their part legal liabilities towards the petitioner no. 1 company, the complainant signed, issued, and delivered the cheques valued of Rs. 91,87,990/- in favour of the petitioner no. 1 company namely J.R. Creation Advertisers Private Limited including the other cheque of Rs. 91,87,990/- dated 31.03.2017 drawn on Oriental Bank of Commerce , Prince Street , Calcutta with the assurance that cheque are good for payment and shall be honoured on presentation. As per instruction of the complainant the petitioner no. 1 company presented the said cheque for encashment with his banker and it has return dishonoured with remarks “Funds Insufficient”. A legal notice was issued on 16.07.2012 to the complainant by the petitioner no. 1 company through speed post at their address and despite service of

notice no payment was received till the filing of the quashing petition. It was categorically stated in the notice that on failure to make payment as demand raised legal action would be taken against the complainant without any further reference thereto.

4. On 10.10.2017 the complainant through its lawyers replied to the statutory demand notice but no credible defence was made as to the incident of dishonour of cheque and it has been admitted that complainant had issued the cheques. The complainant and other accused persons have failed to make the payment of the above cheque with the stipulated period and the accused deliberately and wilfully did not make the payment of above cheque amount. Consequently the petitioner filed a petition of complaint against R.P. Techvision India Private Limited, Koustav Ray one of the Director of said above, Sandip Bhattacharyya the General Manager for Commission of offences under Section 138 read with 141/142 of the Negotiable Instruments Act. It has been registered as criminal complaint no. 2670/2017 and 3233/2017 filed on 16.08.2017 before the Learned Chief Metropolitan Magistrate, District East Karkardoma , Delhi. After 5 months from the date of filing of such complaint the present complainant and other accused persons appeared before the Learned Court and matters were fixed for evidence. It is therefore submitted that from the aforesaid materials on record it would unambiguously reveal that the instant case filed under Section 420 of the Indian Penal Code is a blatant and outright attempt to thwart the proceeding under Section 138 read with 141 /142 of the

Negotiable Instrument Act and to harass the petitioner company and its men and agents.

5. The further submission advanced by the Learned Counsel before this Court is that the petition of complaint and solemn affirmation are devoid of attribution of any specific role allegedly perpetrated by the petitioner. Vicarious liability is a misnomer in Indian Penal Code thus issuance of process is a sheer illegality and abuse *per se* in the eye of law. In addition no ingredients of cheating or any offence available other in the four corners of petition of complaint nor in the solemn affirmation can be found. The complainant himself admitted that business as continuing for more than 10 years hence deception and inducement from inception of the transaction does not find any place in the present case. Secondly both the petition of complaint and solemn affirmation at the most gives rise to settlement of claim and counter claim and any culpability and or *mens rea* are hopelessly absent by any stretch of imagination. That apart the factum of dishonour of cheque annexed herein above glaringly proves that the complaint has come out to extort money from the petitioner company by filing this false and baseless case before a competent court of law. Fourthly both the petition of complaint and solemn affirmation prima facie are grossly unsuccessful to make out any case in terms of Section 420 of the Indian Penal Code in any manner.

6. It is further submitted that it is well settled by various decisions of Hon'ble Apex Court that the crux of Section 420 of Indian Penal Code is *mens rea* from the inception or any other word initial deception. Mere failure of a

person to keep promise subsequently a culpable intention right are the beginning that is when the promise is made cannot be presumed. The further point raised on behalf of the petitioner that there was non-compliance of Section 202 of the Cr.P.C, when evidently the complaint shows that the petitioners have arraigned as an accused herein including the company are situated outright the territorial jurisdiction of the Learned Trial Court. Section 202 of the Code of Criminal Procedure mandates that the Learned Magistrate "*shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding*". But stunningly no enquiry in terms of Section 202 Cr.P.C was ever directed and process was issued defying the settled law of the land which itself is a gross abuse of the process of law.

7. The Learned Advocate tried to impress this court about the bizarre conduct of the complainant as after conclusion of the argument and the matter reached at its final stage suddenly the complainant brought on record a supplementary affidavit after lapse of eight long years from filing of the instant petition of complaint containing annexures of photocopy of summons to witness being Chief Manager , Punjab National Bank , Prince Street Branch and photocopies of letter dated 26.02.2011 pertains to letter for stop payment and photocopy of stop payment advice. On that issue it is submitted while examining by the complaint along with examination under

Section 200 of the Code of Criminal Procedure quashing of which is sought, the Court cannot upon an enquiry on the reliability or genuineness or evidentiary value of the documents produced by the complainant after 8 long years for the first time before this Court. The purported opinion of the hand writing expert or at all a conclusive evidence. Therefore it is submitted that no reliance to report in respect of the document so placed before this Court by way of supplementary affidavits.

8. The Learned Advocate has relied upon the decisions of ***Sunil Kumar Vs Escorts Yamaha***[1] para 4 and 5, ***Eicher Tractor vs. Harihar Singh***[2] para 13 and 14**,** ***Mahindra & Mahindra Financial Services Vs Rajib Dubey***[3] para 18, ***D.P Gulati vs UP***[4] para 5 to 9 **,Ashok Kumar Gupta vs State of UP and Anr.**[5] para 4. Further put reliance in the decision of ***Deepak Gaba & Ors. Vs. State of UP & Anr.***[6] para 5 to 7,11,12,16-17,20,22 and 23 to 25 in order to substantiate that cheating for settlement of accounts not maintainable.

9. The Learned Advocate put reliance on the decision of ***Greaves Cotton Limited & Ors. Vs. State of West Bengal & Anr.***[7] para 15 in respect of mere non-compliance of Section 202 Cr.P.C when no case made out is no ground to remand. With respect to vicarious liability which is a misnomer as no specific role attributed to the petitioner relied upon ***GHCL Employees***

[1] (1999) 8 SCC 468
[2] (2008) 16 SCC 763
[3] (2009) 1 SCC 706
[4] AIR 2015 SC 3760
[5] (2017) 11 SCC 239
[6] AIR 2023 SC 228
[7] 2023 SCC OnLine Cal 454

Stock Option Trust vs India Infoline Limited & Ors.[8] and ***Sunil Bharti Mittal Vs. Central Bureau of Investigation***[9] para 37 to 44.

10. Per contra the Learned Advocate representing the Opposite Party placed his argument to that extent that the revisional application is not maintainable in its present form due to doctrine of merger. It is submitted that the application is bad due to suppression of material facts as prior to making application for quashing before this Court the petitioner should have come up with clean hand but out of extreme desperation the petitioner choose to deliberately suppress and manipulate the facts and circumstances of the case. Therefore the prayer of the petitioner should not be entertained due to such practice.

11. It is further submitted that no ground for quashing on that touch stone of section 482 has been stated and hence no question of quashing of the proceeding arises. On 26.04.2018 the Learned Metropolitan Magistrate of Delhi Court passed the order will reflect that an application under Section 340 of Code of Criminal Procedure has already been filed by the Learned Counsel for the defence /Opposite Party herein on behalf of the accused company and the same is still pending before the said Court for final adjudication. A further application has also been filed by accused company praying for dismissal of the said complaint filed by the present petitioner in this application stating the reason questioning the maintainability of that case, in view of Reserve Bank of India guidelines regarding CTS cheques and the same is also pending till date for final adjudication.

[8] (2013) 4 SCC 505
[9] (2015) 4 SCC 609

12. The further submission advanced before this court is that there are differences found in the invoices raised by the petitioner which were earlier served upon the Opposite Party in the year 2010-11. Before the Learned Trial Judge at Karkardoma District Court, Delhi. The said facts which is crystal clear has already been demonstrated before the said Learned Trial Court and before the order sheet has already been relied upon by the petitioner in the instant application in the supplementary application filed before this Court. The discrepancies found on careful comparison of the pages of the bill numbers submitted before the said Court were detected and it demonstrate that some false invoices annexed by the petitioner here in which can be presumed from the facts that invoices do not even mention statutory taxes etc.

13. The petitioner has deliberately suppressed the balance sheet of the relevant DR before the Learned Trial Court and the Opposite Party has also submitted the same in the form of an affidavit, which would reveal that the petitioner company never had any outstanding from the Opposite Party on the date of deposit of the said tax. Therefore it is pointed out by the Opposite Party that grave issues like forgery in the cheques, cheques leaves before the Hon'ble Supreme Court at Delhi and the Hon'ble Court after hearing was align to their submission and directed the Opposite party to adduce the witnesses for a forensic expert, an official of the company unearth and plethora of forgery committed by the Opposite Party. In compliance with such order the Trial Court at Kakardoma summoned the forensic expert and the deposition was recorded and report was submitted before the court

when the said report has actually supported the contention of the Opposite Party regarding the commission of forgery of cheque. In has been conclusively opined by the forensic expert that there were certain modification by altering the number before depositing the same to the bank the report of the forensic expert along with conclusive finding of such tampering was duly submitted before this court in course of the instant proceeding during the deposition of the official of the bank also confirmed the stop payment notice of the cheque in question which were of the year 2011. During the recording a statement under Section 313 and 281 of the Code of Criminal Procedure it has been duly stated and mentioned before the Trial Court regarding the forgery committed by the petitioners who have moved the instant application before this Court and portrayed the same in detailed manner which is pending for final consideration before the Learned Court. It is further submitted that in the year 2011, the cheques in dispute have already been paid to and received by the petitioners by signing vouchers and said vouchers in original are in possession of the Opposite Party and the photocopy of the same are produced and submitted before this Court. The petitioners have miserably failed to portray their case before this court and there is severe suppression of the actual facts. During the passes of time several development have taken place in the case pending before the Learned Trial Court at Delhi which is hereby dealt with in the instant proceeding and therefore this revisional application is misconceived and devoid of any merit and has been instituted with the mala fide motive may accordingly dismissed with exemplary cost.

Analysis

14. Heard the rival submissions .On perusal of the record it can be found that the accused /Petitioner no. 1 M/s. J.R. Creation Advertiser Private Limited is a company duly incorporated under the provision of the companies Act, 1956 having its registered office at the address mentioned in the cause title. The petitioner no. 2 is the Director of the Company and is sitting at the helms of affairs of the accused company and he jointly and severally has transacted with the complainant company representing the accused company during all material times. The complaint was lodged by M/s. R. P. Tech vision India Private Limited having its registered officer at Lalbazar Street, Kolkata represented by its Director and authorised Representative Shri Dippriya Mitter. It further transpires that both the company were into a business transaction since the month of December 2010, and on the basis of request made to the petitioner no. 1 company to advertise product or item in the name of Chirag computer. As per order the petitioner no. 1 company did the work at different place of India for last many years. The stand taken by the petitioner company, that part payment were made by complainant to the petitioner no. 1 company from time to time, however there stood outstanding balance and towards discharge of legal liabilities two cheques were delivered of Rs. 91,87,990/- each in favour of petitioner no. 1 Company drawn on Oriental bank of Commerce, Prince Street , Kolkata. Those cheques were dishonoured with remarks Bank funds insufficiency. Legal notice was issued and a reply was also given and a reply was also given to the same and a proceeding under Section 138 read with Section

141 of Negotiable Instrument Act was initiated when the opposite party refuted such claim and claimed that forgery has been proved.

15. Before delving deep into the matter and to discuss the nuances of the specific provision of the IPC and its applicability in the instant case this court is of the view that since an issue has been raised regarding suppression of material facts and the subsequent development arose therein, it is necessary to consider that aspect at the outset.

16. The specific stand of the Opposite Party is that no cheque was issued in the year 2017 and the same has been manipulated and in connection with the proceedings pending before the Court of Delhi u/s 138 of NI Act, the Court sent the disputed cheques before the forensic expert and also summoned the said forensic expert who submitted before the Court a report and that report supports the contention of the opposite Party regarding commission of forgery of cheques and it was conclusively opined by the forensic expert that letter "1" of 2011 in the date of the cheque in question was indeed modified to '2017' by altering the "1" as '7' before depositing the same to the bank.

17. The report of the forensic expert was submitted before this Court at a much later stage but during pendency of this proceeding. It is further found from the argument advanced by the Opposite Party that severe discrepancies were found from the cross- examination of one of the applicant of this revisional application before that said court at Delhi who failed to submit the amount of TDS deducted in connection with certain bills, and the petitioner referred the pendency of this revisional application.

According to the Opposite Party the cheques which were issued in the year 2011 were paid and received by the petitioner by signed voucher and the original voucher are in possession of the Opposite Party and produced the photocopy before this Court and vide the opinion of FSL the present petitioner has forged the cheque and manufactured the document by inter-polling "7" in the year and place the cheque as issued in the year 2017. In the written complaint, this specific allegation was made and initiated the case in various Sections of IPC including 468 IPC.

18. Therefore, in the instant case a judicial order touching the cheque in question of this revisional application prima facie established that forgery committed in the year of the disputed cheque. It is also a fact that the petitioner made no whisper about the subsequent development in the proceeding pending at Delhi and therefore the point raised regarding suppression of material facts cannot be brush aside. The said proceeding before Delhi Court is on the verge of conclusion.

19. The age old maxim "*he who comes into equity must come with clean hand*" is the edifice of criminal justice delivery system and the Hon'ble Supreme Court, in number of decisions reiterated that the obligation to approach the court with clean hands is an absolute one. The stream of justice cannot be polluted with the intent of a litigant. The Hon'ble Supreme Court in plethora of decision observed that the expression "clean hand' connotes that the suitor or the dependant have not concealed material facts from the court and there is no attempt by them to secure illegitimate claims .

20. The major objection of the petitioners are that this revisional application is filed for quashing of the proceeding initiated at the instance of the Opposite Party and the Learned Magistrate mechanically took cognizance of the offence under Section 420 IPC and directed to issue summon under Section 420 IPC. The matter was heard at length and at the stage when the complainant was to respond he filed an Affidavit in opposition long after 8 years from filing this revisional application along with several annexures and an affidavit affirmed by one Forensic Science Consultant from Gurugram and such opinion is not at all conclusive proof of evidence .

21. The complainant lodged the complaint specifically commission forgery and cheating and the Learned Magistrate has issued the summon only in respect of the offence under Section 420 IPC but the germane of such complaint from the beginning was that there was no cheque issued in the year 2017 and the petitioners have forged the cheque .Therefore apparently such allegation has got some prima facie proof where an expert has given opinion to that extent. Whether such report will be accepted by the court or not is a completely separate issue however if proved to be true would have a direct impact in the instant proceeding.

22. The power under Section 482 Cr.PC is to be exercised sparingly and in exceptional circumstances and it is time and again cautioned by the Supreme Court that the power is very wide and plenitude but must be exercised with due care and circumspection .It is also settled law in terms of the decision of ***Iqbal alias Bala and Ors vs State of Uttar Pradesh and***

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Ors.[10]**,** that the court can look into many other attending circumstances emerging from the record and if needed to read between the lines .The court is no longer restricted to the stage of the case but is empowered to take into account the overall circumstances leading to the initiation of the case. The case pending before the Learned Court of Magistrate at Kakarduma pertains to a case under Section 138 of the N.I Act relating to the concerned cheque in question lodged by the petitioner and as a counterblast to the proceeding under Negotiable Instruments Act this complaint is lodged. This Court cannot be oblivious to the fact that the petitioner mentioned about such proceeding pending before the Court at Delhi in this revisional application but did not mention about the subsequent development taken place in the said proceeding of which they had the knowledge being the complainant. The petitioner has come in this revisional application since the summon has been issued under Section 420 IPC without following the mandate of Hon'ble Supreme court.

Section 420 of Indian Penal Code reads as follows**;**

> *"420. Cheating and dishonestly inducing delivery of property.—*
> *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

[10] (2023) 8 SCC 734

The crux of Section 420 of the Indian Penal Code is *mens rea* from the very inception, or in other word initial deception. Mere failure of a person to keep promise subsequently a culpable intention right at the beginning that is when the promise is made cannot be presumed. A distinction between mere breach of contract and the offence of cheating, is the intention of the accused at the time of inducement. It is settled law that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction but in the instant case the fate of the case lodged as the petitioner under Section 138 N.I. Act has direct nexus in view of the subsequent development.

23. In the decision as relied upon of the petitioner in ***D.P. Gulathi vs. State of UP (Supra)*** a proceeding under Section 138 of Negotiable Instrument Act was initiated and subsequently, the complainant Director of SVS computer filed the criminal complaint alleging offences under Section 420,406,467,468 and 471 IPC against the appellant and others. The Hon'ble Supreme Court took note of ***Rajeeb Thapar and Ors. Vs. Madan Lal Kapur***[11] where four steps test with regard to quashing of proceeding was enumerated and accordingly the proceeding was quashed as continuance of such proceeding was abuse of process of law.

24. In the case of ***Mahindra & Mahindra Financial Services Vs Rajib Dubey (Supra),*** the complainant alleged that after availing higher purchase finance seven blank cheques were issued by him as security under an understanding that re-payment would be made through demand drafts.

[11] (2013) 3 SCC 330

Despite full re-payment and a request for return of the cheques, the accused allegedly presented them for encashment, leading to dishonour. Claiming cheating and criminal breach of trust the complainant initiated proceedings under Section 406 and 420 IPC upon which cognizance was taken. It was held by the Hon'ble Supreme Court that-

> *"18. It is interesting to note that the respondent does not dispute issuance of cheques. Even a casual reading of the complaint does not show that the ingredients of Section 406 IPC are in any event made out. It is also not understandable as to how Section 294 has any application to the facts of the case much less Section 506 IPC. In addition to this, perusal of the complaint as apparently shows the ulterior motive. It is clear that proceedings initiated by the respondent clearly amounted to abuse of the process of law."*

25. In ***Deepak Gaba and Ors. Vs. State of UP and Anr. (Supra),*** after two cheques issued by Tomar were dishonoured JIPL initiated proceedings under Section 138 of Negotiable Instruments Act. A private complaint was lodged by Tomar alleging that JIPL had raised forged document and inflated understanding dues, misused blank security cheques issued false invoices, supplied goods without authorisation and failed to account for returned goods. He alleged the offences under Section 405,420, 471 and 120B Indian Penal Code but based on pre-summoning evidence, the Magistrate issued summons only for the offence of criminal breach of trust under Section 406 Indian Penal Code leading to further judicial scrutiny of whether the allegation disclosed the necessary ingredients of the alleged offences.

26. In the said case The Hon'ble Supreme Court taking note of ***Md. Ibrahim and Anr. Vs. State of Bihar and Ors.***[12] held that an offence under Section 420 Indian Penal Code requires fraudulent or dishonest inducement, as contemplated under Section 415 Indian Penal Code , leading to delivery of property or a related Act. Since there was no allegation or evidence that JIPL deceived, misrepresented, or dishonestly induced the complainant to part with property, the essential ingredients of cheating were absent and no offence under Section 420 Indian Penal Code was made out. The allegations disclosed only a contractual dispute and failed to establish offences, under the aforesaid sections and such criminal proceedings cannot be used to pursue purely civil claim. Accordingly the proceedings were quashed.

In none of the above cases in the proceeding under 138NI Act the alleged cheque was sent for forensic test and an adverse report was received which supported the case of the subsequent complaint .Hence in the factual matrix of the instant case the above judgements are distinguishable. The petitioners waited for long 4 years when the proceeding under Section 138 Negotiable instrument Act has almost reached the verge of completion of trial and certain facts have come out which primarily supports the case of the prosecution in this case and despite having knowledge the entire proceeding cannot be quashed at the threshold since at present it cannot be said that it would be an abuse of the process of law.

27. So far the point raised regarding non-compliance of Section 202 Cr.P.C fact remains no inquiry was done, the Learned Advocate of the petitioner

[12] (2009) 8 SCC 751

relied upon ***Greaves Cotton Limited and Other V/s State of West Bengal and Anr.***[13] passed by the Learned Single Bench where it was observed;

> *"15. Primarily on a reading of the aforesaid set of judgements it can be held that if in a case where the complaint itself fails to make out any offence, added to that the examination under Section 200 of the Cr.P.C also do not attract any culpability to an accused or accused persons so named, mere non-compliance of Section 202 Cr.P.C would never deter the High Court from exercising its inherent powers in such cases where persons are asked to face a criminal trial without any substantive cause of action being made out." As no offence was made out, the proceeding was not remanded back and accordingly quashed although Section 202 Cr.P.C was not followed by the Magistrate.*

28. In the instant case when the complaint was filed no enquiry in accordance with the mandatory provision under Section 202 Cr.P.C took place though the accused were residents of outside territorial jurisdiction of the court. However the Learned magistrate examined the complainant. However in this case the object of inquiry under Section 202 Cr.P.C is the ascertainment of the fact as to whether issuance of summon was necessary or not in ***National Bank Of Oman vs Barakara Abdul Aziz & Anr.***[14] it was held in cases where the accused resides beyond the area over which the Magistrate concerned exercises no jurisdiction it was incumbent upon the said

[13] 2023 SCC Online Cal 454
[14] (2013) 2 SCC 488

Magistrate to carry out an enquiry or order before issuing process. In this case the subsequent development as has taken place in respect of the complaint lodged by the petitioner under Section 138 of the Negotiable Instruments Act before the Court at Delhi which was not disclosed by the petitioners and surfaced only after filing of the Affidavit in opposition by the opposite party it would be too early to say the complainant has failed to make out a case and hence this court is of the view that it is not a fit case where the power under Section 482 Cr.P.C should have been allowed and the entire proceeding should be quashed but it would be appropriate if the proceeding be remanded back to the Learned Magistrate for the purpose of compliance of mandatory provision of Section 202 Cr.P.C corresponding to 225 of BNSS.

29. In the decision relied upon reported in ***GHCL Employees Stock Option Trust vs. India Infoline Limited and Ors.***[15] the Hon'ble Supreme Court referred ***Madhavrao Jiwajirao Scindia Vs.Sambhahjirao Chandrojirao Angre***[16] and reiterated that criminal proceedings may be quashed where the allegations do not disclose any offence or where the continuation of prosecution would serve no useful purpose. Relying on ***Punjab National Bank Vs. Surendra Prasad Sinha***[17] and ***Maksood Saiyed Vs. State of Gujarat***[18]**,** the Court further held that criminal law should not be used for harassment and that directors or officers of a company cannot be prosecuted on the basis of vicarious liability unless the statute subsequently provides for it and the complaint contains necessary averments. It was held

[15] (2013) 4 SCC 505
[16] AIR 1988 SC 709
[17] AIR 1992 SC 1815
[18] (2008) 5 SCC 668

by the Hon'ble Apex Court that High Court had correctly noted that issuance of summons against respondent no. 2 to 7 was illegal and amount of abuse of process of law as "*in the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case against respondent no. 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them*".

30. In the decision of ***Sunil Bharati Mittal Vs. CBI (Supra)*** it was held that a Director or person managing a company may be prosecuted along with the company if there is sufficient evidence of his active participation coupled with criminal intent. He may also be liable where a statute specifically created vicarious liability such as under Section 141 of the Negotiable Instruments Act, 1881. The Court in para 42 and 43 observed as follows:

> *"42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.*
>
> *43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company,*

if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

31. In the instant case in the written complaint the complainant specifically stated that the accused persons made a deep rooted conspiracy amongst themselves to cheat the company and found from the document of section 138 Proceeding that the accused persons by way of forgery had altered and created a false date in the cheque from 2011 to 2017 and falsely lodged the complaint. At present such allegation is primarily established since a Forensic Report is furnished supporting the allegation of the complainant. Therefore it cannot be said that the complaint was absolutely devoid of any statement against the Directors being the accused persons.

Conclusions

32. In summation of Supra after hearing the rival contention and the facts and circumstances as discussed in details hereinabove this Court is of the considered view that this is not a fit case where the entire proceedings to be quashed at the threshold and it would not be appropriate to observe that no case has been made out in the complaint and therefore due to mere non-compliance of Section 202 Cr.P.C the matter is required to be remanded back.

33. Hence this Revisional Application is allowed in part. The order of the learned Magistrate issuing summon under Section 420 IPC on 02.03.2021 is hereby set aside.

34. The matter is remitted back before the Court of Learned Magistrate for the purpose of compliance of mandatory provision under Section 202 Cr.P.C corresponding to 225 of BNSS.

35. The Learned Magistrate is directed to make all endeavours to do the same at an earliest without granting any unnecessary adjournment.

36. All other connected applications, if any, hereby stand disposed of.

37. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

High Court
सत्यमेव जयते
Calcutta