

ITEM NO.38

COURT NO.3

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3099/2013

(Arising out of impugned final judgment and order dated 14/02/2013 in CRLP No. 202/2008 passed by the High Court Of Gauhati)

UDAY SHANKAR RAO & ANR.

Petitioner(s)

VERSUS

AMARENDEERA KUMAR DUTTA

Respondent(s)

(with appln. (s) for stay and office report)

Date : 22/09/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr.Rakesh K.Khanna, Sr. Adv.
Mr. Rakesh Malhotra, Adv.
Mr. Debasis Misra, Adv.
Mr. Vineet Trehan, Adv.
Mr. Anirudh Tanwar, Adv.

For Respondent(s) Mr. Mukul Kumar, Adv.
Ms. Charu Mathur, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

(Shashi Sareen)
Court Master

(Veena Khara)
Court Master

(Signed Order is placed on the file.)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 2090 OF 2014
(Arising out of SLP(Crl.) No. 3099 of 2013)

UDAY SHANKAR RAO AND ANR. ... Appellant(s)

Versus

AMARENDERA KUMAR DUTTA ... Respondent(s)

O R D E R

Leave granted.

The short question that falls for consideration in this appeal that arises out of an order passed by the High Court of Guwahati is whether the petitioners could be prosecuted on the assumed principle of vicarious liability of top management of a company for the offence of forgery committed by those working at the lower echelons. The legal position on the subject is, in our opinion, fairly well settled by the decisions of this Court that have authoritatively declared that except in situations where the Statute itself creates a vicarious liability and makes prosecution on that basis legally permissible, the law does not generally provide for such prosecution. This Court in Maksud Saiyed Vs. State of Gujarat and Ors. (2008) 5 SCC 668 first

examined the question of vicarious liability in criminal cases and summed up the legal position in the following words:

"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 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 correct question viz. as to whether the complaint petition, even if give face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any 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 provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

(emphasis supplied)

The ratio in Maksud Saiyed's case (supra) was then followed by this Court in S.K. Alagh Vs. State of U.P. and Ors. (2008) 5 SCC 662, wherein too the question was whether the Managing Direction of a Company or its

General Manager could be prosecuted for criminal breach of trust simply because they were in those positions without there being any specific allegation of any individual act of omission or commission on their part. In paras 16, 19 and 20 of the decision this Court reiterated the legal position and said:

"16. The Penal Code, save and except some provisions specifically providing therefore, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

17 to 18 xxx xxx xxx

19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself.

20. We may, in this regard, notice that the provisions of the Essential Commodities Act, the Negotiable Instruments Act, the Employees Provident Funds and Miscellaneous Provisions Act, 1952 etc. have been created such specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees

by the company. In terms of the explanations appended to Section 405 of the Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company."

(emphasis supplied)

The position in the instant case is no different. The respondent-complainant filed a complaint before the Chief Judicial Magistrate at Lakhimpur alleging that a certain policy which the respondent intended to secure from SBI Life Insurance Company Limited was meant to be a Unit Plus I policy for a sum of Rs.1 lakh. Instead of a Unit Plus I policy, however, the company was alleged to have fabricated a proposal form for a Unit plus II policy involving payment of a sum of Rs.1 lakh p.a. for a period of five years to earn a cumulative benefit of Rs.5 lakhs or so. The Chief Judicial Magistrate examined the complaint but came to the conclusion that the same did not make out a prima facie case against the appellant herein and accordingly dismissed the complaint by his order dated 18.05.2007.

Aggrieved by the order passed by the Magistrate, the complainant filed a revision petition before the Additional Sessions Judge, Lakhimpur, which revision petition was allowed and the matter remanded back to the Chief Judicial Magistrate for a fresh order in accordance with law. The Addl. Sessions Judge while disposing of the revision petition took the view that the ingredients of forgery of the signatures of the complainant by the accused persons were made out from the complaint and that the material placed on record prime facie called for initiation of proceedings against the accused persons for offences punishable under Sections 468 and 471 of the Indian Penal Code.

The appellants questioned the correctness of the order passed by the Addl. Sessions Judge before the High Court at Guwahati in criminal Revision Petition No.317 of 2007 which was dismissed by the High Court in terms of an order dated 14.11.2007. The CJM had by that time issued summons to the petitioner for offences punishable under Sections 468 and 471 of IPC. The petitioners were, therefore, left with no option but to file a petition under Sections 482, Cr.P.C. before the High Court challenging the summoning order passed by the CJM. The High Court has, by the order impugned before us, dismissed the said petition and affirmed the order

passed by the CJM.

Appearing for the appellants, Mr. Rakesh Khanna, learned senior counsel urged that the view taken by the courts below was erroneous. It was submitted that in the absence of any provision making the appellants liable for prosecution on the principle of vicarious liability the proceedings launched against them were an abuse of the process of law, especially when there was no allegation against the petitioner that they had forged or fabricated any part of the record relevant to the policy issued in favour of the respondent-company. It was argued that just because there was an allegation that a forgery had taken place without the complaint naming the person who had committed the same, was no reason for the complainant to prosecute the Managing Director and the Vice-President of the company which was a Government company and a subsidiary of the State Bank of India having no interest and deriving no benefit from the creation of forged documents like a policy. He urged that the High Court ought to have quashed the proceedings instituted by the complainant-respondent herein and inasmuch as it failed to do so, it committed an error that needs to be corrected.

There is, in our view, considerable merit in the submission made by Mr. Khanna. As noticed above, the

question is whether any vicarious criminal liability arises in the facts and circumstances of the case. No such liability, however, arises under the IPC nor has the learned counsel for the respondent-complainant been able to refer to any other statute which could possibly expose the Managing Director or Vice President of the company to prosecution for the alleged act of forgery by any employee/official of the company assuming that a forgery such as the one alleged has indeed taken place. There is no specific allegation in the complaint to suggest that it was the petitioner or any one of them who was actually involved in the fabrication of the policy. The Additional Sessions Judge and so also the CJM, therefore, fell in error in holding that there was a reasonable basis for prosecuting the petitioners for the commission of offence under Sections 468 and 470, IPC. That apart, the complainant has been suitably compensated by the consumer forum who has according to Mr. Khanna gone into the question of refund of the amount paid by the complainant and awarded compensation in a sum of Rs.50,000/- to the complainant. Mr. Khanna submits on instructions that a sum of Rs.2,64,370/- representing refund of the principal amount of Rs.1 lakh paid by the complainant besides Rs.50,000/- towards compensation awarded by the Consumer Commission together

with interest @ 12% have already been paid to the complainant. That being so, we see no reason why criminal proceedings initiated by the respondent should continue against the appellants against whom there are no allegations of forgery or other misdemeanor culpable in law.

This appeal accordingly succeeds and is hereby allowed. The order passed by the High court is set aside and the complaint filed by the respondent-complainant dismissed.

.....J.
(T.S.THAKUR)

.....J.
(R.BANUMATHI)

New Delhi,
September 22nd, 2014.