2025 INSC 1069

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1159-1160 OF 2011

ANIL KHANDELWAL ETC. .....APPELLANT(S)

VERSUS

PHOENIX INDIA
AND ANR. ....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 1166 OF 2011

J U D G M E N T

MEHTA, J.

CRIMINAL APPEAL NO(S). 1159-1160 OF 2011

1. Heard.

2. The instant appeals are preferred against the judgment and order dated 3rd December, 2010

passed by the High Court of Judicature at Bombay[1] whereby the Criminal Application No. 1258 of 2010 filed by the appellant – Dr. Anil Khandelwal and Criminal Application No. 1429 of 2010 filed by the appellants B.M. Sharma and Mukul Ranjan under Section 482 of Code of Criminal Procedure, 1973[2] came to be rejected.

3. By way of the said petition, the appellants had challenged the order dated 29th September, 2008 passed by the Judicial Magistrate First Class[3], Bhiwandi in Complaint No. 6353 of 2007, wherein the Magistrate had issued process against the appellants for the offences punishable under Section 500 and 501 of the Indian Penal Code, 1860[4].

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[1] Hereinafter being referred to as the "High Court"
[2] For short "CrPC"
[3] Hereinafter being referred to as the "Magistrate"
[4] For short "IPC"

Brief Facts: -

4. At the relevant time, the appellant Dr. Anil Khandelwal was serving as the Chairman and Managing Director of the Bank of Baroda[5], whereas the appellants B.M. Sharma and Mukul Ranjan held the positions of Deputy General Manager and Chief Manager (BCMS) in the Bank, respectively.

5. The respondent No.1-Phoenix India[6] had taken credit facilities from the Bank to the tune of Rs.21.34 crores and had secured the same by mortgage of its immovable properties.

6. The loan transactions pertain to a period prior to 2002. Respondent No. 1-firm defaulted in payment of the instalments of the term loan as well as the interest due on the outstanding amount from the quarter ending on 30th June, 2002.

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[5] Hereinafter being referred to as the "Bank"
[6] Hereinafter being referred to as the "firm"

Consequently, the Bank classified the loan accounts of respondent No.1-firm as non-performing assets as on 31st December, 2002 and notified respondent No. 1-firm to repay the overdue loans along with the accrued interest. Despite the repeated intimations and demands, the outstanding amounts were not cleared whereupon the Bank initiated proceedings under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[7]. As per the Bank, the outstanding recoverable dues as on the date of initiation of proceedings under the SARFAESI Act were to the tune of Rs.5,09,31,422/- (Rupees Five Crores Nine Lakhs Thirty-One Thousand Four Hundred Twenty-Two only) along with interest.

7. Notice dated 25th March, 2007 was issued to respondent No. 1-firm under Section 13(2) of

[7] For short "SARFAESI Act"

SARFAESI Act calling upon it to pay the outstanding dues in full and discharge the liabilities towards the Bank within 60 days from the date of issuance of the said notice. Respondent No. 1-firm, in response to said notice addressed various correspondences to the Bank, claiming that the demand raised in the notice was exorbitant and incorrect and also offered variable solutions for settlement of outstanding dues and offered to give symbolic possession of the assets to the Bank. However, despite such assurances, respondent No. 1-firm failed to clear the outstanding dues, whereupon the Bank, on 13th June, 2007, issued a possession notice under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, for taking symbolic possession of the immovable properties mortgaged by respondent No. 1-firm to secure the credit facilities.

8. It appears that, inadvertently, the outstanding amount quoted in the possession notice came to be mentioned as Rs.56,15,9,294/- (Rupees Fifty-Six Crore Fifteen Lakh Nine Thousand Two Hundred Ninety-Four only) instead of Rs.5,61,59,294/- (Rupees Five Crore Sixty-One Lakh Fifty-Nine Thousand Two Hundred Ninety-Four only). The Bank claims that the said discrepancy arose solely on account of a clerical error. Without seeking any clarification from the Bank in regard to this discrepancy, respondent No. 1-firm issued a legal notice dated 23rd July, 2007 to the appellants herein, namely the Chairman and Managing Director, the Deputy General Manager, and the Chief Manager of the Bank, alleging defamation on the ground that the Bank had maliciously issued the possession notices reflecting an unrealistic and false outstanding amount of more than Rs. 50 crores.

9. The Bank, in response, promptly issued a clarificatory letter dated 7th August, 2007 expressing regret for the clerical error that occurred in mentioning the amount in the possession notice pasted on the premises of respondent No. 1-firm.

10. Respondent No. 1-firm, however, was not satisfied by the clarification letter and filed a criminal Complaint No. 6353 of 2007 before the Magistrate, Bhiwandi for the offences under Sections 499, 500 and 501 of the IPC alleging *inter-alia* that, by raising the aforesaid exaggerated demand and pasting the possession notice on the premises of respondent No. 1-firm with fictitious outstanding amount, the Bank and its officials had defamed respondent No. 1-firm (complainant) thereby harming its reputation and future business prospects.

11. The Magistrate proceeded on the complaint and issued process against the appellants *vide* order

dated 29th September, 2008 after adverting to the procedure provided under Sections 200 and 202 CrPC.

12. Being aggrieved by the order issuing process dated 29th September, 2008, the appellants herein filed two separate applications bearing Nos. 1258 of 2010 and 1429 of 2010 before the High Court seeking quashing of Complaint No. 6353 of 2007 filed by respondent No. 1-firm. The order dated 29th September, 2008 passed by the Magistrate, issuing process in Complaint No. 6353 of 2007 was impugned in the aforesaid petitions. The High Court, however, proceeded to dismiss the quashing petition observing that the averments in the complaint disclosed the necessary ingredients of the offences alleged against the appellants and that the appellants herein were in-charge of and looking after the day-to-day affairs of the Bank and thus, were *prima facie*

responsible for issuance of the defamatory possession notice. With these conclusions, the quashing petitions came to be rejected. The aforesaid order of the High Court is subject to challenge in these appeals by special leave.

13. No one has entered appearance to represent respondent No. 1-firm (complainant) despite service of notice.

Findings and Conclusion: -

14. We have heard learned counsel for the appellants and with their assistance, perused the material available on record.

15. We are of the firm opinion that the proceedings of the complaint lodged by respondent No. 1-firm (complainant) and the order issuing process against the appellants tantamount to gross abuse of process of law.

16. The Bank is a body Corporate. The appellants herein, being the Chairman and Managing Director as well as other Officers of the Bank, were arraigned as accused on the principle of vicarious liability being the persons responsible for the day-to-day affairs of the Bank. However, the Bank itself, on whose behalf the alleged defamatory notice had been issued, was not arraigned as an accused in the complaint. It is a settled position of law that without impleading the company itself, the prosecution against directors or officers alone is impermissible.

17. In this regard, we are benefitted of the judgment of this Court in the case of ***Aneeta Hada v. Godfather Travels and Tours (P) Ltd.***[8] wherein it was held that prosecution of the directors or officers of a company can be maintained only when the company itself is arraigned as an accused and

[8] (2012) 5 SCC 661

additionally, the directors or officers must have acted in a manner that directly connects his/her conduct to the company's liability. In the absence of the company being impleaded as an accused, its directors or officers cannot be fastened with vicarious liability for offences attributable to the company.

18. Thus, the prosecution of the appellants, without impleading the Bank as an accused in the proceedings, is *ex-facie* impermissible and cannot be sustained.

19. We may further observe that the learned Magistrate as well as the High Court have assumed that the appellants herein were responsible for the day-to-day affairs of the Bank and thereby the process of issuance of the so-called defamatory notice can be attributed to the appellants.

20. Suffice it to say that the appellants have been summoned in capacity of the officers of the Bank for

the offences punishable under the IPC. However, there is no concept of vicarious liability of the officers or directors for the offences under the IPC as is provided under special Penal Statutes such as The Negotiable Instruments Act, 1881, The Food Safety and Standards Act, 2006, The Drugs and Cosmetics Act, 1940, etc. which specifically creates such liability.

21. In ***Maksud Saiyed v. State of Gujarat***[9] similar situation arose where, due to an inadvertent error by the bank, allegations of defamation were made, and the Managing Director of the bank was arraigned as an accused, wherein this court observed the following:

> **"13.** 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**

[9] (2008) 5 SCC 668

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 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 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)

22. Accordingly, before any officer of a Bank or a body corporate can be prosecuted for an offence under the IPC on the allegation of having acted on behalf of the institution, it is incumbent upon the complainant to produce unimpeachable material indicating the precise role of the officer in the commission of the alleged offence. Mere bald assertions of vicarious liability, without foundational

facts to show active participation, authorization, or deliberate omission on the part of the officer, are insufficient to justify issuance of process in such a situation. The law does not permit automatic prosecution of directors or officers merely because of their designation or official status.

23. In this regard, we may refer to the following observations made by this Court in ***Punjab National Bank v. Surendra Prasad Sinha***[10] **:-**

> **"6.** It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. **The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it**

[10] 1993 Supp (1) SCC 499

> **would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly.** Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta."
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> **(Emphasis Supplied)**

24. Hence, in the absence of any specific statutory provision under the IPC creating vicarious liability, coupled with the lack of concrete allegations or material demonstrating the individual role or culpability of the appellants for the alleged defamatory notice, their prosecution cannot be sustained. To permit continuation of criminal proceedings merely on the basis of their official designation in the Bank would amount to a misuse of judicial process, contrary to the settled principles laid down by this Court. Accordingly, the appellants

have been wrongly impleaded, and the proceedings against them are liable to be quashed.

25. Furthermore, the appellants are entitled to the statutory protection provided under Section 32 of the SARFAESI Act, which expressly prohibits any suit, prosecution, or other legal proceedings against the Reserve Bank, the Central Registry, any secured creditor, or their officers for anything done in good faith pursuant to the provisions of the Act.

26. Manifestly, the possession notice dated 13th June, 2007 was *bona fide* issued under Section 13(4) of the SARFAESI Act for taking symbolic possession of the mortgaged property on account of default in repayment of outstanding dues. Owing to a clerical error in the drafting of the notice, instead of reflecting the true outstanding amount as Rs.5,61,59,294/- (Rupees Five Crore Sixty One lakh Fifty Nine Thousand Two Hundred Ninety Four only), the

recovery notice portrayed the amount as Rs.56,15,9,294/- (Rupees Fifty Six Crore Fifteen Lakh Nine Thousand Two Hundred Ninety Four only). Upon realizing this inadvertent mistake, the Bank promptly issued a clarificatory letter on 7th August, 2007, expressing regret and rectifying the figure. This sequence of events clearly establishes that the acts/omissions of the Bank and its officials were *bona fide*, in due discharge of statutory duties under the SARFAESI Act, without any *mala fide* intention to defame respondent No.1- firm.

27. In such circumstances, the prosecution initiated against the officers of the Bank (appellants herein) on the foundation of said clerical error is untenable both in facts as well as in law.

28. As a result, the impugned order dated 3rd December, 2010 passed by the High Court and consequently, the order issuing process dated 29th

September, 2008 passed by the Magistrate do not stand to scrutiny and are hereby quashed and set aside. Proceedings of the Complaint No. 6353 of 2007 are quashed in entirety.

29. The appeals are allowed in these terms.

30. Pending application(s), if any, shall stand disposed of.

CRIMINAL APPEAL NO. 1166 OF 2011

31. In the identical facts in Criminal Appeal Nos. 1159-1160 of 2011, we have quashed the proceedings of Complaint No. 6353 of 2007 filed by respondent No. 2-firm (complainant). Thus, the order issuing process dated 20th December, 2007 passed by the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai in Criminal Complaint No. 804530/SS/2007 and all proceedings sought to be taken therein against the appellant, namely,

Mukul Ranjan, also deserve to be and are hereby quashed.

32. This appeal is allowed accordingly.

33. Pending application(s), if any, shall stand disposed of.

.....J.
(SANJAY KAROL)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
AUGUST 28, 2025.