

# Dispute Resolution Hotline

October 06, 2021

## CAN DIRECTORS AND MANAGERS BE HAULED-UP WITHOUT PERSONAL INVOLVEMENT IN A CRIME COMMITTED BY COMPANY? SUPREME COURT OF INDIA CLARIFIES

- Directors or managers cannot be held vicariously liable by virtue of just being a director or manager of a company.
- Specific allegations and involvement in crime must be shown to initiate criminal proceedings against directors.
- Issue of summons in criminal proceedings is a serious matter. It may be issued only after material placed on record reveals *prima facie* involvement in crime.

### INTRODUCTION

The Supreme Court (“**Supreme Court**”) in the recent judgment of *Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd & Ors.*,<sup>1</sup> has held that the criminal proceedings cannot be kickstarted against the directors and other management personnel of a company in absence of specific allegations and their role in the crime. Following its earlier judgments, the Supreme Court has added yet another piece in the long-standing jurisprudence on vicarious liability of directors and senior management in criminal cases. The main principle being that if a company commits a crime involving a guilty intent, it would normally be the intent and action of the individual who acted on behalf of the company.

### FACTS

In the present case, the Appellant, Mr. Ravindranatha Bajpe (“**Complainant**”) filed a criminal complaint before the Judicial Magistrate, First Class, Mangalore (“**Complaint**”) under Section 200<sup>2</sup> Code of Criminal Procedure (“**CRPC**”) against 13 accused persons. The Complainant alleged that he was the absolute owner of a property situated in Bajpe village of Mangalore taluk (“**Property**”). Mangalore Special Economic Zone Ltd. (“**MSEZ Ltd.**”) intended to lay a water pipeline by the side of a road abutting the Complainant’s Property. After obtaining requisite permissions from the public works department, MSEZ Ltd. and its directors appointed a contractor (which was a company under Indian Companies Act) (“**Contractor**”) to execute the said project. The Contractor in turn authorised its supervisors to oversee the works and appointed a sub-contractor (Accused No. 10) (“**Sub-contractor**”) to execute the works through its labourers (Accused No. 11 to 13) (“**Labourers**”). It was alleged that MSEZ Ltd., its directors and managers, Contractor’s directors, Contractor’s supervisors, the Sub-contractor and its Labourers together conspired with the common intention to lay the pipeline beneath the Complainant’s Property. In doing so, they had trespassed into the Property, demolished the compound wall, and cut 100 trees on the Property and laid the pipeline beneath the ground. Each one of the accused persons had the common intention to lay the pipeline by damaging the Property. All accused persons therefore, committed criminal trespass and caused a pecuniary loss of more than INR 27,00,000/- (Two Million Seven Hundred Thousand Rupees) to the Complainant. Accordingly, the Complainant prayed that the trial court should take cognisance of the matter and issue process against all accused persons. The Judicial Magistrate, First Class, Mangalore (“**JMFC**”) accepted the Complaint and directed to register the case against all accused persons (“**JMFC Order**”) for the offences punishable under Sections 427,<sup>3</sup> 447,<sup>4</sup> 506<sup>5</sup> and 120B<sup>6</sup> read with section 34<sup>7</sup> of the Indian Penal Code (“**IPC**”).

Aggrieved by the JMFC Order, MSEZ Ltd. and its directors and managers preferred a revision petition before the Sessions Court. Similarly, the Contractor and its directors and supervisor also preferred a revision petition before the Sessions Court. The Sessions Court allowed the revision petitions and quashed and set aside the JMFC Order against the said accused persons except for Contractor’s supervisor (“**Sessions Court Order**”).

Aggrieved by the Sessions Court Order, the Complainant preferred another revision application before the High Court of Karnataka (“**High Court**”), which also dismissed Complainant’s application and affirmed the Sessions Court Order. Accordingly, the Complainant preferred the present appeal before the Supreme Court.

### CONTENTIONS OF THE PARTIES

The Complainant *inter-alia* argued that:

- The Sessions Court and the High Court erred in quashing and setting aside the JMFC order, which was issued for the offences punishable under Sections 427, 447, 506 and 120B read with Section 34 of the IPC (*it must be noted that Section 34 provides that when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone*).
- The JMFC had issued the summons after examining the Complainant on oath and after considering the

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evidence/material on record. At the stage of summoning of the accused, only *prima facie* case based on the complaint and material placed on record needs to be considered.

- c. The complaint specifically alleged that MSEZ Ltd., its directors and managers, the Contractor and its directors ("**Accused Directors & Managers**") conspired with all accused persons to lay the pipeline under the property of the complainant. Therefore, at the stage of issuing process/summons, the revisional court could not have interfered with the order passed by the JMFC.
- d. Being the administrators of the companies, all the executives were vicariously liable.

On the other hand, the Respondents / accused persons argued that:

- a. There are no specific allegations and role attributed to the Accused Directors & Managers except the bald statement that all accused persons have connived with each other in committing the offence.
- b. Issue of summons/process by the court is a very serious matter. Therefore, unless there are specific allegations and roles attributed to each accused persons, the JMFC ought not to have issued the process.
- c. The directors and managers of MSEZ Ltd. were stationed at Hyderabad at the time of commission of the alleged offences.
- d. Similarly, Contractor's directors were also stationed at Hyderabad at the time of commission of the alleged offences. In fact, one of the Contractor's directors was 82 years of age.

## JUDGMENT

The Supreme Court examined the Complaint, which merely stated that all the accused persons have conspired with common intention to lay the pipeline beneath the Complainant's Property without any lawful authority and right whatsoever. The Court noted that apart from this there were no allegations in the complaint against the Accused Directors & Managers. In fact, the Complaint did not even allege that the Accused Directors & Managers were present at the time when the compound wall was demolished, and trees were cut. The Accused Directors & Managers were stationed in Hyderabad. There were no allegations that it was at the command of Accused Directors & Managers, that the demolition work took place. Accordingly, in absence of any specific allegations and the specific role attributed to each accused persons the JMFC was not justified in issuing process against Accused Directors and Managers. The Supreme Court in passing this order re-affirmed its earlier judgments in *Sunil Bharti Mittal v. Central Bureau of Investigation*,<sup>8</sup> and *Maksud Saiyed v. State of Gujarat*<sup>9</sup> which provided that:

- a. Unless the statute specifically provides, vicarious liability of the directors cannot be automatically imputed where company is the offender;
- b. If a company commits an offence involving *mens rea (guilty intent)*, it would normally be the intent and action of that individual who acted on behalf of the company;
- c. Even in case of statutes where vicarious liability of directors is expressly provided, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability;

In addition to above, the Supreme Court also placed reliance upon its earlier judgments of *Pepsi Foods Ltd. v. Special Judicial Magistrate*,<sup>10</sup> and *GHCL Employees Stock Option Trust v. India Infoline Limited*,<sup>11</sup> to hold that summoning of an accused in a criminal case is a serious matter. The magistrate has to carefully scrutinise the evidence brought on record and examine if any offence is *prima facie* committed by any or all of the accused. The *prima facie* case against the managing director, company secretary, and directors of a company and the role played by them in their respective capacities must be made out before initiating criminal proceedings against such persons.

With the above observations, the Supreme Court dismissed the appeal of the Complainant and upheld the order passed by the High Court and Sessions Court in dismissing the issue of process against the Accused Directors & Managers.

## ANALYSIS

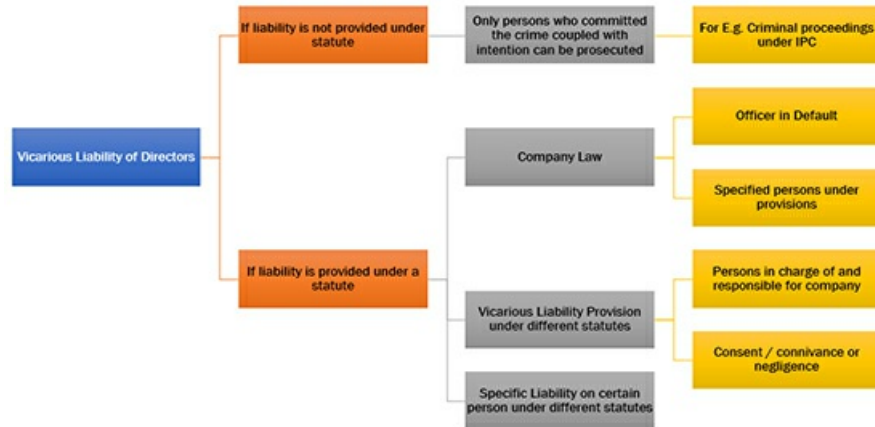
The present judgment is yet another clarion call to action for the criminal courts at lower levels and law enforcement agencies. It is well-settled jurisprudence that where company is the offender, criminal liability can be fastened on directors and management personnel only if there is direct evidence of their active role along with criminal intent in the commission of the crime. The Supreme Court has time and again reiterated these principles. Our analysis on these earlier judgments of the Supreme Court can be found [here](#) and [here](#).

Under Indian law, directors or senior management personnel can be held vicariously liable in the following manner.

1. Where the statute itself provides for vicarious liability of directors and other management personnel. For example:

- a. Companies Act, 2013: primarily the Companies Act holds "officer in default" liable for most of the violations. The term 'officer in default' includes any whole-time director, key managerial person, person on whose advice board is accustomed to act, director with whose consent and connivance the default took place, etc. In some cases, specific individuals (such as director in charge of finance, company secretary) are identified who shall be held liable for violation of certain provisions.<sup>12</sup>
- b. Vicarious liability provisions under different statutes: these provisions are found in many statutes.<sup>13</sup> Primarily, they hold such persons liable who, at the time of contravention, were in charge of, and responsible for the conduct of the affairs of the company or with whose consent or connivance the offence is committed.
- c. Specific liability of certain persons under statutes: some statutes provide for liability of certain designated individuals where the contravention is committed by a company.<sup>14</sup>

2. If the statute does not expressly provide for vicarious liability, then individuals can be prosecuted only if there is direct evidence of their active role along with criminal intent. A brief snapshot of how liability is fastened on the directors of company under Indian law is provided below:



The lower courts and investigative agencies have largely remained oblivious to this jurisprudence. Consequently, it is now beginning to provide another tool in the hands of malicious litigants, who are using it against innocent individuals acting as directors of the companies. It is believed that unless the lower courts and investigation agencies are properly sensitised about this jurisprudence, directors of the companies would get rounded up and proceeded against for crimes simply on account of being a director. On the other hand, wrongful actions against directors, if initiated, must be quashed at the earliest instance without subjecting the innocent persons into protracted litigation. This will help to retain the right talent at the top level for India Inc. and also give sufficient impetus to ease of doing business in India.

– Mohammad Kamran, Ashish Kabra & Vyapak Desai

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<sup>1</sup> Criminal Appeal No. 1047-1058/2021, decided on September 27, 2021.

<sup>2</sup> S. 200 Criminal Procedure Code 1973: A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses.

<sup>3</sup> S. 427 The Indian Penal Code 1100%: whoever commits mischief and thereby causes loss or damage to the amount of fifty thousand rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>4</sup> S. 447 The Indian Penal Code 1100%: whoever commits criminal trespass shall be punished with imprisonment of either description which may extend to three months, with fine or which may extend to five hundred rupees or with both.

<sup>5</sup> S. 506 The Indian Penal Code 1100%: whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description which may exceed two years, or with fine, or with both.

<sup>6</sup> S. 120B: The Indian Penal Code 1100% whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provisions made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

<sup>7</sup> S. 34 The Indian Penal Code 1100%: when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

<sup>8</sup> (2015) 4 SCC 609.

<sup>9</sup> (2008) 5 SCC 668.

<sup>10</sup> (1998) 5 SCC 749.

<sup>11</sup> (2013) 4 SCC 505.

<sup>12</sup> S. 128(6) The Companies Act 2013: If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to Five lakh rupees or with both.

<sup>13</sup> See for example: S. 141(2) of Negotiable Instruments Act, 1881: where any 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 deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

<sup>14</sup> S. 128(6) The Companies Act 2013, S. 42(2) Foreign Exchange Management Act 1999: where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place 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 deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

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