

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 13.05.2022
Pronounced on: 21.05.2022

CRM(M) No.263/2020

SANDEEP SINGH & ORS.

...PETITIONER(S)

Through: Mr. Siddant Gupta, Advocate.

Vs.

NISAR AHMAD DAR

....RESPONDENT(S)

Through: Mr. Shuja-ul-Haq, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged the complaint filed by respondent against them alleging commission of offences under Section 420, 120-B IPC. Challenge has also been thrown to the proceedings initiated by the learned Chief Judicial Magistrate, Anantnag, on the said complaint.

2) A perusal of the record shows that the respondent herein has filed a complaint before the Court of learned Chief Judicial Magistrate, Anantnag, alleging therein that the petitioners have entered into a criminal conspiracy by forming a company, namely, Aizen Communications Pvt. Ltd. It is alleged that the respondent was introduced by petitioner No.2 to other petitioners who were on tour to

Kashmir Valley to promote the business of the aforesaid company. A meeting was held by the petitioners with the respondent at Anantnag wherein the respondent was invited to invest money in the company and the company, in return, assured to pay double the amount within a span of three years with bonus. It is alleged that in this regard the petitioners published notices in national as well as local media thereby making false representations in the name of the company, Aizen Communications Pvt. Ltd., with an intention to cheat the public in general and the respondent in particular. It is further alleged that in one of the advertisement notices, it was provided that if anybody pays 51 installments of Rs.4000/ in one go, the company would return double the amount within three years and will further pay an amount of Rs.1836/ per working day for 200 days with a foreign tour of 07 days at their expenses. It is averred that the respondent/complainant, believing in these representations, was duped of Rs.3.00 crores. It is further averred that the money that was paid by respondent/complainant was deposited by him in the bank account of the company, the details whereof have been given in the complaint. It is alleged that the petitioners, after collecting huge wealth, stopped communicating and fled away from the Valley thereby committing the offence of cheating. It is also alleged that the petitioners induced the respondent/complainant to deliver the property in the name of the company by making false and deceptive representations. Lastly, it has been alleged that the offences have been committed by the company in connivance with the petitioners.

3) The petitioners have urged two grounds. One that the impugned complaint as against the petitioners cannot proceed without impleading the company as an accused. The second ground which has been urged is that the petitioners/accused are residing beyond the limits of local jurisdiction of the trial Magistrate, as such, it was not open to the learned Magistrate to issue process against them without conducting enquiry/investigation in terms of Section 202 of the Cr. P. C

4) I have heard learned counsel for the parties and perused the material on record including the trial court record.

5) Learned counsel for the petitioners has reiterated the aforesaid two grounds during the course of his arguments and contended that in view of the legal flaw in impleading the company as an accused in the complaint, the same deserves to be quashed. In this regard, he has placed reliance upon the judgment of the Supreme Court in the case of **Sharad Kumar Sanghi v. Sangita Rane**, (2015) 12 SCC 781. Learned counsel for the petitioner has further contended that the order passed by the learned trial Magistrate whereby process has been issued against the petitioner is also liable to be set aside because the same has been passed without following the mandatory provisions contained in Section 202 of the Cr. P. C.

6) Learned counsel for the respondent, on the other hand, has contended that there are specific allegations made in the complaint against the petitioners and, as such, even without impleading the

company as an accused, the complaint against the petitioners can proceed further. Alternatively, he has submitted that the respondent/complainant may be permitted to amend the complaint and implead the company as an accused. Learned counsel for the respondent has conceded that it was incumbent upon the trial Magistrate to conduct an enquiry/investigation in terms of Section 202 of the Cr. P. C as the petitioners/accused are residing beyond the limits of his local jurisdiction. He has submitted that he has no objection in case order of issuance of process against the petitioners is set aside and the learned Magistrate is asked to conduct enquiry/investigation and thereafter proceed in accordance with the law.

7) There can be no quarrel with the proposition that vicarious liability of Managing Director, Director or any other office bearer of a body corporate would arise only if there exists any provision in that behalf in the Statute. It is also a settled law that even where vicarious liability is fastened under certain statutes, without impleading company as a party, no proceedings can be initiated against its Directors/office bearers. In **Sharad Kumar Sanghi's** case (supra), which has been relied upon by the learned counsel for the petitioners, it has been held that when the company has not been arrayed as an accused, the criminal proceedings initiated against the Managing Director are liable to be quashed.

8) Coming to the facts of the instant case, it has been pleaded by the respondent/complainant in the complaint that it was respondent

No.2 who introduced other petitioners/accused to him in the year 2017 at Anantnag. It is further alleged in the complaint that petitioner No.2 along with other petitioners held a meeting at Anantnag, wherein he introduced himself as Manager of the company, petitioner No.1 as Managing Director and petitioners No.3 and 4 as Manager and Secretary of the Company. The respondent/complainant goes on to allege that in the said meeting, the petitioners deceitfully invited him and other persons to invest money in the said company with the promise that the company will, in return, pay double the money within a span of three years along with bonus. It has been clearly alleged in the complaint that the representations and offers were made by the petitioners on behalf of the company and even the money was paid by respondent/complainant into the account of the company. The respondent/complainant in his complaint has, in fact, made it clear that the accused persons made these false representations in the name of the company and that the offences have been committed by the company with the connivance of the petitioners who happen to be its office bearers.

9) In **Sharad Kumar Sanghi's** case (supra), the Supreme Court has clearly laid down that when the company has not been arrayed as an accused, no criminal proceedings can be initiated against its Managing Director. While holding so, the Court relied upon following observations made by it in **Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668**

“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. Indian 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 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.”

10) The ratio laid down by the Supreme Court in **Sharad Kumar Sanghi’s** case (supra), has been followed by the said Court in the case of **Sushil Sethi and Ors. Vs. The State of Arunachal Pradesh and Ors., AIR 2020 SC 765**. The Supreme Court, after noticing its earlier judgments on the issue, observed as under:

*“8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In the case of *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668, it is observed and held by this Court that 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. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that*

behalf in the statute. It is further observed that statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that 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. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.”

11) From the analysis of the aforesaid precedents, it is clear that Penal Code does not contain any provision for attaching vicarious liability on the office bearers of a company. Unless there are specific allegations against the office bearers of the company and the company is made as an accused, the criminal proceedings against its office bearers cannot be initiated.

12) In the instant case, as already noted, the complainant has repeatedly reiterated that the petitioners were representing the company and in their capacity as office bearers of the company, they had made false representations. Each and every action of the petitioners was in their capacity as office bearers of the company and whatever they did, the same was done on behalf of the company. Even the money was received from the respondent/complainant in the account of the company. Thus, without impleading the company as an accused, the proceedings against the petitioners could not have been initiated. The learned Chief Judicial Magistrate has, therefore, erred in issuing process against the petitioners.

13) Apart from the above, the learned Magistrate before issuing process against the petitioners, who were residing beyond the limits of his territorial jurisdiction, did not conduct enquiry/investigation in the case, which is mandatory in terms of Section 202 of the Cr. P. C. On this ground also, the order passed by the learned Magistrate, whereby process has been issued against the petitioners, deserves to be quashed.

14) The contention of the respondent that he should be allowed to amend the complaint to implead the company as an accused, cannot be accepted for the reason that it is only a formal amendment which can be allowed in the criminal proceedings. By way of the amendment, the respondent/complainant cannot be allowed to amend the complaint so as to set right a defect which goes to the very root of the case.

15) For the foregoing reasons, the petition is allowed and the impugned complaint and the proceedings emanating therefrom are quashed.

16) A copy of this order be sent to the learned Magistrate for information.

(Sanjay Dhar)
Judge

Srinagar,
21.05.2022
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No