

**252. IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.34999-2019 (O&M)

Reserved on: 21.03.2024

Pronounced on:02.04.2024

S. Rajgopal ...Petitioner

Versus

State of Haryana and others ...Respondents

2. CRM-M-35036-2019 (O&M)

A.K. Jain ...Petitioner

Versus

State of Haryana and others ...Respondents

3. CRM-M-35070-2019 (O&M)

A.M. Naik ...Petitioner

Versus

State of Haryana and others ...Respondents

4. CRM-M-37166-2019 (O&M)

S.N. Talwar and others ...Petitioners

Versus

State of Haryana and others ...Respondents

5. CRM-M-35080-2019 (O&M)

M. Damodaran ...Petitioner

Versus

State of Haryana and others ...Respondents

6. CRM-M-38156-2019 (O&M)

R. Shankar Raman and others ...Petitioners

Versus

State of Haryana and others ...Respondents

7. CRM-M-38271-2019 (O&M)

Subodh Bhargava

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Subhash Gulati, Mr. Alankar Narula, Mr. Arshdeep Cheema,
Mr. Satish Sharma, Ms. Rajni Narula, Advocates
for the petitioner(s) in CRM-M-34999-2019, CRM-M-35070-2019
and CRM-M-35080-2019.

Mr. Mukul Rohatgi, Senior Advocate with
Mr. Prateek Gupta, Advocate and
Mr. Keshav Sehgal, Advocate
for the petitioners in CRM-M-38156-2019.

Mr. Alankar Narula, Advocate and
Mr. Subhash Gulati, Advocate
for the petitioner(s) in CRM-M-35036-2019,
CRM-M-38271-2019 and CRM-M-37166-2019.

Mr. Denson Joseph, Advocate
and Mr. Karambir Kamal, Advocate
for respondent No.3-complainant.

Mr. Vikas Bharadwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. This common judgment shall dispose of all the captioned petitions as they arise out of identical factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-35070-2019, with the consent of parties.

2. The present petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of Supplementary Chargesheet dated 25.04.2019 (Annexure P-3) as well as summoning order dated 01.05.2019 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Faridabad (hereinafter 'JMIC') in FIR No. 81

dated 26.02.2014 registered under Sections 279, 337, 304-A of the Indian Penal Code (hereinafter 'IPC') at Police Station Sector 7, Faridabad.

FACTUAL BACKGROUND

3. On 10.02.2014, at about 10:30 PM, respondent no. 3-complainant was travelling with her husband and 3 years old son namely Pavitr via Mathura Road on a two wheeler make Honda Aviator bearing no. HR-51-AL-2657. The vehicle rode over a pothole causing all three of them to fall down. Thereafter, an unidentified four wheeler, being driven in a rash and negligent manner, came from behind and struck the complainant's son while running over her legs. The driver of the said vehicle fled from the scene. The complainant and her son were brought to the hospital, where her son succumbed to his injuries.

4. Initially, a cancellation report dated 04.06.2014 was filed by the police since neither the erring driver nor the four wheeler could be traced. Dissatisfied by the investigation, the complainant and her husband- Manoj Wadhwa made a representation to the National Human Rights Commission (hereinafter 'NHRC'). In pursuance of the same, the NHRC vide order dated 01.01.2016 directed the matter to be handed over to Crime Branch-CID for further in-depth and comprehensive investigation. The investigation was conducted by DSP, Crime Branch, Gurgaon and since the offending vehicle could not be traced, another Untraced Report dated 08.11.2017(Annexure P-11) was filed wherein it was also stated that the depth and width of the pothole could not be sufficiently determined. Since three years had already lapsed, the investigating agency concluded that it cannot be conclusively established whether the alleged accident occurred due to the poor condition of the road. Meanwhile, in 2016, Manoj Wadhwa, husband of the complainant, filed a Civil Writ Petition No. 19076 of 2016 titled "*Manoj Kumar Wadhwa and another v.*

Union of India” alleging negligence by National Highway Authority of India (hereinafter ‘NHAI’) in the maintenance and upkeep of the concerned road, which was the site of the accident, and claimed compensation. This Court, vide order dated 15.09.2016, directed the NHAI to decide the representation of the complainant within a period of three months. In compliance of the same, the complainant and her husband made a representation to the Chief General Manager, NHAI seeking compensation and reimbursement of medical expenses. Since the NHAI failed to decide the said representation in time, a contempt petition bearing COCP No.1883 of 2017 in CWP No. 19076 of 2016 was filed wherein this Court directed the Commissioner of Police, Faridabad to constitute an SIT and file a detailed affidavit. Consequently, an SIT comprising of Inspector (Additional SHO), Police Station Sector 7, Fariadabad and SI, In-charge, Police Post Sector 11, Faridabad, headed by ACP, Ballabgarh was constituted on 01.08.2018. Citing the Site Plan dated 26.02.2014, prepared by the then IO, the SIT determined that there were pits on the road which resulted in the death of the complainant’s minor son.

5. The project for road widening in the Delhi-Agra section of NH-2, which was also the site of the accident, was awarded to M/s DA Toll Road Pvt. Ltd., Concessionaire, Special Purpose Vehicle Company, promoted and incorporated by M/s Reliance Infrastructure Ltd. (hereinafter ‘Reliance’) by NHAI. Reliance had further sub-contracted the work to M/s Larsen and Toubro (hereinafter ‘L&T’) vide agreement dated 21.08.2012 making it responsible for supervision of maintenance of the said stretch of road. Since both L&T and M/s DA Toll Road Pvt. Ltd. failed to fulfil their contractual responsibilities, the SIT proceeded to file the final report under Section 173 Cr.P.C. dated 06.10.2018 (hereinafter ‘original chargesheet’) against them.

6. However, “Director, M/s L&T” was also arraigned as an accused along with L&T in the original chargesheet and resultantly, summoning order was issued to them. Consequently, an application was moved by L&T before the learned JMIC to recall the summons issued in the name of “Director, M/s L&T” as the same was vague and ambiguous, bereft of any specific name or attribution of a particular role. Vide order dated 26.03.2019(Annexure P-19), learned JMIC directed the investigating agency to specify the name of the Director, L&T who was directly responsible for overseeing the said project. In pursuance of the same, a Supplementary Chargesheet dated 25.04.2019(Annexure P-3) was filed arraigning all 15 Directors of L&T, who were subsequently summoned vide order dated 01.05.2019(Annexure P-4).

CONTENTIONS

7. Mr. Mukul Rohatgi, Senior Advocate, appearing on behalf of the petitioners in CRM-M-38156-2019 opened his arguments and while questioning the integrity of the cause of action, he contended that there are three versions with regard to the genesis of the occurrence. According to the first version, which is based on Manoj Wadhwa’s statement dated 11.02.2014, the death of his minor son was caused by an unfortunate accident and no one was responsible for the same as it was an act of *force majeure*. An inquest report in this regard was prepared and it was concluded that no cognizable offence is made out. The second version, as narrated by respondent no.3-complainant on 26.02.2014, mentions a rashly driven four wheeler, which allegedly hit her son, causing his death and inflicting injuries on her. On the basis of this statement, the FIR (supra) was registered and the criminal justice machinery was put in motion. The third version surfaced on 03.10.2016, two years and eight months after the occurrence, wherein it was stated that the two

wheeler slipped due to the inundation of sewage water and potholes. These pits and potholes were not visible due to absence of streetlights on the road and it was due to the pothole-laden damaged road that the accident occurred. He further relied upon the report submitted by NHAI which was further based on Independent Engineer's report dated 29.04.2014, which indicates that the cause of accident cannot be verified due to lapse of time and it cannot be stated with certitude whether the accident occurred on account of inundation of sewage water, the pits on the road or any other reason. The inconsistent stand of the complainant does not inspire confidence and cannot be relied upon in view of *Suzuki Paras Rampuria Suitings Pvt. Ltd. v. Official Liquidator of Mahendra Petrochemicals Ltd. (2018) 10 SCC 707.*

8. It is further contended that no specific or general role has been attributed to the petitioners in the original Chargesheet as well as the Supplementary Chargesheet. The petitioners were implicated in the Supplementary Chargesheet solely based on information received from Registrar of Companies, Mumbai and the office of L&T, which was in clear defiance of the order dated 26.03.2019 passed by the learned JMIC. Reliance in this regard was placed on *Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. (2022) 15 SCC 430, Castrol (India) Ltd. v. State of Karnataka, (2018) 17 SCC 275.*

9. It was further argued that the concept of vicarious liability of a Director of a Company, in respect of offences alleged under the IPC, does not exist. The vicarious liability of the Managing Director/Director would only arise by deeming fiction which necessarily requires specific averments to be made in the Original Chargesheet and the Supplementary Chargesheet against them. Unlike statutes like the Negotiable Instruments Act, 1881, the IPC does

not contain any provisions for imputing vicarious liability on the part of the Managing Director or Directors of the Company when the Company is arraigned as an accused. In order to buttress his claim, learned Senior counsel relied upon the judgments rendered by the Hon'ble Supreme Court in *Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609, Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668* and *Shiv Kumar Jatia v. State of NCT of Delhi (2019) 17 SCC 193*. Moreover, criminal proceedings cannot be invoked against Independent Directors/Non-Executive Directors in view of *Pooja Ravinder Devidasani v. State of Maharashtra and another. (2014) 16 SCC 1*.

10. Furthermore, the impugned Summoning Order dated 01.05.2019 (Annexure P-4) passed by Ld. JMIC reflects non-application of mind as it does not record satisfaction with regard to existence of a *prima facie* case. The cognizance of Supplementary Chargesheet was taken in a mechanical manner, without recording *prima facie* satisfaction about role of the petitioners in commission of the alleged offence. Reliance in this regard was placed on *Pepsi Food Ltd. v. Special Judge Magistrate (1998) 5 SCC 749*.

11. Learned Senior counsel further averred that the death of an individual should be the direct and proximate result of a negligent act of the accused (*causa causans*) to attract the offence under Section 304-A of the IPC. The act or omission constituting negligence on the part of the accused should have a direct nexus to the resultant death or injury, without there being any intervention of negligence of other persons to hold the accused liable to be prosecuted for the offences punishable under Section 304-A or 337 IPC. This causal nexus should be determinative of the guilt of the accused. Reliance was placed on *Ambalal D. Bhatt v. State of Gujarat (1972) 3 SCC 525* in this regard.

12. Lastly, it was argued that two closure reports were filed by the investigating agency on 04.06.2014 and 08.11.2017, respectively. Both these reports remained inconclusive regarding the presence of potholes at the site of the accident. The investigating agency has not conducted any investigation in compliance of the directions issued by the JMIC in order to determine which Director was directly responsible for supervision of the said project. Conspicuously, the list of directors was obtained from the website of the Registrar of Companies and the impugned Supplementary Chargesheet was filed against all Directors only due to the pendency of the contempt petition before this court.

13. Mr. R.S. Cheema, Senior Advocate, appearing on behalf of the petitioners in CRM-M-35080-2019 and CRM-34999-2019, argued that to breach the threshold of the offence under Section 304-A of the IPC, the following essential ingredients are required to be made out:

- (1) Occurrence of a death,
- (2) The accused who caused the death, and
- (3) A rash or negligent act comprising of an affirmative doing and not just omission of certain responsibilities, unless those omissions come under negligent action.

He further contended that the culpability of the petitioners can only be established if their actions are found to be immediate and indispensable, causing the death of the minor son of the complainant. He highlighted the principles of- *causa sine qua non* i.e., an indispensable cause/condition, without which the effect in question could not have happened and *causa causans* i.e., the immediate cause, the last link in the chain of causation. Therefore, the consequent death has to be an immediate result of the

rash or negligent act committed by the accused to attract the offence under Section 304-A of the IPC in view of *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra AIR 1965 SC 622* and *Suleman Rehiman Mulani and another v. State of Maharashtra AIR 1968 SC 829*.

Learned Senior counsel further submitted that the concept of tortious act of negligence is on a different footing and the same is not applicable under the criminal jurisprudence, which requires stricter standard of proof i.e. establishing guilt beyond the shadow of reasonable doubt. L&T, being a juristic person, has been wrongly arrayed as an accused in the Original Chargesheet, therefore the petitioners also cannot be held liable merely on account of holding certain positions in L&T, especially in the absence of any specific allegations indicating the role played by the petitioners in commission of the crime. He further emphasised upon the jurisprudential boundaries of Section 304-A of the IPC to contend that the presence of the accused at the spot is *sine qua non* for holding them responsible for the alleged offence as Section 304-A of the IPC is confined to 'at-the-site issues'. Since the Directors were not present at the spot, when the alleged incident occurred, no criminal intent can be fastened upon them. Moreover, the impugned summoning order dated 01.05.2019 (Annexure P-4) passed by the learned JMIC itself is not sustainable as it is bereft of any reasoning and was passed without considering the detailed order dated 26.03.2019 passed by his predecessor. Moreover, it is an admitted fact that the responsibility of the maintenance of the road was of M/s Kartar Singh, as such, even the civil liability for paying compensation, if any, cannot be fastened upon the petitioners.

14. *Per contra* Mr. Denson Joseph, Advocate for the complainant contended that the ocular version clearly proves that there were potholes on the

site of the accident and which is corroborated by the statements of the shopkeepers from the nearby establishments, recorded by the investigating agency. The Site Plan prepared by the investigating officer also proves the presence of pits and potholes on the relevant stretch of road. Additionally, the Post-Mortem Report of the deceased child also indicates that the injuries were caused by the concrete fragments and splinters. Learned counsel relied upon the news item published in Navbharat Times immediately after the accident, containing the photograph depicting accumulation of sewage water and potholes at the site.

15. He further argued that the investigating officer has implicated all the petitioners as accused on the basis of the information supplied by the authorised official of L&T. As such, the investigating officer has acted upon the information supplied by L&T itself. Further, L&T is made responsible for maintenance of the said road by Clause 2.1.8 of the agreement dated 21.08.2012 between EPC Division, Reliance and L&T, reads as follows

“Maintenance of existing carriageway, including the stretch between bypasses (if any), such as filling of potholes, filling and compacting shoulders, erecting temporary direction and caution signs..... The road should be motorable at all the time”.

He further argued that the Mr. R.K. Jha, Project Manager, L&T, directly reported to petitioner-S.N. Subramanyam, head of the ECC Division of L&T, who is also a signatory to the concessionaire agreement. As such, it is established beyond doubt that he was responsible for the upkeep and maintenance of the road infrastructure. The fatal accident was caused due to potholes and accumulation of sewage water which reflects the lack of due diligence on the part of L&T. The petitioners are vicariously liable for the

negligence exhibited by L&T in maintaining the road at the site of the accident, attracting the offence under Section 304-A of the IPC. He relied upon the judgments rendered by the Hon'ble Supreme Court in **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another (2010) 3 SCC 330** and **S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan (2023) 10 SCC 685** to contend that the petitioners being Directors are liable for the accident as it was entirely their duty to maintain the road and make it motorable. Lastly, it was contended that the petitioners have played mischief by concealing the true facts by not attaching the complete Supplementary Chargesheet.

16. Mr. Vikas Bharadwaj, learned State counsel supported the arguments raised on behalf of the complainant by referring to para 11 to 14 of the affidavit filed by the Commissioner of Police, Faridabad. It was contended that the negligence in maintenance of the road has been clearly established during investigation and it can be determinedly stated that the fatal accident had taken place due to the potholes present on the site of the accident, making the petitioners responsible owing to the negligence exhibited by them in maintaining the road.

17. In rebuttal, Mr. Mukul Rohatgi, Senior Advocate submitted that there is no concealment and mischief on the part of the petitioners as the complete Supplementary Chargesheet has been attached with the petition bearing no. CRM-M-38156-2019. He further insisted that the complainant in para 6 of her reply has conceded that the entire Board of Directors have been wrongly arrayed as accused and thus, the petitioners are entitled to the relief claimed on this ground alone. Para 6 of the reply filed by the complainant states as under:

“6. That the respondent mother agrees that it was wrong and incompetent on the part of respondent No.2 to have arrayed the entire board of Larsen and Tourbo whereas only the Managing Director or in his absence the Chairman should have been arrayed as the accused.”

18. Mr. R.S. Cheema, Senior Advocate, in rebuttal, contended that a specific stand has been taken in para 5(v) at Page 5 and 6 of the petition bearing no. CRM-M-35080-2019 that L&T had engaged M/s Kartar Singh for the specific purpose of maintenance of the existing road vide work order dated 14.10.2013 (Annexure P-7. As such, M/s Kartar Singh is solely responsible for the supervision of the repair and maintenance of the said road. The aforementioned stand has not been controverted by the complainant or the State in their respective replies.

OBSERVATIONS AND ANALYSIS:

19. Having heard the learned counsel for the parties and perused the record with their able assistance, the following question emerges for adjudication:-

“Whether the petitioners being Directors of L&T can be held vicariously liable for the offence under Section 304-A of the Indian Penal Code?”

20. The doctrine of vicarious liability is a civil concept and its applicability in criminal cases is an exception rather than the rule. The doctrine of vicarious liability originates from the maxim *Qui Facit per Alium Facit per*, which means any act done by the servant in the course of his employment is considered to be done by the master and in principle, the master is also liable for the said act. In the Indian context, a person can be held liable for the

actions of another, with the aid of provisions contained in Section 34, 120-B and 149 of the IPC. As such, in criminal law, in certain cases, a person may be held liable even though the *actus reus* was committed by another person.

21. However, the legal framework for imputing vicarious liability on corporate entities is categorically provided for in a variety of legislations such as the Income Tax Act, 1961, the Negotiable Instruments Act, 1881, the Insecticides Act, 1968, the Drugs and Cosmetics Act, 1940 and Essential Commodities Act, 1955 etc. A two Judge Bench of the Hon'ble Supreme Court in *Iridium India Telecom Ltd. Vs. Motorola Inc. and others (2011) 1 SCC 74*, considered the issue of a Company being vicariously responsible for the criminal actions of its employees and speaking through Justice S.S. Nijjar, took the view that the intent and acts of the individuals who acted on behalf of the Company would be paramount to establish the crime of cheating against the Company and the contention that a corporate body is an artificial person incapable of possessing criminal intent to commit the said offence was categorically rejected. A Constitution Bench of the Hon'ble Supreme Court in *Standard Chartered Bank Vs. Directorate of Enforcement (2005) 4 SCC 530*, speaking through Justice K.G. Balakrishnan for the majority view, further held that a Company is liable to be prosecuted and punished for criminal offences emanating from the actions of its Directors who were acting on behalf of the Company.

22. However, in the present case, the culpable negligence is alleged to have been committed in pursuance of the work awarded to L&T in terms of the agreement dated 21.08.2012. The complainant has sought to set up a case that L&T is an artificial legal entity which works through its Directors and as such, the Directors are vicariously liable for the culpable negligence of the Company.

23. In *Ravindranath Bajpe* (supra), a two Judge Bench of the Hon'ble Supreme Court, speaking through Justice M.R. Shah, has crystallized the jurisprudence on the issue of vicarious liability of the Directors and management officials of a corporate entity. In the aforementioned case, the accused were the Chairman of Board of Directors, Managing Director and other management officials, who were charged with offences under Sections 420, 427, 447, 506, 34 read with Section 120-B of IPC alleging that all the accused possessed a criminal intent as they shared a common intention while committing the said offences. The Hon'ble Supreme Court referred to the judgments in *Sunil Mittal* (supra), *Maksud Saiyed* (supra) and *Pepsi Foods Ltd.* (supra) and formulated the following principles:-

1. No automatic vicarious liability in criminal offences:- It is the fundamental principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for it, which is conspicuously lacking in the IPC. Thus, the Directors or Management officials cannot be held vicariously liable for an offence since *mens rea* can be attributed to them, unless deeming statutory provisions for the same are provided in the relevant statute.
2. Doctrine of 'Alter Ego':- If a group of persons responsible for the conduct of business of the company has a criminal intent, the same can be imputed to the body corporate and not *vice versa*. Therefore, such person, who had committed the offence on behalf of the Company can be made an accused along with the Company only if there is specific attribution of his active participation with culpable intent.

3. Issuance of summons:- Summoning an accused in a criminal case requires application of judicial mind. The *prima facie* assessment and finding with regard to the complicity of the accused must be recorded by the Magistrate before summoning them.

24. A two Judge Bench of the Hon'ble Supreme Court in **Maksud Saiyed (supra)** speaking through Justice S.B. Sinha, has observed the following in paragraph 13:-

"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. "

25. A two Judge Bench of the Hon'ble Supreme Court in **HDFC Securities Ltd. Vs. State of Maharashtra AIR 2017 (SC) 61**, speaking through Justice Pinaki Chandra Ghose, has authoritatively held that IPC does not provide for vicarious liability for any offence alleged to have been committed by a Company. If such liability was sought to be imputed by the legislature by

creating a legal fiction, the same would have been specifically provided in the statute as is the case with the Negotiable Instruments Act. Further, a two Judge Bench of the Hon'ble Supreme Court in *Sharad Kumar Sanghi Vs. Sangat Rane (2015) 12 SCC 781*, speaking through Justice Dipak Misra, has held that when a complainant intends to rope in the Managing Director or any officer of the Company, it is essential to make the requisite specific allegations to constitute the vicarious liability. A two Judge Bench of the Hon'ble Supreme Court in *GHCL Employee Stock Option Trust Vs. Nimesh Ramesh Mehta (2013) 4 SCC 505*, speaking through Justice M.Y. Eqbal, has held that criminal law machinery cannot be set into motion as a matter of course. The summoning order passed by the Magistrate must reflect application of mind to the facts of the case.

26. The following legal position emerges from the aforementioned judicial pronouncements:-

1. A Company and its Directors are not immune from criminal prosecution but it has to be established that the said offence has been committed with their consent or in connivance with them. These persons cannot be arrayed as accused in the absence of their active participation and attribution of a specific role played in commission of the alleged offence with criminal intent.
2. Vicarious liability cannot be fastened upon any Director automatically in the absence of legislative mandate merely because they had occupied certain positions in the Company at the relevant time.
3. For summoning the Directors of a Company for commission of an offence under the IPC, the conventional rule of existence of

mens rea is to be followed. [*Actus non facit reum nisi mens sit rea*- an act does not make the defendant guilty unless it is done with a guilty intent].

4. Summoning the accused in a criminal case requires recording of *prima facie* satisfaction about the involvement of the accused, as a bare minimum. The summoning order must satisfy the objective standards of reason and justice.

27. Adverting to the factual matrix of the case, indubitably, the FIR (supra) and the impugned Supplementary Chargesheet dated 25.04.2019 do not contain any specific allegations with regard to the role played by the petitioners. The impugned Supplementary Chargesheet merely contains the particulars of the petitioners-Directors and it is recorded that the report under Section 173-A Cr.P.C. being presented without the arrest of the accused. The Supplementary Chargesheet is conspicuously silent as to how and in what manner the petitioners are liable for the alleged offence. It is further mentioned that the investigation with regard to the offending vehicle involved in the accident and its driver is still under progress and a supplementary report would be filed after tracing the same.

28. In the light of the legal principles set out by the Hon'ble Supreme Court, the petitioners cannot be implicated in the absence of any specific allegations indicating their specific role in commission of the crime. Further, there is no provision in the IPC for fastening the vicarious liability upon the Directors of the Company for offences listed in it. The criminal liability upon the Directors of the Company cannot be imposed merely because of the positions they hold in the Company at the relevant time, by applying the principle of vicarious liability. There is no other allegation against the

petitioners to indicate their complicity except for being members of the Board of Directors of the Company. The judgments rendered by the Hon'ble Supreme Court in *National Small Industries (supra)* and *S.P. Mani (supra)* relied upon by the learned counsel for the complainant do not support the case set up by the prosecution as both these judgments arose out of a dispute involving an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'). The concept of vicarious liability has been specifically provided in the NI Act itself under Section 141, which makes every person, who was in-charge of and responsible for the conduct of the business of the company at the time the offence was committed, liable. As already observed, the FIR (supra) and Supplementary Chargesheet dated 25.04.2019 lacks any allegation indicating the role played by each and every accused individually and therefore, the offence under Section 304-A of IPC is not attracted against any of the petitioners. The impugned summoning order dated 01.05.2019 was passed in a perfunctory manner without recording *prima facie* satisfaction with regard to the involvement of the petitioners.

CONCLUSION:

29. In view of the above, the present petitions are allowed. The impugned Supplementary Charge sheet dated 25.04.2019 (Annexure P-3) arising out of FIR No.81 dated 26.02.2014 registered under Sections 279, 337, 338, 304-A of IPC at Police Station Sector 7, Faridabad as well as the impugned summoning order dated 01.05.2019 passed by the learned Judicial Magistrate 1st Class, Faridabad in case bearing no. CHI/7718/2018 (Annexure P-4) are hereby quashed along with all subsequent proceedings arising therefrom in the interest of justice, equity and fair play.

30. However, nothing observed herein shall be construed to be an opinion on the merits of the case.

31. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

April 02, 2024

Pankaj*

Whether speaking/reasoned Yes

Whether reportable Yes