

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1584 OF 2007

Sharad Kumar Sanghi ... Appellant

VERSUS

Sangita Rane ... Respondent

J U D G M E N T

DIPAK MISRA, J.

Calling in question the legal validity of the order dated 30.11.2006 passed by the learned Single Judge of the High Court of Madhya Pradesh at Jabalpur in M.Cr.C.No.1922 of 2002 whereby the learned Judge had declined to exercise the power under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing of the proceedings in Criminal Case No.895 of 2001 pending in the court of Judicial Magistrate First Class, Betul which has been registered under Section 420 of the Indian Penal Code against the appellant, the present appeal has been preferred by special leave.

2. Bereft of unnecessary details, the facts which are necessary to be stated are that the appellant who is the Managing Director M/s. Sanghi Brothers (Indore) Ltd., Indore which is a registered company duly incorporated and registered under the Companies Act, 1956 and is engaged in the business of automobile sale, finance and shipping etc. having branches

at various places including the city of Bhopal. The respondent-complainant obtained a quotation from the Bhopal Branch for purchase of a TATA Diesel vehicle model SFC 709/38 LB in the month of April 1998 and the vehicle was delivered to the respondent on 01.05.1998 on payment of the price deposited at Bhopal vide Bank Draft issued from the State Bank of India, Sarni, Betul. The respondent faced difficulty with the vehicle and eventually he came to know in the month of August 2000 that there was a discrepancy in the engine number of the invoice issued to him. On further enquiry, he found that there is a letter issued by Tata Engineering and Locomotive Company (TELCO) on 7.11.2000 that in the course of transit from the company to Bhopal, the said vehicle had met with an accident as a result of which the engine was replaced by another engine. Coming to know of this, the respondent filed a complaint under Section 200 of the Cr.P.C. alleging that M/s Sanghi Brothers (Indore) Ltd., Indore being represented by the Managing Director, Sharad Kumar Sanghi, had suppressed the information and deliberately cheated the respondent.

3. The learned Magistrate, after following the procedure as contemplated under Section 202 of the Cr.P.C., took cognizance of the offence to which we shall advert to at a later stage.

4. After cognizance was taken and summons were issued, the appellant filed a revision before the learned Sessions Judge, Betul which was dismissed on 27.02.2002.

5. Being aggrieved by the aforesaid order, he preferred an application under Section 482 of the Cr.P.C. before the High Court. It was contended before the High Court that the learned Magistrate had no territorial jurisdiction; that there was no deceit by the respondent; that the company was not made an accused in the complaint and, therefore, the complaint was not maintainable; and that there was no *mens rea*. The High Court, as is manifest from the order impugned repelled all the submissions and dismissed the application for quashment.

6. We have heard Mr. Sidharth Luthra, learned senior counsel for the appellant and Mr. Akshat Shrivastava, learned counsel for the respondent.

7. It is not in dispute that the vehicle was purchased by the respondent on 01.05.1998. The invoice contained a different engine number than the engine that was fitted into the vehicle. The respondent lodged the complaint on 08.05.2001. To satisfy ourselves whether there has been specific allegation against the appellant, we have carefully perused the complaint filed under Section 200 of the Cr.P.C. English translation of the complaint has been brought on record. The original complaint which is in Hindi has also been filed. The allegations made against the appellant read as follows :

"That the proprietor of M/s Sanghi Brothers
Indore accused Sharad S/o Sohan Sanghi

negligently prepare the accidental vehicle no.709 L.M. & projected the same as new to deliver the complainant causing gain to self and loss to the complainant which is punishable U/s 420 of the I.P.C."

8. Barring the aforesaid allegation in the initial statement made under Section 200 of the Cr.P.C., the complainant after inheriting the fact, has stated thus :

"Sanghi Brothers Limited run by Mr. Sharad Sanghi committed cheating with the Applicant by delivering accidented vehicle in place of a new one and caused gross financial loss. Applicant is operating the vehicle after borrowing loan from Bank and the vehicle is not worth operating at present due to said defects. I have filed the Photostat copies of the concerning documents in the case."

9. The allegations which find place against the Managing Director in his personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In *Maksud Sajyad vs. State of Gujarat*¹, it has been held, thus:

"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

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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 obligator on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

10. The same principle has been reiterated in *S.K. Alagh vs. State of UP*²; *Maharashtra State Electricity Distribution Company Ltd. vs. Datar Switchgear Ltd.*³; and *GHCL Employees Stock Option Trust vs. India Infoline Ltd.*⁴.

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, the company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director.

12. At this juncture, it is interesting to note, as we have stated earlier, the learned Magistrate while passing the order dated 22.10.2001, had opined, thus :

2 (2008) 5 SCC 662

3 (2010) 10 SCC 479

4 (2013) 4 SCC 505

"It appears prima-facie from the complaint filed by the complainant, documents, evidence and arguments that accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima-facie sufficient grounds exist for registration of a complaint against the accused U/s. 420 of I.P.C. and is accordingly registered."

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.

14. The appeal stands allowed accordingly.

.....,J.
(Dipak Misra)

.....,J.
(Adarsh Kumar Goel)

New Delhi;
February 10, 2015.

ITEM NO.1

COURT NO.5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1584/2007

SHARAD KUMAR SANGHI

Appellant(s)

VERSUS

SANGITA RANE

Respondent(s)

(With appln.(s) for Stay, early hearing and office report)

Date : 10/02/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s)

Mr. A. V. Rangam,Adv.

For Respondent(s)

Ms. Manjeet Kirpal,Adv.

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

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master