REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1694 OF 2008
(Arising out of SLP (Crl.) No.5672 of 2004)

R. Kalyani … Appellant

Versus

Janak C. Mehta & Ors. … Respondents

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.

3. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant

thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004.

Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breech of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorize the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No.3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

4. Ms. Indu Malhotra, learned senior counsel appearing on behalf of Respondent No.1, on the other hand, would contend :

(a) In view of the admitted fact that a first information report had been lodged by the respondents as against the appellant herein on 20.12.2002, i.e., much prior to the lodging of the FIR by the appellant herein vis-à-vis the FIR lodged by the appellant herein on 4.1.2003, the same was done with a mala fide intention.

(b) In view of the fact that the appellant herself owed a sum of Rs.13.28 lacs to the company and her group, a sum of Rs.45 lacs which is evident from the balance sheet of the appellants, continuation of the

criminal proceedings initiated against the respondents would be an abuse of the process of court.

5. Mr. U.U. Lalit, learned senior counsel appearing on behalf of the respondent No.2, supplementing the submissions of Ms. Malhotra urged :

(1) Appellant having not entered into any individual transaction with the company and as the accounts held by her together with members of her family were treated as group accounts and only because respondent No.2 had forwarded a letter of the appellant dated 10.1.2002, which is alleged to be forged, to the National Stock Exchange, the same by itself does not show that he was a party to the forgery.

(2) In respect of the offences under general law, vicarious liability cannot be fastened on an individual.

6. Mr. Vijay Thakur, learned counsel appearing on behalf of respondent No.3, submitted that although his client was not an applicant before the High Court, if the High Court having issued notice to him and quashed the entire criminal proceedings, the impugned judgment should not be interfered with.

7. The legal principles in regard to quashing of a First Information Report in view of a large number of decisions rendered by this Court are now almost well settled.

8. We may notice some of them :

In State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp.(1) SCC 335], it was held :

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
>
> 2. Where the allegations in the First Information Report and other materials, if

any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. ….

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. ….

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In Rajesh Bajaj v. State of NCT of Delhi & Ors. [(1999) 3 SCC 259], this Court held :

"7. After quoting Section 415 of IPC learned judges proceeded to consider the main elements of the offence in the following lines:

> "A bare reading of the definition of cheating would suggest that there are two elements thereof, namely, deception and dishonest intention to do or omit to do something. In order to bring a case within the first part of Section 415, it is essential, in the first place, that the person, who delivers the property should have been deceived before he makes the delivery; and in the second place that he should have been induced to do so fraudulently or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided the property is to be obtained by deception."
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> 12. The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a calendar of finest gauzes for testing the ingredients under Section 415, IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved."

In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

> "6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be

> deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

In Sunita Jain v. Pawan Kumar Jain & Ors. [(2008) 2 SCC 705], it is stated :

> "In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

In State of Orissa & Anr. v. Saroj Kumar Sahoo [(2005) 13 SCC 540], this Court stated the law, thus :

"11. As noted above, the powers possessed by the High Court under Section 482 of the Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

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14. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited Page 2274 purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan (Smt.) v. Jawahar Lal and Ors. [(1992) 3 SCC 317], it was observed that when the

> materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Cr.P.C., which cannot be termed as evidence without being tested and proved."

In Kailsah Verma v. Punjab State Civil Supplies Corporation & Anr. [(2005) 2 SCC 571], this Court stated :

> "5. In **Krishnan and Anr.** v. **Krishnaveni and Anr.** [(1997) 4 SCC 241] this question came up for consideration. That was a case where the complaint was registered under Sections 420, 406 IPC. After inquiry, the police filed a report stating that the case was essentially of a civil nature and no offence was made out. The complainant brought the matter to the Superintendent of Police. As per the directions of the Superintendent of Police, the case was investigated by the Crime Branch and a fresh report was filed under Section 173 IPC. On receipt of the report, the Magistrate took cognizance of the offences under Sections 420 and 406 IPC. Thereupon, the appellant/accused filed an application for discharge and the accused was discharged by the Magistrate. The complainant filed a revision before the Sessions Court and the revision was dismissed. On further revision by the complainant, the High Court set aside the order of the Magistrate and directed the trial of the criminal case on merits. This was challenged on the ground that the second revision was not maintainable. A Bench consisting of three Judges of this Court held:

> '.....though the revision before the High Court under Sub-section (1) of Section 397 is prohibited Sub-section 3 thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below'."

However, Dr. Monica Kumar & Anr. v. State of U.P. & Ors. [2008 (9) SCALE 166], held :

> "The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage."

9. Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information

Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its

jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

11. In the aforementioned backdrop, we may now examine as to whether the FIR lodged by the appellant makes out any case for proceeding against the respondent.

12. We may, for the said purpose, notice the ingredients of Section 420 and 406 of the Indian Penal Code.

The ingredients of Section 420 of the Indian Penal Code are as follows:

i) Deception of any persons;

ii) Fraudulently or dishonestly inducing any person to deliver any property; or

iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

Section 406 of the Indian Penal Code reads, thus :

> "**406. Punishment for criminal breach of trust.** —Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

In Popular Muthiah v. State represented by Inspector of Police [(2006) 7 SCC 296], it was opined :

> "While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/ or inherent jurisdiction not only when an application therefore is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being 'a case before the court' in contradistinction from 'a person who is arrayed as an accused before it' when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it."

13. LKP Shares and Securities Ltd. (the Company) is a company registered and incorporated under the Indian Companies Act, 1956. Whereas respondent No.1 is its President, the second respondent is its Branch Coordinator. Both of them are stationed at Bombay which is its headquarters. It has many branches including the one at Chennai. Every branch is said to be an independent entity.

14. Respondent No.3 who has been arrayed as accused No.3 in the FIR was the Branch Manager of the company at Chennai. Indisputably, all interactions and transactions by and between the appellant and the company, if any, were made by the complainant only with the respondent No.3.

15. A bare perusal of the First Information clearly goes to show that authorisedly or unauthorisedly, respondent No.3 was operating the appellant's account. It is furthermore not in dispute that she and her family members were operating six accounts with the company, the details whereof are as under :

Sl. No.	Name	Account No.
1.	Mr. A Sridhar	A555
2.	Mr. Dinesh D	D316
3.	Mrs. Dhanam	B0002
4.	Ms. Kalyani R.	K0004
5.	Jayamani S.	J0001
6.	M/s. R.S.R. Securities Limited	R0014

16. It is admitted that the appellant and her husband were Directors of M/s. R.S.R. Securties Ltd. It is furthermore conceded that the respondent No.3 and the brother of the appellant herein, when the company was in great financial difficulties, became the Directors of the said M/s. RSR Securities Ltd. It also stands admitted that the respondent No.3 resigned from the post of Branch Manager on or about 25.10.2002.

17. The records before us also show that Demat Fixed Accounts were being operated by Sridhar, brother of the appellant. It does not appear that any transaction involving purchase and sale of any share was entered into by and between the appellant and the company at any point of time, although the accounts of the RSR Securities had been opened for trading in shares.

18. Apparently, the First Information Report does not contain any allegation against the appellant No.1.

19. The principal allegations therein are only against the third respondent which may be enumerated hereinafter :

(1) He, without the knowledge and consent of the complainant with mala fide intention, operated the account maintained in her name.

(2) He promised to take over the liabilities of the company's account R-14 and at his instance only the appellant and her husband resigned from the company and he and Mr. Sridhar became the Directors.

(3) Accused No.3 promised to pay a sum of Rs.9.57 lacs being the balance in the account K-4 and also Rs.11.97 lacs being the value of shares purchased in the account as early as 1999 but not delivered in time, but he failed and or neglected to do so.

Paragraph 11 of the said First Information which is material for our purpose reads as under :

> "11. The complainant submits that the 3rd accused in R-14 account without the knowledge and consent of the complainant caused liabilities in the said account and even after taking over the said liabilities by the 3rd accused by inducting himself as director of the company now with ulterior intentions, fabricated a letter dated 10.1.2002 purported to have been written by the complainant by forging signature of the complainant, thereby trying to misappropriate the money due to the complainant from the personal account and also the 1st and 2nd accused who are responsible for the day to day management and affairs of the company as responsible persons of the company, liable for the act of 3rd accused who is a manager in their company."

20. It was also alleged therein that the appellant came to learn that the second accused had forwarded a letter dated 10.1.2002 to the national Stock Exchange which is said to be a forged and fabricated letter, the contents whereof are :

> **"**Pursuant to the discussions my brother Mr. A. Sridharan had with you regarding settlement of all outstanding payments in the accounts which we were operating.
>
> I request you to transfer the credit balance of Rs.9,57,037.16 from my personal account No.K004 to adjust the debit balance of Rs.21,08,420.45 in our company SRI R.S.R. Securities account No.R104. Any further debit balance after adjustment as above will be recoverable against the company."

21. Whereas, thus, no allegation whatsoever has been made against the respondent No.1, the only allegation against the respondent No.2 was that he had forwarded the said letter dated 10.1.2002 to National Stock Exchange. The act of forgery on/or fabrication of the said letter had been attributed to Respondent No.3.

Respondent Nos.1 and 2 herein were sought to be proceeded against on the premise that they are vicariously liable for the affairs of the company.

22. As Mr. Mani had time and again referred to the allegations relating to forgery of the said document dated 10.1.2002, we may also notice a disturbing fact. Before lodging the said First Information, a notice was issued by the appellant against the respondents herein on 15.10.2002, whereas the address of respondent Nos.1 and 2 were shown as 404, Embassy Centre, Nariman Point, Mumbai – 400 021 and 302, Veena Chambers, 21, Dalal Street, Fort, Mumbai – 400 001 respectively. However, in the complaint petition, they were shown to be residents of Chennai.

23. In the aforementioned factual backdrop, we although do not agree with the approach of the High Court, concur with its conclusion.

The allegations contained in the First Information Report, therefore, do not disclose an offence against the respondent Nos 1 and 2. They have in their individual capacity been charged for commission of offences of cheating, criminal breach of trust and forgery.

24. As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, as contained in Section 415 of the Indian Penal Code, did not and could not arise.

25. Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust.

So far as allegations in regard to commission of the offence of forgery are concerned, the same had been made only against the respondent No.3 and not against the respondent No.2. Sending a copy thereof to the National Stock Exchange without there being anything further to show that the respondent No.2 had any knowledge of the fact that the same was a forged and fabricated document cannot constitute offence.

Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created.

In Sham Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630], this Court held :

> "9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

Yet again, in Radhey Shyam Khemka & Anr. v. State of Bihar [(1993) 3 SCC 54], the law has been laid down by this Court, thus :

> "6. But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the share-holders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie and offence under the Penal Code has been disclosed on the materials produced before the court. If the screening on this question is not done properly at the stage of initiation of the criminal proceeding, in many cases, some disgruntled share-holders may launch prosecutions against the promotors, directors and those in charge of the management of the company concerned and can paralyse the functioning of such company. It need not be impressed that for prosecution for offences under the Penal Code the complainant has to make out a prima fade case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. It cannot be overlooked that there is a basic difference between the offences under the Penal Code and acts and omissions which have been

made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statue imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the traditional rule of existence of mens rea is to be followed."

In Hira Lal Hari Lal Bhagwati v. CBI, New Delhi [(2003) 5 SCC 257], it has been held :

"32. Likewise the ingredients of Section 420 of the Indian Penal Code are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial as has been held by this Court in the case of G. Sagar Suri and Anr. v. State of U.P. and Ors. [(2000) 2 SCC 636]. In this, this Court held that.

> "Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter."

39. It is settled law, by catena of decisions, that for establishing the offence of cheating, the

> complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise of representation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed."

{[See also Vir Prakash Sharma v. Anil Kumar Agarwal & Anr. [(2007) 7 SCC 373]}.

26. Although the legal principle that a penal statute must receive strict construction, it is not in doubt or dispute, we may notice some authorities in this behalf.

In Section 263 of the *Francis Bennion's Statutory Interpretation* it is stated :

> "A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The Court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

Maxwell in The Interpretation of Statutes (12th Edn) says:

> "The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of

> express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

In *Craies and Statute Law* (7th Edn. At p. 529) it is said that penal statutes must be construed strictly. At page 530 of the said treatise, referring to U.S. v. Wiltberger, [(1820) 2 Wheat (US) 76], it is observed, thus :

> "The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."

In Tuck v. Priester, [(1887)] 19 QBD 629] which is followed in London and County Commercial Properties Investments v. Attn Gen., [(1953) 1 WLR 312], it is stated:

> "We must be very careful in construing that section, because it imposes a penalty. **If there is a**

> **reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable.** Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."

Blackburn, J. in Wills v. Thorp said [(1875) LR 10 QB 383]:

> "When the Legislature imposes a penalty, the words imposing it must be clear and distinct."

27. If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.

28. For the reasons aforementioned, we do not find any legal infirmity in the impugned judgment. Before parting with this case, however, we must clarify one aspect of the matter.

Respondent No.3, arrayed as accused No.3 in the First Information Report, did not file any application under Section 482 of the Code of Criminal Procedure. We do not know under what circumstances, the High Court directed service of the notice on him. Nowhere in the impugned

judgment, High Court found that the allegations contained in the First Information Report against the respondent No.3 also do not disclose commission of any cognizable offence. It is one thing to say that he has not committed the same but it is another thing that the High Court's jurisdiction under Section 482 of the Code of Criminal Procedure could have been invoked at this stage.

29. In view of our findings aforementioned, we have no other option but to hold that the High Court in its judgment cannot be said to have covered the case of the respondent No.3. The investigation against him, therefore, shall continue. However, it will be open to him to take appropriate defences at appropriate stages as are permissible in law.

30. The appeal is dismissed with the aforementioned observations.

…….J.
[S.B. Sinha]

..……..…J.
[Aftab Alam]

New Delhi;

October 24, 2008