CASE NO.:
Appeal (civil) 1748 of 1999

PETITIONER:
ANZ Grindlays Bank Limited & Ors., etc.

RESPONDENT:
Directorate of Enforcement & Ors., etc.

DATE OF JUDGMENT: 05/05/2005

BENCH:
N. Santosh Hegde & K.G. Balakrishnan & D.M. Dharmadikari & Arun Kumar & B.N. Srikrishna

JUDGMENT:
JUDGMENT

With

Civil Appeal Nos. 1749/99, 1750/99, 1751 & 1944/99,
S.L.P.(Crl.) Nos. 2599/03, 4995/03 and 1940/04,
Criminal Appeal Nos. 847/04 and 848/04 and
Writ Petition (Crl.) No. 165/04

Delivered by:
B.N. Srikrishna,J
K.G. Balakrishna, J
Arun Kumar, J

Srikrishna, J

We have had the benefit of reading the opinions expressed by our esteemed and learned brothers Balakrishnan, Dharmadhikari and Arun Kumar, JJ. With great respect, we are unable to persuade myself to the views expressed therein.

Brother Balakrishnan, J., has indicated in his judgment the circumstances under which the reference has been made to this larger Bench to reconsider the correctness of the view expressed by the majority in Assistant Commissioner, Assessment \026II, Bangalore & Ors. vs. Velliappa Textiles Ltd. & Anr.

Velliappa was concerned with prosecution for an offence under Sections 276C, 277 and 278 read with Section 278B of the Income Tax Act, 1961. Each of the punishing sections provides that a person found guilty shall be punishable with a mandatory term of imprisonment and fine. The majority in Velliappa took the view that since an artificial person like a company could not be physically punished to a term of imprisonment, such a section, which makes it mandatory to impose a minimum term of imprisonment, cannot apply to the case of an artificial person.

The majority judgment in Velliappa indicates that the situation is not one of an interpretational exercise, but one that calls for rectification of an irretrievable error in drafting of the concerned statute. It has noticed the two Reports of the Law Commission of India of 1941 and 1947 pointing out the impossibility of implementing such a provision without transgressing the well established bounds of judicial functions and taking on the role of legislature. It was also pointed out that the situation is neither novel, nor unique. Such situation has been faced in several other jurisdictions wherein

it was recognised that the only solution to such a problem is by legislative action. Instances from the jurisdictions in Australia, France, Canada, Netherland and Belgium were referred to. There was also reference made to the fact that the Indian Parliament was cognizant of the problem and had proposed the IPC (Amendment) Bill, 1972, Clause 72(a), which specifically was intended to take care of a situation where the offender is a company and the offence is mandatorily punishable with imprisonment in which case the option was given to the Court to sentence such a corporate offender to fine only. Reference was also made in Velliappa to the fact that the said Amendment Bill had lapsed.

It is unnecessary to make detailed reference to the arguments presented to the Court in Velliappa and the view expressed thereupon, as they are reflected in the judgment itself. We would, therefore, deal with some of the additional arguments presented before us to persuade us to hold that Velliappa was wrongly decided.

LEGISLATIVE INTENT

One of the functions of the Court is to ascertain the true intention of the Parliament in enacting the statute and, as far as permissible on the language of the statute, to interpret the statute to advance such legislative intent. If this be the test, there is no doubt that Parliament has accepted the view taken in the majority in Velliappa as correct. Velliappa interpreted the situation arising out of a prosecution under Sections 276C, 277, 278 read with Section 278B of the Income Tax Act, 1961 and the judgment was delivered on 16th September, 2003. Section 278B was promptly amended by Parliament by insertion of sub-section (3) by the Finance (No. 2) Act, 2004 w.e.f. 1.10.2004. The inserted sub-section (3) reads as under:

"278B (3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section(2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act."

Similar amendment was made in Wealth Tax Act, 1957 also by insertion of sub-section (3) in Section 35 HA by the same Finance (No. 2) Act, 2004. In the face of these Parliamentary amendments, it would be futile to look for some presumed intention of Parliament on a theoretical basis. When Parliament has taken note of a situation and resolved the difficulty by a suitable amendment in legislation, the Court must hold that its decision has correctly interpreted the law and accords with the Parliamentary intent in enacting the law as it stood prior to the enactment. (See, Bhimaji Shanker Kulkarni v. Dundappa Vithappa Udapudi and another).

Thus, if the interpretative function of the Court be to find out the true intention of Parliament, then such intention has been manifested the amendments adopting the manner of resolving the difficulty indicated by Velliappa.

JUDICIAL FUNCTION

A number of arguments were addressed by learned counsel as to what is the true function of the Court in interpreting a statute. We would prefer to tread the conventional path that the maxim 'judicis est just dicere, non dare' best expounds the role of the court. It is to interpret the law, not to make it. The Court cannot act as a sympathetic caddie who nudges the ball into the hole because the putt missed the hole. Even a caddie cannot do so without inviting censure and more. If the legislation falls short of the mark, the Court could do nothing more than to declare it to be thus, giving its

reasons, so that the legislature may take notice and promptly remedy the situation. This is precisely what has happened in the present case.

We are unable to subscribe to the view that by 'judicial heroics' it is open to the Court to remedy an irretrievable legislative error by resort to the theory of presumed intention of the legislature. It was contended that the Court should adopt a purposive construction of statutes. The dicta of Denning L.J. in Seaford Court Estates Ltd. vs. Asher were pressed into service for emulation. The view of Denning L.J., that 'judicial heroics' were warranted to cope with the difficulties arising in statutory interpretation, was severely criticized by the House of Lords in Magor & St. Mellons R.D. C. v. Newport Corporation . Lord Simonds said, "the duty of the Court is to interpret the word that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited." "It appears to me", said Lord Simonds, "to be a naked usurpation of legislative function under the thin disguise of interpretation". Lord Morton observed: "these heroics are out of place". Lord Tucker said, "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J., were to prevail." This disapproval of Denning L.J.'s approach was cited with approval by this Court in Punjab Land Development and Reclamation Corporation Ltd. vs. Presiding Officer, Labour Court

The argument of purposive interpretation, therefore, does not appeal when the statute in plain terms says something.

INTERPRETATIVE EXERCISE

There appears to be a difference of opinion amongst the learned counsel assailing the correctness of majority view in Valliappa as to whether the task of the Court in the case on hand is one of statutory interpretation. Some counsel have argued that it is open to the Court to read the words "imprisonment and fine" as "imprisonment or fine". In our view, such a construction is impermissible. First, it virtually amounts to rewriting of the section. The Court would be reading the section as applicable to different situations with different meanings. If the offender is a corporate entity, then only fine is imposable; if the offender is a natural person, he shall be visited with both the mandatory term of imprisonment and fine. The exercise would then become one of putting a fluctuating or varying interpretation on the statute depending upon the circumstances. That is not permissible for the Court, either on principle, or on precedent. While it may be permissible for the court to read the word 'and' as 'or', or vice versa, whatever the interpretation, it must be uniformly applied to all situations. If the conjunction 'and' is read disjunctively as "or", then the intention of Parliament would definitely be defeated as the mandatory term of imprisonment would not be available even in the case of a natural person. We have not been shown any authority for the proposition that it is open to the Court to put an interpretation on a statute which could vary with the factual matrix.

Secondly, when a statute says the Court shall impose a term of 'imprisonment and a fine', there is no option left in the Court to say that under certain circumstances it would not impose the mandatory term of imprisonment. It is trite principle that punishment must follow the conviction.

In State of Maharashtra vs. Jugamander Lal this Court observed: (at p.5)

"By saying that a person convicted of the offence shall be sentenced to imprisonment of not less than one year the Legislature has made it clear that its command is to award a sentence of imprisonment in every case of conviction."

[See also in this connection: Gul Mahmud Shah vs. Emperor ; Jayaram Vithoba and another vs. The State of Bombay ; Jagmohan Singh vs. State of U.P. and Modi Industries Ltd. Vs. B.C. Goel]

Thirdly, if on the words used by the legislature it is impossible to effectuate the intention of the legislation, namely, to punish a company to imprisonment, it is not possible to read the section in any other manner to impose any other punishment on the offender. "We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there", said the Judicial Committee in Crawford vs. Spooner . In other words, the language of Acts of Parliament and more especially of the modern Acts, must neither be extended beyond its natural and proper limits, in order to supply omissions or defects, nor strained to meet the justice of an individual case.

"If", said Lord Brougham in Gwynne vs. Burnell , "we depart from the plain and obvious meaning on account of such views (as those pressed in arguments on 43 Geo, 3, C.99), we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a defect which the legislature could easily have supplied, and are making the law, not interpreting it. This becomes peculiarly improper in dealing with a modern statute, because the extreme conciseness of the ancient statutes was the only ground for the sort of legislative interpretation frequently put upon their words by the judges. The prolixity of modern statutes, so very remarkable of late, affords no grounds to justify such a sort of interpretation."

The interpretation suggested by the learned counsel arguing against the majority view taken in Velliappa, which has appealed to our learned brothers Balakrishnan, Dharmadhikari and Arun Kumar, JJ., would result in the Court carrying out a legislative exercise thinly disguised as a judicial act.

The argument of Mr. Jethmalani that Section 11 of IPC defines the word 'person' to include a company, and because of Section 7 it is an inexorable definition which must permeate and lend colour to construction of all sections, is an argument of petitio principii and really begs the question. Irrespective of a declaration in the statute that it shall be applied 'unless there is anything repugnant in the clause to the context', such an interpretation must necessarily be implied as forming part of all statutes. [See in this connection, Commissioner of Sales Tax vs. Union Medical Agency ;Kartick Chandra vs. Harsha M. Dasi ; Edmund N. Schuster vs. Assistant Collector of Customs, New Delhi ; State of Maharashtra vs. Syndicate Transport ; and Knightsbridge Estates Trust Ltd. Vs. Byrne and others] The definition of any word in a statute must necessarily depend on the context in which the word is used in the statute. If the statute says that the 'person' committing the offence shall be mandatorily sent to prison, this principle would suggest that such a section would not apply to a juristic person.

The maxim 'lex non cogit ad impossibilia', like all maxims, only tells us that law does not contemplate something which cannot be done. The maxim applies, in so far as persuading the Court to hold that it is impossible to send a company to prison. The maxim by itself does not empower the Court to break up the section into convenient parts and apply them selectively. Nor does the maxim 'Impotentia excusat legem' apply here for the same reason. Au contraire, the application of these two maxims could equally persuade the Court to ignore the language of the statutory provision in the case of a juristic person, there being no warrant for the dissecting of the section and treating only one part as capable of implementation when the mandate of the section is to impose the whole of the prescribed punishment.

In the written submissions on behalf of Iridium India Telecom Ltd.- (the petitioner in Special Leave Petition (Criminal) No. 4995 of 2003), a fallacious mathematical syllogism is put forward in support. The argument is that the statute mandates ('A+B'); if A is impossible, then A=0. Then, the statutory mandate would be only (Zero+B), which is really equal to 'B' (presumably 'A' = imprisonment and 'B' = fine). There is no warrant for the assumption that the value of 'A' reduces to zero merely because it is impossible in case of a corporate offender. It could very well be that 'A' is indeterminate. In that case, the mathematical logic would break down

(Indeterminate+B) = Indeterminate, which is exactly what has been held by Velliappa, namely, that the statute would become unworkable in the case of a juristic person. Ergo, it cannot apply to a juristic person for all the reasons adumbrated by the majority in Velliappa.

The maxim 'ut res magis valeat quam pereat is pressed into service to contend that the duty of the Court is to construe the enactment in such a way is to implement rather than defeat the legislative purpose. In our view, this maxim can be pressed into service only if it is permissible to extract another reasonable meaning from the plain words used in the statute. There is a further difficulty in accepting this principle as applicable to the case on hand. This principle might enable the Court to resolve the difficulty in construing a statute so that an interpretation is put on the statute which will carry forward the intention of the statue. However, it is to be remembered that the interpretation put on the statute must be of determinative import in all cases. This maxim cannot enable the Court to put a variant construction on the statute, which would vary with the circumstances of different cases. For example, if this maxim is applied to construe a section such as Section 56(1)(i) of the Foreign Exchange Regulation Act, 1973, it is not permissible for the Court to hold that the Section would mean one thing in the case of an offender, who is a natural person and something else in the case of an offender, who is a juristic person. Such a situation can only be brought about by Parliamentary legislation of the nature cited earlier. The mandate of the legislature can be interpreted so as to advance the purpose of the legislation. Whatever interpretation is given must be applicable equally in all situations. Neither this maxim, nor any other maxim, enables a Court to interpret a statute in different ways under different fact situations.

ARGUMENT OF CONSEQUENCE

A final argument, more in terrorem than based on reason, put forward was that, if the majority view in Velliappa is upheld, it would be impossible to prosecute a number of offenders in several statutes where strict liability has been imposed by the statute. If that be so, so be it. As already pointed out, the judicial function is limited to finding solutions within specified parameters. Anything more than that would be 'judicial heroics' and 'naked usurpation of legislative function'.

JURISPRUDENTIAL PRINCIPLE

Kenny in "The Outlines of Criminal Law" observes as under:

"Moreover a corporation is devoid not only of mind, but also of body; and therefore incapable of the usual criminal punishments. "Can you hang its common seal?" asked an advocate in James KK's days (8St.Tr.1138)."

"Thus the fact that a corporation cannot be hanged or imprisoned sets a limit to the range of its criminal liability. A corporation can only be prosecuted, as such, for offences which can be punished by a fine."

Para 57 of the judgment in Velliappa specifically notices that corporate criminal liability cannot be imposed without making corresponding legislative changes such as the imposition of fine in lieu of imprisonment. That such requisite legislative changes were introduced in Australia, France (Penal Code of 1992), Netherlands (the Economic Offences Act, 1950 and Article 51 of the Criminal Code) and Belgium (in 1934 Cour de Cassation) is already referred to in Velliappa.

We see nothing special in the Indian context which requires us to take a different view. In all these jurisdictions, the view that prevailed was that, where a statute imposes mandatory imprisonment plus fine, such a provision would not enable the punishment of a corporate offender. If the legislatures of these countries stepped in to resolve the problem by appropriate legislative enactments giving option to the Courts to impose fine in lieu of imprisonment in the case of a corporate offender, we see nothing special in the Indian context as to why such a course cannot be adopted. Merely

because the situation confronts the Courts in a number of statutes, the Court need not feel deterred in construing the statute in accordance with reason.

The argument that the Criminal Procedure Code, 1973 recognises different stages of cognizance, prosecution, conviction and punishment and that it is open to the Court to stop short of actual imposition of punishment, is opposed to the law laid down by this Court in a series of cases. In State of Maharashtra vs. Syndicate Transport (supra); Edmund N. Schuster vs. Assistant Collector of Customs, New Delhi (supra) and Kartick Chandra vs. Harsha M. Dasi (supra) it has been held that once the court after trial in accordance with the prescribed procedure comes to a finding of guilt and convicts an offender, the court is bound to sentence the offender with the punishment prescribed in law. In other words, sentence must inexorably follow conviction, as night follows the day. The argument that it is open to the court to abandon its duty midway without imposition of punishment of the offender, is one without merit.

The reliance on Section 48A of the Monopolies and Restricted Trade Practices Act, 1969, which was inserted by the 1984 amendment, is of no consequence. The section merely says "any person or body corporate' or which "does or omits to do what is mentioned in the Act shall be punishable with 2 years imprisonment and also with fine which may exceed to Rs.10000/-." We do not think that reliance on this section in any way advances the contention canvassed by the counsel in favour of overruling the view taken by the majority in Velliappa. It is obvious that notwithstanding such an amendment made in 1984, a body corporate cannot be visited with imprisonment for any term. This section, therefore, is of the same nature as the ones which were the subject matters in the fiscal statutes like Income Tax Act and Wealth Tax Act or Foreign Exchange Regulation Act. That the Parliament is alive to the situation and has remedied the difficulty with alacrity is really indicative of its recognition of the correctness of the majority view taken in Velliappa.

For all these reasons, we are of the opinion that the majority view of this Court in Velliappa is correct and does not require any reconsideration by this Bench. All the matters comprised in this group be placed before appropriate Benches for disposal in accordance with law.

==========

K.G. BALAKRISHNAN, J.

Leave granted.

The appellant in Civil Appeal No. 1748 of 1999 filed a writ petition before the High Court of Bombay challenging various notices issued to them under Section 50 read with Section 51 of the Foreign Exchange Regulation Act, 1973 (for short, the FERA Act) and contended that the appellant company was not liable to be prosecuted for the offence under Section 56 of the FERA Act. In this appeal filed against the judgment of the Division Bench of the Bombay High Court, dated 7th November, 1998, the appellant contends that no criminal proceedings can be initiated against the appellant-company for the offence under Section 56(1) of the FERA Act as the minimum punishment prescribed under Section 56(1)(i) is imprisonment for a term which shall not be less than six months and with fine. Section 56 of the FERA Act, 1973 reads as follows :

"56. Offences and prosecutions - (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act (other than Section 13, clause (a) of sub-section (1) of section 18, Section 18A, clause (a) of sub-section (1) of section 19, sub-section (2) of section 44 and sections 57 and 58, or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable, --

(i) in the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(ii)\005\005.
(2)\005\005
(3)\005\005
(4)\005\005
(5)\005\005
(6)\005\005."

The contention of the appellants in other connected matters also is to the same effect that in a case where the offence is punishable with a mandatory sentence of imprisonment, the company cannot be prosecuted as the sentence of imprisonment cannot be enforced against the company. When the matter came up before the bench of three learned Judges of this Court, the decision in Assistant Commissioner, Assessment-II Bangalore & Ors vs. Velliappa Textiles Ltd & Anr. (2003) 11 SCC 405 was cited in support of that contention. The bench doubted the correctness of the above decision and by reference order dated 16.7.2004 reported in 2004(6) SCC 531, the matter has thus been placed before this Court by the learned Chief Justice of India for our decision.

The question that arises for consideration is whether a company or a corporate body could be prosecuted for offences for which the sentence of imprisonment is a mandatory punishment. In Velliappa Textiles' case (supra), by a majority decision it was held that the company cannot be prosecuted for offences which require imposition of a mandatory term of imprisonment coupled with fine. It was further held that where punishment provided is imprisonment and fine, the court cannot impose only a fine. In Velliappa Textiles, prosecution was launched against the respondent, a private limited company, for the offences punishable under Sections 276-C, 277 and 278 read with Section 278-B of the Income Tax Act. Under Section 276-C and 277 of the Income Tax Act, the substantive sentence provided is the sentence of imprisonment and fine. Speaking for the majority, one of us, (Srikrishna, J.) held that the first respondent company cannot be prosecuted for offences under Section 276-C, 277 and 278 read with Section 278-B since each of these sections requires the imposition of a mandatory term of imprisonment coupled with a fine and leaves no choice to the court to impose only a fine. The majority was of the view that the legislative mandate is to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the Statute and that while interpreting a penal statute, if more than one view is possible, the court is obliged to lean in favour of the construction which exempts a citizen from penalty than the one which imposes the penalty. Following the decision in State of Maharashtra vs. Jugamander Lal AIR 1966 SC 940, it was held that the expression used is "imprisonment and fine" and the court is bound to award sentence of imprisonment as well as fine and that there is no discretion on the part of the court to impose only a fine and that the court cannot interpret the statutory provisions in a way so as to supply a lacuna in a statute.

The view expressed in Velliappa Textiles is seriously assailed before us by the Additional Solicitor General, Mr. Malhotra, who appeared for the respondents. Senior Counsel Shri KK Venugopal,

Shri Andhiyarujina, Shri Ashok Desai and other counsel supported the contention that a company cannot be prosecuted for an offence, for which the mandatory sentence is imprisonment. Shri Ram Jethmalani appearing for the appellant in the appeal arising out of Special Leave Petition (Crl.) No. 4995 of 2003 supported the view that the company is liable to be prosecuted even if the offence is punishable both with a term of imprisonment and fine. He submitted that in case the company is found guilty, the sentence of imprisonment cannot be imposed on the company and then the sentence of fine is to be imposed and the court has got the judicial discretion to do so. He further submitted that this course is open only in the case where the company is found guilty but if a natural person is so found guilty, both sentence of imprisonment and fine are to be imposed on such person.

There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.

As in the case of torts, the general rule prevails that the corporation may be criminally liable for the acts of an officer or agent, assumed to be done by him when exercising authorized powers, and without proof that his act was expressly authorized or approved by the corporation. In the statutes defining crimes, the prohibition is frequently directed against any "person" who commits the prohibited act, and in many statutes the term "person" is defined. Even if the person is not specifically defined, it necessarily includes a corporation. It is usually construed to include a corporation so as to bring it within the prohibition of the statute and subject it to punishment. In most of the statutes, the word "person" is defined to include a corporation. In Section 11 of the Indian Penal Code, the "person" is defined thus :

"The word "person" includes any Company or Association or body of persons, whether incorporated or not."

Therefore, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability.

Inasmuch as all criminal and quasi-criminal offences are creatures of statute, the amenability of the corporation to prosecution necessarily depends upon the terminology employed in the statute. In the case of strict liability, the terminology employed by the legislature is such as to reveal an intent that guilt shall not be predicated upon the automatic breach of the statute but on the establishment of the actus reus. subject to the defence of due diligence. The law is primarily based on the terms of the statutes. In the case of absolute liability where the legislature by the clearest intendment establishes an offence where liability arises instantly upon the breach of the statutory prohibition, no particular state of mind is a prerequisite to guilt. Corporations and individual persons stand on the same footing in the face of such a statutory offence. It is a case of automatic primary responsibility. It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue.

In series of offences punishable under various statutes, sentence of imprisonment and fine are prescribed as the punishment. In some of these enactments, for certain offences a minimum period of imprisonment is prescribed as punishment. Under Section 56(1)(i) of the FERA Act, in respect of certain offences, if the amount or value involved therein exceeds one lakh of rupees, the punishment prescribed is imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine. In any other case, the punishment prescribed is imprisonment for a term which may extend to three years or with fine or with both.

Going by the provisions in Section 56 of the FERA Act, if the view expressed in Velliappa Textiles is accepted as correct law, the company could be prosecuted for an offence involving rupees one lakh or less and be punished as the option is given to the court to impose a sentence of imprisonment or fine, whereas in the case of an offence involving an amount or value exceeding rupees one lakh, the court is not given a discretion to impose imprisonment or fine and therefore, the company cannot be prosecuted as the custodial sentence cannot be imposed on it.

The legal difficulty arising out of the above situation was noticed by the Law Commission and in its 41st Report, the Law Commission suggested amendment to Section 62 of the Indian Penal Code by adding the following lines :

"In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only."

This recommendation got no response from the Parliament and again in its 47th Report, the Law Commission in paragraph 8(3) made the following recommendation :

"In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the Penal Code also, but it is likely to arise more frequently in the case of economic laws. We, therefore, recommend that the following provision should be inserted in the Penal Code as, say, Section 62:

(1) In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.

(2) In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.

(3) In this section, "corporation" means an incorporated company or other body corporate, and includes a firm and other association of individuals."

But the Bill prepared on the basis of the recommendations of the Law Commission lapsed and it did not become law. However few of these recommendations were accepted by the Parliament and by suitable amendment some of the provisions in the taxation statutes were amended.

The question whether a company could be prosecuted for an offence for which mandatory sentence of imprisonment is provided continued to agitate the minds of the courts and jurists and the law continued to be the old law despite the recommendations of the Law Commission and the difficulties were expressed by the superior courts in many decisions.

The question under consideration is that where an accused is found guilty and the punishment to be imposed is imprisonment and fine, whether the court has got the discretion to impose the sentence of fine alone. Senior counsel Shri Jethmalani contended that if a corporate body is found guilty of the offence committed, the court, though bound to impose the sentence prescribed under law, has the discretion to impose the sentence of imprisonment or fine as in the case of a company or corporate body the sentence of imprisonment cannot be imposed on it and as the law never compels to do anything which is impossible, the court has to follow the alternative and impose the sentence of fine. The counsel also hastened to add that this discretion could be exercised only in respect of juristic persons and not in respect of natural persons. It was contended that by doing so, the court does not alter the provisions of the law by interpretation, but only carry out the mandate of the legislature. Senior counsel appearing for other appellants, on the other hand, contended that the Parliament enacted laws knowing fully well that the company cannot be subjected to custodial sentence and therefore the legislative intention is not to prosecute the companies or corporate bodies and when the sentence prescribed cannot be imposed, the very prosecution itself is futile and meaningless and thus the majority decision in Velliappa Textiles has correctly laid down the law. The counsel on either side drew our attention to various decisions on the point.

Different High Courts have taken different views on this question. In State of Maharasthra vs. Syndicate Transport 1963 Bom. L.R. 197, it was held that the company cannot be prosecuted for offences which necessarily entail consequences of a corporal punishment or imprisonment and prosecuting a company for such offences would only result in the court stultifying itself by embarking on a trial in which the verdict of guilty is returned and no effective order by way of sentence can be made.

In Kusum Products Limited vs. S.K. Sinha, ITO, Central Circle-X, Calcutta 126 ITR 804 (1980), the Calcutta High Court took the view that even though the definition of "person" under Section 232(3)(i) is wide enough to include a company or a juristic person, the word "person" could not have been used by Parliament in Section 277 (Income Tax Act) in the sense given in the definition clause. It was further held that the intention of the Parliament is otherwise because imprisonment has been made compulsory for an offence under Section 277 of the Act and a company being a juristic person cannot possibly be sent to prison and it is not open to court to impose a sentence of fine or allow to award any punishment if the court finds the company guilty under the said Section, and if the court does it, it would be altering the very scheme of the Act and usurping the legislative function.

In Badsha vs. Income Tax Officer 1987 (1) K.L.T. 112 Justice Thomas, J., as he then was, following the decision of the Allahabad High Court in Modi Industries Limited vs. B.C. Goel 144 ITR 496 (1983), held that "A company registered under the

Companies Act, 1956 is a juristic person and cannot be awarded the punishment of imprisonment and hence cannot be prosecuted for breach of Sections 277 and 278 of the Act" and therefore the court held that the first accused being a firm was not liable to be prosecuted for offences under Section 277 and 278.

In P.V. Pai vs. R.L. Rinawma, Dy. Commissioner, Income Tax, (1993) 2 Comp. L.J, 314 (Karn.), it was held that imprisonment alone was the punishment that could be imposed on a person found guilty and that the legislature intended that the offence under Section 277 should be met with punishment of compulsory imprisonment and fine, and courts have no jurisdiction to impose fine only and if that is done it would be altering the very scheme of the Act.

It is also pertinent to make reference to the decision of this Court in State of Maharashtra vs. Jugamander Lal AIR 1966 SC 940. That was a case where the accused was found guilty under Section 3(1) of Suppression of Immoral Traffic in Women & Girls Act, 1956. Under Section 3(1) of that Act, any person found guilty shall be punishable on his first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees. The High Court took the view that the word "punishable" used in the Section postulated a discretion on the court to impose a sentence of imprisonment or a sentence of fine or both. But this Court held that in the context in which the word "punishable" has been used in Section 3(1), it is impossible to construe it as giving any discretion to the court in the matter of determining the nature of sentences to be passed in respect of a contravention of the provision. By using the expression "shall be punishable" the legislature has made it clear that the offender shall not escape the penal consequences. What the consequences are to be are then specified in the provision and they are rigorous imprisonment for a period not less than one year and not more than three years and also a fine which may extend to Rs.2,000/-. These are the punishments with respect to a first offence and higher punishments are prescribed in respect of a subsequent offence. By saying that a person convicted of the offence shall be sentenced to imprisonment of not less than one year, the Legislature has made it clear that the command is to award a sentence of imprisonment in every case of conviction. It is difficult to conceive of clearer language for couching such command.

The counsel for the appellant relying on the above decision contended that when the Section commands the punishment for imprisonment and fine, the court is not left with any discretionary power to alter the sentence and that would amount to re-writing the provisions of the law.

Contrary view has been taken in series of other decisions to which our attention was drawn.

A full Bench of the Delhi High Court in Delhi Municiaplity vs. J.B. Bottling Company 1975 Crl. L.J. 1148 considered a similar question. The respondent-company was found guilty under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, and was fined rupees five thousand. The respondent-company filed an appeal and contended that for the offence under Section 16 of the Prevention of Food Adulteration Act, the minimum period of six months imprisonment is prescribed and the company is immune from prosecution as the sentence contemplated under law cannot be imposed on it. The Court held that:

"The office of the judges is always to make construction as shall suppress the mischief and advance the remedy and therefore it will stay its hand in passing the sentence which will be impossible to execute but pass only such

sentence which can be executed, namely, fine. The proviso to Section 16 applies only to the three classes of offences mentioned therein and as compared to the rest of the offences contemplated by the Act are of less serious nature and if indictment of the company is confined to only those offences which are covered by the proviso, then not only the intention of the legislature is defeated, but the provisions of Section 16(1-D) and Section 18 are also to that extent rendered nugatory, insofar as the offences are committed by the companies".

In Oswal Vanaspati & Allied Industries vs. State of Uttar Pradesh (1993) 1 Comp. L.J. 172 (All.), the appellant-company sought to quash the complaint filed against it by the Food Inspector under various sections of the Act alleging that the company cannot be prosecuted for an offence under Section 16 of the Act as the sentence of imprisonment provided under that section after its amendment by the Prevention of Food Adulteration (Amendment) Act No. 34 of 1976 which is mandatory cannot be awarded to it. In paragraph 7, the Full Bench of the Allahabad High Court held as follows :

"A company being a juristic person cannot obviously be sentenced to imprisonment as it cannot suffer imprisonment. The question that requires determination is whether a sentence of fine alone can be imposed on it under Section 16 of the Act or whether such a sentence would be illegal and hence cannot be awarded to it. It is settled law that sentence or punishment must follow conviction; and if only corporal punishment is prescribed, a company which is a juristic person cannot be prosecuted as it cannot be punished. If, however, both sentence of imprisonment and fine is prescribed for natural persons and juristic persons jointly, then, though the sentence of imprisonment cannot be awarded to a company, the sentence of fine can be imposed on it. Thus it cannot be held that in such a case the entire sentence prescribed cannot be awarded to a company as a part of the sentence, namely, that of fine can be awarded to it. Legal sentence is the sentence prescribed by law. A sentence which is in excess of the sentence prescribed is always illegal; but a sentence which is less than the sentence prescribed may not in all cases be illegal."

It is also appropriate to make reference to a decision of the United States Supreme Court. The judgment was rendered in United States vs. Union Supply Company 54 Law. Ed. 87 by Justice Holmes. There was an indictment of a corporation for willfully violating the sixth section of the Act of Congress of 1902 and any person who willfully violates any of the provisions of this Section shall, for each such offence, be liable to be punished with fine not less than fifty dollars and not exceeding five hundred dollars, and imprisonment for not less than 30 days, nor more than six months. It is interesting to note that for the offence under Section 5, the Court had discretionary power to punish by either fine or imprisonment, whereas under Section 6, both punishments were to be imposed in all cases. The plea of the company was rejected and it was held :

"It seems to us that a reasonable interpretation of the words used does not lead to such a result. If we compare Section 5, the application of one of the penalties rather than of both is made to depend, not on the character of the defendant, but on the discretion of the

Judge; yet, there, corporations are mentioned in terms\005\005. And if we free our minds from the notion that criminal statutes must be construed by some artificial and conventional rule, the natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that, if one of them is impossible, it does not mean, on that account, to let the defendant escape."

The Counsel for the appellant contended that the penal provision in the statute is to be strictly construed. Reference was made to Tolaram Relumal and another Vs. The State of Bombay 1955(1) SCR 158 at 164 and Girdhari Lal Gupta Vs. D.H. Mehta and another 1971(3) SCC 189. It is true that all penal statutes are to be strictly construed in the sense that the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of. All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment. Here, the legislative intent to prosecute corporate bodies for the offence committed by them is clear and explicit and the statute never intended to exonerate them from being prosecuted. It is sheer violence to commonsense that the legislature intended to punish the corporate bodies for minor and silly offences and extended immunity of prosecution to major and grave economic crimes.

The distinction between a strict construction and a more free one has disappeared in modern times and now mostly the question is "what is true construction of the statute?" A passage in Craies on Statue Law 7th Edn. reads to the following effect :

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. 'All modern Acts are framed with regard to equitable as well as legal principles.' "A hundred years ago", said the court in Lyons' case, "statutes were required to be perfectly precise and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."

At page-532 of the same book, observations of Sedgwick are quoted as under:

"The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the legislature without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the courts inclining to mercy."

The question, therefore, is what is the intention of the legislature. It is an undisputed fact that for all the statutory offences, company also could be prosecuted as the "person" defined in these Acts includes "company, or corporation or other incorporated body."

Even for offences under Section 56(1)(ii) FERA Act, the company could be prosecuted as the amount involved is less than rupees one lakh and there is no mandatory sentence of imprisonment and the prescribed punishment is imprisonment for a term which may extend to three years or with fine or with both. It is also pertinent to note that the object of the amendment was to have more stringent provisions where the amount involved in the offence is more than rupees one lakh. It is not reasonably possible to assume that amendment to the Section was carried out to give immunity to corporate bodies from prosecution for serious offences. The scheme of the Indian Penal Code also would show that for serious and graver offences, mandatory sentence of imprisonment is prescribed and for less serious offences the court is given a discretionary power of imprisonment or fine.

In the case of penal code offences, for example under Section 420 of the Indian Penal Code, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under Section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellants' plea is accepted that for the offence under Section 417 IPC, which is an offence of minor nature, a company could be prosecuted and punished with fine whereas for the offence under Section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted as there is a mandatory sentence of imprisonment.

So also there are several other offences in the Indian Penal Code which describe offences of serious nature whereunder a corporate body also may be found guilty, and the punishment prescribed is mandatory custodial sentence. There are series of other offences under various statutes where accused are also liable to punished with custodial sentence and fine.

The contention of the appellants is that when an offence is punishable with imprisonment and fine, the court is not left with any discretion to impose any one of them and consequently the company being a juristic person cannot be prosecuted for the offence for which custodial sentence is the mandatory punishment. If the custodial sentence is the only punishment prescribed for the offence, this plea is acceptable, but when the custodial sentence and fine are the prescribed mode of punishment, the court can impose the sentence of fine on a company which is found guilty as the sentence of imprisonment is impossible to be carried out. It is an acceptable legal maxim that law does not compel a man to do that which cannot possibly be performed [impotentia excusat legem] . This principle can be found in Bennion's Statutory Interpretation 4th Edn. At page 969. "All civilized systems of law import the principle that lex non cogit ad impossibilia\005." As Patternson, J. said "the law compels no impossibility". Bennion discussing about legal impossibility at page 970 states that, "If an enactment requires what is legally impossible it will be presumed that Parliament intended it to be modified so as to remove the impossibility element. This Court applied the doctrine of impossibility of performance [Lex non cogit ad impossibilia] in numerous cases [State of Rajasthan vs. Shamsher Singh, 1985(Supp.) SCC 416; Special Reference No. 1 of 2002 reported in 2002(8) SCC 237].

As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed

for graver offences. If the appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the Legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. The offences mentioned under Section 56(1) of the FERA Act, 1973, namely those under Section 13, clause (a) of sub-section (1) of Section 18; Section 18A; clause (a) of sub-section (1) of Section 19; sub-section (2) of Section 44, for which the minimum sentence of six months' imprisonment is prescribed, are serious offences and if committed would have serious financial consequences affecting the economy of the country. All those offences could be committed by company or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences, if these offences involve the amount or value of more than one lakh, and that they could be prosecuted only when the offences involve an amount or value less than one lakh.

As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the Section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the life, liberty and property of the citizens. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy .

We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles on this point and answer the reference accordingly. Various other contentions have been urged in all appeals, including this appeal, they be posted for hearing before appropriate bench.

==========

ARUN KUMAR, J.

C.A.No.1748 of 1999

I have had the benefit of going through the judgment prepared by my learned brother K.G. Balakrishnan, J. I am entirely in agreement with the view expressed by my learned brother in the said judgment. However, in order to highlight certain aspects I have chosen to add the following:

The question for consideration in the appeal is:

"Whether a company or a corporation, being a juristic person, can be prosecuted for an offence for which mandatory punishment prescribed is imprisonment and fine"?

The controversy has arisen in the context of provisions of Section 56 of the Foreign Exchange Regulation Act 1973 (for short 'FERA'). The appellant Corporation was sought to be prosecuted under said provision for

violation of the relevant provision of the Act. It was contended on behalf of the appellant that the appellant being a company cannot be subjected to criminal action under Section 56 of the FERA because the section prescribes a minimum sentence of imprisonment and fine and a company cannot be imprisoned. Section 56 is reproduced as under:

"56. Offences and prosecutions \026 (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act (other than Section 13, clause (a) of sub-section (1) of section 18, Section 18A, clause (a) of sub-section (1) of Section 19, sub-section (2) of Section 44 and Sections 57 and 58, or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable,--

(i) In the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both.
(2)\005.
(3)\005.
(4)\005.
(5)\005
(6)\005"

The main argument advanced on behalf of the appellant in this behalf is that the statutes creating criminal liability have to be strictly construed. When a statute prescribes punishment of imprisonment and fine, it is not permissible for the court to award punishment of fine alone. A corporation being a juristic person cannot be awarded the punishment of imprisonment. The appellants contend that when a statutory provision cannot be complied with as per its strict language, the consequence should be that there can be no prosecution. There is no sense in prosecuting somebody when the punishment cannot be awarded as per the mandate of the statute. The present reference to a larger Bench for consideration of this question was made in view of a three-Judge Bench decision of this Court in Assistant Commissioner, Assessment-II, Bangalore & Others vs. Velliappa Textiles Ltd. And another [2003 (11) SCC 405]. In the said judgment two learned Judges who formed the majority, took the view favouring the proposition advanced by the appellants, that is, in such a situation a corporation cannot be prosecuted.

So far the principle regarding strict construction of penal statutes is concerned there can be no quarrel. However, we need not misapply the principle. This principle has developed only in the context of the provisions in statutes which lay down the elements of an offence and the persons who can be charged with it. If there is any ambiguity or doubt as to whether in a given case an offence is made out or not or about who can be an offender with respect to the given offence, the ambiguity is to be resolved in favour of the person charged. In Maxwell on 'The Interpretation of Statutes', 12th Edition, the rule is stated as under:

"Strict construction of words setting out the elements of an offence

If there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged. This is, in practice, by far the most important instance of the strict construction of penal

statutes."

Various illustrations discussed in Maxwell in this connection deal only with cases where there was ambiguity or doubt regarding ingredients or elements of an offence as stated in a statute. Not a single instance has been brought to our notice about the above rule being applied in relation to sentencing part of penal statutes. Rather in sentencing courts have always enjoyed a certain amount of discretion. For instance, inspite of a statute prescribing punishment for an offence the courts have been empowered to grant probation to a person found guilty in certain cases.

We cannot ignore the fact that prosecution, conviction and sentencing are different stages in a criminal trial. The stage for sentencing is reached only after a verdict of guilt is pronounced after a full-fledged trial. See Sec.235 Code of Criminal Procedure. A reference to Section 56 of the Act itself demonstrates this aspect when the last words in opening part in sub-section (1) are:

"\005.upon conviction by a court, be punishable \005".

Thus the section itself refers to two stages, i.e. the stage up to conviction and thereafter the stage of punishment. From this it follows that conviction is not dependant on sentencing. Rather it is the other way round i.e. sentencing follows conviction.

The learned counsel appearing for the respondents have demonstrated the anomalous situation to which the proposition suggested on behalf of the appellants would give rise to. It was pointed out with reference to Section 56 of the FERA that for offences where the amount or value involved does not exceed Rs.one lakh, the punishment can be imprisonment or fine while when the amount or value involved exceeds Rs. One lakh, punishment by way of imprisonment and fine is mandatory. For offences under Section 56 where amount or value does not exceed Rs. One lakh, the argument based on impossibility of levy of punishment by way of imprisonment on a corporation does not survive because imprisonment in such a case is not mandatory. If we accept this argument of appellants result will be that for lesser offences Corporations can be prosecuted while for graver offences exceeding amount of Rs. One lakh the Corporations will escape liability. This could never be the object of the statute. Not only with reference to Section 56 of FERA, this anomaly can be demonstrated with reference to other statutes. For instance under the Employees Provident Fund Act, if the offence is committed second time imprisonment is mandatory. Corporations are often the offenders under the said Act. Second offence is taken more seriously and that is why punishment of imprisonment has been made mandatory. Could it be said that for first offence a Corporation can be prosecuted and punished while in case of second offence it goes scot free because imprisonment is a mandatory sentence in that case?

What follows from this is that for difficulty in sentencing we need not let the offenders escape prosecution. While laying down criminal liability the statute does not make any distinction between a natural person and Corporations. The Crimninal Procedure Code dealing with trial of offences contains no provision for exemption of Corporations from prosecution if there is difficulty in sentencing them as per statute. How can we allow Corporations to escape liability on this specious plea? In such a situation the Latin maxim Lex Non Cogit Ad Impossibilia is attracted which means: law does not compel a man to do which he cannot possibly perform. Broom's "Legal Maxims" contains several illustrative cases in support of the maxim. This maxim has been referred with approval by this Court in State of Rajasthan v. Shamsher Singh (1985) suppl. SCC 416.
In the background of above legal position let us consider Section 56 of the FERA. First we must find as to who can be the offender. The key words are: "if any person". The meaning of the word 'person'is to be

gathered. This word has not been defined in the FERA. The definition of the word 'person' is available in Section 11 of the Indian Penal Code as well as in Section 3 (42) in the General Clauses Act. Both the definitions are similar and show that the word 'person' includes any company or association or body of persons whteher incorporated or not. It follows that the word 'person' here will includes corporation, company or association or body of persons whether incorporated or not. This makes it clear that a company or a corporation can be subjected to penal liability under Section 56 of the FERA. In fact, during the course of hearing none of the counsel appearing for appellants argued or suggested that Section 56 does not apply to corporations. Their entire argument to save the corporations from liability under Section 56 is based on the difficulty of levying mandatory punishment of imprisonment on corporations when the amount involved exceeds Rs. One lakh. As a matter of fact, it is not disputed that when the amount involved does not exceed Rs. One lakh, a corporation or a company can be prosecuted under Section 56.

The question which now arises is can the criminal liability created by the statute be made dependent on the sentencing part contained in the same statute. In my view the mandate of the provision is quite clear, that is, the corporations are liable to be prosecuted for offences under FERA as per Section 56 and allowing corporations to escape liability for prosecution on this specious plea based on difficulty in sentencing as per the Section, will be doing violence to the statute. As already noticed principles of strict interpretation of criminal statutes require that the substantive offences created by the statute which does not exclude corporations, should be enforced strictly and anyone rendering itself liable for action under the said Section, be it a corporation or a natural person, should face prosecution, conviction and sentence. The charging provision contained in Section 56 lays down the ingredients of the offence in very clear and unambiguous terms. There is no scope for any doubt that corporations are subject to provision of Section 56 of FERA. The statutory mandate is loud and clear. Any interpretation which leads to results contrary to the statutory mandate will be in violation of the statute.

No difficulty arises when we come to the stage of sentencing after a finding of guilt if the amount involved does not exceed Rs.one lakh. This difficulty arises only in cases where amount involved exceeds Rs. One lakh. Here it may be worthwhile to mention that the original FERA of 1947 did not prescribe a mandatory punishment of imprisonment and fine and therefore, such a situation was never faced. The 1973 Act sought to make the penal provision more severe and, therefore, prescribed that in case of high valuation cases punishment by way of imprisonment and fine, both will be necessary. When the statutory intention was to make the graver offences punishable more severely, are we justified in holding that in such a situation the offender totally escapes liability? The law cannot be allowed to result in such absurdity. Such a view in my judgment will neither be just nor fair nor in accordance with the law. By a purely technical process of reasoning Corporations should not be allowed to go scot free. There are several statutes making corporations liable for conviction which prescribe punishment by way of imprisonment as well as fine. An interpretation as suggested on behalf of the appellant will result in corporations escaping liability in all cases. Here we may point out that Section 48 A of the Monopolies and Restrictive Trade Practices Act 1969 specifically makes corporations liable for prosecution while at the same time providing that in case of conviction they will be liable to imprisonment and also fine. In the face of this specific provision will corporations be allowed to escape liability on same reasoning as is being advanced here on behalf of appellants. In my view allowing corporations to escape prosecution for offences under Section 56 FERA for the only reason that corporations cannot be punished with imprisonment even though the punishment by way of fine which is also prescribed under the Section can be levied on them, will be defeating the statutory mandate regarding bringing to book offenders under the FERA. For the view I am taking I find support from the view expressed by the three-Judge Bench in the referring order in this case which is reported as ANZ Grindlays Bank Ltd. and Others vs. Directorate of Enforcement and Others [2004 (6) SCC

531] wherein it is observed:
"..Section 56 of the Act provides for different punishments for commission of different offences. It is true that in an offence of this nature a mandatory punishment has been provided for but offences falling under other part of the said section do not call for mandatory imprisonment. Section 56 of the Act covers both cases where an offender can be punished with imprisonment or fine and a mandatory provision of imprisonment and fine. In the event it is held that a case involving graver offence allegedly committed by a company and consequently, the persons who are in charge of the affairs of the company as also the other persons, cannot be proceeded against, only because the company cannot be sentenced to imprisonment, in our opinion, the same would not only lead to reverse discrimination but also go against the legislative intent. The intention of Parliament is to identify the offender and bring him to book."

"..upon taking recourse to the principle of purposive construction as has been held by a three-Judge Bench of this Court in Balram Kumawat v. Union of India an attempt should be made to make Section 56 of the Act workable. It is possible to read down the provisions of Section 56 to the effect that when a company is tried for commission of an offence under the Act, a judgment of conviction may be passed against it, but having regard to the fact that it is a juristic person, no punishment of mandatory imprisonment can be imposed."

Another three-Judge Bench of this Court in a judgment in Balram Kumawat vs. Union of India 2003 (7) SCC 628, to which I was a party, observed in the context of principles of statutory interpretation:
"23. Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

In M.V. Jawali v. Mahajan Borewell & Co. and Others [1977 (8) SCC 72] this Court was considering a similar situation as in the present case. Under Section 278 B of the Income Tax Act a company can be prosecuted and punished for offence committed under Section 276-B, sentence of imprisonment is required to be imposed under the provision of the statute and a company being a juristic person cannot be subjected to it. It was held that the apparent anomalous situation can be resolved only by a proper interpretation of the section. The Court observed:
"8. Keeping in view the recommendations of the Law Commission and the above principles of interpretation of statutes we are of the opinion that the only harmonious construction that can be given to Section 276-B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on a company, fine will be the only punishment."

For the above reasons I reject the argument on behalf of the appellants that Corporations cannot be prosecuted under Section 56 of the FERA for

the reason that mandatory punishment of imprisonment cannot be imposed on Corporations. I would like to answer the reference accordingly resulting in the appeal being dismissed. The remaining matters be listed before an appropriate Bench for disposal.