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Raymond Ltd. and ors Vs. Rameshwar Das Dwarkadas P.Ltd

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Court : Delhi

Decided On : Apr-08-2013

Judge : G.P. Mittal

Appellant : Raymond Ltd. and ors

Respondent : Rameshwar Das Dwarkadas P.Ltd

Advocate for Def. : Mr. Arpan Behl, Ms. Sugandha Nayak

Advocate for Pet/Ap. : Mr. Chetan Sharma, Mr. Vivek Dholakia, Mr. Prashant Gupta

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

26. h February, 2013 Pronounced on:

8. h April, 2013 + CRL.M.C. 1124/2007 RAYMOND LTD. & ORS. Through: ..... Petitioners Mr. Chetan Sharma, Senior Advocate with Mr. Vivek Dholakia, Advocate, Mr. Prashant Gupta, Advocate. versus RAMESHWAR DAS DWARKADAS P.LTD. ..... Respondent Through: Mr.Manoj K.Singh, Advocate with Mr. Arpan Behl, Advocate, Ms. Sugandha Nayak, Advocate. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. The Petitioners invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (the Code) for quashing of the summoning

order dated 07.11.2006 and the Criminal Complaint No.30/1 of 2005 titled M/s. Rameshwar Das Dwarkadas Pvt. Ltd. v. M/s. Raymond Limited & Others.

2. A complaint under Section 499 read with Section 500 of the Indian Penal Code (IPC) was preferred by the Respondent against the Petitioners on the allegations that the Respondent is the assignee of the trademark SUNSTAR. The trademark SUNSTAR is duly registered at number 1061264 with the trademark registry in the name of M/s. Unique Strategic Alliance. M/s. Unique Strategic Alliance by a deed of assignment dated 01.04.2005 transferred all rights in the earlier said trademark in favour of the Respondent. The first Petitioner (M/s. Raymond Limited and Ors.) served a legal notice dated 30.06.2005 Ex.CW-1/3 upon the Respondent alleging that it (Petitioner No.1) was the registered user of the trademark SUNFLOWER, JK, Sher, Rej, Three Files, Two Files etc. etc. The first Petitioner complained that use of the trademark SUNSTAR on the packaging case of the Files being manufactured by Unique Star Alliance and marketed by the Respondent and Econ International Pvt. Ltd. was infringement of the trademark belonging to the first Petitioner. Thus, the Respondent was required (i) to remove the words Sun from the packages and/or at other places, if any and cease and desist from infringing the copyright vested in the artistic and literary work in Sunflower and all its other brands, with respect to Trademark and Label Mark; (ii) to surrender to Raymond for destruction without compensation the entire stock of your printing blocks, dyes, advertisement, packing materials, circulars and all other related materials bearing the identical or deceptively similar trademark and label mark of Sunflower and all its other brands, if any; (iii) to forthwith pay to Raymond at Mumbai a sum of `2,00,000/- (Rupees Two Lacs only) each towards damages; and (iv) to tender to Raymond an apology and furnish to us a written undertaking in a form approved by us, stating that you will henceforth desist from committing the impugned act.

3. The Respondent replied the earlier said notice denying that the Respondent was infringing the trademark SUNSTAR on the other hand the first Petitioner was informed that the SUNSTAR brand was being owned by the Respondent and was duly registered with the trade mark registry and if the first Petitioner had any objection to the registration, it could approach the trademark Registry. The first Respondent was, therefore, required to withdraw the notice and tender apology for

issuing the ceased and desist notice. The first Petitioner was further informed that its action was against commercial morality and amounted to monopolistic trade practice. The Respondent, therefore, put the first Petitioner to notice to initiate appropriate proceedings against it (the first Petitioner) for intentionally issuing a notice to diminish the competitor in the market.

4. In the complaint the Respondent further alleged that a letter dated 03.06.2005 was written by the first Petitioner to one of Respondents customer informing that an injunction against use of the SUNSTAR mark had been issued by the Bombay High Court. According to the averments made in the complaint, the first Petitioner also issued some press releases regarding the injunction issued by the Bombay High Court against use of the SUNSTAR brand by any person. It was stated that a poster was also taken out by the first Petitioner whereby the persons engaged in the business of Files were given to understand that the Respondent was infringing the SUNFLOWER trademark of the first Petitioner by selling its Files with SUNSTAR brand. The Respondent, therefore, claimed this action of the Petitioners to be illegal and with intent to harm the Respondents reputation who had earned a great name and reputation on account of the sale of its product under the registered trademark SUNSTAR. Thus, the complaint which is the subject matter of the present Petition was filed by the Respondent against the First Petitioner, i.e. M/s. Raymond Limited and its Directors (Petitioners Ndo.2 to 7).

5. It is not in dispute, rather it is admitted case of the parties that a civil suit filed in the original side of the Bombay High Court was against one M/s. Filex with its office at Jalandhar, Punjab, who was allegedly infringing the first Petitioners SUNFLOWER brand under trademark No.259420. The said trademark was registered under Class 8 in respect of Files (made of steel). It is also not in dispute that the Respondent is also the assignee of the registered trademark SUNSTAR. Thus, it is admitted that the Respondent was entitled to use the trademark SUNSTAR in respect of Files.

6. The question for consideration is whether the advertisement and particularly the poster Ex.CE-1/5 was aimed at the Respondent and was thus intended to harm the Respondents reputation as also its business.

7. It is no longer res integra that the powers under Section 482 of the Code to quash a complaint or a FIR must be used with circumspection in exceptional cases and not as a matter of course. It goes without saying that the powers vested in the High Court under Section 482 of the Code being residuary power are very wide and the same can be used (i) to make such order/orders as may be necessary to give effect to an order under the Code, or (ii) to prevent abuse of the process of the Court or (iii) otherwise to secure the ends of justice.

8. In State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. AIR 199.SC 60.the Supreme Court considered its earlier decision on quashing of the FIR and observed that it would not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Some of the cases where the powers to quash FIR could be exercised were enumerated as under:(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 FIR 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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (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) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the

grievance of the aggrieved party. (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.

9. The following contentions are raised on behalf of the Petitioners:- (i) Petitioner No.1 being a juristic person cannot possess mens rea and thus cannot be held criminally liable for the offence of defamation punishable under Section 500 IPC. There is no provision in the IPC which makes a Director or its officers vicariously liable for the act of the Corporate entity. (ii) The Respondent has not attributed any overt act on the part of Petitioners No. 2 to 7. Thus, in the absence of any specific allegations that they or any of them did any act to bring out the notices/posters, Petitioners No.2 to 7 cannot be prosecuted. (iii) The Respondent does not have any locus standi to file the complaint under Section 500 IPC as the letters / trade notices did not refer to the Respondent rather it refer to one M/s. Filex. (iv) The dispute between the parties was of civil nature. Admittedly, a Civil suit No.1299/2005 was filed on the original side of this Court wherein one of the relief sought by the Respondent was grant of damages for defaming the Respondent. The said Civil suit was disposed of as settled by an order of this Court dated 02.03.2006 and thus the criminal complaint cannot survive. POINT NO.1 10. It is urged by the learned counsel for the Petitioner that first Petitioner M/s. Raymond Limited is a juristic person having no mind of its own. Referring to Kalpnath Rai v. State AIR 199.SC 201.the learned counsel for the Petitioners urges that in the absence of any criminal intent a corporation cannot be held criminally liable for an offence requiring mens rea. The learned counsel heavily relies on Para 53,55, 57 and 58 of the report which are extracted hereunder:- 53. Sections 136 and 312 of IPC are the provisions incorporating two of the offences involving harbour in which the common words used are whoever knowing or having reason to believe. Another offence in the Penal Code involving harbour is Section 157 wherein also the words whoever harbours knowing that such person etc. are available. It was contended that mens rea is explicitly indicated in the said provisions in the Penal Code whereas no such indication is made in Section 3(4) of TADA and therefore, the element of mens rea must be deemed to have been excluded from the scope of Section 3(4) of TADA. x x x x x x x x x x 55. There is a catena of decisions

which has settled the legal proposition that unless the statute clearly excludes mens rea in the commission of an offence the same must be treated as essential ingredient of the criminal act to become punishable. (State of Maharashtra v. Mayer Hans George AIR 196.SC 722.Nathulal v. State of M.P. AIR 196.SC 43). x x x x x x x x x x 57. For all the above reasons we hold that mens rea is an essential ingredient for the offence envisaged in Section 3(4) of TADA.

58. On the above understanding of the legal position we may say at this stage that there is no question of A-12 the Company to have had the mens rea even if any terrorist was allowed to occupy the rooms in Hotel Hans Plaza. The Company is not a natural person. We are aware that in many recent penal statutes, companies or corporations are deemed to be offenders on the strength of the acts committed by persons responsible for the management or affairs of such company or corporations e.g. Essential Commodities Act, Prevention of Food Adulteration Act, etc. But there is no such provision in TADA which makes the Company liable for the acts of its officers. Hence, there is no scope whatsoever to prosecute a company for the offence under Section 3(4) of TADA. The corollary is that the conviction passed against A-12 is liable to be set aside.

11. Learned counsel also presses into service Zee Telefilms Limited v. M/s. Sahara India Commercial Corporation Limited & Anr. (2001) 1 CALLT 26 HC; Sunil Chandra Banerjee v. Krishna Chandra Nath, AIR (36) 1949 Calcutta 689; A.K. Khosla and Ors. v. T.S. Venkatesan & Ors., (1992) 1 CALLT 7 HC; and Vineet Jain & Ors. v. State NCT of Delhi & Ors. 184 (2011) DLT 59.in support of the averment.

12. In the case of Zee Telefilms Limited the Calcutta High Court held that intention to cause harm is the most essential sine qua non of an offence under Section 499 IPC. The Calcutta High Court held that since company is an artificial person or a juristic entity it is incapable of having any mind and hence question of having such a state of mind could not arise. It was, therefore, concluded that such a person cannot commit an offence of defamation. The Calcutta High Court relied on the report of the Supreme Court in Kalpnath Rai and held as under:8. Offence of defamation is defined in section 499 IPC. It is apparent from the very definition that

intention of the accused who make such imputation must be to harm the reputation or he must make it with knowledge or reasonable belief with such imputation will harm the reputation of the person concerned. Therefore, unless one makes the offending Imputation with such state of mind, he cannot be said to have committed such offences. Undoubtedly a company is a Juristic entity. The offence of defamation consists of three essential ingredients, namely, (i) making or publishing any imputation concerning any person, (ii) such imputation must have been made by words either spoken or intended to be read or by signs or by visible representation, and (iii) the said imputation must have been made with intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned. Therefore, it is apparent from the very definition of the offence as given in section 499 IPC that intention to cause harm is the most essential sine qua non of an offence under section 499IPC. Question is whether a Juristic or artificial entity is capable of having such a state of mind? According to a decision of this Court in Sunilakhya Chowdhury v. H.M.J.H. Jadwet AIR 196.Cal 266, a Juristic person and artificial person or a Juristic entity is incapable of having any mind and hence question of having such a state of mind cannot arise. It was, therefore, concluded such a person cannot commit an offence of defamation of which mens rea is one of the essential ingredients though the directors and other officers of such company may be liable for committing such offences in certain circumstances. This Court in an earlier case in Anath bandhu v. Corporation of Calcutta also held that a limited company cannot be prosecuted for an offence of which mens rea is an essential ingredient. It may be possible to prosecute a company for an offence which does not require mens rea or particular state of mind to be one of the essential ingredients of the offence. But, If the statute requires that mens rea is an essential ingredient of the offence, then a company cannot be prosecuted for such an offence as such company is incapable of having a mind or intention or mens rea. Learned counsel for the petitioners cited a decision of the apex Court in Kalpanath Rai v. State [through CBI), 1998 Cri LJ 36.wherein it was held in paragraph 57 of the report that:a company is not a natural person. Mens rea being an essential ingredient of offence under section 3(4) there is no question of prosecuting it for the same. In many recent penal statutes, companies or corporations are deemed to be offenders on the strength of

the acts committed by person responsible for the management of the affairs of such company or corporation. But, there is no such provision in the Tada which makes the company liable for the acts of its officers. Hence, there is no scope whatsoever to prosecute a company for the offence under section 3(4) of Tada.

9. In the penal code also there is no provision which makes a company or an association of persons liable for prosecution for the offences of which mens rea is one of the essential ingredients. In this situation and in view of the aforesaid decision of the apex Court, it is apparent that if a statute defining the offence makes the mens rea or particular state of mind to be essential ingredients of such offence, a company or an association of person cannot be prosecuted for such offences though its officers or directors responsible for the management of the affairs of such company may be liable for prosecution. Similar view was expressed by this Court in an earlier decision in AIR 194.CAL 68.where it has been held that bank is a Juridical person and not an actual person. The bank is such that it cannot be said to have the mens rea required for the offence of cheating. The bank as such cannot be punished for cheating because it has no physical body. Similar view was reiterated in a recent decision of this Court in a comparatively recent decision of this Court in AK. Khosla v. T.S. Venkatesan. 1991 (2) CRN 321.

13. The Calcutta High Court, therefore, quashed the criminal complaint filed by the Respondent against Zee Telefilms Ltd.

14. In Sunil Chandra Banerjee, the Calcutta High Court took the view that the Bank which is a corporate entity cannot be held guilty of the offence of cheating as it cannot be said to have requisite mens rea for the offence of cheating. To the same effect are the observations of Calcutta High Court in A.K. Khosla and Ors.

15. Per contra, learned counsel for the Respondent places reliance on the report of the Supreme Court in Iridium India Telecom Ltd. v. Motorola Incorporated & Ors. (2011) 1 SCC 7.wherein it was laid down that a corporate entity cannot escape liability for a criminal offence like cheating on the premise that it cannot have dishonest intention. The learned counsel for the Respondent heavily relies on Paras 55,56,59,60,63, 64 and 65 of the report which are extracted hereunder:55. We are of the considered opinion that there is much substance in

the submission of Mr Jethmalani that virtually in all jurisdictions across the world governed by the rule of law, the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent.

56. In the year 1909, the United States Supreme Court in New York Central & Hudson River Railroad Co. v. United States [53 L Ed 613 :

212. US 48.(1908)] stated the principle thus: (L Ed p.

622) It is true that there are some crimes which, in their nature, cannot be committed by corporations. But there is a large class of offences, of which rebating under the federal statutes is one, wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. If it were not so, many offences might go unpunished and acts be committed in violation of law where, as in the present case, the statute requires all persons, corporate or private, to refrain from certain practices, forbidden in the interest of public policy. *** We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, and can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has entrusted authority to act in the subject-matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act. While the law should have regard to the rights of all, and to those of corporations no less than to those of individuals, it cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that interState commerce is almost entirely in their hands, and to give them immunity from all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the subject-matter and correcting the abuses aimed at. x x x

x x x x x x x 59. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the alter ego of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.

60. It may be appropriate at this stage to notice the observations made by MacNaghten, J.

in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. 1944 KB 146.(AC p.

156) A body corporate is a person to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate. x x x x x x x x x 63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is

almost the same. Mens rea is attributed to corporations on the principle of alter ego of the company.

64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530.On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para

6) 6. 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.

65. This Court also rejected the submission that a company could avoid criminal prosecution in cases where custodial sentence is mandatory. Upon examination of the entire issue, it is observed as follows: (Standard Chartered Bank case (2005) 4 SCC 530.SCC pp. 548-50, paras 27-28 & 30-32) 27. In the case of Penal Code offences, for example under Section 420 of the 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 then 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.

28. So also there are several other offences in the 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 a series of other offences under various statutes where the accused are also liable to be punished with custodial sentence and fine. *** 30. 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 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.

31. 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 a 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.

32. 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 (sic and fine). We overrule the views expressed by the majority in Velliappa Textiles Ltd. (2003) 11 SCC 40.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 an appropriate Bench.

16. It is important to note that in Iridium India Telecom Ltd. the Supreme Court did not take into consideration the law laid down by a Coordinate Bench in Kalpnath Rai where it was laid down that unless the statute clearly excludes mens rea in the commission of offence, the same must be treated as essential ingredient of the criminal act to become punishable and that a company cannot be said to have requisite mens rea to harbor a terrorist if any terrorist was allowed to occupy the room in its hotel. The Supreme Court primarily relied upon a Constitution Bench judgment in Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 53.wherein the Supreme Court took the view that a company can be prosecuted for an offence for which the punishment of imprisonment as well as fine is provided and instead of awarding the mandatory sentence of imprisonment (which becomes impossible in case of corporate entity) the company can be sentenced to pay fine only. These observations, however were in the context of the corporate entity that it could be prosecuted on the principle of strict liability without any mens rea as provided specifically under the provisions of the Prevention of Food Adulteration Act, 1954, Essential Commodities Act, 1954, Negotiable Instruments Act, 1881, Narcotic Drugs and Psychotropic Substances Act, 1985, Foreign Exchange Regulation Act, Income Tax Act, 1961, etc. etc.

17. The Supreme Court raised the question about the corporate criminal liability where mens rea is a necessary ingredient but parried the question without expressing any opinion on the same issue. Para 8 of the report in Standard Chartered Bank is extracted hereunder:8. 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.

18. Thus, in view of the divergence of opinion on this question, the law laid down on corporate criminal liability in Kalpnath Rai & Iridium India Telecom Ltd., the earlier judgment of the Supreme Court in Kalpnath Rai shall have to be taken as a binding precedent. Moreover, the observations of the Supreme Court in Iridium India Telecom Ltd. shall have to be read in the context when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs as the person in control of affairs of the company were very well aware that the project was not viable and they induced the Appellant to invest/expend a sum of `500 crores on the basis of projections / statements which they knew to be false.

19. Thus, Iridium India Telecom Ltd must be taken to have been decided on its own facts and cannot be taken to have overruled Kalpnath Rai.

20. In this view of matter, I hold that since the first Petitioner cannot possess any mens rea it cannot be guilty of the offence of cheating under Section 499 read with Section 500 IPC. POINT NO.2 21. Admittedly, a Director or an officer of the first Petitioner cannot be made vicariously liable being such officer or Director as is provided under the provisions of certain statutes like the Prevention of Food Adulteration Act, 1954, Essential Commodities Act, 1954, Negotiable Instruments Act, 1881, Narcotic Drugs and Psychotropic Substances Act, 1985, Foreign Exchange Regulation Act, Income Tax Act, 1961, etc. etc. To make a person liable for the offence of defamation, the Complainant must prove that the accused has made any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person.

22. I have before me the complaint filed by the Respondent against the Petitioners. The tenor of the complaint reveals that the Respondent was not aware of the exact constitution of the first Petitioner. It simply had the information that Petitioners No.2 to 7 were its Directors. Admittedly, the Respondent did not make any specific allegations as to how the Petitioners No.2 to 7 or any of them committed or participated in an act to publish the news items and particularly the poster Ex.CW-1/5. The Respondent was content to include Petitioners no.2 to 7 in the term accused and describe the acts done on behalf of the first Petitioner by any person whatsoever to have been done by the accused. Para 2 of the complaint is extracted hereunder:2. Accused No.1 is Raymond Limited with its registered office at Plot No.156, H.No.2, Village Zadgaon, District Ratnagiri, Maharashtra 415612. The other Accused, namely Accsued Nos. 2 through 7, are Directors of Accused No.1. The exact constitution of the Accused is not known to the Complainant until after investigation in the present action. The present complaint has been instituted on account of defamation, misrepresentation and illegal use of Complainants registered trademark and unfair competition in relation to Complainants trademark SUNSTAR. In the present complaint the term Accused shall connote the Accused collectively unless the context otherwise provides.

23. Thus, the Respondent preferred to include all the Petitioners in the term accused used in the complaint. However, a perusal of the complaint reveals that no specific act has been attributed to Petitioners No. 2 to 7.

24. The Respondent examined Narender Kumar Khandelwal (CW-1) one of its Directors in pre summoning evidence. In his statement on oath he attributed the entire role in filing the civil suit on the original side of Bombay High Court, issuance of the notice Ex.CE-1/3 to the Respondent and taking out of the posters in the area of Delhi only to the first Petitioner. The only allegation leveled against Petitioners No.2 to 7 is that they are in charge of and responsible for the conduct of the business of the first Petitioner. As stated by him earlier, on the basis of this averment alone Petitioners No. 2 to 7 cannot be fastened with the criminal liability of defamation. To prove that there are grounds to proceed against Petitioners No.2 to 7 the Respondent was atleast required to allege that Petitioners No.2 to 7 intended to cause harm to the reputation of the Respondent by publishing any

imputation. That having not been done, it would be difficult to say that there were any grounds for proceeding against Petitioners No.2 to 7. I am supported in this view by a judgment of this Court in Vineet Jain & Ors. v. State NCT of Delhi & Ors. 184 (2011) DLT 59.where a Coordinate Bench of this Court held that such imputation must be made with the intention to cause harm or with the knowledge or having reasons to believe that it will harm the reputation of the person concern. POINT NO.3 25. The learned senior counsel tried to make an attempt that the Respondent had no locus standi to file a criminal complaint against the Petitioners as no role has been assigned to the Petitioners. The learned senior counsel places reliance on S. Khushboo v. Kanniammal & Anr. (2010) 5 SCC 600.

26. I do not find much substance in this contention. The respondent did allege that the alleged defamatory poster was taken out at the behest of the first Petitioner and that the Petitioners No.2 to 7 were in charge of and responsible for the conduct of its business. It is a different matter that I have taken a view that the first Petitioner cannot be prosecuted being a corporate entity and that no specific role has been attributed to Petitioners No.2 to 7. The contention is without any substance and reliance on S. Khushboo is misconceived. POINT NO.4 27. In view of my decision on Points No.1 and 2 the summoning order and the complaint have to be quashed. This point is merely of an academic interest. There is no dispute about the proposition of law that a complaint disclosing civil transaction may also have criminal texture and the court must see whether a dispute which is essentially of a civil nature has been made a criminal offence. If the court finds that the dispute is mainly of civil nature and has been given a criminal colour, the High Court must use its inherent powers to quash the criminal complaint. But, at the same time, if the act/complaint gives rise to the civil as well as criminal remedy the person aggrieved is at liberty to avail either or both the remedies.

28. In Indian Oil Corp. vs. NEPC India Ltd. & Ors. (2006) 6 SCC 73.relied upon by the learned senior counsel for the Petitioners, the Supreme Court deprecated the practice of converting purely civil dispute into criminal cases but at the same time it was held that in a given set of facts may give rise to a civil wrong as also a criminal offence. Relevant Para of the report is extracted hereunder:12..(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence;

or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

29. In the instant case if the poster Ex.CW-1/5 is taken on its face value it will amount to Respondents defamation for which he would be entitled to take an action under the civil as well as criminal law. Thus, it cannot be said that a civil dispute has been converted into a criminal offence by the Respondent.

30. But, at the same time, it has to be noticed that the Respondent instituted the criminal complaint for the offence of defamation on 27.09.2005. He also filed a civil suit on the original side of this Court also sometime in September, 2005. He was granted an interim injunction by the learned Single Judge of this Court. The factum of filing of the civil suit and grant of injunction was disclosed in the criminal complaint but the factum of filing of the criminal complaint was not mentioned in the civil suit. The civil suit wherein relief, inter alia, of damages for defamation was claimed was settled between the parties by an order dated 02.03.2006. In view of the settlement, the Petitioners issued fresh public notice thereby clearing the confusion if any in the minds of the traders / customers that the injunction which was obtained against infringement of the Petitioners trademark was only against M/s. Filex. The relevant part of the order by which the civil suit for defamation was settled is extracted hereunder:Since the plaintiff is the manufactures and trader trading under the brand name Sunstar which is its registered brand name for the last number of years, the said posters gave an impression to the pubic at large that the Bombay High Court had restrained the plaintiff from using Sunstar brand in respect of his files. With this grievance present suit is filed seeking restraint against the defendants from mis-representing and demeaning the plaintiffs product. In the written statement filed by the defendants, the defendants have taken shelter under the aforesaid order of the Bombay High Court and has stated

that said order is not misused and there was no intention to cover the plaintiff in the said posters while taking out a public notice on the basis of order passed by Bombay High Court. However, without prejudice to its contentions raised in the written statement, the defendant agreed to come out with proper notice, inter alia, stating that the restraint order is against M/s. Filex and also in the said notice, projecting the label of Raymonds Limited which is being infringed along with the label of Filex which was the infringing label. Copy of this notice is placed on record which reads as under:The public is hereby informed that the Bombay High Court vide its ad-interim Order dated 20th April, 2005 has restrained M/s. Filex from in any manner using/applying/affixing the label (Label B below) or any other label/design identical with or deceptively similar to Label B/design belonging to Raymond limited (J.K. Files & Tools Division) (Label A below) on any cartons/boxes/containers bearing M/s. Filexs products so as to pass off their products as and for those of the Raymond Limiteds products. Therefore, the Public is hereby warned that any person dealing in any products bearing the impugned label or any other label/design identical with or deceptively similar to the impugned label/design shall render themselves liable for prosecution. Label A Label B With this notice grievance of the plaintiff stands satisfied. It will be further clarified, as agreed to by learned counsel for the defendant that there is no restraint order passed by any court at the instance of the defendant against the plaintiff. While the suit can be disposed of in view of the remedial steps taken by the defendant, learned counsel for the defendant prays for payment of cost on the ground that the earlier poster of the defendant was misleading because of which plaintiff has suffered immense loss. He submits that even if damages are not to be granted, at least the court fee paid by the plaintiff should be reimbursed. Having agreed to the fact that misleading statement appeared in the notices / posters published by the defendant thereby covering sunstar brand as well, this prayer of the learned counsel for the plaintiff is reasonable and justified. I may note at this stage that counsel for the plaintiff submitted that the plaintiff has no exclusive right to use the trade name Sunstar. It is made clear that this aspect is not determined in these proceedings and if defendant has no grievance in this behalf, it may file appropriate proceedings. Defendant is accordingly directed to pay the sum of `22,000/- to the plaintiff as cost. The suit is disposed of with the aforesaid

direction..

31. As stated earlier at the time of the settlement of the civil suit the Respondent did not disclose the filing of the criminal complaint. In the facts of this case, the non disclosure of the criminal complaint would amount to its settlement as well. Again proceeding further with the complaint in the circumstances would amount to misuse of the process of the Court.

32. For the reasons stated above and the law laid down in Bhajan Lal it would be in the interest of justice to quash the instant complaint. I order accordingly.

33. Pending Applications also stand disposed of. (G.P. MITTAL) JUDGE APRIL 08 2013 vk

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