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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 525 OF 2018

1. Shri. A. P. Hinduja

Age : 67 years, Occupation : Business,

Add. P. D. Hinduja Hospital &

Medical Research Centre,

Mahim, Mumbai-400 016

And

Office at : Hinduja House,

171, Dr. Annie Besant Road,

Worli, Mumbai 400 018

V/s.

... Petitioner

1. State of Maharashtra

2. Drugs Inspector (HQ)

Food and Drug Administration,

M. S., Survey No. 341,

Bandra Kurla Complex,

Bandra East, Mumbai-51.

... Respondents

Mr. Amit Desai, Senior Advocate with Mr. Gopalakrishna Shenoy
i/b. Pawan Mali for the Petitioner.

Ms. Mahalaxmi Ganpathy, APP with Ms. Megha Bajoria, APP
for the Respondent-State.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 1st JULY 2026.

PRONOUNCED ON : 1st OCTOBER 2026.

JUDGMENT: -

1) By the present Petition filed under Article 227 of the Constitution

of India and section 482 of the Code of Criminal Procedure, 1973 (For Short 'CrPC')/now section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioner/ accused No. 3 seeks to challenge the Order dated 3rd September 2015 passed by the learned Metropolitan Magistrate in CC No.632/SW/2005 thereby rejecting the discharge application of the Petitioner and the Order dated 2nd December 2017 passed by the Sessions Court, in Criminal Revision Application No.1446 of 2015, thereby dismissing the Revision Application filed by the Petitioner.

2) Heard Mr. Amit Desai, learned Senior Advocate for the Petitioner and Ms. Mahalaxmi Ganpathy, learned APP for the Respondent-State.

FACTUAL MATRIX

3) The facts as alleged in the complaint are as under:

3.1) The Petitioner/accused No.3 is the Managing Trustee of the P. D. Hinduja Hospital & Medical Research Centre (for short 'Hinduja Hospital'/accused No.4). The accused Nos.1 and 2 are the pharmacist and Deputy Director (material) respectively of accused No.4. The accused Nos.5 to 7 are the partners of accused No.8, i.e., Segal Optics (dealer/ distributor). Accused No.9 is the proprietor of M/s Shah & Shah (manufacturer). Accused Nos.10 and 11 are the Directors of M/s. Ointment & Cosmetics India Pvt. i.e. Accused No.12 who is also manufacturer.

3.2) On 15th June 1992, a complaint was received from Dr. Sunil U.

Patil regarding ophthalmic drug Visilon. It was alleged that, drug Visilon B.No.24190 manufactured by Shah & Shah was used during cataract surgery of Mr. Umakant S. Patil after which a fungal infection developed in the operated eye. The infection resulted into blindness.

3.3) Based on the said complaint, on 22nd June 1992 the Drugs Inspector visited Hinduja Hospital for conducting an investigation. A sample of the said drug Visilon-Hydroxypropyl Methyl Cellulose 2% B.No.24190 manufactured by Shah & Shah was drawn by the Drugs Inspector. One unit of the said drug was procured in prefilled syringe for further investigation. That, one counterpart of the sample was sent to the Government Analyst. The Government Analyst's report dated 20th August 1992 declared that, the sample of the drug was not of standard quality, and that the same was misbranded vide rule 96 and section 17(b) of the Drugs and Cosmetic Act, 1940 (For short "the said Act"), as the content of Methyle Cellulose in the sample was less than the labelled amount. That, when the sample was tested for sterility, microbial growth was observed.

3.4) On 4th September 1994, orders of prosecution were received from Joint Commissioner, H.Q., Food and Drug Administration. That, on 7th October 1994, Respondent No. 2 visited the premises of manufacturer and distributor and collected documents. The documents would indicate that, the Visilon eye lotion Methyl Cellulose 2% I.P. was permitted on 10th March 1986

under license No.337 MB(L). On 4th August 1988, it was endorsed as Methyl Cellulose usp Eye drops 2%. On 26th December 1989, Director Drugs Control, West Bengal permitted to manufacture Visilon in prepacked syringes of 2ml.

3.5) It is alleged that, though the licensed name of the drug is Visilon-Methyl Cellulose eye drops 2% Methyl Cellulose usp., the sample carton is labeled as Hydroxypropyl Methyl Cellulose 2%. It is contended that as the drug is manufactured under name which belongs to another drug it is spurious under section 17B (a) of the said Act.

3.6) That, the report of the Government Analyst declared the said drug Visilon B. No. 24190 to be not of standard quality and also as misbranded. That, it showed microbial growth when tested for sterility i.e. it contained harmful or toxic substances which may render it injurious to health. Therefore, the drug was termed as adulterated under section 17A (e) of the said Act. That, while the manufacturers i.e. accused Nos.10 to 12 claim to have manufactured the said drugs in vials only, accused No.9 informed that it was received from the manufacturers in pre-filled syringe.

3.7) On the basis of above allegations, it was alleged that, accused Nos. 1 to 4 acquired, stocked and distributed the drug Visilon B.No.24190 at Bombay during the period from 7th March 1991 to 23rd June 1992 and contravened section 18(a)(i) read with section 17(b)(c), 17A(c), 17B(a)(c) punishable under section 27(a) and section 16 punishable under section

27(d) read with section 34 of the said Act.

3.8) On the basis of the aforesaid alleged facts, Respondent No.2 filed a complaint vide CC No.632/SW/2005 before the learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai. The learned Magistrate was pleased to issue process against the Petitioner and others for the alleged offences. The only allegation against the Petitioner is that, he is Managing Trustee of accused No. 4. The averment made in support of the allegation only states that the Petitioner was the Managing Trustee.

SUBMISSIONS OF PETITIONER:

4) The learned Senior Advocate appearing for the Petitioner submitted that,

4.1) The only allegation against the Petitioner is that he is a Managing Trustee of Hinduja Hospital. The Petitioner has been arraigned as an accused only on the basis of section 34 of the said Act. The allegations/charges against the Petitioner and accused Nos.1, 2 and 4 are that they (Hospital and the Pharmacy) acquired, stocked and distributed the drug Visilon B. No. 24190 at Bombay during the period from 7th March 1992 to 23rd June 1992 and contravened section 18(a)(i) read with section 17(b)(c), 17A(c), 17B(a)(c) punishable under section 27(a) and section 16 of the said Act punishable under section 27(d) read with section 34 of the said Act.

4.2) The provisions of section 34 of the said Act are not applicable to

a Trust or the employees of the Trust. There is no averment as is required to attract or invoke the provisions of section 34 of the said Act. The Petitioner has been made an accused only on the basis of information given by accused No.4/ Hinduja Hospital vide letter dated 30th November 1994, which was in reply to the Complainant's letter dated 17th November 1994 calling for some information. By the letter dated 30th November 1994, accused No.4- Hinduja Hospital only gave names and addresses of the Managing Trustee, Senior Supervisor, Pharmacy and particulars of payment and nothing more.

4.3) The order dated 3rd September 2015 passed by the learned Metropolitan Magistrate rejecting the Discharge Application of the Petitioner, proceeds on erroneous assumption that a Trust is included in the definition of company and comes under the term "association of individuals". It is, therefore, concluded that the Petitioner is responsible for day-to-day conduct of the Hospital and can be prosecuted.

4.4) By the Order dated 11th November 2012 passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai in C.C. No. 632/SW/2005 accused Nos. 5 to 7 were discharged. Being aggrieved by the said Order the state preferred a Criminal Revision Application No. 45 of 2012. By an Order dated 12th February 2013, the Criminal Revision Application No.45/2012 was partly allowed whereby the Order dated 11th November 2012 was set aside as against accused No. 6 and confirmed as regard accused

No. 5 and 7. In effect, the Order of discharge passed in favour of accused Nos. 5 and 7 (partners of the firm dealing with the drug) was confirmed on the ground that, there was no allegation that they were in-charge of accused No. 8 firm and/or conducting day to day business of the said firm.

4.5) While referring to the order dated 2nd December 2017 passed by the Sessions Court it was submitted that, while rejecting the Petitioner's Revision Application reliance was placed on the Judgment of Madras High Court in the case of *M/S. Abraham Memorial Educational Trust v. C. Suresh Babu* reported in 2012 SCC OnLine Mad 2986 which equated a "company" to a "Trust". Further a Trust has also been equated to "association of individuals".

4.6) It was submitted that, the judgment in the case of *M/S. Abraham Memorial Educational Trust (supra)* has now been overruled by the Hon'ble Supreme Court in the case of *Sankar Padam Thapa v. Vijaykumar Dineshchandra Agarwal*, reported in 2025 SCC OnLine SC 2194.

4.7) The Petitioner has been roped in only because he is termed as the Managing Trustee of the Trust. There is no evidence of any direct involvement or being incharge of the hospital pharmacy. That, under the Trust law the term 'Managing Trustee' is not defined as the term 'Managing Director' is defined under the Companies Act ,2013. The term 'Managing Trustee' of the Trust cannot be equated with the 'Managing Director' of the Company. That, the term 'Managing Trustee' is only used as a term of convenience. A Trust cannot

be equated to a company.

4.8) Section 34 of the said Act refers to vicarious liability of the director, which has to be strictly construed as is laid down by the Hon'ble Supreme Court in its various cases including in the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another* reported in (2005) 8 SCC 89. That, the principle of vicarious liability is an exception to the general rule and therefore, when a statute provides for the same the provision has to be strictly construed. A Trust cannot be equated to a Company registered under the Companies Act. A Trust is not a juristic person as a company. Therefore, invoking the provisions of section 34 of the said Act is misconceived and improper. That, the provisions of section 34 cannot be made applicable to the Trust. That, if a Trust cannot be prosecuted or sued, then the principle of vicarious liability also cannot be applicable to a Trust.

4.9) There is no averment or pleading whatsoever made against the Petitioner that the Petitioner was incharge and was responsible for the conduct of business or the day-to-day administration of the Hospital/Pharmacy.

SUBMISSIONS OF RESPONDENT-STATE:

5) The learned A.P.P. appearing on behalf of the Respondent- State submitted that,

5.1) The Petitioner being the Managing Trustee of the Trust has

overall general control and is responsible for and aware of all the affairs and activities of the Trust. A Managing Trustee/Trustee acts either through himself or through other employees of the Trust. Under section 27 of the said Act, the Managing Trustee can act through himself or any other person. That, for the acts of the Trust, the Trustees are the persons who have the overall responsibility, along with the other concerned employee or authorised person. The Trustees represent the Trust.

5.2) The Petitioner, being the Managing Trustee, was responsible for and aware of the affairs and activities of the Trust. During the course of enquiry made with the Hospital, Respondent No.2 was informed that the Petitioner was the Managing Trustee. Therefore, the Petitioner is made accused. In response to the queries, the Hospital itself addressed a letter dated 30th November 1994 confirming that the Petitioner was functioning as its Managing Trustee. A Trustee is responsible for the affairs of the Trust.

5.3) The Ld. Magistrate has rightly observed that, a person who is "in charge" means a person who is in overall control of the day-to-day affairs and functioning of the establishment. In the present case, the Petitioner was admittedly the Managing Trustee of the Trust, thereby demonstrating that he exercised overall supervision and control over its day-to-day activities.

5.4) The judgment in the case of *Sankar Padam Thapa (supra)* is restricted only to and is relation to the Negotiable Instruments Act, 1881 (for

short 'NI Act') and therefore it cannot be applicable to the present case.

5.5) The details provided by accused No.4 in its letter dated 30th November 1994 clearly make out a case against the Petitioner as he is the Managing Trustee of accused No.4. That, in view of the said letter, it is not necessary that the rule regarding pleadings and averments has to be complied with.

SUBMISSIONS IN REJOINDER

6) Mr. Amit Desai, learned Senior Advocate appearing for the Petitioner in rejoinder submitted that: -

6.1) In the complaint, there is also no pleading in respect of the applicability of Section 27 of the said act, apart from being mentioned in the complaint. That, the pharmacist and the director (material) have been made accused as they were the persons directly connected with the procurement, distribution and selling of the drugs.

6.2) It is necessary and a requirement in law including Section 27 of the Act that the essential and necessary averments are made to show that the concerned person was incharge of or responsible for the day-to-day affairs of the concerned entity. There is no such averment. Only the Petitioner's designation is stated.

6.3) The Trust cannot be equated to a company and that the term "Managing Trustee" is a term of convenience and not a term defined under the

Trust law. On the other hand, the term “Managing Director” is a term specifically defined under the Companies Act.

REASONING

7) Perused the entire record. The present petition is filed challenging orders rejecting the application of the petitioner filed for recall of process and seeking discharge. It is therefore required to be seen whether the Petitioner has made out a case seeking discharge, in as much as, no case is made out against the Petitioner. In short, it is required to be seen if any prima facie case is made out against the Petitioner. In this regard it would be necessary to state the law on discharge as laid down by the Hon’ble Supreme Court.

7.1) A useful reference can be made to the decision of the Hon’ble Supreme Court in the case of *Union of India Vs. Prafulla Kumar Samal*, reported in *AIR 1979 SC 366*. It is necessary and useful to refer to paragraph 10 of the said judgment which reads as under:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and

proceeding with the trial

(3) *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused*

(4) *That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial"*

7.2) The Supreme Court in the case of *R.S. Nayak vs. A.R. Antulay and Anr.* reported in, *AIR 1986 SC 2045*, while analysing provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in Para 44 has held as under:-

"The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate

considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction.” It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of “prima facie” case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed.”

7.3) A further reliance can also usefully be placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Soma Nath Thapa*, reported in (1996) 4 SCC 659 wherein, the Supreme Court has held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

7.4) The Supreme Court in the case of *Palvinder Singh Vs Balwinder*

Singh and others, reported in (2008) 14 SCC 504 while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshalling and appreciation of evidence is not in the domain of the Court at that point of time. Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the prima facie case as made out by the Complainant/prosecution.

8) Section 34 of the said Act deals with Offences by companies. It is the statutory provision which provides for the vicarious liability. Section 34 specifically provides that, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The proviso to sub-section (1) of section 34 of the said Act, provides that the person so charged shall not be liable to any punishment under the Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

9) Sub-section (2) of section 34 of the said Act, provides that notwithstanding anything contained in sub-section (1), where an offence

under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. It is therefore clear that, for the purposes of sub-section (2), it is necessary to show that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of the person accused.

10) The explanation to section 34 of the said Act, which defines a company is in a sense restrictive in nature and only for the purpose of section 34 of the said Act. Clause (a) of the explanation defines a “company” to mean a body corporate, and includes a firm or other association of individuals; and clause (b) defines a “director” in relation to a firm to mean a partner in the firm. For the purposes of the section, what is included to mean a company is a body corporate, a firm or other association of Individuals. The term Trust is not included. The term director is defined in relation to a firm and equated to a partner of the firm. There is no reference to the term Trustee. One must remember that, Section 34 of the said Act provides and invokes concept of vicarious liability. The said provision has to therefore strictly construed. In fact, on a holistic reading of the provision it clearly appears that, the Trust is

infact excluded. It is also necessary to keep in mind that, Trust is not a juristic person like a company and therefore also excluded from the explanation and Section 34 of the said Act.

11) Section 27 of the said Act deals with the penalty for manufacture, sale etc. of drugs in contravention of the Act. It provides that, whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes drugs in contravention of the provisions of Act shall be punishable with the punishments as provided in the said section. The section is a deeming provisions and therefore the provisions will have to be strictly construed and each requirement/ provision followed strictly in its true letter and spirit. To invoke the provisions of Section 27 of the said Act, it would be necessary that the pleading and averment prima facie indicating at least to some extent the manner in which the acts were done through the other. Further, the said Section is required to be read with the relevant rules under the Drugs Rules 1945. Amongst other rules, the rules in respect of the duties of inspectors of premises licensed for sale, taking of samples etc. are to be seen. Rule 59 of the Drug Rules, 1945 deal with the sale of drugs other than homeopathic medicines. Rule 61, of the Drug Rules, 1945, provides for forms of license to sell drugs. The Drug Rules, 1945, provide for restricted licences to sell, stock or distribute drugs.

12) The case of Respondent No.2 in the complaint is that, the Petitioner and accused Nos.1, 2 and 4 acquired, stocked and distributed the drug Visilon B.No.24190 at Bombay during the period from 7th March 1992 to 23rd June 1992. The said drug was found to be not of standard quality, misbranded, spurious and adulterated and therefore contravened section 18(a)(i) read with section 17(b)(c), 17A(c), 17B(a)(c) punishable under section 27(a) and section 16 of the said Act punishable under section 27(d) read with section 34 of the said Act. Pertinent to note that, the said drug was manufactured, distributed and dealt with by accused Nos 5 to 12, out of which accused Nos. 5 and 7, who were the partners of the Segal Optics, i.e., accused No.8 the dealer, have been discharged on the ground that, they were not incharge and responsible for the affairs of accused No.8.

13) Perusal of the complaint would prima facie indicate that, as against the Petitioner there is no specific allegation or averment that he was in-charge of or responsible for the day-to-day affairs of accused No.4 i.e. Hospital or the Pharmacy. The only averment against the Petitioner is in para-2 of the complaint which reads as under:

“..... The accused No.3 is Managing Trustee of P.D. Hinduja National Hospital & Medical Research Centre, Mahim, Bombay. i.e. accused No.4”

Apart from the aforesaid averment, no other averment or allegation made which would indicate that, the Petitioner being the Managing Trustee of the

Trust was in any way connected with or incharge of acquiring, stocking or distribution of drugs in the accused No. 4 Pharmacy including the drug Visilon. Prima facie the said averment only states the designation of the Petitioner and no more. I have noted that, Respondent No. 2 has made the Pharmacist (accused No. 1) and the Deputy Director (Materials) (accused No. 2) of Hinduja Hospital and the Hospital (accused No.4) as accused in the complaint. Prima facie the Pharmacist and/or the Deputy Director (Materials) would be incharge of the pharmacy of the hospital and supervise the procuring, stocking and sale of the drugs in the pharmacy. The Respondent No. 2 has made the manufacturer, dealer/distributor and their partners and directors as the case may be as other co- accused in the complaint. Accused Nos. 5 to 12 were the manufacturers, dealer and/or distributors of the said drug.

14) The record indicates that the Petitioner is made accused only on the basis of the Hospitals letter dated 30th November 1994 issued by accused No.4 Hospital. The letter was in reply to letter dated 17th November 1994 of the Drugs Inspector, where the following information was sought from the Hospital i.e. (i) Name and address of the Managing Trustee/Chairman, Executive Council; (ii) Address of Mr. Joseph Mathew – Sr. Supervisor Pharmacy and (iii) Payment Particulars. In the complaint, there is no averment or pleading which would show any involvement of the Petitioner in

procuring the drug. It cannot be that, by merely mentioning the provisions of sections 27 or 34 of the said Act, the requirement of making the necessary and essential averments and pleadings is given a go by. It is also well settled that, even by merely using or employing the language of a Section, it cannot be said that the required ingredients of the Section are attracted or the necessity of making the necessary averments and pleading is complied with. In the present case, as against the Petitioner, I find that there is no averment. In my opinion, a perusal of the complaint in the present case indicates that, the complaint lacks the most basic, essential and fundamental averments/pleadings. In the present case, there is nothing on record to even prima facie indicate that, any independent enquiries were undertaken by Respondent No. 2 as to fix the vicarious liability or conclude that a particular individual was incharge of the day-to-day activities of the Hospital/Pharmacy or an act was done by or through the person. Pertinent to note and very importantly, that procurement, stocking and selling of drugs is done under the supervision of a pharmacist an expert person having the requisite knowledge of the medicines, drugs and the composition/ contents of the drugs. This also the requirement under the Drug Rules, 1945. The license of the Pharmacy is given based on the expertise and qualification of the expert person having special knowledge.

15) Prima facie it appears that there is no averment or pleading in respect of the Petitioner be incharge or in control of the day-to-day affairs of

the hospital, pharmacy or directly supervising the same with the accused Nos.1 and 2. There is a complete silence. There is a complete absence of the required and essential averments. Even if one were to invoke the provisions of section 27 of the said Act, there is a complete absence of the required and essential averments. It is settled law that, vicarious liability provisions have to be strictly construed. It was necessary for the Respondent No. 2 plead and at least prima facie demonstrate that, the Petitioner was responsible and incharge of the pharmacy i.e. procurements, stocking and selling. There is no such averment or pleading. Simply because a person is a Trustee and termed/called as Managing Trustee of a Trust, he cannot and does not become liable for each and every act by an employee in a pharmacy. Pertinent to note that, even a non-designate person, if involved or the acts can be attributed to the said person would be liable for prosecution. What is necessary is that the basis averment and pleadings are made. In the present complaint, apart from mentioning the designation of the Petitioner there is not even a whisper in respect of the role, part played or act attributed to the Petitioner. Bald, general, sweeping or vague pleadings, in my considered view are not enough to invoke a vicarious liability.

16) I have also noted that, both the impugned Orders rejecting the discharge application of the Petitioner have solely relied upon the judgment passed by the Madras High Court in the case of *M/S. Abraham Memorial*

Educations Trust (supra). The Hon'ble Supreme Court while deciding an issue in the case of *Sankar Padam Thapa (supra)* has overruled the judgment of the Madras High Court in the case of *M/S. Abraham Memorial Educations Trust (supra)*. The issue before the Hon'ble Supreme Court in *Sankar Padam Thapa (supra)* was whether a complaint under the NI Act would be maintainable against a Trustee in the absence of the Trust being arraigned as an accused. The Hon'ble Supreme Court framed the issue in Paragraph 2 of the judgment as under:

"2. The question for consideration in the instant appeal is as to whether in the absence of a Trust being made an accused in a complaint under the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), when a Cheque has been issued on behalf of a Trust, the said complaint would be maintainable against the Chairman/a Trustee of the said Trust?"

17) The Hon'ble Supreme Court in the case of *Sankar Padam Thapa (supra)*, while considering the issues before it, has made certain observations which are relevant and of importance to the present case. The said observations are as follows: -

"26. Ergo, it is clear that though a Trust may act or even be treated as an entity for certain legal purposes and not all legal purposes, a Trust is an obligation imposed on the ostensible owner of the property to use the same for a particular object - for the benefit of a named beneficiary or charity, and it is the Trustee(s) who are bound to maintain and defend all suits and to take such other steps with regard to the nature, land or the value of the Trust property, that may be reasonably required for the preservation of the Trust property, and the assertion of protection of title thereto, subject to the provisions of the instructions of Trust to take such other steps.

28. *Though we have delved into the issue of whether a Trust can sue or be sued on its own, we would make it amply clear (and as would also become evident from what followsinfra) on this point, that our view is confined to examination of the subject in the context of the NI Act alone, in praesenti. We were called upon to consider only as to whether without making a Trust an accused, a complaint would be maintainable against a Trustee in the eye of law under the NI Act.*

29. *Hence, the question posed is answered in the affirmative. When a cause of action arises due to an alleged dishonour of cheque and a complaint is initiated under the NI Act, the same is maintainable against the Trustee who has signed the cheque, without the requirement to array the Trust also as an accused.*

.....
34. *Clearly, Mukund(supra) principally proceeded on equating a Trust with a ‘company’, which is a fallacy. If we trace our steps back to over a century ago, in the locus classicus Salomon v. A Salomon and Co. Ltd., [1897] A.C. 22, Lord Macnaghten of the House of Lords opined:*

‘...
The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or Trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act. That is, I think, the declared intention of the enactment. If the view of the learned judge were sound, it would follow that no common law partnership could register as a company limited by shares without remaining subject to unlimited liability....’

(emphasis supplied)

.....
36. *Therefore, Mukund(supra) does not lay down the correct position of law having wrongly assigned equivalence between a ‘company’ and a Trust, besides running counter to our exposition qua Sections 3 and 13 of the Trusts Act. The legal status accorded to a ‘company’ cannot be imported to a Trust, in the eyes of law, in the case at hand.*

.....
38. *The views expressed by the respective High Courts in Prana Educational and Charitable Trust(supra); Dadasaheb Rawal Co-op.*

Bank of Dondaicha Ltd.(supra); Abraham Memorial Educational Trust(supra); Mukund(supra), and; Bijaya Manjari Satpathy(supra) run counter to what we have held above. The same do not commend themselves to us and are overruled in law, without disturbing their effect(s)inter-parties.

.....
42. We are conscious that Pratibha Pratisthan(supra) has been doubted and referred to a Larger Bench vide Order dated 04.10.2019 in Tara Bai Desai Charitable Ophthalmic Trust Hospital v. Supreme Elevators India (P) Ltd., Special Leave Petition (Civil) No. 18636/2019 [since reported as (2025) 3 SCC 80]. In fact, one of us (Ahsanuddin Amanullah, J.) was nominated by Hon'ble the then Chief Justice of India to be part of the 3-Judge Bench constituted to hear the afore-noted reference. As the learned Judge presiding over that 3-Judge Bench has since demitted office, it would entail nomination of a new coram. However, till the reference is decided one way or the other, the law as declared in Pratibha Pratisthan(supra) continues to hold the field as no order has been passed in Special Leave Petition (Civil) No. 18636/2019 requesting other Benches to await the outcome thereof. There is no doubt on this, given the clear dicta in Union Territory of Ladakh(supra) [2-Judge Bench], which after surveying the law, held:

'35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680[See Paragraphs 27 and 28 in the report on this point.]. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.'

(emphasis supplied)

The Hon'ble Supreme Court has clearly observed and concluded that a Trust cannot be equated to a Company and that doing so would be a fallacy. It is observed that the legal status accorded to a company cannot be imported into a Trust. Pertinent to note that a Trust is not a distinct legal entity as different and distinct from its Trustees.

18) The learned Magistrate in the Order dated 3rd September 2015 has proceeded on the basis that, a Trust is included in the definition of a company and also comes under association of individuals. It is further observed that, the Petitioner being described as the Managing Trustee can be prosecuted. Both the Order dated 3rd September 2015 and the order dated 2nd February 2017 placed reliance on the Judgment of the Madras High Court in the case of *Abraham Memorial Educations Trust (supra)*, which is no more good law as the same has been overruled by the Hon'ble Supreme Court in the case of *Sankar Padam Thapa (Supra)*.

19) The Impugned Order dated 2nd February 2017, proceeds to equate the term "Managing Trustee" to the term "Managing Director" and also to a manager, director and secretary as used in section 141 of the NI Act. It also holds that a "Trust" is a "Company" under Section 34 of the said Act. This in my opinion are erroneous findings. The Hon'ble Supreme Court has in the case of *Sankar Padam Thapa (Supra)* specifically observed that, equating a

Trust with a 'company', is a fallacy. A Trust is clearly excluded from the scope and ambit of section 34 of the said Act. Furthermore, the term Managing Director is a term well defined under section 2(26) of the Companies Act, 1956/nor Section 2(54) of the Companies Act 2013. The term "Managing Trustee" is not defined under the Trust laws and therefore cannot be equated to the term "Managing Director".

20) The judgment in the case of *M/S. Abraham Memorial Educational Trust (supra)* was thus the sole and exclusive legal foundation for the Petitioner's implication at every stage of the proceedings under Section 34 of the said Act, which judgement has now been overruled and is no longer good law. The Impugned Orders do not consider in the proper perspective the fact that, there is no pleading or averment as to the role of the Petitioner. In my opinion the Petitioner is sought to be made liable on an erroneous interpretation of Section 34 of the said Act. There is no reference or consideration of the Petitioner's role and involvement in procuring the said drug or being aware of the fact that the drug was spurious, misbranded etc., nor is the difference between a Trust and Company considered.

21) Under a Trust, all Trustees are equal and hold property in Trust as co-owners. There can be no doubt of the fact that in a criminal proceeding, the Trustees who are liable and answerable, are the ones who have done the alleged acts of commission and/or of omission. In that view of the matter, it

therefore becomes all the more imperative to make and have in place the necessary averments and pleadings in respect of the acts of the Trustees. On most of the occasions the task and work are assigned to specific individual employees / representatives under a resolution to carry out the work. In case like the present one which deals with selling of medicines / drugs manufactured by a third party through the pharmacy of the hospital, it is necessary to remember that the same is done through an approval process of licensing as provided under the Drugs Act 1945. There is specialized and expert knowledge which is required to procure and dispense drugs. The knowledge is acquired through a particular course, education etc. The Act and the rules provide for procedure and safeguards. In such a situation, it cannot be that all the Trustees are prosecuted for act of any individual, unless there is a material on record to show the involvement of all Trustees or a particular Trustee(s) and the same is pleaded.

22) It is also essential to keep one reminded of the fact that, section 34 of the said Act creates a vicarious liability and it is settled law that the same has to be interpreted and construed strictly.

23) The Hon'ble Supreme Court in the case of *Tolaram Relumal v. State of Bombay*, reported in (1954) 1 SCC 961 has observed that: -

“8. The question that needs our determination in such a situation is whether Section 18(1) makes punishable receipt of money at a moment of time when the lease had not come into existence, and

when there was a possibility that the contemplated lease might never come into existence. It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent for the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in London & North Eastern Railway Co. v. Berriman [London & North Eastern Railway Co. v. Berriman, 1946 AC 278 at p. 295 (HL)]: (AC p. 295)

“... Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language.”

24) The Hon’ble Supreme Court in the case of *Dilip Kumar Sharma v.*

State of M.P., reported in (1976) 1 SCC 560 has observed that: -

“23. It is well settled that such a penal provision must be strictly construed; that is to say, in the absence of clear compelling language, the provision should not be given a wider interpretation, and

“no case should be held to fall within which does not come within the reasonable interpretation of the statute. (M.V. Joshi v. M.U. Shimpi [AIR 1961 SC 1494: (1961) 3 SCR 986: (1961) 2 Cri LJ 696])”

If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute.”

25) As regards the importing of criminal vicarious liability, the

Hon'ble Supreme Court in the case of *Sunil Bharti Mittal v. CBI*, reported in (2015) 4 SCC 609 has observed that: -

“(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.”

26) The Hon'ble Supreme Court in the case of *Balaji Traders v. State of U.P.*, reported in (2025) 10 SCC 638 has observed that: -

“24. A three-Judge Bench of this Court has also observed in Dilip Kumar Sharma [Dilip Kumar Sharma v. State of M.P., (1976) 1 SCC 560: 1976 SCC (Cri) 85] that a penal provision must be strictly construed; that is to say, in the absence of clear, compelling language, the provision should not be given a wider interpretation.”

Considering the aforesaid pronouncements, it is necessary that Section 34 of the Act, being penal provision is required to be strictly construed.

27) The Hon'ble Supreme Court in *Sankar Padam Thapa (supra)* has categorically held in paragraph 23 that. *“... that a Trust does not have a separate legal existence of its own, making it incapable of suing or being sued”* and in paragraph 25 that it is "not a legal entity" or 'juristic person'. In paragraph 38, the Hon'ble Supreme Court inter alia expressly overruled

Abraham Memorial Educational Trust (Supra) the very judgment on which both courts below exclusively relied. The judgement further has also overruled the judgment in the case of *Mukund v. Eknath*, reported in *2023 SCC OnLine Bom 3015* of this Court, holding that equating a Trust with a "company" for the purposes of Section 141 of the NI Act was "a fallacy" and held that: -

“36. Therefore, Mukund(supra) does not lay down the correct position of law having wrongly assigned equivalence between a ‘company’ and a Trust, besides running counter to our exposition qua Sections 3 and 13 of the Trusts Act. The legal status accorded to a ‘company’ cannot be imported to a Trust, in the eyes of law, in the case at hand.”

28) Section 34 of the said Act provides for Offences by companies and is applicable to a “company”. It deals with offences committed by a company and every person incharge or responsible for the conduct of the company. The explanation to the section defines a company to mean a body corporate, and includes a firm or other association of individuals and a “director” in relation to a firm means a partner in the firm. The section provides that a "firm" is also a company and its "partners" will be deemed to be "directors". The intention of the legislature therefore is clear. The language of Section is plane, clear and simple. Pertinent to note that legislature in its wisdom, in the explanation does not however include a "Trust" in the definition of a company nor is a Trustee included in the definition of a director. Section 34 of the said Act creates a statutory and vicarious liability,

and is therefore to be strictly interpreted and construed. It is pertinent to note that the Hon'ble Supreme Court in *Sankar Padam Thapa (supra)* has observed that it will be a "fallacy" to equate a company with a Trust. It is therefore, now clearly settled by the Hon'ble Supreme Court that a Trust cannot come within the scope of section 34 of the Act.

29) The explanation of Section 34 of the said Act is identical to Section 141 NI Act, both provisions fasten vicarious criminal liability in relation to a "company" on the person "in charge of and responsible for the conduct of the business of a company or association of individuals". It is a well settled that Section 34 of the Drugs and Cosmetics Act, 1940, is pari materia with Section 141 of the Negotiable Instruments Act, 1881. The Hon'ble Supreme Court in the case of *Dilip Hariramani v. Bank of Baroda*, reported in (2024) 15 SCC 443, in paragraph 7 of its judgment, and the Madhya Pradesh High Court, in the case of *Narayanan Ayyar v. State of M.P.*, reported in 2006 SCC OnLine MP 189, in paragraph 10 have held that the provisions of Section 34 of the Drugs and Cosmetics Act, 1940, are pari materia with those of Section 141 of the Negotiable Instruments Act, 1881. Accordingly, the principles of law laid down in the interpretation of Section 141 of the Negotiable Instruments Act can be relied upon, to the extent applicable, while interpreting Section 34 of the Drugs and Cosmetics Act, 1940.

30) During the arguments the learned Advocate appearing for the

Respondents while referring to the case of *Sankar Padam Thapa (Supra)* placed reliance on paragraph 26 to contend that, the Trustees are responsible for the affairs of the Trust and therefore criminally liable. As laid down by the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. v. Judicial Magistrate*, reported in (1998) 5 SCC 749, to initiate criminal proceedings is a serious matter having grave and long-lasting consequences. In my considered view, to initiated criminal prosecution, and more importantly a criminal prosecution based on vicarious liability it is absolutely necessary to make essential and required averments and pleadings in the proper perspective of the case. Further the penal provisions are to be strictly construed. One cannot by in a general, bald and casual manner seek to conflate civil obligations of a Trustee with vicarious criminal liability. Only being a Trustee, in my opinion is not enough to invoke the provision of a criminal offence much less a vicarious liability unless clearly provided by a statutory provision. A Trustee or even a director of a company for that matter only by his position does not become per se liable or per se vicariously liable for any and every act. This in my opinion would be a dangerous proposition to accept and would have far reaching consequences. Something more in the form of reliable and cogent material is required to connect the person with the act. One cannot assume and presume that, only because a person is a Trustee or a director of company the person is aware, has knowledge and has taken part in the day-to-day

administration and incharge of each and every aspect of the decision or the decision-making process. Criminal liability is not co-extensive with civil responsibility. Paragraph 26 of the judgment of *Sankar Padam Thapa (Supra)*, read in context, deals with the civil law obligation of Trustees to maintain and defend proceedings concerning Trust property.

31) A Trust cannot be equated or treated as a "company" or "association of persons" under section 34 of the said Act. Section 34 of the said Act creates a criminal liability and thereafter has to be strictly adhered to and complied with. One cannot add, supplement or subtract the ambit, scope and applicability of the said sections. The Trust Act and the law related to Trust does not define the term or the designation of "Managing Trustee". It is only the Trustees, who hold, the property in Trust and strive to achieve the objects of the Trust. A Trustee acts for and on behalf of the Trust. To implicate a Trustee of the Trust, it is necessary that, the complaint has at least the required prima facie pleadings and averments of the overt act or the knowledge or of having authority to take the decision or that the decision on which the impugned action is based was taken by the specific Trustee or Trustees. "Managing Trustee" is not a designation defined in the Trust Act. The term Managing Director which is defined in Section 2(54) of the Companies Act, 2013 as a person in substantial charge of management. There is no definition much less similar definition of "Managing Trustee" in the Trust Act.

Consequently, the prosecution cannot rely upon the mere designation to maintain a criminal prosecution against such a person even if the person is referred to as a “Managing Trustee”. In the present case, the Petitioner has been roped in as an accused solely based on the information provided by the Hospital vide its letter dated 30th November 1994. There is no independent verification and assertion of facts. There is no material much less credible or reliable or as even any reasonable material. There is no pleadings. Further a Trust also cannot be equated to an Association of Persons. A Trust depending on its objects is governed either by the Indian Trust Act, 1882 or the Maharashtra Public Trust Act, 1950. It is defined under the Acts. There is a different mechanism for its formation, supervision and administration. It cannot be equated to an Association of persons, and surely not for the purposes of section 34 of the said Act.

32) Further, it is pertinent to note that Section 27 of the said Act which prescribes the penalties for manufacture, sale, stocking, exhibition for sale or distribution of drugs in contravention of the provisions of the Act, employs the expression "whoever, himself or by any other person on his behalf". The legislative intent is therefore explicit that criminal liability under the Act is not confined only to the person who directly undertakes the prohibited act, but also extends to a person who causes such acts to be carried out through another person or entity acting on his behalf. Along with Section

27 of the said Act, it is necessary to refer to the Drugs Rules, 1945. These Rules provide that an application is required to be made to seek a license to operate a pharmacy. The State Government appoints licensing authorities to whom the application is made. When making an application for the grant of license to sell, stock, exhibit and/or for sale or distribute drugs, the rules prescribe different terms depending on the nature of the drug. It is the requirement of law, that the Applicant provides and gives the names of qualified person under whose personal supervision the sale and dispensing of the drugs would be made. It also specifies the category of drugs and the particulars of the special storage accommodation. If the Applicant chooses to sell drugs, which do not require the engaging of services of qualified persons, i.e., drugs which can be sold without supervision of a qualified person, here also the names of the Drugs and storage details are given. Further, after the license is granted, if there is any change in qualified staff / incharge of the pharmacy, it is required that the licensee reports to the license authority, such change within one month. In case there is a change in the constitution of the licensed firm, the same shall be informed to the licensing authority. In case the change takes place in the constitution of the firm, the current license shall be valid for a period of three months from the date of the change in the constitution of firm unless a fresh license has been obtained in the name of the firm with the changed constitution. It is thus, clear that the qualified

person who is approved by the licensing authority runs and administers the pharmacy. These are necessary aspects to which are required to be considered before initiating criminal prosecution which entail serious consequences.

33) The question which is then required to be considered is that, as to what extent and under what facts and circumstances the said criminal liability can be invoked. It is settled law that invoking criminal prosecutions is a serious matter having far reaching and devastating consequences. Criminal prosecutions based on the principles of vicarious liability can be invoked only if the statute expressly and clearly provides for the same and the said provision is to be strictly construed. The required averments and pleadings in that regard are therefore a must and have to be specifically pleaded and available.

34) The prosecution, for the first time during the arguments stressed on the Section 27 of the said Act and the expression "himself or by any other person on his behalf". Perusal of the complaint would indicate that, the said Section is only referred to in the complaint. Even in respect of section 27 of the Act ,there is no specific pleading dealing with provisions/ ingredients Section 27 or the Rules. Prima facie, there is no averment as is required to invoke and attract the provisions of Section 27 of the said Act. Even as regards Section 27 of the said Act, the complaint is dehorse of required and essential basic averments. The pleading is entirely absent from the complaint. The

prosecution cannot be permitted to set up and argue a new case at this stage which is not pleaded in an attempt to cure the deficiency in its complaint. Further, the expression "by any other person on his behalf" contemplates a person directing another to undertake the prohibited act on his behalf. At the very least there should be specific averments of the Petitioner having caused, authorized or directed the prohibited acts or omissions. No such averments appear anywhere in the complaint. This submission of the prosecution is a bald assertion with no foundation or material in the complaint, and a mere afterthought. This ought not to be permitted. In that view of the matter the said argument is required to be rejected.

35) I have also noted that accused Nos.5 and 7, who were the partners of the accused No.8 firm i.e. Segal Optics, who is the dealer of the said drug, have been discharged by the Sessions Court on the ground that they were not in-charge and responsible for the day-to-day affairs of the partnership firm. The same law would be applicable to the present Petitioner and with greater force.

36) I have also noted that, the presumption of incharge status requiring no separate pleadings, as held in *S.M.S. Pharmaceuticals Ltd (Supra)*, is confined to Managing Directors and Joint Managing Directors of companies as Managing director is a defined term by the Companies Act. No such presumption applies to a Trustee. There is no term as "Managing

Trustee” which is defined under the Trust laws. As noted earlier, the Hon’ble Supreme Court in the judgment of *Sankar Padam Thapa (Supra)* has held that a company cannot be equated to a Trust. The corollary which would then follow is that a defined term such as the “Managing Director” of a company cannot be equated to the terms Managing Trustee, especially so when one invokes a vicarious liability under criminal prosecution. A Managing Director in law is a defined term and is appointed by the procedure as laid down in the Companies Act and with other duties and obligation.

37) Further even assuming that, Section 27 under Section 34 of the said Act are, applied to the Petitioner, the complaint is bereft of the averments necessary to fasten vicarious personal criminal liability on the Petitioner. Specific averments of active involvement are required. Vicarious liability "must be pleaded and proved and not inferred."

38) A useful reference can be made to the Judgment of the Hon’ble Supreme Court in the case of *Lalankumar Singh v. State of Maharashtra*, reported in (2023) 236 Comp Cas 741 where the Hon’ble Supreme Court while dealing with the provisions of Section 34 of the said Act has made the following observations:-

“13. In the case of State of Haryana v. Brij Lal Mittal** , this court observed thus:***

"None the less, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three respondents were being

prosecuted as directors of the manufacturers with the aid of section 34(1) of the Act which reads as under:

'Offences by companies. — (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.'

It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.

14. *It could thus be seen that this court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils*

* See (2010) 11 SCC 125.

** See (1998) 93 Comp Cas 329 (SC); (1998) 5 SCC 343.

*** See page 333 of 93 Comp Cas.

the twin requirements of section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was incharge of and was also responsible to the company for the conduct of its business.

17. *In the case of Pooja Ravinder Devidasani v. State of Maharashtra* this court observed thus**:*

*"Every person connected with the company will not fall into the ambit of the provision. Time and again, it has been asserted by this court that only those persons who were in charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. A director, who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for an offence under section 141 of the N.I. Act. In National Small Industries Corporation Ltd. v. Harmeet Singh Paintal (2010) 3 SCC 330; (2010) 1 SCC (Civ) 677; (2010) 2 SCC (Cri) 1113*** this court observed#: (SCC page 336, paragraphs 13-14)*

'Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the director. But the complaint should spell out as to how and in what manner respondent No. 1 was in charge of or was

responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. A company may have a number of directors and to make any or all the directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under section 141.' (emphasis in original)

In Girdhari Lal Gupta v. D.H. Mehta (1971) 3 SCC 189; [1971] SCC (Cri) 279; AIR 1971 SC 2162, this court observed that a person

** See (2015) 190 Comp Cas 106 (SC); (2014) 16 SCC 1.*

*** See page 116 of 190 Comp Cas.*

**** See (2010) 154 Comp Cas 313 (SC).*

See page 320 of 154 Comp Cas.

'In charge of a business' means that the person should be in overall control of the day-to-day business of the company.

*A director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the director concerned (see State of Karnataka v. Pratap Chand (1981) 2 SCC 335; [1981] SCC (Cri) 453) *.*

In other words, the law laid down by this court is that for making a director of a company liable for the offences

committed by the company under section 141 of the N.I. Act, there must be specific averments against the director showing as to how and in what manner the director was responsible for the conduct of the business of the company.

*In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya (2006) 10 SCC 581; (2007) 1 SCC (Cri) 621**, it was held by this court that***: (SCC pages 584-85, paragraph 7)*

'.. . it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company.' (emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under section 141 of the N.I. Act.”

39) The observations of the Hon'ble Supreme Court in the case of *Sunil Bharti Mittal vs. CBI*, reported in (2015) 4 SCC 609, in paragraph No.43 and 44, read as under: -

“43. *Thus, an individual who has perpetrated the commission of*

an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [aneeta hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661: (2012) 3 SCC (Civ) 350: (2012) 3 SCC (Cri) 241], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of ‘alter ego’, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

40) The Hon’ble Supreme Court in the case of *Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd.*, reported in 2021 SCC OnLine SC 806 has observed that.

“9. From the order passed by the learned Magistrate issuing the process against the respondents herein, Accused 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a prima facie case against Respondents 2 to 5 and 7 and 8. Merely because Respondents 2 to 5 and 7 and 8 are the Chairman/ Managing Director/Executive Director/Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect

to their individual role. Under the circumstances, the High Court has rightly dismissed the revision applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against Respondents 1 to 8 herein-original Accused 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120-B read with Section 34 IPC.”

The observations of the Hon’ble Supreme Court in the aforesaid Judgments are squarely applicable to the present case.

CONCLUSION

41) To conclude, it is clear that there is no averment or pleading as against the Petitioner so as to invocation of Section 27 or 34 of the said Act. The complaint does not contain any pleading or averment whatsoever. Penal provisions and provisions providing vicarious liability are required to be strictly construed. I find that, apart from stating the designation of the Petitioner there is no after pleading or averment. No case is made out against the Petitioner. In the same criminal proceedings, the dealer of drugs has been discharged on similar grounds. There are no circumstances or any material on record on the basis of which any suspicion can be raised as against the Petitioner.

42) In view of the above facts and circumstance, submissions advanced by the learned counsels for the parties and the law as laid down by the Hon’ble Supreme Court, I am of the considered opinion that the facts of

the present case warrant the exercise of the inherent powers of this Court under Section 482 of the CrPC. A prima facie case has been made by the Petitioner to seek discharge. Allowing the continuation of the criminal proceedings against the Petitioner, without any averment, pleading or material would amount to abuse of the process of law. In my considered view, it will be in the interest of justice and to secure the ends of justice, the Petitioner is discharged from the criminal proceedings.

43) Hence, I pass the following Order: -

i) Petition is allowed in terms of prayer clause (b).

(RANJITSINHA RAJA BHONSALE, J.)

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