



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.487 OF 2010

1. ICICI Bank Limited
a company incorporated under the Companies Act, 1956 and a banking company under Banking Regulation Act, 1949 and a Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934 having its registered office at Landmark, Race Course Circle, Vadodara 390007 and corporate office at ICICI Bank Towers, Bandra Kurla Complex, Mumbai 400 051.
 2. Ms. Chanda Kocchar
ICICI Bank Ltd.
Corporate Head Office,
ICICI Bank Towers,
Bandra-Kurla Complex,
Bandra (E), Mumbai-400 051
 3. Dr. Nachiket Mor
No.1, Cenotaph Road,
Teynampet,
Chennai-18.
 4. Vasudeo Kulkarni,
Rawivewarpet, Phadhake House,
84 WK, Pune 411 029.
 5. Asavari Patankar
A-Wing, Shangrila Gardens,
Bund Garden Road,
Pune 411 001.
- ...Petitioners
- Versus*
1. State of Maharashtra
 2. Pune Municipal Corporation

having its office at
Shivaji Nagar, Pune – 411 005. _____ ...Respondents

Mr. Faisal Ali Sayyed i/by M.K. Ambalal, *for the Petitioners.*
Mr. Abhijit P. Kulkarni a/w Sweta Shah and Abhishek Roy, *for*
the Respondent - PMC.

CORAM DR. NEELA GOKHALE, J.
RESERVED ON: 27TH NOVEMBER 2025
PRONOUNCED ON: 8TH DECEMBER 2025

JUDGMENT:-

1. The Petitioners seek to quash and set aside the complaint dated 31st October 2009 bearing Criminal Case No. 236 of 2009 filed and pending before the Judicial Magistrate First Class (PMC), Pune ('JMFC, (PMC) Pune') and the summons issued to the Petitioners by order dated 20th November 2009 issued by the JMFC (PMC), Pune.

2. The Petitioner No.1 is a bank incorporated under the provisions of the Companies Act, 1956 and is a banking company within the meaning of Banking Regulations Act, 1949 and the scheduled bank within the meaning of the Reserve Bank of India Act, 1934. The Petitioner No.2, at the relevant time, was the Chief Executive Officer and the

Managing Director ('CEO & MD') of the Bank; the Petitioner No.3 is the former Deputy Managing Director of the Bank; the Petitioner No.4 is a Member of the Legal Department of the Bank and the Petitioner No.5, is the Branch Manager of the Pune Bund Garden Branch of the said Bank. The Respondent No.2 is the Pune Municipal Corporation established under the Bombay Provincial Municipal Corporation Act of 1949 ('BPMC Act').

3. The Pune Municipal Corporation ('PMC') filed a Criminal Complaint No. 236 of 2009 against the Petitioners before the JMFC (PMC), Pune under Sections 398 and 401 of the BPMC Act. According to the Corporation, the Petitioners have contravened the provisions of Section 81/1/A of the delegation order notified by the Corporation along with Sections 398, 149, 457, 466(1) and (2) of the BPMC Act. It was alleged that the Petitioner-Bank had imported into the limits of Pune Municipal Corporation, gold bullions/coins for distribution without paying the octroi/toll to the Corporation.

The gold bullions/coins are stated to have been imported during the period 01.04.2006 till 31.08.2009. A notice dated 11th September 2009 was issued to the Bank calling upon it to pay the octroi duty. Despite receipt of the said notice, the Corporation learnt that the Petitioner imported gold bullions/coins for a period through 03.07.2009 upto 31.07.2009. The octroi payable was computed at Rs.1,27,58,409/-. However, at the time of importing the said goods, the octroi duty was not paid. Therefore, the Corporation issued another notice dated 3rd October 2009 to the Petitioner-Bank, calling upon it to pay the amount of octroi plus the penalty as provided under Section 398 of the BPMC Act. Finally, the Corporation filed the complaint before the JMFC (PMC), Pune.

4. The JMFC (PMC), Pune by its order dated 20th November 2009, issued summons against the Petitioners. It is this summons that is sought to be quashed and set aside by the Petitioners.

5. By order dated 17th February 2010, notice was issued to the Corporation and the Trial Court was directed not to insist upon presence of the Petitioner-Bank or its directors in a proceedings before it until further orders. By order dated 5th October 2011, this Court issued Rule. While admitting the Petition, it was observed that perusal of the complaint *prima facie* showed that there was no allegation of existence of intention to defraud the Corporation, giving rise to arguable questions as raised in the Petition.

6. The Petitioners have raised various grounds of challenge in the Petition. Mr. Faisal Ali Sayyed, learned counsel appearing for the Petitioners, however, pressed only one ground, that being, in the absence of any averments in the Petition against Petitioner Nos. 2 to 5, they cannot be held liable for the alleged penalty. He submitted that the JMFC (PMC), Pune failed to appreciate that the allegations/averments in the complaint are generic and totally indefinite in nature. There is nothing specifically attributed

against any of the Petitioners and the ingredients of the offence alleged are missing. He further submitted that the order of issuance of summons by the JMFC (PMC), Pune is based on surmises and conjectures without any evidence against the Petitioners. Hence, he submitted that the complaint against the Petitioner Nos.2 to 5 is not maintainable and thus, deserves to be quashed and set aside.

7. *Per contra*, Mr. Abhijit Kulkarni, learned counsel appearing for the Corporation, submitted that the offence is complete as soon as the goods crossed the Corporation limits and there is no requirement of any thing else to be done to allege contravention. He placed reliance on the decision of this Court in the case of ***P. D. Kashikar v. State of Maharashtra***¹ to buttress his argument that duty is cast virtually on the person, who imports the goods into the municipal area to tender the octroi payable thereon. Section 398 of the BMC Act is a statutory offence and any good intention expressed by accused is wholly irrelevant once the goods are imported

¹ (1993) Mh.L.R. 652

without payment of octroi. It is at this point, Mr. Kulkarni says that the declaration of import is required to be made and the payment tendered. He thus, submits that the complaint is sustainable and there is no infirmity in the orders of the JMFC (PMC),Pune.

8. Heard learned counsel appearing for the respective parties and perused the record with their assistance.

9. For the purpose of better understanding, the relevant provisions of the BPMC Act are re-produced herein below:-

“398. Penalty for evasion of octroi or toll.- Where any vehicle, animal, or goods imported into the limits of the City are liable to the payment of toll or octroi any person who, with the intention of defrauding the Corporation, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the City any such vehicle, animal or goods upon which payment of the toll or octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend to ten times the amount of such toll or octroi or to two hundred and fifty rupees, whichever may be greater.

401. Offences by companies, etc.- Where a person committing an offence under this Act, or any rule, bylaw, regulation or standing order is a company, or body corporate, or an association of persons (whether incorporated or not), or firm, every director, manager, secretary, agent or other officer or person concerned with the management thereof, and every partner of the firm shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.”

10. Section 398 of the BPMC Act thus, can be invoked if (i) any vehicle, animal or goods, liable to octroi, are imported into the city limits; (ii) the payment of toll or octroi is not made and (iii) the non-compliance is with an intention of defrauding the Corporation.

11. Section 401 of the BPMC Act creates a vicarious liability on a person, who is a director, manager, secretary, agent or other officer or person concerned with the management of the company or partner of a firm in cases where the offence is alleged against a company. It is settled law that when a company is the accused, its directors, managers, secretary, etc,

can be roped in only if there is some incriminating role ascribed to them.

12. In its recent judgment in the matter of *Kamalkishor Shrigopal Taparia v. India Ener-Gen Pvt. Ltd. & Anr.*², the Supreme Court, in an issue relating to the provisions of the Negotiable Instruments Act, 1881 held that a mere designation as director does not conclusively establish liability under Section 138 read with Section 141 of the Negotiable Instruments Act. Liability is contingent upon specific allegations demonstrating the director's active involvement in the company's affairs at the relevant time.

13. The Supreme Court in *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal & Anr.*³, observed as under:

“From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For

² (2025) 7 SCC 393

³ (2010) 3 SCC 330

fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 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 offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the

company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

14. In ***N.K. Wahi v. Shekhar Singh & Ors.***⁴ the Apex Court observed:

“8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

15. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another***⁵, the Apex Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.

⁴ (2007) 9 SCC 481

⁵ (2005) 8 SCC 89

16. The statutory regime in the Negotiable Instruments Act insofar as it provides for vicarious liability of Directors, Managers, any person in charge of and responsible to the company for conduct of its business at the relevant time, is *pari materia* with the statutory regime of the BPMC Act in this regard.

17. A plain reading of the complaint does not demonstrate any role specifically attributed to any of the Petitioner Nos.2 to 5. The said Petitioners are the directors, CEO, authorized signatory, branch manager, etc. of the Petitioner No.1-Bank. Although the statutory regime of the BPMC Act attracts the doctrine of vicarious liability, prosecution against the Petitioner Nos.2 to 5 cannot continue in the absence of any averment ascribing a specific role attributed to them. There is no such pleading in the entire complaint.

18. Since Mr. Faizal has only pressed the aforesaid ground, I have not dealt with the other grounds of objection taken by the Petitioners to the impugned order.

19. In view of the facts and circumstances of the present case and the settled legal position, the complaint bearing Criminal Case No. 236 of 2009 against Petitioner Nos.2 to 5 is quashed and set aside. Consequently, the summons dated 20th November 2009 issued to the Petitioner Nos.2 to 5 is also quashed. Complaint against the Petitioner No.1-Bank remains as it is.

20. It is made clear that all contentions before the JMFC (PMC), Pune are left open.

21. Rule is partially made absolute.

(DR. NEELA GOKHALE, J)

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