

# Indusind Bank Ltd vs State Of H.P. And Others on 5 August, 2024

Neutral Citation No. ( 2024:HHC:6327 ) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MMO No. 1070 of 2022 .

Reserved on: 16.07.2024 Date of Decision: 05.08.2024.

IndusInd Bank Ltd.

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Versus

State of H.P. and others

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to

...Respondent

Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes.

For the Petitioner : Mr. Ashwani Kaundal, Advocate. For the Respondents : Mr Jitender Sharma, Additional Advocate General, for respondent No.1-State.

None for respondent No.2.

Rakesh Kainthla, Judge The present petition has been filed against the order dated 26.8.2019, passed in complaint case No. 121-2/2 of 17/2015, titled Bhupinder Singh Rohal Vs. State of H.P., by learned Judicial Magistrate First Class, Court No.3, Shimla (learned Trial Court), vide which the learned Trial Court has Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Neutral Citation No. ( 2024:HHC:6327 ) ordered the issuance of the summons to the petitioner for the commission of an offence punishable under Section 420 of IPC.

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(Parties shall hereinafter referred to in the same manner as they were arrayed before the learned Trial Court for convenience)

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a petition under Section 156(3) of Cr.P.C., seeking direction to the SHO, Boileauganj to register the FIR against the officials of the petitioner and J.P. Motors. It was asserted that the complainant wanted to purchase a car to earn his livelihood by running it as a taxi. He visited the showroom of J.P. Motors situated at Tavi Chowk. He selected Tata Indigo ECS LS BS-III with a unit price of 5,19,596/- inclusive of taxes. The Manager, J.P. Motors told the complainant that they had a tie-up with

IndusInd Bank, The Mall, Shimla for providing finance/loan facilities to the customers. The officials of Indusind Bank would complete all the formalities and the vehicle would be delivered on the same day.

The complainant agreed to get his car financed from the IndusInd Bank. The complainant and his colleagues Ashok Verma and Sanjeev Sharma reached the showroom of J.P. Motors. The officials of the bank asked the complainant about Neutral Citation No. ( 2024:HHC:6327 ) the margin money. The complainant handed over 1,68,000/-

to the concerned officials. A loan case of 5,20,000/- was .

prepared. The complainant was asked to sign more than a dozen documents and an invoice of 5,19,596/- was also prepared. The bank sanctioned a loan of 3,52,000/- with 7.92% interest per annum. The loan was repayable with an EMI of 13,800/- for 48 months starting from January 2013 and ending in December 2016. The officials told the petitioner that EMI was kept on higher, so that the amount could be paid before the completion of 48 months. The complainant was also told to pay more than the EMI to ensure the liquidation of the loan at the earliest. The complainant paid the whole of the amount by 3.3.2015 but he was told that an amount of 3,58,477/- was due as an outstanding loan. The complainant saw the statement of account and found that the loan amount was shown as 4,92,000/- as against 3,52,000/- and the value of the vehicle was shown as 6,60,000/- as against 5,19,596/-. The statement of account also showed that the complainant had purchased Top Model, Tata Indigo ECSVX-1396, Diesel BSIV, whereas he purchased the base model Tata Indigo ECS LS BS-III.

The complainant pointed out the discrepancy and even showed Neutral Citation No. ( 2024:HHC:6327 ) the original registration certificate of the car. The Manager and the staff threatened the complainant to seize his vehicle and to .

recover the whole amount. The complainant and his friends even went to the office of J.P. Motors and demanded the invoice of the car. The invoice of Tata Indigo CS LS having a price of 5,80,219.78 was handed over to the complainant. The company had stopped manufacturing this model in the year 2009-10. The complainant approached the police but the police did not take any action. The complainant submitted a report to the Superintendent of Police, Shimla but no action was taken.

Hence, the petition was filed for referring the matter to the police for investigation.

3. The learned Trial Court took cognizance and found sufficient reasons to summon the accused, namely, Indusind Bank and J.P. Motors vide order dated 25.4.2019. Mr. Rohit Bhardwaj, Manager, Indusind Bank appeared before the Court on 26.8.2019, stating that he was the Manager of Indusind Core Bank and the person to be summoned was the Manager of Indusind Bank, Financial Services. The Court ordered the summoning of the Manager on taking steps.

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4. Being aggrieved from the order passed by the learned Trial Court, the Bank has filed the present petition for quashing .

the summoning order. It is asserted that the complainant approached the Bank to provide financial assistance for the purchase of vehicle Tata Indigo ECS VX CR-IV, however, the complainant purchased the Indigo ECS Variant on 29.11.2012 and issued a No Objection Certificate. The cost of the vehicle was 6,60,000/-. The complainant arranged margin money of 1,68,000/- and the bank financed the rest of the amount of 4,92,000/-. The total value of the amount to be recovered was 6,47,866/- in 46 EMIs of 13,800/-. The complainant defaulted in the payment of the money. He also filed a complaint before the Consumer Forum and subsequently a complaint before the learned Trial Court. The matter was also referred to the Sole Arbitrator who passed an award in favour of the Bank for a sum of 3,34,425/- along with interest @18% per annum.

The summons was issued to the Branch, which had no concern with the finance of the commercial vehicle. The Court was informed of this fact and the summons has been issued to the Commercial Vehicle Division of the Bank. Learned Trial Court failed to appreciate that the Bank is a Company incorporated Neutral Citation No. ( 2024:HHC:6327 ) under the Companies Act and it can be sued only through the Director or the person in charge. The complaint is vague and .

does not show the name of the officer, who was responsible for the commission of the offence or in charge of the daily affairs of the Company. The complaint is false and was filed to avoid the liability to repay the amount. The complainant produced a fake and fabricated invoice and obtained a loan from the bank. Fraud, if any, was committed by an official and the Company cannot be held liable for the same. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

5. The respondent/State has filed a reply making preliminary submissions regarding lack of maintainability. It was asserted that the complainant made a complaint at Police Station (West), Boileauganj, which was dealt with as per law. No cognizable offence was found to have been committed and no action was taken. The petition was wrongly filed against the State of H.P.; hence, it was prayed that the present petition be dismissed.

6. No reply was filed on behalf of the complainant.

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7. I have heard Mr Ashwani Kaundal, learned counsel for the petitioner and Mr Jitender Sharma learned Additional .

Advocate General for respondent No.1-State.

8. Mr. Ashwani Kaundal, learned counsel for the petitioner submitted that the Company is a juristic person and cannot appear before the Court. Therefore, it is necessary to sue it through a natural person. He relied upon Section 305 of Cr.P.C.

in support of his submission. He further submitted that the allegations in the complaint do not constitute the commission of any cognizable offence and the learned Trial Court erred in summoning the bank. Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court summoning the Bank be set aside.

9. Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State submitted that the complainant made a complaint to the police which was inquired.

No cognizable offence was found to have been committed and no action was taken. The dispute between the parties does not concern the State. Hence, he prayed that the petition be dismissed against the State.

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10. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

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11. Section 305 of Cr.PC reads as under:-

"305. Procedure when corporation or registered society is an accused --(1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined. (4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-

section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the Managing Director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the

corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

Neutral Citation No. ( 2024:HHC:6327 ) (6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such .

representative, the question shall be determined by the Court."

12. It is apparent from the bare perusal of the Section that where the Corporation is an accused person, it has to appoint a representative in the inquiry or trial. Therefore, a choice has been given to the Corporation to appoint a person to represent it. The complainant or the Court cannot decide, who will represent the Corporation by naming that person. It was laid down in D. Bhattacharya vs. The State of Bihar of Ors.

MANU/BH/0328/1989 that where the accused is a Company, an opportunity has to be given to the Company to nominate a representative on its behalf to face trial. It was observed: -

"4. It was submitted on behalf of the Petitioner that the trial court can very well prosecute Coropany namely, M/s Indian Aluminium Co. Ltd but the trial court has committed illegality while issuing process against Shri D. Bhattacharya, Mines Manager, Bagru Hill Bauxite Mines, Lohardaga.

5. It was pointed out by the learned Counsel that, if any violation has been made by the company, the company may be prosecuted. He has no grievance for that, but his grievance is that a summons ought not to have been issued against the Manager because he has not been nominated on behalf of the company to face the prosecution on behalf of the company, as provided under Section 305 of the Criminal Procedure Code.

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6. The learned Counsel for the Petitioner has drawn any attention to Sub-clause 2 and 3 of Section 305 of the Code of Criminal Procedure which read as follows:

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7. From the order of the cognizance it appears that opportunity has not been given to the aforesaid company.

In that view of the matter, it is directed that prosecution may be launched against the company but an opportunity should be given to the aforesaid company to nominate a representative on its behalf and take any proper step thereafter in accordance with law.

8. With these directions that part of the impugned order issuing processes against Sri D. Bhattacharya, the Manager of the said company, is quashed and the trial court is directed to give an opportunity to the company to nominate its representative and face the prosecution and thereafter trial court will issue process against that person.

9. It is, however, made clear that the cognizance against the company has not been quashed by this order. Only that part of the impugned order, as stated above, has been quashed. It will be open to the trial court to proceed with the trial after the company nominates its representative and takes steps in accordance with the law."

13. It was held in S.A. Khan v. Union of India, 2011 SCC OnLine Mad 1656 that the right to appoint a representative is conferred upon the Company and the prosecution cannot say that a particular person should represent the Company. It was observed: -

"7. It is the further contention of the learned counsel for the petitioner that the right to appoint a representative to represent the company (firm) in a criminal trial or Neutral Citation No. ( 2024:HHC:6327 ) inquiry is conferred on the company/firm under Section 305 of the Code of Criminal Procedure and the prosecution cannot have anything to say that the .

company should appoint a person to represent it in the inquiry or trial. It is the further contention of the learned counsel for the plaintiff that the right given to the Company/firm under Sub-clause (2) of Section 305 Cr.

P.C. cannot be interpreted to mean a corresponding right available to the prosecution to name a person to be the representative of the company or firm and compel him to represent the company/firm in the enquiry.

8. The above said contention raised by the learned counsel for the petitioner is clearly tenable and the same has to be countenanced. What sub-section (2) of Section 305 Cr. P.C says is that where a Corporation (Firm in this case) is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the Corporation (Firm in this case). The term used is "may" and not "shall" meaning that it is a right available to the Corporation/firm to appoint a representative to defend it in a criminal trial or inquiry. If the Corporation or Firm does not come forward to appoint a representative, the same doesn't mean that the prosecution can compel anybody to represent the Company (Firm). This shall be quite obvious if the entire Section 305 Cr. P.C is considered. For better appreciation, the entire Section 305 Cr.P.C is reproduced hereunder:

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9. According to Sub-clause (3) of Section 305 Cr.P.C., if a representative of a Corporation/Company (Firm) appears on behalf of the Company, then a requirement of the Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that the same shall be done in the presence of the representative or read, stated or explained to the representative. It also proceeds to state that any requirement for the examination of the Neutral Citation No. ( 2024:HHC:6327 ) accused shall be construed as a requirement of the examination of such representative. Sub-section (3) contemplates the voluntary appearance of a representative of .

the Company/Firm. It does not mean that anybody can be compelled by the prosecution or the Court to represent the company/firm. Then a question will arise as to what shall happen to the prosecution if nobody is appointed by the company/firm or nobody appears as a representative of the company/firm in the trial or inquiry in the criminal case before the Court. The answer is found in Sub-clause (4) which reads as follows:

"4. Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply."

Therefore, it is abundantly clear that if a process was properly served on the Corporation/Company/firm and the corporation/company (firm) does not enter an appearance through a representative, then the requirement that certain things are to be done in the presence of the accused, like framing of charges and examination of witnesses in the presence of the accused shall not be applicable. Similarly, the requirement of examination of the accused also shall not be applicable. The only circumstance under which the Court can decide whether a person is or is not a representative of the Corporation/company/society/firm is when a person appears as representative of such body and a question arises as to whether such a person is or is not such a representative. Then only the question shall be determined by the Court.

10. As per Sub-clause (3) of the Section 305 Cr. P.C, which reads as follows: -

"(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement Neutral Citation No. ( 2024:HHC:6327 ) that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the .

accused shall be examined shall be construed as a requirement that the representative shall be examined."

The power conferred on the Court is to decide whether a person who appears as a representative of the company/firm is or is not a representative of the company or firm. The said power cannot be stretched further to say that the Court has the power to direct any person, which it considers to be a representative of the company, to appear on behalf of the company.

11. The learned trial Judge, namely Additional Metropolitan Magistrate, E.O.I, Egmore has arrived at a correct conclusion on proper construction and proper interpretation of Section 305 Cr.P.C and the learned Principal Sessions Judge, on an erroneous application and wrong interpretation of a provision of law, has arrived at a wrong conclusion that a person can be compelled to represent a Corporation/Company/Firm, which is arraigned as an accused in an inquiry or trial before a criminal Court. On that score alone the order of the learned Principal Sessions Judge is liable to be interfered with and set aside." (Emphasis supplied)

14. Delhi High Court also held in *Puneet Gupta v. State*, 2013 Cri LJ 1055 that the right course is to issue a summon to the company and it is for the company to decide through whom it would be represented. It was observed: -

"10. Thus, it would be seen that a company can be represented through a representative appointed for this purpose. Sub-section (3) says that where a representative of a company appears, any requirement of this Code that anything shall be done in the presence of the accused, Neutral Citation No. ( 2024:HHC:6327 ) shall be construed as a requirement that, that thing shall be done in the presence of the representative. Sub-section (4) says that if the representative of the corporation does .

not appear, the requirement as referred to in sub-section (3) shall not apply. Thus, simply because there was nobody to represent the company, the directors could not have been summoned to appear as accused. The right course to be adopted was to issue summons to the company through its principal officer and it is for the company to decide as to through whom it is to be represented. Thus, simply on the ground that the company was not being represented, its directors who are the Petitioners herein could not have been summoned to face prosecution...." (Emphasis supplied)

15. Punjab & Haryana High Court held in *Jay Switches (India) Private Limited v. State of Haryana*, 2014 SCC OnLine P&H that the Company has to appoint a representative and in case he does not appear, no bail bonds can be taken from the representative and his presence cannot be compelled on every date. It was observed: -

"I have gone through the provisions of Section 305 Cr.P.C., which deal with the appointment of a representative for the purpose of enquiry or trial. Clause 3 to Sub-section 305 states that where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative etc. and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined. Clause 4 of this Section states that where a representative of a corporation does not appear, any such Neutral Citation No. ( 2024:HHC:6327 ) requirement as is referred to in sub-section (3) shall not apply.



Therefore, the above-laid procedure clearly shows that if .

any representative does not appear, then the condition that he shall be examined or anything is to be explained to the representative or to be read to him or evidence is to be taken in his presence, will not apply. It is nowhere written in the procedure that like an accused, bail bonds and surety bonds are to be taken or in his absence, non-bailable warrants be issued to procure the presence of the representative. There is also nothing in this provision that evidence must be recorded in the presence of a representative or representative must be examined as is required for an accused. Therefore, in view of the specific provisions in the Cr.P.C., no bail bonds can be taken from the representative and his presence cannot be compelled on each and every date.

Learned counsel for the petitioner has relied upon the law laid by this Court in Dow Agro Science India Pvt. Ltd. v. CBI (decided on 19.08.2013) by this Court. In that case, the petition was allowed. The part of the impugned order whereby the representative of the Company was directed to furnish the bail bonds/surety bonds is set aside.

Keeping in view the above discussion, I find that condition No. II cannot be imposed as per the provisions of Section 305 Cr.P.C. Therefore, condition No. II imposed in the impugned order dated 31.03.2014 is set aside.

Further, if any order in consequence of non-compliance of condition No. II is passed, that is also to be treated as set aside." (Emphasis supplied)

16. Andhra Pradesh High Court also held in India Brewery and Distillery (P) Ltd. v. R.K. Distilleries (P) Ltd., 2014 SCC OnLine AP 1523 that Section 305 of Cr.P.C. authorizes a Company to appoint the representative for inquiry and trial. The Neutral Citation No. ( 2024:HHC:6327 ) complainant cannot dictate to the Company, who will represent it during the trial. It was observed:-

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"7. A reading of the above section makes it clear that as the Corporation which includes a company or registered society cannot be physically present in the Court to face a prosecution, sub-section (2) of Section 305 Cr.P.C. authorizes a company to appoint their representative for the purpose of enquiry or trial and such appointment need not be under the seal of the Corporation.

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10. In the instant case, the first respondent company filed a private complaint against the accused company showing its Managing Director as the person representing the said company. He was not made an accused in his individual capacity though he was

a signatory to the cheque. Pursuant to an authorization dated 13.8.2012 given by the accused company one Mr. Parasram N. Ramnani styling himself as a person representing the company filed an application to substitute his name as the person representing the accused company instead of its Managing Director Balkrishan Mankani. The said application was opposed by the first respondent herein stating that the Managing Director who is responsible for the day-to-day affairs of the company alone has to represent the company. Under Section 305 Cr.P.C. it is the privilege of the accused company to authorise any person of its choice to represent the accused company. Since the Managing Director of the accused was not individually prosecuted and as the company cannot be sent to jail, no prejudice would be caused to either of the parties if the accused is represented by a person authorised by the accused company. The argument of the Counsel that the person who signed the cheque alone has to represent the company and not a stranger who has nothing to do with the issuance of a cheque cannot be accepted. In a given Neutral Citation No. ( 2024:HHC:6327 ) situation, if the person who signs the cheque and is shown as a person representing the company dies, the prosecution against the company will not get abated.

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Steps have to be taken to substitute a person to represent the company. Therefore, the accused company has every authority to substitute a person of its choice to represent the company under Section 305 Cr.P.C. Even if the person who signed the cheque is made individually liable, still the accused company can be represented by a person of its choice. Both the Courts have erred in holding that the Managing Director who signed and issued the cheque alone has to represent the company and that the company cannot be permitted to substitute a person of its choice." (Emphasis supplied)

17. Gauhati High Court held in Ram Narayan Sharma v.

State of Assam, 2017 SCC OnLine Gau 1004 that when the accused is a Company, the Court cannot summon a person as an accused.

The proper course is to issue notice to the Company and allow the Company to decide the name of its representative. It was observed:-

17. A conjoint reading of section 63 and section 305 of Cr.PC would show that after the process is served in the manner provided in section 63, Cr.PC, the Corporation may appoint a representative for the purpose of the inquiry or trial as provided in section 305(2), Cr.PC. It is, thus, evident that when the accused is a corporate body it is not for the court to decide who shall represent the Corporate Body. The court can issue the process in the manner as provided under section 63, Cr.PC and the representative will be appointed by the Corporate body for the purpose of

representing the Corporate Body during the trial.

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18. In the present case, even if it is assumed that M/s. Brahmaputra Valley Regional Handloom Weavers Co- operative Society Ltd. Ambari, Guwahati, Assam is an .

accused, it was not permissible for the court to summon the petitioners as accused rather; the proper course would have been to issue notice to M/s. Brahmaputra Valley Regional Handloom Weavers Co-operative Society Ltd.

Ambari, Guwahati, Assam for appointment of a new representative on the death of Jagannath Sharma (since deceased).

18. Bombay High Court held in Sanjeev S. Malhotra vs. State of Maharashtra and Ors. MANU/MH/1120/2020 that it is for the company to nominate a person to represent it during the trial. It was observed: -

"8. It is thus, clear that on receiving the summons issued by the trial court, the accused Company may appoint a representative for the purpose of trial and such appointment can be made on a simple letter even without the seal of the Corporation. When such a representative of the Corporation appears before the Court for answering the Chargesheet, anything which is done in the presence of such a representative can be construed as a thing done in the presence of the Company. Even the statement of the accused/Company under section 313 of the Criminal Procedure Code can be recorded by examining such representative of the accused.

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11. It is thus, clear that for prosecuting a Company as accused, the Court is required to issue a process against the company and then becomes the choice of the accused Company to nominate its representative to answer the Charge. The corporation by itself is a distinct legal entity from its director. Therefore, the impugned order directing the petitioner/accused No. 2 to answer the charge levelled Neutral Citation No. ( 2024:HHC:6327 ) against the accused Company by signing the plea on behalf of the company cannot be sustained. Hence, the order."

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19. Karnataka High Court held in Krishnaswamy Sridhar v. State, 2021 SCC OnLine Kar 15863 that where the Corporation is an accused person or one of the accused persons in an inquiry or trial, it may appoint a representative and if the representative does not appear, the Company cannot take a defence that it has been condemned unheard. It was observed:-

"Section 305 of Cr. P.C. deals with the procedure when the Corporation or registered Society is an accused; sub- section (1) of Section 305 defines an incorporated Company or a Society; sub-section (2) directs where a Corporation is one of the accused persons in a trial, it may appoint a representative for the purpose of inquiry or trial and such appointment need not be under the seal of the Corporation; sub-section (3) directs where a representative of the Corporation appears, in his presence several acts and formalities of conduct of trial would take place; sub-section (4) directs that where a representative of a Corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply; sub- section (6) deals with a question whether any person appearing as representative of the Corporation in an inquiry or trial is or is not such representative shall be determined by the Court.

8. In terms of sub-section (2) when the Corporation is an accused person it has to appoint a representative for the purpose of inquiry and trial though it is not to be under the seal of the Corporation. Sub-section (3) prescribes for the Corporation to do many functions or formalities in a trial for which the presence of the representative as Neutral Citation No. ( 2024:HHC:6327 ) contained in sub-section (2) is imperative. Answering the charge, examination or other nuances of evidence will be when the company is represented. Sub-section (4) dilutes .

the rigour of sub-section (3), which directs that where a representative of the Corporation does not appear any such requirement referred to under sub-section (3) will not apply.

9. The section speaks of a representative not appearing before the Court. Therefore, the only interpretation, in my considered view, that can be given to sub-section (4) is the nuances of a trial of reading the charge, answering the charge and the requirement of the accused to be examined will not happen if the representative does not appear. The accused-Corporation/Company if deliberately does not appoint anybody to represent the Company, it would not be available for such Corporation/Company to contend that there has been no fair trial as contained under sub-section (3) as by the representative not appearing before the Court, they would lose such contention to be advanced later."

20. It was further held that the Court cannot direct any other accused to represent the corporation or a company against his will. It was observed:-

"12. On a plain reading of sub-section (3) of Section 305 of Cr. P.C., it clearly indicates that a trial can go on in the absence of a representative, as observed by me in the preceding paragraph, if the Company fails to appoint or if the representative fails to appear they would lose the right to contend that there was an unfair trial for the procedure under sub-section (3) of Section 305 not being followed. The Criminal Court on 25-4-2018 directs the accused 4-petitioner to represent the Company-accused 8 and 9. The Company though cannot be convicted for the offences alleged,

nonetheless can be convicted for the imposition of fine. Such fine will have to Neutral Citation No. ( 2024:HHC:6327 ) be answered by the representative of the accused company in any proceeding. Therefore, the submission of the learned Counsel for the CBI that no prejudice would be .

caused to the petitioner if he represents accused 8 and 9- Company would not hold water as representing an accused in a criminal trial can never be against the Will of any person. In the event, the accused is directed to represent the Company gets acquitted and the fine is imposed upon the Company, the accused who is directed to represent the Company would become responsible. Even otherwise, in a criminal trial, no person even a co-accused can be forced or directed by a judicial order to represent a company. If such an accused concedes to appear as a representative of the company that circumstance will be altogether different. Therefore, the order passed by the Special Court declining to accept the application raising a challenge to the order that was passed directing the petitioner to represent the company is, in my considered view, erroneous." (Emphasis supplied)

21. Andhra Pradesh High Court held in Mannam Venkata Krishna Rao v. State of A.P., 2022 SCC OnLine AP 3027 that the company is free to nominate a person as its representative and no person can be forced to represent it. It was observed: -

"9. In such circumstances, the contention of the petitioner herein that he cannot be forced to represent the company irrespective of whether he continues to be a Director or not of the company, has to be accepted.

10. It is also necessary to mention that the provisions of Section 305 Cr. P.C., also provide for a situation where the company may refuse to name any person as its representative. In such circumstances, Section 305(4) Cr. P.C., provides that the trial Court may take up trial of the matter without having to insist upon any person representing the company and all the requirements that Neutral Citation No. ( 2024:HHC:6327 ) are set out in the Code of Criminal Procedure for doing certain acts in the presence of the accused will stand waived."

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22. Calcutta High Court reiterated this position in Hans Raj Jain v. State of W.B., 2024 SCC OnLine Cal 789 and held:

"54. However, from the reading of provisions under Section 65 and Section 305 of the Cr. P.C., it appears firstly that affixing a duplicate of summons at a conspicuous place of the company would satisfy requirement of good service thereof to a company. It shows also that no coercive action has, however, been provided by the statute in case of the absence of a representative of an accused company, even after due service of summons to it. In case he appears, according to section 305(3) of the CrPC, statutory

requirements of things to be done, read, stated or explained in the presence of the accused, would be construed to be required to be so done in the presence of the said representative. It has further been provided that the requirement of the law of examination of the accused company would be construed to be the requirement of examination of the said representative. However, in his absence, the statute has provided that provisions under section 305(3) of the CrPC, would not apply."

23. Therefore, it is apparent from the judgments of different High Courts that the Company is a juristic person. It is to be sued in its own name and not through any person. The summons is to be addressed to the Company and it will be the choice of the Company to nominate a person to represent it during the proceedings. If the person does not appear, the Court Neutral Citation No. ( 2024:HHC:6327 ) will proceed further as per law and the Company cannot take defence that the proceedings were conducted in its absence.

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24. Therefore, it is held that the complaint is not bad because the petitioner was not sued through a natural person.

The Company is a juristic person and is to be sued in its own name.

25. It was submitted that the Company does not have any soul, body or mind and it cannot be sent to jail; hence, it cannot be held liable for cheating, which requires the mandatory imposition of imprisonment. This submission cannot be accepted. The Hon'ble Supreme Court held in Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530 that a Company can be prosecuted for cheating but it cannot be sent to jail. It was observed: -

"27. In the case of Penal Code offences, for example under Section 420 of the Penal Code, 1860, 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 a Neutral Citation No. ( 2024:HHC:6327 ) minor nature, a company could be prosecuted and punished with a 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, 1860 which describe offences of serious nature whereunder a corporate body also may be found guilty, and the punishment prescribed is a 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.

29. The contention of the appellants is that when an offence is punishable with imprisonment and fine, the court is not left with any discretion to impose any one of them and consequently the company being a juristic person cannot be prosecuted for the offence for which custodial sentence is the mandatory punishment. If the custodial sentence is the only punishment prescribed for the offence, this plea is acceptable, but when the custodial sentence and fine are the prescribed mode of punishment, the court can impose the sentence of fine on a company which is found guilty as the sentence of imprisonment is impossible to be carried out. It is an acceptable legal maxim that law does not compel a man to do that which cannot possibly be performed (*impotentia excusat legem*). This principle can be found in Bennion's Statutory Interpretation, 4th Edn. at p. 969. "All civilized systems of law import the principle that *lex non cogit ad impossibilia*...." As Patterson, J. said "the law compels no impossibility". Bennion discussing legal impossibility at p. 970 states that: "If an enactment requires what is legally impossible it will be presumed that Parliament intended it to be modified so as to remove the impossibility element." This Court applied the doctrine of impossibility of performance (*lex non cogit ad impossibilia*) in numerous cases (State of Neutral Citation No. ( 2024:HHC:6327 ) Rajasthan v. Shamsheer Singh [1985 Supp SCC 416: 1985 SCC (Cri) 421] and Special Reference No. 1 of 2002, In re [(2002) 8 SCC 237]).

30. As the company cannot be sentenced to imprisonment, the court has to resort to the punishment of imposition of a fine which is also a prescribed punishment. As per the scheme of various enactments and also the Penal Code, 1860, a 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 a custodial sentence or fine. We do not think that the intention of the legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. The offences mentioned under Section 56(1) of the FERA Act, 1973, namely, those under Section 13; clause (a) of sub-section (1) of Section 18; Section 18-A; clause (a) of sub-section (1) of Section 19; sub-section (2) of Section 44, for which the minimum sentence of six months imprisonment is prescribed, are serious offences and if committed would have serious financial consequences affecting the economy of the country. All those offences could be committed by companies or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences if these offences involve the amount or value of more than Rs one lakh and that they could be prosecuted only when the offences involve an amount or value less than Rs one lakh.

31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine are 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.

Neutral Citation No. ( 2024:HHC:6327 ) 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 the amenability of the corporation to criminal law is essential to have a peaceful society with a 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 [(2003) 11 SCC 405: 2004 SCC (Cri) 1214] 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."

26. Thus, the submission that the Company cannot be prosecuted for the commission of cheating is not acceptable.

27. It was submitted that the Company does not have any mind and it cannot have any mens rea; hence, it cannot be prosecuted for cheating, which requires dishonest intention.

Neutral Citation No. ( 2024:HHC:6327 ) This submission cannot be accepted. It was held in Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609: (2015) 2 SCC (Cri) 687 that the .

Company can be prosecuted for the commission of an offence involving mens rea by applying the principle of 'alter ego' imputing the intention of the group of persons that guide the business of the Company to the Company. It was observed: -

"38. The first case which needs to be discussed is Iridium India [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74: (2010) 3 SCC (Cri) 1201]. Before we discuss the facts of this case, it would be relevant to point out that the question as to whether a company could be prosecuted for an offence which requires mens rea had been earlier referred to in a Constitution Bench of five Judges in Standard Chartered Bank v. Directorate of Enforcement [(2005) 4 SCC 530: 2005 SCC (Cri) 961]. The Constitution Bench had held that a company can be prosecuted and convicted for an



offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite mens rea to prove the guilt. Para 8 reads as under: (SCC p. 542) "8. ... 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."

39. In Iridium India [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74: (2010) 3 SCC (Cri) 1201], the aforesaid question fell directly for consideration, namely, whether Neutral Citation No. ( 2024:HHC:6327 ) a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and .

England on this issue. For our benefit, we will reproduce paras 59-64 herein: (SCC pp. 98-100) "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: (1944) 1 All ER 119 (DC)]: (KB 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 Neutral Citation No. ( 2024:HHC:6327 ) Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate.

61. The principle has been reiterated by Lord Denning .

in Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. [(1957) 1 QB 159: (1956) 3 WLR 804: (1956) 3 All ER 624 (CA)] in the following words: (QB p. 172) A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and managers who represent the directing mind and will of the company and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So, you will

find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co.

Ltd. v. Asiatic Petroleum Co. Ltd. [1915 AC 705:

(1914-15) All ER Rep 280 (HL)] (AC at pp. 713 &

714). So also in criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the Directors or the managers will render the company themselves guilty.

62. The aforesaid principle has been firmly established in England since the decision of the House of Lords in Tesco Supermarkets Ltd. v. Nattrass [1972 AC 153:

Neutral Citation No. ( 2024:HHC:6327 ) (1971) 2 WLR 1166: (1971) 2 All ER 127 (HL)]. In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of .

law: (AC p. 170 E-G) 'I must start by considering the nature of the personality which by fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is r acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case, any liability of the company can only be a statutory or vicarious liability.'

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 Neutral Citation No. ( 2024:HHC:6327 ) 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 the '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:

2005 SCC (Cri) 961]. 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.'"

40. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid Neutral Citation No. ( 2024:HHC:6327 ) down in the aforesaid judgment in *Iridium India case [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74: (2010) 3 SCC (Cri) 1201]* is that if the person or .

group of persons who control the affairs of the company commit an offence with criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

41. In the present case, however, this principle is applied in an exact reverse scenario. Here, the company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company are attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a director of a company can be held liable."

28. This position was reiterated in *Religare Finvest Ltd. v.*

*State (NCT of Delhi)*, (2024) 1 SCC 797: 2023 SCC OnLine SC 1148 wherein it was held:

"26. There was some divergence of opinion amongst certain High Courts about the liability of corporate entities. The Calcutta High Court's view was that that only natural persons could be ascribed with intention or "mens rea". Resultantly, a juristic person such as a company could not be ascribed with criminal intent (Ref. Champa

Agency v. R. Chowdhury [Champa Agency v. R. Chowdhury, 1974 CHN 400], Sunil Chandra Banerji v. Krishna Chandra Nath [Sunil Chandra Banerji v. Krishna Chandra Nath, 1948 SCC OnLine Cal 149:

AIR 1949 Cal 689] and A.K. Khosla v. T.S. Venkatesan [A.K. Khosla v. T.S. Venkatesan, 1991 SCC OnLine Cal 225: 1992 Cri LJ 1448]). The Bombay High Court differed and had taken Neutral Citation No. ( 2024:HHC:6327 ) note of developments in the United Kingdom. In Esso Standard Inc. v. Udham Bhagwandas Japanwalla [Esso Standard Inc. v. Udham Bhagwandas Japanwalla, 1973 .

SCC OnLine Bom 56: (1975) 45 Comp Cas 16] arguments were advanced before the Court on whether a company can have mens rea, and on how the process of attribution would, in fact, operate, with the precise question being whose mens rea would be attributed to the company. The High Court accepted that a strict test of mens rea was required to locate or ascribe criminal responsibility of a company, on the decision-maker concerned. The Court adopted this line of reasoning, approving Lord Diplock's opinion in Tesco Supermarkets Ltd. v. Nattrass [Tesco Supermarkets Ltd. v. Nattrass, 1972 AC 153: (1971) 2 WLR 1166 (HL)], including the following relevant observations:

(Tesco Supermarkets case [Tesco Supermarkets Ltd. v. Nat-

trass, 1972 AC 153: (1971) 2 WLR 1166 (HL)] , AC pp. 199-

200) "In my view, therefore, the question : what natural persons are to be treated in law as being the company for the purpose of acts done in the course of its business, including the taking of precautions and the exercise of due diligence to avoid the commission of a criminal offence, is to be found by identifying those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company."

27. In Meridian Global Funds Management Asia Ltd. v. Securities Commission [Meridian Global Funds Management Asia Ltd. v. Securities Commission, (1995) 2 AC 500: (1995) 3 WLR 413 (PC)], a more nuanced approach was adopted:

(AC pp. 506-07) "These primary rules of attribution are obviously not enough to enable a company to go out into the world and do business. Not every act on behalf of the company could be expected to be the subject of a Neutral Citation No. ( 2024:HHC:6327 ) resolution of the board or a unanimous decision of the shareholders. The company therefore builds upon the primary rules of attribution by using general rules of .

attribution which are equally available to natural persons, namely, the principles of agency. It will appoint servants and agents whose acts, by a combination of the general principles of agency and the company's primary rules of attribution, count as the acts of the company. And having done so, it will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons, such as estoppel or ostensible authority in contract and vicarious liability in tort. It is worth pausing at this stage to make what may seem an obvious point. Any statement about what a company has or has not done, or can or cannot do, is necessarily a reference to the rules of attribution (primary and general) as they apply to that company. Judges sometimes say that a company "as such"

cannot do anything; it must act by servants or agents.

This may seem an unexceptionable, even banal remark. And of course, the meaning is usually perfectly clear. But a reference to a company "as such"

might suggest that there is something out there called the company of which one can meaningfully say that it can or cannot do something. There is in fact no such thing as the company as such, no ding an sich [Ed.:

German for "thing-in-itself"], only the applicable rules. To say that a company cannot do something means only that there is no one whose doing of that act would, under the applicable rules of attribution, count as an act of the company.

The company's primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication, excludes attribution on Neutral Citation No. ( 2024:HHC:6327 ) the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and .

require some act or state of mind on the part of that person "himself" as opposed to his servants or agents. This is generally true of rules of criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?

One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution i.e. if the act giving rise to liability was specifically authorised by a resolution of the board or a unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is

satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act, etc. of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy."

(emphasis in original)

28. Lord Hoffmann, in his opinion stated that: (Meridian Global Funds Management Asia case [Meridian Global Funds Neutral Citation No. ( 2024:HHC:6327 ) Management Asia Ltd. v. Securities Commission, (1995) 2 AC 500: (1995) 3 WLR 413 (PC)], AC pp. 511-12) "... their Lordships would wish to guard themselves .

against being understood to mean that whenever a servant of a company has authority to do an act on its behalf, knowledge of that act will for all purposes be attributed to the company. It is a question of construction in each case as to whether the particular rule requires that the knowledge that an act has been done, or the state of mind with which it was done, should be attributed to the company. Sometimes, as in Supply of Ready Mixed Concrete (No. 2), In re [Supply of Ready Mixed Concrete (No. 2), In re, (1995) 1 AC 456:

(1994) 3 WLR 1249 (HL)] and this case, it will be appropriate. ... On the other hand, the fact that a company's employee is authorised to drive a lorry does not in itself lead to the conclusion that if he kills someone by reckless driving, the company will be guilty of manslaughter. There is no inconsistency.

Each is an example of an attribution rule for a particular purpose, tailored as it always must be to the terms and policies of the substantive rule."

29. This Court, considered the issue in Iridium India Tele-

com Ltd. v. Motorola Inc. [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74: (2010) 3 SCC (Cri) 1201: (2010) 14 SCR 591] and held, inter alia, that : (SCC p. 100, para 63) "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."

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30. Earlier, in the Constitution Bench ruling in *Standard Chartered Bank v. Directorate of Enforcement* [*Standard Chartered Bank v. Directorate of Enforcement*, (2005) 4 SCC .

530: 2005 SCC (Cri) 961] the Court referred to Section 11IPC, which defined "person". "The word "person" includes any Company or Association or body of persons, whether incorporated or not"; the Court also referred to the 41st and 47th Law Commission Reports. The Law Commission had stated that:

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

31. The Judges -- in the majority held that all penal statutes are to be strictly construed, in the sense that the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words. Any act falling within the mischief that is addressed should be intended to be included and has to be included if thought of. Further, all penal provisions, like all other statutes, need to be fairly construed in terms of expressed legislative intent. The intent to prosecute corporate bodies for the offences committed by them was clear and explicit, and the statute did not intend to exonerate them from prosecution. The Court, therefore, held that it would be violence to commonsense that the legislature intended to punish the corporate bodies for minor and silly offences while at the same time, extending immunity of prosecution to major and grave economic crimes."

29. In the present case also, the bank is engaged in the banking activities and financing of the vehicle and if any cheating is committed by the persons engaged on behalf of the Neutral Citation No. ( 2024:HHC:6327 ) bank, then the intention of those persons would be attributed to the bank and it will be responsible for the criminal liability.

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30. Mr. Ashwani Kaundal, learned counsel for the petitioner referred to various documents filed with the petition to submit that the complainant filed a complaint before the Consumer Forum. He had executed a No Objection Certificate and the documents furnished by him show that he had taken a loan of 4,92,000/-. It is not permissible to look into the documents annexed to the petition under Section 482 of Cr.P.C.

It was laid down by the Hon'ble Supreme Court in *MCD v. Ram Kishan Rohtagi*, (1983) 1 SCC 1: 1983 SCC (Cri) 115, that the proceedings can be quashed if on the face of the complaint and the papers accompanying the same no offence is constituted. It is not permissible to add or subtract anything. It was observed:

"10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."

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31. Madras High Court also held in *Ganga Bai v. Shriram*, 1990 SCC OnLine MP 213; ILR 1992 MP 964; 1991 Cri LJ 2018, that .

the fresh evidence is not permissible or desirable in the proceedings under Section 482 of Cr.P.C. It was observed:

"Proceedings under Section 482, Cr.P.C. cannot be allowed to be converted into a full-dressed trial. Shri Maheshwari filed a photostate copy of an order dated 28.7.1983, passed in Criminal Case No. 1005 of 1977, to which the present petitioner was not a party. Fresh evidence at this stage is neither permissible nor desirable. The respondent by filing this document is virtually introducing additional evidence, which is not the object of Section 482, Cr.P.C."

32. Andhra Pradesh High Court also took a similar view in *Bharat Metal Box Company Limited, Hyderabad and Others vs. G. K. Strips Private Limited and another*, 2004 STPL 43 AP, and held:

"9. This Court can only look into the complaint and the documents filed along with it and the sworn statements of the witnesses if any recorded. While judging the correctness of the proceedings, it cannot look into the documents, which are not filed before the lower Court. Section 482 Cr.PC debars the Court to look into fresh documents, in view of the principles laid down by the Supreme Court in *State of Karnataka v. M. Devendrappa and another*, 2002 (1) Supreme 192. The relevant portion of the said judgment reads as follows:

"The complaint has to be read as a whole. If it appears that on consideration of the allegations, in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to Neutral Citation No. ( 2024:HHC:6327 ) show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

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When information is lodged at the Police Station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material



collected during the investigation and evidence led in Court, which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings".

33. A similar view was taken in *Mahendra K.C. v. State of Karnataka*, (2022) 2 SCC 129: (2022) 1 SCC (Cri) 401 wherein it was observed on page 142:

"16. ... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial."

34. This position was reiterated in *Supriya Jain v. State of Haryana*, (2023) 7 SCC 711: 2023 SCC OnLine SC 765 wherein it was held:

13. All these documents which the petitioner seeks to rely on, if genuine, could be helpful for her defence at the trial but the same are not material at the stage of deciding whether quashing as prayed for by her before the High Court was warranted or not. We, therefore, see no reason to place any reliance on these three documents.

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35. A similar view was taken in *Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya*, (2024) 2 .

SCC 86: 2023 SCC OnLine SC 1258 wherein it was observed:

"63. Adverting to the aspect of the exercise of jurisdiction by the High Courts under Section 482CrPC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, the law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by Section 482CrPC; such powers are always available to be exercised ex debito justitiae i.e. to do real and substantial justice for the administration of which alone the High Courts exist. However, the tests laid down for quashing an FIR or criminal proceedings arising from a police report by the High Courts in the exercise of jurisdiction under Section 482CrPC not being substantially different from the tests laid down for quashing a process issued under Section 204 read with Section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the

substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible if the justice of a given case does not overwhelmingly so demand." (Emphasis supplied)

36. It was specifically stated in para-2 of the present petition that the loan was sanctioned for the ECS VX CR-IV Neutral Citation No. ( 2024:HHC:6327 ) vehicle but the complainant purchased an Indigo ECS vehicle.

Hence, the plea of the complainant that he had purchased Indigo .

ECS but the loan was sanctioned for Indigo ECS VX CR-IV is duly established by the contents of the petition. The complainant asserted that he had taken the loan of 3,52,000/- but his loan amount was shown wrongly as 4,92,000/-. He was made to pay the excess amount. These averments clearly show that the bank official had represented to the complainant that the loan of a lower amount was being sanctioned, whereas they showed the loan of a higher amount. The complainant was led to accept the loan of the lower amount based on this representation. The full amount sanctioned by the bank to the complainant was not disbursed to him and in this manner, the bank officials retained the money belonging to the complainant and the complainant was made to return a higher amount than the amount disbursed to him. These allegations show the commission of the cognizable offences.

37. It was submitted that the complaint is false and is filed as the counterblast to the Arbitrator's award obtained by the bank. This submission is not to be appreciated in these proceedings as truthfulness or otherwise of the allegations is Neutral Citation No. ( 2024:HHC:6327 ) not to be seen at this stage. The present petition has been filed under Section 482 of Cr.P.C. and the Court has to see the .

allegations in the complaint to determine whether an offence is disclosed or not. It is not permissible for the Court to conduct a fact-finding inquiry to determine the innocence or otherwise of the contents of the complaint at this stage. It was laid down by the Hon'ble Supreme Court in Priyanka Jaiswal vs. State of Jharkhand, 2024 SCC OnLine SC 685 that the Court exercises extra-ordinary jurisdiction under Section 482 of Cr.P.C. and cannot conduct a mini-trial or enter into an appreciation of an evidence of a particular case. It was observed: -

"13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of Akhil Sharda

2022 SCC OnLine SC 820 held to the following effect:

"28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in the exercise of powers under Section 482 Cr. P.C., it Neutral Citation No. ( 2024:HHC:6327 ) appears that the High Court has virtually conducted a mini-trial, which as such is not permissible at this stage and while deciding the application under .

Section 482 Cr. P.C. As observed and held by this Court in a catena of decisions no mini-trial can be conducted by the High Court in the exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

38. A similar view was taken in Maneesha Yadav v. State of r to U.P., 2024 SCC OnLine SC 643 wherein it was held that: -

"13. As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the stage of quashing of the proceedings under Section 482 Cr.

P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of Bhajan Lal (supra).

14. We may gainfully refer to the observations of this Court in the case of Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home(2019) 11 SCC 706: 2018 INSC 1060:

"14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of FIR is untenable. We do not Neutral Citation No. ( 2024:HHC:6327 ) see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of

Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23].

In Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23], this Court while deciding the question of whether the High Court

could entertain the Section 482 petition for quashing of FIR when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16) "16. Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."

39. Hence, it is not permissible for the Court to go into the truthfulness or otherwise of the allegations made in the complaint and the complaint cannot be quashed on the ground that its contents are false.

40. It was submitted that the wrong Branch was summoned. This submission proceeds on the basis that the Branches of the bank are different juristic persons. It is not correct. The juristic person is the bank and Branches are its Neutral Citation No. ( 2024:HHC:6327 ) limbs, as the limb of a person cannot be summoned and the person has to be summoned; therefore, the Branch of a .

Company cannot be summoned and the Company as a whole has to be summoned. The complainant has arrayed Indusind Bank as the party; therefore, Indusind Bank is to be summoned and it will be for the bank to decide, who will represent it before the Court.

41. Consequently, the present petition fails and the same is dismissed.

42. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla) Judge 5th August, 2024 (Chander)