

A SHIV KUMAR JATIA

v.

STATE OF NCT OF DELHI

(Criminal Appeal No.1263 of 2019)

B AUGUST 23, 2019

**[ABHAY MANOHAR SAPRE AND  
R. SUBHASH REDDY, JJ.]**

- Criminal Law – Doctrine of vicarious liability –Corporate criminal liability – Directors/Controlling authorities of company – When not liable – On 16.10.13, the victim came to the hotel in question to meet two resident guests of the hotel who were American citizens – All three were having food and wine in the club on the 6<sup>th</sup> floor and were frequently going out on terrace for smoking – Victim fell from the terrace of 6<sup>th</sup> floor to the 4<sup>th</sup> floor of the hotel and got injured – Appellants-accused charged u/ss.336,338 r/w s. 32, IPC and s.4, 2003 Act– Chargesheet inter alia alleges criminal negligence and violation of license conditions by the hotel management – High Court declined to quash the FIR registered against the appellants – On appeal, held: To prove guilt u/s.338, in addition to the elements u/s.336 (the act, done rashly and negligently, to endanger human life or personal safety), an additional consequence of grievous hurt is to be proved – No allegation is made against the accused no.2, Managing Director of the accused no.1 (the listed public company which runs the Hotel in question) directly attributing negligence with the criminal intent attracting provisions u/ss.336, 338 r/w s. 32, IPC – Mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent – Individual either as Director/ Managing Director/Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent – Although it is the case of the accused no.4-General Manager, that he was also out of country on the date of incident, he being the General Manager of the very hotel stands on different footing to that of accused no.2 – When there is allegation of violation of licence conditions and negligence against the General Manager and other staff members, appropriate findings can be recorded after full-fledged trial – Further, in absence of the allegations that the hotel*

*has not provided any smoking area at all in the entire hotel, there is no reason to prosecute the accused for the alleged offence u/s.4, 2003 Act – No offence is made out against both the appellants – Chargesheet filed against the accused no.-2 as also the summoning order passed by the Metropolitan Magistrate, stands quashed – Chargesheet filed against the accused no.4 is also quashed, however summoning order is quashed only to the extent of proceedings initiated u/s.4, 2003 Act – Cigarettes and Other Tobacco Products (Prohibition of Trade and Commerce, Production, Supply and Distribution) Act, 2003 – "Regulations for keeping places of public entertainment in Delhi 1980"– Regulation 19 – Code of Criminal Procedure, 1973 – ss.205, 317 and 482 – Doctrines.*

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#### **Disposing of the appeals, the Court**

**HELD:** 1.1 To prove the alleged offence under Section 336, essential elements are, the act, done rashly and negligently, to endanger human life or personal safety. To prove the guilt of the accused under Section 338, in addition to the elements under Section 336, an additional consequence of grievous hurt is to be proved. It is clear from the material placed on record that the appellant (A-4) was not in the country on the date of the incident and the license of the hotel is in the name of accused No.3. The owner of the hotel is M/s Asian Hotels (North) Limited, which is a public listed company made as accused no.1. Though there are allegations of negligence on the part of hotel and its officers who are incharge of day to day affairs of the hotel, so far as appellant– accused no.2 is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 of IPC. Taking contents of the final report as it is, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Limited, which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent. An individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. [Paras 26-29] [222-D-E; 223-C-F]

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- A        1.2 In the case on hand principally the allegations are made against the first accused-company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is accused no.2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures.
- B        Principally the allegations are made only against the company and other staff members who are incharge of day to day affairs of the company. In absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, it is a fit case for
- C        quashing the proceedings, so far as the Managing Director is concerned. Although it is the case of the accused no.4/General Manager, that he was also out of country on the date of incident, at the same time it is to be noticed that he is General Manager of the very hotel and whether any incharge arrangements are made of his responsibilities etc. is a matter which is to be examined
- D        only during trial. He stands on a different footing to that of, Managing Director of M/s. Asian Hotels (North) Limited, who is accused no.2. When the allegation is made that there is a violation of licence conditions and negligence against the General Manager and other staff members, appropriate findings can be recorded after full-fledged trial. It is not possible to record any finding of
- E        negligence basing on a status report, referred to, in the order passed by the Joint Commissioner of Police dated 21.08.2015. From a reading of the above Section 4 of the Act it is apparent that it prohibits smoking in any public place. However, as per the proviso, a hotel having 30 rooms or a restaurant having seating capacity of 30 persons or more and in the airports, a separate provision for smoking area or space may be made. It is clear that it obligates a hotel having 30 rooms or a restaurant with a seating capacity of 30 persons or more shall have a provision for separate smoking area. In the case on hand it is merely alleged that though the terrace was not notified as a smoking area, the injured and
- F        other resident guests of the hotel were allowed to smoke in the terrace area in the 6th Floor. It is the specific case of the appellants-accused that there is a separate smoking area at the lobby level of the hotel. In absence of making any allegations that hotel has not provided at all any smoking area in the entire hotel there is absolutely no reason or justification to prosecute
- G        the appellants-accused for the alleged offence under Section 4 of
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COTPA 2003. Even if the allegations are taken on the face value as mentioned in the chargesheet no offence is made out against both the appellants qua the alleged offence committed by them to prosecute under Section 4 of the COTPA 2003. So far as the prosecution under Section 4 of COTPA 2003 is concerned it is a fit case to be quashed against both the accused no.2 and also accused no.4. [Paras 30, 32 and 33] [224-B-D; 225-A-C-F-H; 226-A-B]

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1.3 The case of the appellant-accused no.2 in Crl.Appeal @ SLP (Crl.) No.8008 of 2018 falls within one of the categories enumerated in the case of *State of Haryana v. Bhajan Lal* to invoke the inherent powers under Section 482 of Cr.P.C. either to prevent the abuse of the process of court or otherwise to secure the ends of justice. Having perused the directions issued permitting the accused to appear through an advocate, such direction is within the power of the High Court in exercise of inherent powers conferred under Section 482 Cr.P.C. Having regard to nature of directions issued by the High Court, as referred above, it is not a fit case to interfere with the same, in these appeals. For the aforesaid reasons, criminal appeal @ S.L.P.(Crl.)No.8008 of 2018 filed by accused no.2 is allowed by setting aside the order dated 18.5.2018 passed in Crl.M.C. No.2209 of 2015 by the High Court of Delhi at New Delhi and consequently criminal proceedings initiated against the appellant (A-2) and the chargesheet filed in FIR No.390 of 2013 on the file of Police Station at R.K. Puram and further summoning order dated 16.5.2015 passed by the learned Metropolitan Magistrate, Patiala House Court, New Delhi stands quashed, *qua* the said appellant. [Paras 35-37] [226-G; 227-C-E]

1.4 Criminal appeal @ S.L.P.(Crl.)No.7969 of 2018 filed by the accused No.4 is partly allowed, quashing the chargesheet filed against him in FIR No.390 of 2013 on the file at Police Station, R.K. Puram and further summoning order dated 16.05.2015 only to the extent of proceedings initiated against him for alleged offence under Section 4 of Cigarettes and Other Tobacco Products (Prohibition of Trade and Commerce, Production, Supply and Distribution) Act, 2003. Criminal appeals @ S.L.P.(Crl.) Nos. 10054-10056 of 2018 are dismissed. The observations and findings recorded in the impugned order passed by the High Court and order of Supreme Court are only for the purpose of disposal of

- A these appeals, arising out of applications filed under Section 482 of Cr.P.C. It is open to the Trial Court to record its own findings post-trial, on its own merits depending upon the case made out strictly in accordance with law. [Paras 38-41] [227-F-H; 228-A -B]
- B *Sushil Ansal v. State Through CBI* (2014) 6 SCC 173 : [2014] 9 SCR 571 – held inapplicable.  
*Sunil Bharti Mittal v. Central Bureau of Investigation* (2015) 4 SCC 609 : [2015] 1 SCR 377 ; *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668 : [2007] 9 SCR 1113 ; *Sharad Kumar Sanghi v. Sangita Rane* (2015) 12 SCC 781 : [2015] 2 SCR 145 ; *State of Haryana v. Bhajan Lal* 1992 Supp.(1) SCC 335 : [1990] 3 Suppl. SCR 259 – relied on.
- C *Pooja Ravinder Devidasani v. State of Maharashtra* AIR 2015 SC 675 ; *TGN Kumar v. State of Kerala & Ors.*(2011) 2 SCC 772 : [2011] 1 SCR 436 ; *Madan Mohan v. State of Rajasthan* (2018) 12 SCC 30 : [2017] 12 SCR 222 – referred to.

**Case Law Reference**

E	[2014] 9 SCR 571	held inapplicable	Para 12
	[2015] 1 SCR 377	relied on	Para 13
	[2007] 9 SCR 1113	relied on	Para 13
	[2015] 2 SCR 145	relied on	Para 13
F	AIR 2015 SC 675	referred to	Para 13
	[2011] 1 SCR 436	referred to	Para 20
	[2017] 12 SCR 222	referred to	Para 20
	[1990] 3 Suppl. SCR 259	relied on	Para 35

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1263 of 2019.

From the Judgment and Order dated 18.05.2018 of the High Court of Delhi at New Delhi in Crl. M.C. No. 2209 of 2015.

With

H Criminal Appeal Nos. 1264, 1265-1267 of 2019.

Sidharth Luthra, Mukul Gupta, Vikas Singh, Anupam Lal Das, Sr. Advs., Dr. Lalit Bhasin, Ms. Nina Gupta, Ms. Palak Chadha, Dhawal Jain, Ms. Ruchika Joshi, Mudit Sharma, P. V. Yogeswaran, Neeraj Chaudhari, Ravjyot Singh, Ms. Pooja Dhar, Sumit Mishra, Yatin Savlani, Ankur Chawla, Ms. Pallavi Langar, R. K. Mohit Gupta, Ms. Shristi Juneja, Anoopam N. Prasad, Ms. Mehaak Jaggi, Ms. Ankita Tiwari, Karan Burman, Viresh B. Saharya, Akshat Agarwal, Sahil Verma, Chirag M. Shroff, Ms. Mahima C. Shroff, B. V. Balram Das, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

**R.SUBHASH REDDY, J.**

1. Leave granted.

2. These three criminal appeals are filed against the common judgment and order dated 18.05.2018 passed by the High Court of Delhi at New Delhi in Crl. M.C. Nos. 2209, 2208 and 3480 of 2015, as such, they are disposed of by this common judgment and order.

3. Criminal Appeal @ SLP (Crl.)No.7969 of 2018 is filed by the petitioner in Crl.M.C.No.2208 of 2015 who is accused No.4. Criminal appeal @ SLP(Crl.)No.8008 of 2018 is filed by the petitioner in Crl.M.C. No.2209 of 2015, who is accused No.2, whereas criminal appeals @ SLP(Crl.)Nos.10054-56 of 2018 are filed by the complainant aggrieved by the directions issued in paragraph 143 of the impugned judgment and common order.

4. The aforesaid criminal misc. cases in Crl.M.C.Nos. 2208 of 2015 and 2209 of 2015 are filed by accused Nos. 4 and 2 respectively, before the High Court of Delhi at New Delhi under Section 482 of Cr.P.C., for quashing of the chargesheet filed against them and further questioning the order dated 16.5.2015 passed by the learned Metropolitan Magistrate, Patiala House Court, New Delhi in FIR No.390 of 2013 on the file of Police Station, R.K. Puram. By the impugned chargesheet the appellants/ accused in criminal appeal nos. @ SLP(Crl.)No.7969 of 2018 and SLP(Crl.)No.8008 of 2018 are sought to be prosecuted for the offences under Sections 336 and 338 read with Section 32 of the Indian Penal Code, 1860 (for short IPC) and Section 4 of the Cigarettes and Other Tobacco Products (Prohibition of Trade and Commerce, Production, Supply and Distribution) Act, 2003 [hereinafter referred as 'COTPA 2003'].

- A        5. Initially, crime in FIR No.390 of 2013 on the file of Police Station, R.K. Puram was registered on 19.10.2013 for the alleged commission of offence punishable under Section 308 IPC. After investigation, investigating agency, having found no ingredients for offence under Section 308 of IPC, ultimately charged the appellants Aseem Kapoor-accused No.4 and Shiv Kumar Jatia-accused No.2 and six others for the offences under Section 336/338 read with Section 32 of IPC 1860 and Section 4 of COTPA 2003.
- B        6. Necessary facts in brief for disposal of these appeals are as under.
- C        7. At first instance on 17.10.2013, a case, on receipt of information that one Gaurav Rishi, resident of B-18, G.K. II, New Delhi, got admitted in Fortis Hospital, Vasant Kunj, vide MLC No.2240 of 2013 with the alleged history of fall from stairs, was registered for offence under Section 308 of IPC 1860. Subsequently, on investigation, it was found that the injured Gaurav Rishi fell from the terrace of 6<sup>th</sup> floor to 4<sup>th</sup> floor of the hotel i.e. Hyatt Regency. Investigation further reveals that the injured has joined two resident guests of the hotel who were American citizens by name Ms. Rebecca and Ms. Margarita. It is alleged that all of three were having food and wine in club which was on the 6<sup>th</sup> floor and they were frequently going out on terrace for smoking. During the course of investigation, statements and supplementary statements of Ms. Rebecca and Ms. Margarita were recorded who appear to have stated that on 16.10.2013 Gaurav Rishi(injured) came to hotel for a social visit to meet them and all of them were sitting in the executive lounge at the 6<sup>th</sup> Floor of the hotel. There is a terrace adjacent to the lounge to which hotel permitted its guests for smoking.
- F        8. It is the case of the prosecution that terrace was dark and there was no light on the terrace and hotel staff did not stop them from going there. Precisely it is the allegation that there was a lapse on the part of the hotel management in taking safety measures for the guests and they have allowed the guests to terrace area which was not safe.
- G        Referring to a copy of the RTI reply received from the office of Deputy Health Officer, South Delhi Municipal Corporation regarding Hyatt Regency, it is alleged that no health trade license was granted to the hotel for the terrace area adjoining 6<sup>th</sup> floor. Chargesheet further reveals that, Licensing Branch, Delhi Police, Delhi has issued license which
- H        was renewed upto 31.03.2015 in the name of P.R.Subramanian, who is

also one of the accused in the case, authorising him to keep a place of public entertainment known as Hyatt Regency. Referring to the conditions of license for 4 star and above category issued under regulation 19 of the “Regulations for keeping places of public entertainment in Delhi 1980”, it is the case of the prosecution that the Hyatt Hotel has not adhered to the conditions of license. Further alleging criminal negligence and illegal omission on part of the hotel management made the following allegations. The operative portion of the chargesheet dated 16.03.2015 reads as under:-

“1. M/s Asian Hotels (North) through its Management Director Mr. Shiv Jatia – it is a company which looks after the Hyatt Regency Hotel. And is responsible for every criminal act done in the hotel.

2. Shiv Jatia, Managing Director Hyatt Hotel - He is the only non-independent and Executive Director of the Company. He is present in all the board meeting as the chairperosn and all decisions of the company/Hotel are taken under his signature. He further authorized Mr. PR. Subramanian to apply for lodging license of the company. Therefore, he is overall responsible for all omission and commission of its officials, violation of lodging license/health trade license with regards to safety of its guests.

3. Sh. P.R. Subramanian – The lodging license of the Hyatt hotel has been granted in his name and he is responsible for violation of lodging license/health trade license with regards to safety of its guests due to which the incident occurs.

4. Sh. Aseem Kapoor S/o Sh. Rajinder Pal Kapoor General Manager, Hyatt Hotel, R.K. Puram – He is general manager of the Hyatt Regency and has overall responsibility for looking after the day to day affair of the hotel and also for omission and commission of its officials with regards to safety of its guests.

5. Lt. Col. Deepak Khanijou (Ret.), Director of Security. He is responsible for overall security of the hotel/guests, access to prohibited areas, lightening in the hotel, warning sign boards, installation of CCTV and deployment of staff for safety and security of guests.

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- A 6. Mr. Karan Lal S/o Shri Vijay Lal, Asstt. Front office Manager, Hyatt Regency. His role is to supervise the running of the front office during his shift hours. On the day of incident he was the shift incharge and lounge manager informed him about the incident but he failed to provide the timely rescue of the injured to the hospital.
- B 7. Pawan Kumar Singh (Asstt. Manager Food and Beverage) Hyatt Regency Delhi, Bikaji Cama Place, New Delhi - He was the incharge of the lounge situated at 6<sup>th</sup> floor. During his duty the terrace was opened to the guests, despite knowing that the terrace area was not a proper smoking area and was not properly lit and safe.
- C 8. Amit Ghildiyal S/o Sh.M.D. Ghildiyal, Food and Beverage Trainee, Hyatt Hotel – He was the incharge of the lounge situated at 6<sup>th</sup> floor. During his duty the terrace was opened to the guests despite knowing that the terrace area was not a proper smoking area and was not properly lit and safe, whose names are kept in the column No.11 (without arrest) of the challan for the offences u/s 336,338 and with 32 IPC and 4 COTPA.”
- D 9. The appellants-accused have filed criminal misc. cases before the High Court of Delhi under Section 482 of Cr.P.C. seeking quashing E of the impugned proceedings including the summoning order dated 16.05.2015 passed by the Metropolitan Magistrate, Patiala House Court, New Delhi. The said petitions are disposed of by the impugned common order dated 18.05.2018 by the High Court. Though the order is bulky but most part of the order refers to contentions and abstracts from various F documents. High Court has opined that it is not appropriate to quash the FIR No. 390 of 2013 at Police Station, R.K. Puram, which was registered against the appellants-accused for offence under Sections 336 and 338 read with Section 32 of IPC and Section 4 of COTPA, 2003. While declining to quash the proceedings as prayed for, the petitioners in criminal misc. cases were allowed to appear through an advocate whose G vakalatnama should be on record.
- H 10. We have heard Sri Sidharth Luthra, learned senior counsel for the appellant in SLP(Crl.) No.8008 of 2018, Sri Mukul Gupta, learned senior counsel for the appellant in SLP(Crl.) No.7969 of 2018 and Sri Anupam Lal Das, learned senior counsel for the appellant in H SLP(Crl.) Nos.10054-10056 of 2018.

11. Learned senior counsel Sri Sidharth Luthra, has taken us through the impugned order passed by the High Court and other materials placed on record and made the following submissions:- A

12. From the allegations as stated in the final report/chargesheet, submitted by the police, no case is made out to proceed against the appellant-accused no.2 for the alleged offences under Sections 336, 338 read with Section 32 of IPC and Section 4 of COTPA 2003. The appellant-accused no.2 was overseas from 12.10.2013 to 19.10.2013. The High Court has considered the case as if “investigation is pending”. To attract the ingredients of Section 336, an act, done rashly and negligently, to endanger human life or personal safety are essential elements. There are no such ingredients to prosecute the appellant-accused no.2. To attract Section 338 of IPC in addition to the above said acts, as required to prosecute for the offence under Section 336, additional ingredients of grievous hurt should be alleged and proved. The appellant-accused No.2 who is the Managing Director of M/s Asian Hotels (North) Limited, which is a public listed company, runs hotel Hyatt Regency, is neither the occupier nor the owner nor the licensee of the hotel. The injured person and other resident guests of the hotel, with whom he was having food and wine, insisted upon going to terrace area in question to smoke, despite there being another designated area in the hotel. M/s Asian Hotels (North) Ltd., who is made accused no.1 is the owner of the hotel. Merely because the appellant was holding position as Managing Director, in absence of specific allegations of negligence with the criminal intent, is not liable for prosecution. The *cause causans* for the incident was the act of injured, climbing a wall with a height of 2 feet 8 inches with 1 foot 8 inches fence on the muntin and walking there. The accused no.1 is the owner of the hotel and no individual can be made accused along with the company, unless there is sufficient evidence of his active role with criminal intent. The High Court of Delhi has wrongly placed reliance on the judgment of this Court in the case of **Sushil Ansal vs. State Through CBI<sup>1</sup>** and rejected the petition filed by the appellant. G

13. In support of his case learned counsel Sri Sidharth Luthra relied on the judgments of this Court in the case of **Sunil Bharti Mittal vs. Central Bureau of Investigation<sup>2</sup>; Maksud Saiyed vs. State of**

<sup>1</sup> (2014) 6 SCC 173

<sup>2</sup> (2015) 4 SCC 609

- A **Gujarat<sup>3</sup>; Sharad Kumar Sanghi vs. Sangita Rane;<sup>4</sup> and Pooja Ravinder Devidasani vs. State of Maharashtra<sup>5</sup>.**

14. Learned counsel referred to the status report, extracted in the order dated 21.08.2015 passed by the Joint Commissioner of Police, by which representation of Ms. Gauri Rishi was rejected.

- B 15. Learned senior counsel Sri Mukul Gupta appearing for the appellant-accused no.4, who was the General Manager of the hotel has made the following submissions:-

- C 16. By looking at the allegations made in the chargesheet submitted by the police, no case is made out to proceed against him for the alleged offences under Sections 336, 338 read with Section 32 of IPC and Section 4 of COTPA 2003. The incident occurred only due to sheer negligence of the injured who walked out to the terrace for smoking and climbed on the parapet wall with the height of 2 feet 8 inches which was having
- D additional fence of 1 foot 8 inches. The appellant-accused No.4 was also out of country on the date of incident. Only on the ground that the appellant-accused no.4 is a General Manager, he cannot be held vicariously liable, as he is not even the licensee of the hotel.

- E 17. Learned senior counsel while referring to the judgment in the case of **Sunil Bharti Mittal vs. Central Bureau of Investigation<sup>2</sup>** and relied on other judgments in support of his case.

**18.** Learned senior counsel Sri Anupam Lal Das appearing for the appellant in Criminal Appeal @ SLP(Crl.)Nos.10054-10056 of 2018, filed by the sister of the injured, has made the following submissions:-

- F 19. Having regard to negligence and violation of conditions of license, made against the appellants-accused nos. 2 and 4, no case is made out to quash the proceedings. The appellants-accused being the Managing Director and the General Manager of the company, cannot escape their responsibility for their negligence and other incharge persons of the hotel, which resulted in an unfortunate incident in which the brother of the appellant has suffered grievous hurt. There are absolutely no grounds to interfere with the impugned order passed by the High Court.

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<sup>3</sup> (2008) 5 SCC 668

<sup>4</sup> (2015) 12 SCC 781

H <sup>5</sup> AIR 2015 SC 675

At the same time, the High Court has committed error in issuing directions in cryptic and unreasoned manner, in granting exemption for personal appearance of the accused. The exemption for appearing in person, is a matter to be considered under Section 205 and/or Section 317 of Cr.P.C. by the concerned Magistrate.

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20. Learned counsel has placed various decisions of this Court wherein scope of Section 482 Cr.P.C. is considered. Learned counsel also relied on in support of his case, in the case of **TGN Kumar vs. State of Kerala & Ors.**<sup>6</sup> and also the judgment in the case of **Madan Mohan vs. State of Rajasthan**<sup>7</sup>.

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21. We have considered the detailed submissions, arguments advanced by the learned counsel on both the sides and also perused order and other materials placed on record.

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22. We have perused the impugned order passed by the High Court. The High Court has referred to the contentions in detail and has arrived at the conclusion that it is not a fit case to quash the proceedings. The High Court has mainly relied on the judgment of this Court in the case of **Sushil Ansal vs. State Through CBI**<sup>1</sup>. Having regard to the order which we propose to pass, we feel it is not desirable to record findings in detail, except to the extent required for the disposal of these appeals. As much as these appeals are filed against the order passed on application for quashing the proceedings, under Section 482 of Cr.P.C., any findings on various contentious issues will prejudice the case of parties during the trial.

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23. At the outset it is to be noticed that M/s Asian Hotels (North)-accused No.1, which is the listed public company runs Hotel Hyatt Regency, of which accused No.4 is the General Manager and other personnel who are incharge of various departments are also made accused apart from the appellants (accused). So far as accused No.2 is concerned, he is the Managing Director of M/s Asian Hotels (North) Limited which company is made first accused in the case. The appellant-Shiv Kumar Jatia is sought to be prosecuted only on the ground that he is the Managing Director of M/s Asian Hotels (North) Limited, which runs the Hotel Hyatt Regency and is the only non-independent and Executive Director of the company and chairs the Board meeting of the company and

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<sup>6</sup> (2011) 2 SCC 772

<sup>7</sup> (2018) 12 SCC 30

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- A decisions are taken under his signatures. Further it is pleaded that he authorized Mr. P.R. Subramanian to apply for lodging license of the company. Therefore, he is overall responsible for all omissions and commissions of its officials, violation of lodging license/health trade license etc.
- B 24. So far as accused No.4 – Aseem Kapoor is concerned, it is alleged that he is the General Manager of the Hyatt Regency. As such he is overall responsible for looking after the day to day affair of the hotel and also is responsible for omissions and commissions of its staff with regard to safety of guests.
- C 25. Mr. P.R. Subramanian, is also made as one of the accused on whose name the lodging license of the hotel has been granted.
  - 26. To prove the alleged offence under Section 336, essential elements are, the act, done rashly and negligently, to endanger human life or personal safety. To prove the guilt of the accused under Section
- D 338, in addition to the elements under Section 336, an additional consequence of grievous hurt is to be proved. It is clear from the material placed on record that the appellant (A-4) was not in the country on the date of the incident and the license of the hotel is in the name of accused No.3 namely P.R. Subramanian. The owner of the hotel is M/s Asian Hotels (North) Limited, which is a public listed company made as accused
- E no.1. Taking on the face value the allegations made against the appellant (accused no.2) in the chargesheet, so far as Shiv Kumar Jatia he is sought to be prosecuted for the aforesaid offences only on the ground that he is Managing Director of M/s Asian Hotels (North) Limited, which runs Hotel Hyatt Regency and also on the ground that he is the
- F only non-independent and Executive Director of the Company who chairs meeting of the company and signatory for various decisions.
- G 27. The liability of the Directors /the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of **Sunil Bharti Mittal<sup>2</sup>**. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, 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
- H would act on behalf of the company. At the same time it is observed

that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the Statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

28. Though there are allegations of negligence on the part of hotel and its officers who are incharge of day to day affairs of the hotel, so far as appellant–accused no.2 Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 of IPC. Taking contents of the final report as it is we are of the view that, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Limited, which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent, so far as appellant–accused no.2. Applying the judgment in the case of *Sunil Bharti Mittal*<sup>2</sup> we are of the view that the said view expressed by this Court, supports the case of appellant/accused no.2.

29. By applying the ratio laid down by this Court in the case of *Sunil Bharti Mittal*<sup>2</sup> it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in the case of *Maksud Saiyed vs. State of Gujarat & Ors.*<sup>3</sup> this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. It is further held that Statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the

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- A complainant to make requisite allegations which would attract the provisions constituting vicarious liability.
  - 30. In the judgment of this Court in the case of **Sharad Kumar Sanghi vs. Sangita Rane**<sup>4</sup> while examining the allegations made against the Managing Director of a Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 of Cr.P.C. In the case on hand principally the allegations are made against the first accused-company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is accused no.2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day to day affairs of the company.
  - D In absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned.
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- 31. The order dated 21.08.2015 passed by the Joint Commissioner of Police by which representation of Ms. Gauri Rishi in compliance of order dated 03.07.2015 passed by this Court, was rejected, is also placed on record. The said order rejecting the representation regarding the renewal of licence to the Hotel Hyatt Regency, refers to status report submitted by D.C.P. (South) District. In the said report it is stated that there is a terrace on the 6<sup>th</sup> floor adjoining the Regency Club which is used as smoking area for the guests because the Regency Club is non-smoking area for the guests. At 11.30/40 p.m. both the ladies resident guests of the hotel who are American citizens and Gaurav Rishi (injured) went to the terrace for smoking. It is further stated that while both ladies were busy in gossiping and smoking, Gaurav Rishi (injured) climbed over and came at the roof of stair case (Mumty) which is at front corner of the terrace. It is also stated that the staircase of terrace is for emergency exit and was under renovation. It has a parapet wall of about 2 feet 8 inches height, with additional 1 foot 8 inch of iron railing.
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- 32. With reference to negligence and alleged violation of licence conditions by the General Manager and other staff members of the hotel,
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who are incharge of day to day affairs of the hotel, is a matter which is to be examined during trial. Although it is the case of the accused no.4/ General Manager, that he was also out of country on the date of incident, at the same time it is to be noticed that he is General Manager of the very hotel and whether any incharge arrangements are made of his responsibilities etc. is a matter which is to be examined only during trial. He stands on a different footing to that of, Managing Director of M/s. Asian Hotels (North) Limited, who is accused no.2. When the allegation is made that there is a violation of licence conditions and negligence against the General Manager and other staff members, appropriate findings can be recorded after full-fledged trial. It is not possible to record any finding of negligence basing on a status report, referred to, in the order passed by the Joint Commissioner of Police dated 21.08.2015.

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33. The appellants (accused) are also sought to be prosecuted for the alleged offence under Section 4 of COTPA 2003. To prosecute the appellants-accused for the offence under Section 4 of COTPA 2003 it is alleged that the terrace on the 6<sup>th</sup> Floor was open to the guests, despite knowing that terrace area was not a proper smoking area and was not properly lit and safe. Section 4 and proviso to the said Section of COTPA 2003 read as under:-

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“4. Prohibition of smoking in a public place.-No person shall smoke in any public place:

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Provided that in a hotel having 30 rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.”

From a reading of the above Section 4 of the Act it is apparent that it prohibits smoking in any public place. However, as per the proviso, a hotel having 30 rooms or a restaurant having seating capacity of 30 persons or more and in the airports, a separate provision for smoking area or space may be made. It is clear that it obligates a hotel having 30 rooms or a restaurant with a seating capacity of 30 persons or more shall have a provision for separate smoking area. In the case on hand it is merely alleged that though the terrace was not notified as a smoking area, the injured and other resident guests of the hotel were allowed to smoke in the terrace area in the 6<sup>th</sup> Floor. It is the specific case of the appellants-accused that there is a separate smoking area at the lobby level of the hotel. In absence of making any allegations that hotel has not provided at all any smoking area in the entire hotel there is absolutely

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- A no reason or justification to prosecute the appellants-accused for the alleged offence under Section 4 of COTPA 2003. Even if the allegations are taken on the face value as mentioned in the chargesheet no offence is made out against both the appellants *qua* the alleged offence committed by them to prosecute under Section 4 of the COTPA 2003. For the aforesaid reasons, so far as the prosecution under Section 4 of COTPA 2003 is concerned it is a fit case to be quashed against both the accused no.2 – Shiv Kumar Jatia and also accused no.4 – Aseem Kapoor.

34. From a reading of the impugned order passed by the High Court we are of the view that the High Court mainly relied on the judgment C in the case of *Sushil Ansal vs. State Through CBI*<sup>7</sup>. In the aforesaid case which relates to Uphaar Cinema which caught fire and resulted in death of number of persons was a case where a repair to the transformer that had been made on the day before the incident, was not properly done. The faulty repair to the transformer resulted in a loose connection that led to the catching of fire to the transformer and all the cars in the D parking lot were burnt in the fire which resulted in suffocation for viewers of the cinema in the hall. Further it was held that in that case there was an addition of an 8-seater box that closed off the exit on the right side of the balcony. It was also found that the owners of the cinema have added 52 additional seats to the theatre which blocked the gangway on E the right side of the movie hall. In the aforesaid case both A-1 and A-2 were found guilty not by virtue of their position in the company, but rather by virtue of specific allegations made against them. In the aforesaid case accused themselves were found to be occupiers, there were gross statutory violations, which had a direct nexus with the death of the victims. F Further looking at the facts and circumstances of the present case, the said case cannot be applied against the appellants-accused.

35. Having regard to the case law referred above by applying the facts of the case on hand we are of the view that the case of the appellant-accused no.2 Shiv Kumar Jatia in Crl.Appeal @ SLP (Crl.) No.8008 of G 2018 falls within one of the categories enumerated in the case of *State of Haryana v. Bhajan Lal*<sup>8</sup> to invoke the inherent powers under Section 482 of Cr.P.C. either to prevent the abuse of the process of court or otherwise to secure the ends of justice.

H <sup>8</sup> 1992 Supp.(1) SCC 335

36. In the criminal appeals @ SLP (Crl.)Nos.10054-10056 of 2018, the sister of the victim, has also questioned the directions issued by the High Court allowing them to appear before the Trial Court through an advocate and by permitting them to appear as and when there is a specific direction by the Trial Court to appear before such court. It is the case of the appellant-complainant in the above said criminal appeals that while dismissing the criminal misc. cases filed under Section 482 of Cr.P.C., the High Court has committed error in issuing directions as referred above. It is the case of the said appellant that to dispense with personal appearance and allowing the accused through an advocate can be considered only by the Magistrate under Section 205 and/or 317 of Cr.P.C. But without recording any reason the High Court has issued such directions which are impugned in the appeals. Having perused the directions issued permitting the accused to appear through an advocate, such direction is within the power of the High Court in exercise of inherent powers conferred under Section 482 Cr.P.C. Having regard to nature of directions issued by the High Court, as referred above, we are of the view that it is not a fit case to interfere with the same, in these appeals.

37. For the aforesaid reasons, criminal appeal @ S.L.P.(Crl.)No.8008 of 2018 filed by Shiv Kumar Jatia - accused no.2 is allowed by setting aside the order dated 18.5.2018 passed in Crl.M.C. No.2209 of 2015 by the High Court of Delhi at New Delhi and consequently criminal proceedings initiated against the appellant (A-2) and the chargesheet filed in FIR No.390 of 2013 on the file of Police Station at R.K. Puram and further summoning order dated 16.5.2015 passed by the learned Metropolitan Magistrate, Patiala House Court, New Delhi stands quashed, *qua* the said appellant.

38. Criminal appeal @ S.L.P.(Crl.)No.7969 of 2018 filed by the accused No.4 - Aseem Kapoor is partly allowed, quashing the chargesheet filed against him in FIR No.390 of 2013 on the file at Police Station, R.K. Puram and further summoning order dated 16.05.2015 only to the extent of proceedings initiated against him for alleged offence under Section 4 of COTPA 2003.

39. Criminal appeals @ S.L.P.(Crl.)Nos.10054-10056 of 2018 filed by Ms. Gauari Rishi are dismissed.

40. We make it clear that the observations and findings recorded in the impugned order dated 18.05.2018 passed by the High Court of

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- A Delhi at New Delhi and order of this Court are only for the purpose of disposal of these appeals, arising out of applications filed under Section 482 of Cr.P.C.

41. We further make it clear that it is open to the Trial Court to record its own findings post-trial, on its own merits depending upon the B case made out strictly in accordance with law.

Divya Pandey

Appeals disposed of.