

SRI NARENDRA KUMAR A. BALDOTA

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v.

THE STATE OF KARNATAKA

(Criminal Appeal No. 429 of 2022)

MARCH 14, 2022

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**[INDIRA BANERJEE AND J. K. MAHESHWARI, JJ.]**

*Code of Criminal Procedure, 1973: s. 482 – Quashing of proceedings – M Company of which appellant is the Chairman and Managing Director, imported a car for which customs duty and road tax was paid – Thereafter, differential motor vehicle tax was demanded in respect of the said vehicle and the same was paid, and no Dues Certificate was also issued – FIR filed against appellant that he conspired with Regional Transport Officer to evade payment of road tax– Petition seeking quashing of proceedings– Dismissed by the High Court – On appeal, held: Criminal law cannot be set into motion as a matter of course – Summoning of an accused in a criminal case is a serious matter - Before summoning, the Magistrate has to record his satisfaction of a *prima facie* case against the Chairman, Managing Director or officer of a company in his/her own capacity – On facts, there is no whisper of how and in what manner the appellant abetted the commission of any offence – No document submitted in connection with the vehicle imported by M Company being fake or fabricated – Allegations in the FIR read with the chargesheet filed by the Lokayuktha Police only discloses short payment of road tax – There is only a vague, bald allegation of collusion and conspiracy to defraud the State of revenue, which is devoid of any material particulars – Thus, proceedings against the appellant are misconceived, harassing, in abuse of process of law and have been initiated without proper application of mind – Prevention of Corruption Act, 1988:ss. 13(1)(c), 13(1)(d), 13(2) – Penal Code – ss. 120B and 420.*

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**Allowing the appeal , the Court**

**HELD: 1.1 The appellant is Chairman and Managing Director of the corporate entity, which purchased the vehicle in question. There is not a whisper in the chargesheet of the specific**

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- A **role played by the appellant or how he committed the offence of cheating. [Para 24][980-E-F]**
  - 1.2. Criminal law cannot be set into motion as a matter of course. Summoning of an accused in a criminal case is a serious matter. To set Criminal law into motion, the order of the Magistrate summoning the accused, must reflect that he has applied his mind to the facts of the case. Before the Magistrate issues summons to a Chairman, Managing Director, Director or any other official of the company, the Magistrate has to record his satisfaction of a *prima facie* case against him/her in his/her own capacity is *sine qua non* for initiation of criminal proceedings against a Chairman, Managing Director or officer of a company. It is well settled that no official of a company can be dragged into criminal proceedings only in his/her capacity as official of the company, without any specific role attributed to him/her in relation to the offence alleged against the company. [Para 25][980-F-H; 981-A]**
- B **Magistrate summoning the accused, must reflect that he has applied his mind to the facts of the case. Before the Magistrate issues summons to a Chairman, Managing Director, Director or any other official of the company, the Magistrate has to record his satisfaction of a *prima facie* case against him/her in his/her own capacity is *sine qua non* for initiation of criminal proceedings against a Chairman, Managing Director or officer of a company. It is well settled that no official of a company can be dragged into criminal proceedings only in his/her capacity as official of the company, without any specific role attributed to him/her in relation to the offence alleged against the company. [Para 25][980-F-H; 981-A]**
- C **against a Chairman, Managing Director or officer of a company. It is well settled that no official of a company can be dragged into criminal proceedings only in his/her capacity as official of the company, without any specific role attributed to him/her in relation to the offence alleged against the company. [Para 25][980-F-H; 981-A]**
- D **1.3. Short payment of tax per se is not a criminal offence. The High Court ordinarily would exercise its jurisdiction under Section 482 Cr.P.C., if the allegations made in the FIR taken to be correct in entirety, do not make out any offence. When the allegations made in the FIR or evidence collected during investigation do not satisfy the ingredients of an offence, the superior Courts would not encourage harassment of a person in a Criminal Court. [Para 29][984-B-C]**

*Devendra v. State of U.P. (2009) 7 SCC 495 : [2009] (7) SCR 872 – referred to.*

- E **1.4. In the instant case, the allegations in the FIR read with the chargesheet filed by the Lokayuktha Police only discloses short payment of road tax. There is only a vague, bald allegation of collusion and conspiracy to defraud the State of revenue, which is devoid of any material particulars. [Para 32][985-D-E]**
- F **1.5. The Appellant has not questioned initiation of criminal proceedings against any of the other accused persons. He has no intention of stalling proceedings against any person involved in smuggling cars or forging or fabricating documents or committing**

any other illegal activities. He has questioned the legality of initiation of proceedings against him for alleged short payment of road tax in respect of a vehicle owned by the company of which he is Chairman and Managing Director even though, the alleged deficit road tax had been paid by the company within one month of issuance of demand notice. [Para 37][987-C-D]

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1.6. There is no whisper of how and in what manner the appellant has abetted the commission of any offence. It is nobody's case that any document submitted in connection with the vehicle in question imported by M/s MSPL Limited is fake or fabricated. That is not the charge, so far as the appellant is concerned. It transpires that in case of some of the cars, the owners had declared the selling rates at the factory as the value of the car, and not the on road value which would be about three times the factory value. [Para 38][987-E-F]

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1.7 The mere fact that demand notice may have been issued and the differential tax realized before institution of the private complaint is inconsequential. Either the charges disclose an offence of defrauding the State of revenue or the offence of defrauding the State of revenue not made out. The question is whether the materials on record disclose any criminal act on the part of these Appellants. The answer cannot but be in the negative. [Para 42][988-D-E]

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1.8 It is submitted that the Company had paid full road tax as charged by the Motor Vehicles Authorities, on the basis of the actual invoice value of the car. No further amount was payable. However, when the RTO raised a notice of demand for Rs. 21 lakh odd in 2012, the company did not raise any dispute since the amount claimed was a small amount for the Company, which had a turnover of crores of rupees. [Para 44][988-G-H]

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1.9 The proceedings against the appellant are misconceived, harassing, in abuse of process of law and have been initiated without proper application of mind. Further proceedings against the appellants in the Court below, shall remain stayed. [Para 45][989-A]

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- A *S.V. Nandaraju and others Writ Petition No. 41103/2016 (GM-RES) dated 19th December, 2019; S. Rajendran v. State of Karnataka & Others Criminal Petition No. 3087 of 2018; K.J. Kruruvilla v. State of Karnataka & Another Criminal Petition No. 344 of 2017; Ravindranatha Bajpe v. Mangalore Special Economic Zone Limited and Others 2021 SCC Online SC 806; Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668 : [2007] (9) SCR 1113; State of Haryana v. Bhajan Lal (1992) Supp (1) SCC 335 : [1990] (3) Suppl. SCR 259; G. Sagar Suri & Another v. State of U.P. and Others (2000) 2 SCC 636 : [2000] (1) SCR 417; Joseph Salvaraj A. v. State of Gujarat and Others (2011) 7 SCC 59 : [2011] (8) SCR 815 - referred to.*

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## **Case Law Reference**

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|---|---------------------------|-------------|---------|
| D | [2007] (9) SCR 1113       | referred to | Para 27 |
|   | [1990] (3) Suppl. SCR 259 | referred to | Para 28 |
|   | [2009] (7) SCR 872        | referred to | Para 29 |
|   | [2000] (1) SCR 417        | referred to | Para 30 |
| E | [2011] (8) SCR 815        | referred to | Para 31 |

From the Judgment and Order dated 22.10.2021 of the High Court of Karnataka, Dharwad Bench in Criminal Petition No.100167 of 2017.

- F Mukul Rohatgi, Sr. Adv., Mahesh Agarwal, M. S. Ananth,  
Anshuman Srivastava, Rohan Talwar, E. C. Agrawala, Advs. for the  
Appellant.

Shubhranshu Padhi, Ashish Yadav, Rakshit Jain, Vishal Banshal,  
Advs. for the Respondent.

- G The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

- ### 1. Leave granted.

2. This Appeal is against an order dated 22<sup>nd</sup> October 2021 passed by the Dharwad Bench of the High Court of Karnataka dismissing the

Criminal Petition being CRL.P. No.100167 of 2017 filed by the Appellant under Section 482 of the Code of Criminal Procedure (“Cr.P.C.”), seeking to quash the proceedings against the Appellant in Crime No.69/2012 on the file of the III Additional District and Sessions Judge, Ballari later numbered as Special Case No.04/2016 for offences punishable under Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the P.C. Act”) and Sections 120B and 420 of the Indian Penal Code (“IPC”).

3. The Appellant is the Chairman and Managing Director of M/s MSPL Limited. In 2010, MSPL Limited imported an Aston Martin Rapide car for which the Company paid the applicable customs duty. The Company also paid road tax to the Regional Transport Office (RTO), Hosapete.

4. One Jagadish B.N., Advocate filed a private complaint in the Court of XXIII Additional City Civil Sessions Judge, Bangalore City and Special Judge, Prevention of Corruption Act, Bangalore Urban District, Bangalore City alleging that there was collusion and conspiracy between RTOs in Karnataka as a result of which appropriate road tax was not being collected. It was alleged that cars were being imported in Karnataka for which RTO was not charging road tax as per the actual cost.

5. By an order dated 7<sup>th</sup> August 2012, the Court of XXIII Additional City Civil & Special Judge, Prevention of Corruption Act Bengaluru passed an order referring the complaint to the Superintendent of Police, Lokayuktha, Bengaluru Urban, under Section 156(3) of the Cr.P.C. with a direction to constitute a team of four Deputy Superintendents of Police to investigate the matter and report. On 14<sup>th</sup> August 2012, FIR in respect of the complaint was registered at the Lokayuktha Police Station, Bengaluru, Urban and a criminal case being Crime No.69/2012 was started.

6. Some relevant observations and/or findings in the order dated 7<sup>th</sup> August 2012 of the XXIII Additional City Civil Sessions Judge, Bangalore City and Special Judge, Prevention of Corruption Act, Bangalore Urban District, Bangalore City are as follows:

*“This complaint is filed under section 200 of Cr.P.C. on 06.08.2012 by the complainant Mr. Jagadeesh B.N, advocate and the complainant claims that a huge scam has taken place in connection with imported cars, more particularly Bentley and Ferari cars.*

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- A      5. *The complaint claims that huge scam has taken place regarding registration of Foreign cars that are imported to India more particularly Bentley and Ferari. The complainant claims that the vehicle dealers, middle man, smugglers across the country and owners of the imported vehicle at Mangalore have misquoted and collected the price of Bentley and Ferari car have come away with the registration, and in the process have also managed suppress the brand names of the cars. The complainant claims that he is unable to procure that facts which have been hidden and buried at high public functionaries and it is only an authorised investigating agency that can unearth the fraud taken place regarding the fraud in the registration.*
- B      6. *The complainant claims that after a tax investing exposed the alleged smuggling operation, nervous members of the super-rich have scrambled to avoid arrest by abandoning cars, including Bentleys and Astoria Martins on the streets of New Delhi and it is reported and a copy photograph is made available. The complainant claims that the said document is down loaded from the internet.*
- C      7. *The Complainant claims that more than 500 cars entered India and majority have been illegal or illegal means and to general car registered it requires the payment of tax of 18% of the amount. The complainant claims that to get a car registered in the passport authorities, and approved procedure is laid down by the Motor Vehicles Act, more particularly a custom duty of 10% should have been paid.*
- D      8. *Complaint further claims that not less than 500 cars entered in Karnataka and for name sake 4 to 5 car were mentioned as Bentley and remaining cars have been registered by suppressing the brand name and more than 98% have been registered on the basis of invoice and not on the basis of cash bill.*
- F      ...
- G      11. *The complainant further claims that the manufacturing rate of Bentley car is 1.16 crores for basic model and car which have entered Bangalore range from basic model to top*
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*end. The selling rate at the factory ord is 86,000 pounds i.e., Rs.1,16,00,000/- and on road the value of Bentley car would go beyond Rs.3 crores for a car and if formalities are properly complied with. The complainant further claims that top end model would range up more the Rs.6 crores.* A

12. *The complainant also claims that the racket is done with extraordinary brilliance and intelligence and it is abetting come and also influencing the public servant in getting their car registered and unless proper investigation agency conducted fair, equal and comprehensive investigation, the fraud cannot be unearthed.....* B

13. *The complainant further claims that the majority of the dealers who have not disclosed their identity in Bangalore after receiving the assignment, have based on the documents only invoice which totally not explained and have cleverly avoided the cash receipt being given, for the reason that the majority of the authorized dealer are not entitled to deal with the vehicle.* C D

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20. *The complainant claims that the accused persons are private individual and no sanction is necessary to take cognizance against them the complainant orally submits that the accused persons have abetted and influenced the public servants for committing the offences and the investigating agency would get the definite picture orally after ascertaining with the concerned transport authority at different levels and at different parts of Karnataka, but mainly in Bangalore as the cars moved from Bangalore and fabrication and forgery of documents took place in Bangalore, besides abetments (sic) to commit offence under prevention of corruption act complainant further claims that a full scale investigation is required by independent agency.* E F G

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24. *The complainant further orally submitted that, few vehicles were registered with take documents in the transport authority in India and thereafter in Karnataka through Bangalore more particularly rural areas and thereafter they go away from the* H

- A *state and will be applied in different parts it is further submitted that for registration the documents are necessary and one the registration is the certificate given by the R.T.O. in that event the difference between the fake and genuine papers pertaining to the presence of the motors vehicles get vanished.*
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28. *The Complainant claims that the accused persons who are the dealers, distributors in Bangalore, other places have forged the documents and have successfully abated the public servants (Transport Authorities) and have got the registration of the said vehicles illegally and have resulted in the loss of crores and cores of rupees and in the process have cheated the Government Public at large. He further submits that mafia in the form of a 'net work' is behind the scam.*
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- D *31. In the cell all context and circumstances of the case and after recording the complainant his grievance and contents of the complaint at this stage I am of the sincere view that is it just and proper that only a comprehensive investigation is necessary by the superintendent of police, lokayukta Bangalore urban by constitute a team of four Dy. SP and entrust the matter to them to investigation and to report. Hence I proceed to pass the following*
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***ORDER***

- F *The complaint is referred to superintendent of Police, Lokayukta, Bangalore Urban under Section 156(3) of Cr.P.C. with a direction to constitute a team of four Dy. S.P. for investigating the matter and to report. “*
- G 7. The Appellant is neither a vehicle dealer nor a middle man nor a smuggler. He is not even the owner of the vehicle in question but only the Chairman/Managing Director of M/s MSPL Limited, the Company which has imported the vehicle, and got the same registered. Neither the Appellant nor the Company of which the Appellant is the Managing Director has abandoned any vehicle.
- H 8. On 27<sup>th</sup> February 2013, the RTO, Hosapete issued a demand notice to M/s MSPL Limited demanding differential motor vehicle tax of

Rs.20,44,468/- in respect of the vehicle in question. M/s MSPL Limited immediately complied with the demand and paid the demanded sum of Rs.20,44,468/- in full on 20<sup>th</sup> March 2013, after which the RTO, Hosapete issued a "No Dues Certificate" to M/s MSPL Limited.

9. On 2<sup>nd</sup> November 2015, Lokayuktha Police issued a notice dated 13<sup>th</sup> October 2015 to the RTO, Ballari. By a letter dated 2<sup>nd</sup> November 2015, the RTO informed the Lokayuktha Police that M/s MSPL Limited had paid the entire deficit tax. A B

10. On 8<sup>th</sup> December 2015, Lokayuktha Police filed an inquiry report-cum-chargesheet in the aforesaid case being Crime No. 69/2012 under Sections 13(1)(c), 13(1)(d) and 13(2) of the P.C. Act, 1988 and Sections 120B and 420 of IPC. C

11. In the chargesheet, it is alleged that the Appellant had conspired with one Mr. K. Pampapati, Regional Transport Officer, Hosapete and Mr. Shanmukh Naik Superintendent, Office of Regional Transport Officer, Hosapete to evade payment of an amount of Rs.20,44,468/- towards road tax. D

12. Pursuant to the chargesheet filed by the Lokayuktha Police, against the Appellant and others, Special Case No.4 of 2016 was started in the Court of the III Additional District and Sessions Judge, Ballari sitting at Hosapete. E

13. By an order dated 4<sup>th</sup> November 2016, in Special Case No.4/2016, the learned III Additional District and Sessions Judge, Ballari sitting at Hosapete took cognizance and issued summons to the Appellant.

14. Thereafter, the Appellant filed Criminal Petition No.100167 of 2017 before the Dharwad Bench of the High Court of Karnataka under Section 482 of the Cr.P.C., praying that the proceedings in Special Case No.4/2016 on the file of the III Additional District and Sessions Judge, Ballari sitting at Hosapete be quashed as against the Appellant. F

15. Section 8A of the Karnataka Motor Vehicles Taxation Act, 1957 provides as follows:- G

**"8A. Collection of tax escaping payment.- If at any time it is found that the amount of tax paid for any period in respect of any motor vehicle falls short of the tax payable under this Act, then, notwithstanding any incorrect entry or the absence of any entry in the certificate of registration relating to the H**

- A *motor vehicle regarding the tax payable in respect of such vehicle or the issue of a taxation card or an entry having been made in such taxation card regarding the payment of tax for such period, the taxation authority may, after notice to the registered owner or person having possession or control of the motor vehicle and giving him an opportunity of being heard recover the difference between the tax so paid and the tax payable by such owner or person”.*
- B 16. In the said petition, the Appellant pointed out that short collection in road tax, if any, could be collected from the owner of the vehicle, under Section 8A of the Karnataka Motor Vehicles Taxation Act, 1957.
- C On receipt of demand notice, M/s MSPL Limited, the owner of the vehicle in question, had paid the differential tax. M/s MSPL Limited had deposited the entire road tax in full.
- D 17. By an interim order dated 14<sup>th</sup> February 2017, the Dharwad Bench of the High Court of Karnataka was pleased to stay the criminal proceedings against the Appellant. The interim order was extended from time to time.
- E 18. By the judgment and order dated 22<sup>nd</sup> October 2021 impugned in this Court, the High Court dismissed the Criminal Revisional Petition being CRL.P. No.100167 of 2017.
- F 19. It is the case of the Appellant that on 19<sup>th</sup> December 2019, the Bengaluru Bench of the High Court of Karnataka allowed a Writ Petition/ Criminal Revisional Petition filed by one S.V. Nandaraju and others being Writ Petition No.41103/2016 (GM-RES) and quashed proceedings initiated against petitioners in the aforesaid case, S.V. Nandaraju, which arose from the same chargesheet as in the present case. The High Court held:-
- G “23. *In that view of the matter, as already noticed, the occurrence of the events and accrual of cause of action in the present set of matters were between the years 2003 and 2006. The private complaint under Section 200 of Cr.P.C. was registered on 06.08.2012, while the FIR was registered on 14.08.2012. It is an admitted fact that except petitioners No.6 and 7, in Crl.P.No.5130/2016, who retired in the year 2013 and 2015 respectively, the other petitioners had already retired, way back in the year 2006-2007. Some of the*
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*petitioners continue to serve. However, as noticed earlier the State Government had declined to sanction prosecution against the serving employees. It was also observed in the Government Order that two of the employees had already retired and therefore the State Government declined to sanction prosecution. Furthermore, the State Government, while pointing out to Section B(a) of the Taxation Act, had observed that if there was short collection of tax, the difference could be collected from the owners of the vehicles. It is an admitted fact that the owners of the vehicles were called upon to pay the difference amount and the same has been paid by them. Consequently, the criminal proceedings against the owners of the vehicles were quashed by this Court. Further, as held by the State Government, since Section 21 of the Taxation Act protects the Officers who acted in good faith, and since sanction to prosecute was declined by the State Government, the same benefit is required to be granted to the petitioners who are similarly placed. Some of the petitioners have already got the benefit of the order passed by the Government."*

20. Mr. Rohatgi, learned Senior Counsel appearing for the Appellant drew attention of this Court to an order dated 26<sup>th</sup> September 2019 passed by the Bengaluru Bench of the High Court of Karnataka in Criminal Petition No.3087 of 2018 titled ***S. Rajendran v. State of Karnataka & Others*** and an order dated 11<sup>th</sup> December 2019 passed by another Bench of the High Court of Karnataka at Bengaluru in Criminal Petition No.344 of 2017 (***K.J. Kruruvilla v. State of Karnataka & Another***). In both the cases, the criminal revisional petitions were allowed and the proceedings against the petitioners were quashed.

21. In the case of ***S. Rajendran*** (supra) he had purchased a Toyota Prado vehicle, which was registered on 3<sup>rd</sup> November 2007. Pursuant to the private complaint filed by the Respondent No. 2, FIR was registered and chargesheet was filed on 28<sup>th</sup> November 2016. In the meanwhile, on 28<sup>th</sup> July 2010, a notice was issued demanding a sum of Rs.2,83,480/- At the time of hearing, the petitioner in Criminal Petition No.344 of 2017 produced a receipt acknowledging payment of the aforesaid amount. Taking note of the fact that there was no material annexed to the chargesheet against the petitioner, S. Rajendran, in

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- A Criminal Petition No.3087 of 2018, and that payment of differential tax had been made before filing of the private complaint, the petition was allowed.

22. In the case of the **K.J. Kuruvilla** (supra), the petitioner had purchased a Range Rover which was registered on 30<sup>th</sup> March 2007. At B the time of Registration, the petitioner was called upon to pay Rs.9,99,628/- towards Life Time Tax. Later the vehicle was sold on 11<sup>th</sup> March 2011. Thereafter, the petitioner was called upon to pay differential tax of Rs.19,045/- which was paid. Relying on **S. Rajendran**(supra), Criminal proceedings against K.J. Kuruvilla were also quashed. Under Section C 8A of the Karnataka Motor Vehicle Taxation Act, 1957 a notice is required to be issued to the petitioner to explain how there was shortfall in collection of tax and thereafter the petitioner is required to pay the differential amount, if any.

23. The chargesheet filed by the police is totally vague and devoid D of material particulars. The charges in the Chargesheet were identical stereotype charges. Only the dates of registration and the deficit fee amount varied from case to case. On such stereotype charge is as follows:-

E     *"On 10.01.2011 at the time of registering the vehicle shown in Column No.4, indulged with the officers shown in column No.2 and hatched a criminal conspiracy by paying deficit fee of Rs.20,44,468/- causing loss of revenue to Government and thus committed offence of cheat."*

- F 24. As observed above, the Appellant is Chairman and Managing Director of the corporate entity, which purchased the vehicle in question. There is not a whisper in the chargesheet of the specific role played by F the Appellant or how he committed the offence of cheating.

- G 25. Criminal law cannot be set into motion as a matter of course. Summoning of an accused in a criminal case is a serious matter. To set Criminal law into motion, the order of the Magistrate summoning the accused, must reflect that he has applied his mind to the facts of the G case. Before the Magistrate issues summons to a Chairman, Managing Director, Director or any other official of the company, the Magistrate has to record his satisfaction of a *prima facie* case against him/her in his/her own capacity is *sine qua non* for initiation of criminal proceedings against a Chairman, Managing Director or officer of a company. It is H well settled that no official of a company can be dragged into criminal

proceedings only in his/her capacity as official of the company, without any specific role attributed to him/her in relation to the offence alleged against the company.

26. In *Ravindranatha Bajpe v. Mangalore Special Economic Zone Limited and Others*<sup>1</sup>, this Court held:-

“.....All of them are arrayed as an accused as Chairman, Managing Director, Deputy General Manager (Civil & Env.), Planner & Executor, Chairman and Executive Director respectively. Therefore, as such, in absence of any specific allegations and the specific role attributed to them, the learned Magistrate was not justified in issuing process against accused nos. 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120B read with Section 34 IPC.

26. As observed by this Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 28 in *Pepsi Foods Limited (supra)*, it is observed and held as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and

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<sup>1</sup>2021 SCC Online SC 806

- A      *may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*
- B      *27. As held by this Court in the case of India Infoline Limited (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them.* Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. *Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.”*
- C      *27. In Maksud Saiyed v. State of Gujarat<sup>2</sup>, this Court held:-*
- F      *“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. 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 the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director*
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- H      <sup>2</sup>(2008) 5 SCC 668

and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.” A

28. In *State of Haryana v. Bhajan Lal*<sup>3</sup> this Court held:- B

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. C

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused. D E

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(3) Where the uncontested allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. F

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(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. G

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<sup>3</sup>(1992) Supp (1) SCC 335

- A      *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*
- B      29. Short payment of tax *per se* is not a criminal offence, as held by this Court in *Devendra v. State of U.P.*<sup>4</sup>. The High Court ordinarily would exercise its jurisdiction under Section 482 of Cr.P.C., if the allegations made in the FIR taken to be correct in entirety, do not make out any offence. When the allegations made in the FIR or evidence collected during investigation do not satisfy the ingredients of an offence, the superior Courts would not encourage harassment of a person in a Criminal Court.
- C      30. In *G Sagar Suri & Another v. State of U.P. and Others*<sup>5</sup>, this Court adjudicating the liability of a Director in a proceedings under Section 420 of the IPC held:-
- D      *“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.*
- E      *...*
- F      *14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or*

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H      <sup>4</sup>(2009) 7 SCC 495

H      <sup>5</sup>(2000) 2 SCC 636

*participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.”*

31. In *Joseph Salvaraj A. v. State of Gujarat and Others*<sup>6</sup>, this Court held that even if chargesheet had been filed, Magistrate could still examine whether the offences alleged to have been committed by the accused were *prima facie* made out from the complainant's FIR, chargesheet, documents, etc. or not.

32. In the instant case, the allegations in the FIR read with the chargesheet filed by the Lokayuktha Police only discloses short payment of road tax. There is only a vague, bald allegation of collusion and conspiracy to defraud the State of revenue, which is devoid of any material particulars.

33. The Appellant filed the Criminal Revisional Petition under Section 482 of the Cr.P.C. praying that the proceedings in Special Case No.4 of 2016 on the file of the II<sup>nd</sup> Additional District and Sessions Judge, Ballari sitting at Hosapete be quashed in so far as the Appellant is concerned.

34. In the said petition the Appellant contended:-

- (i) The Appellant is not in charge of the day to day affairs of the company, M/s MSPL limited;
- (ii) The Appellant had not signed the application for registration of the vehicle in question;
- (iii) Even though the vehicle is owned and registered in the name of the Company, no complaint has been filed against the Company but only against the Appellant;

- A           (iv) No notice was issued to the Appellant during the investigation and no opportunity was given to the Appellant or to the Company.
  - (v) The Company M/s MSPL Limited had paid the entire tax amount, as was evident from “no dues certificate” issued by the RTO, Hosapete dated 16<sup>th</sup> August, 2016.
  - B           (vi) The Appellant has not gained any pecuniary benefit, nor has the company gained any pecuniary benefit;
  - C           (vii) The Appellant never met any official of the road transport, the question of conspiracy involving the Appellant did not arise.
35. The Appellant claims that he has never been involved in any criminal offence in his life time. The false implication of the Appellant would damage the reputation of the Appellant. There being absolutely no materials against the Appellant anywhere in the chargesheet, the proceedings as against the Appellant are liable to be quashed. The filing of the chargesheet against the Appellant is arbitrary, harassing and unsupported by any materials on record.
36. None of the aforesaid contentions have been considered by the High Court. The High Court observed:-
- F           *“14. On going through the charge sheet filed by the investigation officer, which is referred to above, discloses that accused Nos.1 and 2 have involved in evasion of the tax and admittedly, the difference tax of Rs.20,44,468/- was collected from accused No.2 only on 20.03.2013, whereas, the R.C. was issued on 10.01.2011 by collecting nominal tax of Rs.21,98 ,801/- only. The allegation is of serious nature and these facts are not disputed. Under such circumstances, it cannot be concluded that the criminal proceeding was initiated against the accused Nos.1 and 2 without any basis. The contention of the learned counsel for accused No.1 that he was not knowing the value of the vehicle and he accepted the value as declared by accused No.2 and therefore, he demanded lesser amount of tax, cannot be accepted at this stage. Similarly, the contention of the learned counsel for accused No.2 that he was not knowing either the value of the vehicle or the tax*
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  - H

*and whatever tax demanded by accused No.1 was paid by him and therefore, he was not committed any offence also cannot be accepted at this stage. When there is specific allegation made against various accused including the present petitioners, regarding evasion of tax systematically showing the value of the imported vehicles at a lesser value, the same cannot be ignored. Therefore, I am of the opinion that the petitioners are not entitled for the relief they are claimed in the present petitions and they are required to answer the charges and face the trial."*

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37. The Appellant has not questioned initiation of criminal proceedings against any of the other accused persons. He has no intention of stalling proceedings against any person involved in smuggling cars or forging or fabricating documents or committing any other illegal activities. He has questioned the legality of initiation of proceedings against him for alleged short payment of road tax in respect of a vehicle owned by the company of which he is Chairman and Managing Director even though, the alleged deficit road tax had been paid by the company within one month of issuance of demand notice.

38. There is no whisper of how and in what manner the Appellant has abetted the commission of any offence. It is nobody's case that any document submitted in connection with the vehicle in question imported by M/s MSPL Limited is fake or fabricated. That is not the charge, so far as the Appellant is concerned. From Paragraph 11 of the order dated 7<sup>th</sup> August 2012, it transpires that in case of some of the cars, the owners had declared the selling rates at the factory as the value of the car, and not the on road value which would be about three times the factory value.

39. Mr. Rohatgi emphatically argued that the company of which the Appellant is the Chairman and Managing Director, M/s. MSPL Limited, had paid road tax as charged by the Motor Vehicle Authorities on the basis of the value of the vehicle as given in the invoice. The Appellant has annexed a copy of the invoice which shows that the vehicle in question was purchased by the Company from Aston Martin Brussels by the Manager of M/s MSPL Limited at a total cost of 162,465,00 Euros, the Appellant has also annexed the application form for registration of the vehicle. It is pointed out that all the required information was provided in the application for registration.

- A        40. Opposing the appeal, Mr. Subhranshu Padhi, learned counsel appearing on behalf of the State of Karnataka emphasized the gravity of the allegations in the complaint. Mr. Padhi submitted that there was a racket in operation to defraud the State of revenue of crores of rupees. Mr. Padhi submitted that this Court ought not to quash the proceedings.
- B        41. Mr. Padhi tried to distinguish the judgments of the High Court cited by the Appellant, that is, the judgments/orders in the cases of *S.V. Nandaraju (supra)*, *S. Rajendran (supra)* and *K.J. Kuruvilla (supra)*. Mr. Padhi pointed out that in the cases of *S. Rajendran (supra)* and *K.J. Kuruvilla (supra)*, where the High Court had quashed the criminal proceedings, the demand notice for deficit tax had been issued and the deficit tax had also been realized before the private complaint filed by the Respondent No.2 was registered.
- C        42. The mere fact that demand notice may have been issued and the differential tax realized before institution of the private complaint is in our view inconsequential. Either the charges disclose an offence of defrauding the State of revenue or the offence of defrauding the State of revenue not made out. The question is whether the materials on record disclose any criminal act on the part of these Appellants. The answer cannot but be in the negative.
- D        43. The judgment dated 19<sup>th</sup> December, 2019 in the case of *S.V. Nandaraju and others (supra)* is distinguishable and has no application to the facts of this case. The accused were officers and/or employees of the Motor Vehicles Department, some of whom had retired long before the complaint was lodged. In some of the cases, proceedings had been quashed on the ground that sanction under Section 17 of the P.C. Act to prosecute had been declined by the State Government.
- E        44. Mr. Rohatgi argued with force that the Company had paid full road tax as charged by the Motor Vehicles Authorities, on the basis of the actual invoice value of the car in question. No further amount was payable. However, when the RTO raised a notice of demand for Rs. 21 lakh odd in 2012, the company did not raise any dispute since the amount claimed was a small amount for the Company, which had a turnover of crores of rupees.
- F        H

45. This Court is of the view that the proceedings against the Appellant are misconceived, harassing, in abuse of process of law and have been initiated without proper application of mind. This appeal is, therefore, allowed. Further proceedings against these Appellants in the Court below, shall remain stayed.

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Nidhi Jain  
(Assisted by : Tamana, LCRA)

Appeal allowed.