

Supreme Court of India

P. Rajarathinam vs State Of Maharashtra And Ors. on 28 January, 1998

Equivalent citations: (2000) 10 SCC 529

Bench: K Thomas, M Srinivasan

JUDGMENT

1. These appeals stand placed before us in order to resolve an apparent conflict between the judgments of this Court in *Municipal Corpn. of Delhi v. Ram Kishan Rohtagi*, and *U.P. Pollution Control Board v. Modi Distillery*, both having been rendered by two-Judge Benches. The necessity to resolve the conflict is to discern the vicarious liability, if any, of officers of a Company, being prosecuted under Special Acts where the Company is the offender.

2. Before us is a complaint in which the Company and its Directors have been arraigned as accused and one of them has approached us for quashing of proceedings, having unsuccessfully tried for such relief before the High Court in jurisdiction under Section 482 of the CrPC. It has been urged that at the very outset it be identified as to who out of the arraigned persons is to face the prosecution.

3. Section 141 of the Negotiable Instruments Act which covers the topic "Offences by Companies" reads as follows:

"141. Offences by companies.--(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-- For the purposes of this section,--

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm."

4. A bare reading of the provision mandates that some facts must come on the record in order to figure as to who should answer the charge ultimately. Necessarily, pre-charge evidence assumes

importance. The complainant will have to put his side of the case as given out in the complaint and the persons summoned would have to put on the record all what is material to extricate themselves out. In any case, the crucial time would be when framing charge whereat a decision in that respect would be required to be made by the court. Presently, it appears to us premature to be resolving the conflict and the ratio deduced thereby, may turn out to be obiter Therefore, we think that we need not resolve such conflict at present and leave it to the court concerned to pass appropriate orders at the time of framing of charge. In this manner, we dispose of these appeals.