

(1963) 09 BOM CK 0005
In the Bombay High Court
Case No : Criminal Ref. No. 20 of 1963

State of Maharashtra

APPELLANT

Vs

Syndicate Transport Co. (P) Ltd. and Others

RESPONDENT

Date of Decision : 26-09-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 386, 388
General Clauses Act, 1897 — Section 3, 3(42)
Interpretation Act, 1889 — Section 2
Penal Code, 1860 (IPC) — Section 11, 2, 403, 406, 420

Citation : AIR 1964 Bom 195 : (1964) 66 BOMLR 197 : (1964) CriLJ 276 :
(1964) MhLj 308

Hon'ble Judges : Paranjpe, J

Bench : Single Bench

Advocate : G.R. Mudholkar, Addl. Govt. Pleader, for the Appellant; B.B. Raikar, N.L. Verma, V.G. Hardas, V.B. Mandpe and B.L. Gupta, for the Respondent

Judgement

1. This criminal reference raises an important question of law regarding the liability of a corporate body for indictment on a criminal charge involving the question of mens rea.

2. The opponent No. 1, Messrs. Syndicate Transport Company, (Private) Limited is a company incorporated under the Indian Companies Act (Act No. 7 of 1917), with its registered office at Nagpur. I shall refer to it as the Company hereafter. The opponent No. 3, Chintaman, is the Managing Director of the Company, while the opponents Nos. 4, 5, 6, 7 and 8 are its ordinary directors. The opponent No. 9 Manohar is an ordinary shareholder of the Company. This Manohar wrote a letter to the complainant Khemka Motors (Opponent No. 2) to request for an advance of Rs. 11,000/- to the Company for the purchase of a diesel engine. The letter also stated that the diesel engine, when purchased, would be fitted to the Company's bus No. B.Y.Y-610, and that bus would then be transferred in the name of the complainant and would be run by the Company on hire purchase agreement till the satisfaction of the advance of Rs. 11,000/-. Accordingly, the

complainant agreed to advance Rs. 11,000/- and paid that amount in cash to the share holder Manohar. After obtaining the amount, a diesel engine was purchased but it was fitted to another bus of the Company and the bus No. BYY-610 was not transferred to the complainant. On these facts, the complainant prosecuted the Company, its Managing Director, its other directors and the shareholder Manohar for alleged offences u/s 420 and 406 or 403 of the Indian Penal Code. The trial Magistrate passed a separate order discharging the directors and framed charges u/s 420, Indian Penal Code against the Company, its Managing Director Chintaman, another director Harinarayan and the shareholder Manohar. The Company went up in revision to the Sessions Court, Nagpur with a request to quash the proceedings against it. Accepting this submission, the Extra Additional Sessions Judge, Nagpur has reported the case to this Court with a recommendation to quash the charge framed by the trial Magistrate against the Company. The learned Extra Additional Sessions Judge was of the view that a corporate body acts only through its agents or servants and the mens rea of such agents or servants cannot be attributed to the Company. He also remarked that it would not be possible to sentence a Company to imprisonment and a charge u/s 420. Indian Penal Code could not be sustained against the Company because it was mandatorily punishable with imprisonment. The learned Additional Government Pleader for the State and Messrs. Mandpe and B. L. Gupta for the Company and the director Harinarayan supported the reference. Mr. V. G. Hardas advocate for the complainant-Company opposed the reference.

3. While opposing the reference, Mr. Hardas submitted that u/s 2 of the Indian Penal Code every person shall be liable for punishment under the Code and u/s 11 *ibid*, a corporate body like a company is included in the definition of a "person" and, therefore, a corporate body, like any other person, ought to be indictable for any offence punishable under the Code. Messrs. Mudholkar and Mandpe contended, on the other hand, that though a corporate body was included in the definition of a "person" there were certain offences which could be committed only by an individual human being and a corporate body could not therefore, be capable of committing such offences. They further urged that certain offences had to be punished only with imprisonment and it would not be possible to impose a punishment of imprisonment on corporate bodies. According to them, a corporate body could act only through some authorized agent or servant and it would not be possible or permissible to attribute the guilty intention of the said agent or servant to the company so as to make the company liable for the offence. They, therefore, urged that the definition of a "person" would have to be read as being subject to the qualifying clause "unless there is anything repugnant in the subject or context" and corporate bodies will have to be held to be immune from prosecution for offences falling within the three categories mentioned above. Both these submissions would require careful consideration.

4. Sections 2 and 11 of the Indian Penal Code are in the following words:

"Section 2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India".

"Section 11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not."

A plain reading of these two sections together would show that a company or a corporate body shall be liable for indictment for all kinds of offences. It is not disputed that there are several offences which could be committed only by an individual human being, for instance, murder, treason, bigamy, rape, perjury etc. A company which does not act by or for itself but acts through some agent or servant would obviously not be capable of commission of the aforesaid offences and would therefore, not be liable for indictment for such offences. Again, there are certain other offences which necessarily entail the consequences of corporal punishment or imprisonment. A body corporate or a company cannot be subjected to such corporal punishment or imprisonment. Prosecuting a company for such offences would only result in the Court "stultifying itself by embarking on a trial in which it a verdict of guilty is returned, no effective order by way of sentence can be made." That will mean that the broad definition of a "person" which included a corporate body will have to be read as being subject to some kind of limitations.

5. The definition of a person in Section 11 of the Indian Penal Code is more or less on par with the definition of that word given in Section 3(42) of the (Central) General Clauses Act, 1897 which is in the following words:

"3 (42): "person" shall include any company or association or body of individuals whether incorporated or not".

However, that and the other definitions given in Section 3 of the (Central) General Clauses Act are governed by the qualifying clause in the main Section No. 3 "unless there is anything repugnant in the subject or context" but such a qualifying clause is not appended to the definitions given in the Indian Penal Code. Even so, it would be seen from the analogy of the reasoning in Kartick Chandra Mallik and Another Vs. Rani Harsha Mukhi Dasi, Executrix to estate of Raja Manindra Chandra Sinha, and Darbari Lal and Others Vs. Smt. Dharam Wati, that the clause "unless there is anything repugnant in the subject or context" must always be understood to exist in the context of the definitions given in the Indian Penal Code also. Mr. Hardas would not show any authority to the contrary which would exclude the application of the qualifying clause "unless there is anything repugnant in the subject or context"

6. Indeed, he accepted such a qualification while conceding that a corporate body cannot be indicted for offences like treason, murder, bigamy perjury, rape etc. which can be committed only by human individuals or for offences which are compulsorily punishable with imprisonment. It would, therefore, have to be held that despite the generality of the definition of a "person" given in Section 11 of

the Indian Penal Code, a corporate body or a company shall not be indictable for offences which can be committed only by a human individual or for offences which must be punished with imprisonment. The offence of cheating u/s 420, Indian Penal Code "shall be punished with imprisonment" and even Mr. Hardas accepted the position that a company cannot be prosecuted for that offence, mandatorily involving a punishment of imprisonment. He, therefore, conceded that the reference will have to be accepted so far as the charge of cheating u/s 420, Indian Penal Code was concerned.

7. Mr. Hardas, however, submitted that barring offences which could only be committed by an individual or which mandatorily entailed punishments of imprisonment, a company or a corporate body was indictable for all other offences involving mens rea on the basis that the mens rea of the authorized agents or servants, who purport to act for it could be attributed to the company. According to him, the complainant was also prosecuting the company for alleged offences of criminal breach of trust or dishonest misappropriation of property under Sections 406 and 403 of the Indian Penal Code, in the alternative, and these offences did not prescribe a compulsory punishment of imprisonment and, therefore, the Magistrate ought to be directed to proceed against the company under those sections in the alternative. Mr. Mandpe for the company was contending, on the other hand, that though these offences did not necessarily involve a punishment of imprisonment, the mens rea of the agents or servants cannot be attributed to the company and it was not permissible to prosecute a company and a corporate body for any offences involving mens rea.

8. The learned advocates for the parties stated at the bar that there were only three rulings of Indian Courts on this point. In support of his contention that the company could be prosecuted for the offences committed by its servants, Mr. Hardas relied on *Anath Bandhu Vs. Corporation of Calcutta*, . In that case, a limited company was prosecuted for breach of Section 407 of the Calcutta Municipal Act, which was committed by the proprietor of the Company and the proprietor was convicted for that offence. The learned Judge who decided the case repelled the contention that the limited Company could not be indicted for that offence. He held that if a sentence of fine were to be passed, action could be taken under Sections 386 and 388 of the Criminal Procedure Code for recovering the fine from the Company. That case did not involve any mens rea and the decision did not consider the question whether the mens rea of the servants or agents of the company could be attributed to the company. Consequently, that ruling was of no help to Mr. Hardas in support of his contention that the mens rea of the company's servants or agents could be attributed to the company. Mr. Mandpe relied on *Punjab National Bank v. A. R. Gonsalves*, Bunder Inspector, Karachi Port Trust AIR 1951 Sind 142. That was a case relating to the infringement of some bye-laws of the Karachi Port Trust It was held in that case that it was only in a limited class of cases that a company can commit an offence and these must be cases in which mens rea is not essential and must be cases in which it is possible for the Court to pass a sentence of fine only. This case, no

doubt, supports the view point of the company's advocate but the discussion in that judgment is not very detailed. *Mf. Mandpe* then relied on *Sunil Chandra Banerji v. Krishna Chandra Nath* ILR 1949 Cal 293 : AIR 1949 Cal 689. That was a case against the Manager of a Bank for offences under Sections 406 and 403 and the following cryptic remark was made therein:

"This fact may render the bank civilly liable, but I cannot see how it can be said that these proceedings are against the bank itself. I do not see how a bank can be charged with cheating. The bank is a person, but it is a juridical person and not an actual person. The bank is such that it cannot be said to have the mens rea requisite for the offence of cheating. The bank, as such, cannot be punished for cheating because it has no physical body".

In that decision also the question was not considered at any length. Thus, the three Indian decisions cited above are of little help for the decision of the question at issue. The learned advocates for the parties stated at the bar that there was no other reported Indian decision on this point. They wanted to rely on English cases in support of their respective view points. I would consider those cases at some length.

9. *Mr. Hardas* was relying on *Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.* 1944 1 K. B. 146 which had held that a limited company could be convicted of offences under the Defence (General) Regulations, 1939. In that case, officials of that company had made use of a document which was false in material particulars and statements, which the Manager knew to be false in material particulars were made. In this case Viscount Caldecote C.J. made the following observations:

".....He has not disputed the abstract proposition that a company can have knowledge and can form an intention to do an act. A company cannot be found guilty of certain criminal offences, such as treason or other offences for which it is provided that death or imprisonment is the only punishment, but there are a number of criminal offences of which a company can be convicted Under the Defence (General) Regulations, 1939, it is common for offences to be created in which certain ingredients are required to be found and the present case seems to me to fall within that categorythe real point which we have to decide, which is, I repeat, whether a company is capable of an act of will or of a state of mind, so as to be able to form an intention to deceive or to have knowledge of the truth or falsity of a statement.....The offences created by the regulation are those of doing something with intent to deceive or of making a statement known to be false in a material particular. There was ample evidence, on the facts as stated in the special case, that the company by the only people who could act or speak or think for it had done both these things, and I can see nothing in any of the authorities to which we have been referred which requires us to say that a company is incapable of being found guilty of the offences with which the respondent company was charged."

In this judgment in that same case Macnaghten J. made the following observations:

"It is true that a corporation can only have knowledge and form an intention through its human agents, but circumstances may be such that the knowledge and intention of the agent must be imputed to the body corporate.....If the responsible agent of a company, acting within the scope of his authority, puts forward on its behalf a document which he knows to be false and by which he intends to deceive, I apprehend that, according to the authorities that my Lord has cited, his knowledge and intention must be imputed to the company."

It has to be remembered that this ruling related to a case where offences were created under a regulation having the effect of a statute. That decision supported the view of Mr. Hardas that under certain circumstances the guilty intention of the director or authorised agent of the company may be attributed to the company to make it indictable, but that ruling does not purport to lay down generally, as Mr. Hardas wanted to say, that in every case the mens rea of the directors would be attributable to the company.

10. Mr. Hardas was then relying on certain other English cases in support of his view that a company would be indictable for the acts of its agents and directors. Mr. Mandpe, on the other hand, was relying on some other English cases in which indictments for offences involving mens rea were quashed. I do not think it necessary to discuss those cases at any length because they have been fully considered in the latest English ruling on the point, which I would mention in the next paragraph. Suffice it to say that in the cases relied on by Mr. Hardas, either the question of mens rea was not involved or the statutory under which the prosecutions were launched had made corporate bodies vicariously liable for the acts of its servants and agents. In the case relied on by Mr. Mandpe the Judge had not advanced any reasons of his own for quashing the indictment.

11. The matter had come up for consideration before the King's Bench Division again in *Rex v. I. C. R. Haulage, Ltd.* 1944 1 KB 551. In that case, a company was being prosecuted for a common law conspiracy to defraud. It was conceded by the counsel for the company that a limited company can be indicted for some criminal offences and it was conceded by the counsel for the Crown that there were some criminal offences for which a limited company cannot be indicted. As Stable J. remarked therein:

"The controversy centred round the question where and on what principle the line must be drawn and on which side of the line an indictment such as the present one falls. Counsel for the company contended that the true principle was that an indictment against a limited company for any offence involving as an essential ingredient "mens rea" in the restricted sense of a dishonest or criminal mind, must be bad for the reason that a company not being a natural person, cannot have a mind honest or otherwise, and that, consequently, though in certain circumstances it is civilly liable for the fraud of its officers, agents or

servants, it is immune from criminal process. Counsel for the Crown contended that a limited company, like any other entity recognized by the law, can as a general rule be indicted for its criminal acts which from the very necessity of the case must be performed by human agency and which in given circumstances become the acts of the company, and that for this purpose there was no distinction between an intention or other function of the mind and any other form of activity".

(12) Upon those rival contentions, Stable J. made the following observations on page 554:

"The offences for which a limited company cannot be indicted are, it was argued, exceptions to the general rule arising from the limitations which must inevitably attach to an artificial entity, such as a company. Included in these exceptions are the cases in which, from its very nature, the offence cannot be committed by a corporation, as for example, perjury, an offence which cannot be vicariously committed, or bigamy, an offence which a limited company, not being a natural person cannot commit vicariously or otherwise. A further exception, but for a different reason, comprises offences of which murder is an example, where the only punishment the court can impose is corporal the basis on which this exception rests being that the court will not stultify itself by embarking on a trial in which, if a verdict of guilty is returned, no effective order by way of sentence can be made. In our judgment these contentions of the Crown are substantially sound, and the existence of these exceptions, and it may be that there are others, is by no means inconsistent with the general rule".

13. Stable J. then went on to consider several authorities which were cited at the bar. After quoting the views of Lord Caldecote C. J. and Lord Macnaghten J. in 1944 1 K. B. 146, which I have quoted above, the final decision was given in the following words at page 559:

".....With both the decision in that case and the reasoning on which it rests, we agree."

In our judgment, both on principle and in accordance with the balance of authority, the present indictment was properly laid against the company, and the learned commissioner rightly refused to quash. We are not deciding that in every, case where an agent of a limited company acting in its business commits a crime the company is automatically to be held criminally responsible. Our decision only goes to the invalidity of the indictment on the face of it, an objection which is taken before any evidence is led and irrespective of the facts of the particular case. Where in any particular case there is evidence to go to a jury that the criminal act of an agent, including his state of mind, intention, knowledge or belief is the act of the company, and, in cases where the presiding judge so rules, whether the jury are satisfied that it has been proved, must depend on the nature of the charge, the relative position of the officer or agent, and other relevant facts and circumstances of the case. It was because we were satisfied

on the hearing of this appeal that the facts proved were amply sufficient to justify a finding that the acts of the managing director were the acts of the company, and the fraud of that person was the fraud of the company, that we upheld the conviction against the company, and, indeed, on the appeal to this court no argument was advanced that the facts proved would not warrant a conviction of the company assuming that the conviction of the managing director was upheld and that the indictment was good in law."

14. In this connection, the remarks in Halsbury's Laws of England in paragraph 521 on page 281 and 282 of Tenth Volume, Third Edition (Simonds Edition) 1955 were referred to in the Court of the Extra Additional Sessions Judge, but he does not seem to have considered them. Those remarks are as follows:

"A corporation aggregate cannot be guilty of any offences (such as bigamy or perjury) which by their very nature can only be committed by natural persons; nor can a corporation aggregate be found guilty of a crime where the only punishment is death or imprisonment.

Apart from these exceptions, a corporation may be guilty both of statutory and of common law offences, even though the latter involve mens rea: and in the construction of any enactments relating to an offence punishable on indictment or on summary conviction, the expression "person" includes a body corporate unless the contrary intention appears. A corporation can only commit crime by or through its agents, some of whom must themselves be responsible for the crime. It is a question of fact in each particular case whether the criminal act of its agent is the act of the corporation, and whether the agent's state of mind, intention, knowledge or belief can be imputed to the corporation. It depends on the nature of the charge, the position of the officer or agent relative to the corporation and the other relevant facts and circumstances of the case".

Similar views on this point are expressed in Russell on Crime, Eleventh Edition, Volume I, 1958.

15. A perusal of the decision in 1944 1 KB 551 would show how the law on the point has been undergoing a change in England. Section 2 of the Interpretation Act, 1889 (52 and 53 Vict. c. 63) was in the following terms:

"in the construction of every enactment relating to an offence, punishable on indictment, the expression person shall, unless a contrary intention appears, include a body corporate."

Despite that provision which made bodies corporate, like any other person or individual, liable for an indictment, corporations were ordinarily not indicted for any serious offences or offences involving mens rea. Corporations were prosecuted only in cases involving breaches of bye-laws or rules or entailing minor sentences of fines. Later on, they were indicted under statutes which made corporations vicariously liable for the acts committed by their agents or directors. That was when corporation were far and few between. The society,

however, was developing and the ideas of corporate activities were taking root. In order to cope up with the changing circumstances new laws permitting the formation of corporations of different kinds were passed. Knowing that the law will not pursue a corporate body for the criminal acts of its servants or directors, unscrupulous persons began to prey upon individuals in the society, in a manner which was not intended by the legislations that had given birth to such corporate bodies. That necessitated a change in the outlook towards corporate bodies, so far as their criminal liability was concerned. On page 104 in Volume I of Russell on Crime, 1958 Edition, the reason for the change in our attitude towards corporate bodies has been lucidly stated in the following Words:

"It would seem that the common law rule affords a good guide as to the intention of a statute. The modern tendency of the courts however has been towards widening the scope within which criminal proceedings can be brought against institutions which have become so prominent a feature of every day affairs, and the point is being reached where what is called for is a comprehensive statement of principles formulated to meet the needs of modern life in granting the fullest possible protection of criminal law to persons exposed to the action of the many powerful associations which surround them. At common law, corporations are now indictable for nuisance and breaches of public duty, whether existing by the common law or created by statute, and whether the breach of duty is by misfeasance or non-feasance. Corporations are often indicted for non-repair or illegal obstruction of highways, and it would seem that a corporation aggregate is indictable for defamatory libel".

Thereafter the author has mentioned recent decisions which have widened the scope of criminal proceedings against the corporate bodies culminating in the latest decision in (1944 1 K. B. 551 cited supra.

16. In our country also, corporate bodies were initially indictable for minor breaches of rules or byelaws or for offences involving petty fines only. In recent times, the ideas of corporate activities have taken root and several legislations permitting the formation of corporate bodies have been passed. Numerous corporate bodies have come into existence. These corporate bodies include various public and private limited companies also. These corporate bodies necessarily act through the human agency of their directors or officers and authorised agents. They reap all the advantages flowing from the acts of their directors, servants or authorized agents and there seems to be no reason to exempt them from liability for crimes committed by their agents or servants while purporting to act for or on behalf of the corporate bodies. The ordinary citizen is now very much exposed to the activities of persons acting, in the name of corporate bodies, to his detriment. Even in our country, now in the words of Russell quoted above,

"the point is being reached where what is called for is a comprehensive statement of principles formulated to meet the needs of modern life in granting the fullest possible protection of criminal law to persons exposed to the action of

the many powerful associations which surround them".

17. In my view, therefore, "the scope within which criminal proceedings can be brought against institutions which has been become so prominent a feature of everyday affairs" ought to be widened so as to make corporate bodies indictable for offences flowing from the acts or omissions of their human agents. Ordinarily, a corporate body like a company acts through its managing director or board of directors or authorized agents or servants and the criminal act or omission of an agent including his state of mind, intention, knowledge or belief ought to be treated as the act or omission including the state of mind, intention, knowledge or belief of the company. I do not mean or intend to suggest that in every case where an agent of a limited company acting in its business commits a crime, the company is automatically to be held criminally responsible. As adumbrated, a company cannot be indictable for offences like bigamy, perjury, rape etc which can only be committed by a human individual or for offences punishable with imprisonment or corporal punishment. Barring these exceptions, a corporate body ought to be indictable for criminal acts or omissions of its directors, or authorized agents or servants, whether they involve mens rea or not, provided they have acted or have purported to act under authority of the corporate body or in pursuance of the aims or objects of the corporate body. The question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of the offence disclosed by the allegations in the complaint or in the charge-sheet, the relative position of the officer or agent vis-a-vis the corporate body and the other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act. Each case will have necessarily to depend on its own facts which will have to be considered by the Magistrate or Judge before deciding whether to proceed against a corporate body or not.

18. I would next consider the claim of Mr. Hardas that the Magistrate should be directed to proceed against the company with respect to the charges of criminal breach of trust and criminal misappropriation under Sections 406 and 403 of the Indian Penal Code in the alternative. The fact that the Magistrate did not take cognizance under those sections virtually amounted to a discharge of the company thereunder. The complainant had not challenged that implied discharge by filing a revision against the order of the Magistrate omitting to take cognizance of these offences. No reason was shown by Mr. Hardas why or how that question could now be agitated for the first time while hearing this argument.

19. Even if the argument could be considered, the merits of the allegations in the complaint would not warrant any direction to the Magistrate to proceed against the company u/s 406 or 403, Indian Penal Code in the alternative. The complaint did not allege that the managing director or board of directors had made the dishonest representation or had received the monies or had authorised the shareholder Manohar to make such a representation or to receive the amount.

On the contrary, the allegations in the complaint only showed that the alleged dishonest representation and the alleged receipt of the amount was by a mere shareholder who was only a stranger so far as the administration of the company was concerned. There was no warrant in the allegations in the complaint for the claim of Mr. Hardas that Manohar was acting on the authority given to him by the managing director. There was also nothing to show that the board of directors had passed any resolution authorising Manohar to make such a dishonest representation or to receive the amount. The allegations in the complaint clearly indicated that the shareholder Manohar purported to act on his own, but in the name of the company. Under these circumstances, the alleged false or dishonest representation or the alleged dishonest misappropriation by Manohar could not be attributed to company even though the company may have reaped the _ benefit of the use of the diesel engine fitted to its other bus. Consequently, it would not be possible to uphold the contention of Mr. Hardas that the Magistrate should be directed to proceed against the company with the alternative charges u/s 406 or 403 of the Indian Penal Code. I am, however, making it clear that the above expressions of opinion on facts are for the purposes of this order with regard to the Company only and the trial Magistrate will be at liberty to arrive at his own conclusions or findings of facts as may be found on the evidence adduced before him.

20. In the result, the reference is accepted. The charge framed against the accused No. 1 Messrs. Syndicate Transport Company (Private) Limited is quashed. The record be sent back to the Magistrate for proceeding with the trial in accordance with law.

21. Reference accepted.