

(2009) 09 GAU CK 0027
In the Gauhati High Court
Case No : Criminal Petition No. 274 of 2008

The Mahindra and Mahindra Financial Services Ltd. and
Another

APPELLANT

Vs

Delta Classic Pvt. Ltd.

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Companies Act, 1956 — Section 291, 292, 293
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482, 561A
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 144(1)
Penal Code, 1860 (IPC) — Section 34, 409, 420

Citation : (2010) CriLJ 4591 : (2009) 4 GLT 741

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : M. Hazarika, M. Sharma and P. Upadhyay, for the Appellant; U. Bhuyan, B. Chakraborty, I. Ahmed and A. Hazarika, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—This is an application, made u/s 482, Code of Criminal Procedure seeking to get set aside the Order dated 7-8-2008, passed by a learned Judicial Magistrate, Guwahati, in CR Case No. 7889/2007, whereby the learned Judicial Magistrate, having taken cognizance of offences under Sections 420 and 409 read with Section 34, I.P.C. directed issuance of process to, amongst others, the present accused-Petitioner, the Petitioner No. 1 being the accused No. 1 and the Petitioner No. 2 being accused No. 2 in the complaint case aforementioned.

2. I have heard Ms. M. Hazarika, learned Senior counsel, for the accused-Petitioner, and Mr. U. Bhuyan, learned Counsel, appearing on behalf of the complainant-opposite party.

3. Before entering into the contents of the complaint and determining the question as to whether the complaint discloses commission of any offence, it is imperative to point out, at the very outset, that the accused-Petitioner No. 1,

namely, Mahindra and Mahindra Financial Service Ltd., (hereinafter referred to as "the accused company") is, admittedly, a company registered under the Companies Act, 1956, which finances purchase of vehicles, and the accused-Petitioner No. 2 is its Managing Director. As far as the remaining accused persons, against whom processes have been directed to be issued, are concerned, they are not Petitioners in the present proceeding.

4. The complainant's case may, in brief, be described thus: In the month of April, 2003, agents and representatives of the accused company approached the complainant with various schemes of financing, as regards purchase of vehicles, on the basis of hire-purchase agreement. Induced by accused Nos. 2 and 3, namely, Managing Director and Branch Manager of the accused company respectively, the complainant entered into a hire-purchase agreement with the accused company, on 20-6-2003, for purchase of one Indigo LX Black (Diesel) vehicle at a total cost of Rs. 5,19,580/-. As agreement was accordingly executed on 20-6-2003. Out of the said total cost of Rs. 5,19,580/-, an amount of Rs. 2,06,083/- was the own investment of the complainant and the balance amount of Rs. 3,14,000/- was in the form of loan from the accused company. In terms of the agreement, the entire loan was to be repaid within a period of 36 months, the total repayable amount, including interest, being Rs. 4,72,000/-. In the month of January, 2006, accused No. 3, namely, Branch Manager of the accused company, asked the complainant to execute a fresh agreement for a further period of three years in respect of the balance amount payable by the complainant. The complainant accordingly entered into a fresh agreement on 23-1-2006. By the time the agreement, dated 23-1-2006, was executed, an amount of Rs. 3,23,200/- had already been repaid by the complainant. However, on 24-3-2006, the accused No. 4, who is an agent of the accused company, seized the vehicle, on the street, at the time, when the minor daughter of the complainant, along with his elder brother, was travelling in the said vehicle. When the complainant went to bring the vehicle, accused No. 4 replied that he was acting under the instructions of the accused No. 2, namely, Managing Director of the accused company. The complainant was further asked by accused No. 4 to pay Rs. 1,00,000/- within five days to be able to take back the vehicle. Having been left with no alternative, the complainant, on 28-3-2006, paid Rs. 1,00,000/-. However, the complainant was asked to wait for some more time on the ground that certain formalities were required to be completed. Eventually, the complainant was served with a letter, dated 8-6-2006, issued by the Branch Manager of the accused company, whereby the complainant was asked to pay the balance dues within a period of three days and take delivery of the vehicle or else, the vehicle would be disposed of. When the complainant went to bring the vehicle, he came to learn that the accused had already sold the vehicle by holding auction. The accused have, thus, resorted to "cheating" for making wrongful gain and, in the process, caused wrongful loss to the complainant inasmuch as they induced the complainant to enter into a fresh agreement, but they auctioned the vehicle.

5. Appearing on behalf of the accused-Petitioners, it has been submitted by Ms. Hazarika, learned senior counsel, that the complaint, when read as a whole, does not disclose commission of any offence by any of the accused named in the complaint inasmuch as the complainant had voluntarily entered into an agreement on 20-6-2003 and obtained a sum of Rs. 3,14,000/- as loan, which was payable with interest within a period of three years. It is pointed out by Ms. Hazarika that the complainant took delivery of the vehicle on 23-6-2003 and the sale certificate as well as Registration Certificate, issued by the Motor Vehicular Department, clearly indicate that the vehicle stood hypothecated to the accused company. It is also pointed out by Ms. Hazarika that the complainant became a habitual defaulter inasmuch as several cheques, issued by the complainant, were dishonoured by the bank due to insufficiency of fund and despite several visits made to the complainant by the representatives of the accused company, the habitual default of the complainant towards repayment of his loan continued. Having been left with no other alternative and acting upon the terms of the agreement of loan, the accused company, according to Ms. Hazarika, took possession of the vehicle on 23-4-2006. On possession of the vehicle having been taken by the accused company, the complainant, according to Ms. Hazarika, made some part payment and assured the accused company to repay the remaining amount by 30-4-2006, but payment was not made and the vehicle was surrendered to the accused company. It is further pointed out by Ms. Hazarika that a letter was issued by the accused company, on 8-6-2006, to the complainant requesting the latter to take back the vehicle by paying entire outstanding dues within a period of three days and the complainant was also informed that in the event of failure of the complainant to pay the outstanding dues within the period aforementioned, the vehicle would be disposed of. This letter, according to Ms. Hazarika, was duly received by the complainant, but the complainant did not make payment of the outstanding dues. The accused company, then, contends Ms. Hazarika, issued a notice, on 27-6-2006, to the complainant directing the complainant to pay the outstanding dues within five days and informing the complainant that on the failure of the complainant to repay the entire outstanding dues within five days, the vehicle would be disposed of to realize the outstanding dues, but the complainant avoided receipt of the said notice. Hence, instead of making repayment and obtaining the vehicle, the complainant, after the vehicle had already stood sold by auction, lodged the present complaint making false and frivolous allegations.

6. It is also contended by Ms. Hazarika that the dispute, if any, between the parties concerned is a dispute of civil nature and the action taken, on the basis of the complaint, in question, is abuse of the process of law. Hence, the complaint may be quashed so far as the accused company (i.e. the Petitioner No. 1) and its Managing Director (i.e. the Petitioner No. 2) are concerned.

7. Controverting the submissions made on behalf of the accused Petitioners, Mr. Bhuyan, learned Counsel, has submitted that the facts stated in the complaint, if considered in their correct perspective, clearly show that the accused persons,

named in the complaint, had committed offences under Sections 420 and 409 read with Section 34, IPC. This apart, the accused Petitioner No. 2, according to Mr. Bhuyan, being Managing Director of the accused company, is liable for prosecution for the offences aforementioned inasmuch as the accused company can be clearly seen to have, in the facts and attending circumstances of the present case, committed the offences aforementioned. In support of his submissions. Mr. Bhuyan has placed reliance on S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another,

8. Before entering into the merit of this criminal petition, it is necessary to point out that the law with regard to quashing of criminal complaint or FIR is no longer *res integra*. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of R.P. Kapur Vs. The State of Punjab, wherein the question, which arose for consideration was whether a first information report can be quashed u/s 561-A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it, that no case for quashing of the proceeding was made out; Gajendragadkar, J. speaking for the Court, however, observed that though, ordinary, criminal proceedings, instituted against an accused, must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the FIR or the complaint in order to decide whether the offence alleged is disclosed or not. In such cases, said the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a mere look into the contents of a complaint or FIR shows that the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint or the FIR, as the case may be, shall be quashed.

9. As a corollary to what has been discussed above, it is also clear that if the contents of a complaint or an FIR constitute offence, such a complaint or FIR cannot be quashed except where the complaint or the FIR is, otherwise also, not sustainable in law.

10. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Apex Court, in the leading case of State of Haryana and others Vs. Ch. Bhajan Lal and others, observed as follows:

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 of the inherent powers u/s 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 of rigid formulae and to give an exhaustive list of myriad kinds of cases, wherein such power should be exercised:-

(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.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

(4) Where the allegation in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned act (under which criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(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 of the accused and with a view to spite him due to private and personal private grudge.

(Emphasis is added)

11. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court gave a note of caution on the powers of quashing of criminal proceeding in the following words:

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases: that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or

inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

(Emphasis is added)

12. It is clear from a close reading of the principles laid down in the case of R.P. Kapoor (supra) and Bhajanlal (supra) that broadly speaking, quashing of a First Information Report or a complaint is possible (a) when the allegations made in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and/or make out a case against the accused; and (c) when the allegations made in the FIR or complaint are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

13. Having clarified the position of law with regard to the quashing of complaint, what, now, needs to be pointed is the difference between the offence of "cheating" and the offence of "criminal breach of trust", for, cognizance, in the present case, has been taken of the offences punishable under Sections 420 and 409, IPC.

14. In "criminal breach of trust", an accused comes into possession of a property or acquires dominion over a property honestly and bona fide, but he develops dishonest intention subsequent to the taking possession of, or subsequent to having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do.

15. Thus, in "criminal breach of trust", the intention of the accused cannot be dishonest or mala fide at the time, when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over, the property, the accused develops dishonest intention and actuated by such mens rea, he converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do.

16. Contrary to what happens in "criminal breach of trust", the intention of the accused, in a case of "cheating", is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the

property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In short, thus, while in "criminal breach of trust". the accused comes into possession of the property without dishonest intention and develops dishonest intention subsequent to his coming into possession of the property, the offence of "cheating" is one, wherein the accused has dishonest intention from the very commencement of the transaction.

17. In the light of the distinction, which exist between an offence of "criminal breach of trust" and an offence of "cheating", it becomes clear that if a person is accused of having committed an offence of "criminal breach of trust", he cannot, on the same facts and in the same breath, be accused to have committed the offence of "cheating" too. In the present case, the learned Magistrate has taken cognizance of offences under both penal provisions, namely, Section 420 and 409, IPC. Having taken cognizance of both the offences aforementioned, the learned Magistrate has accordingly directed issuance of processes. This reflects non-application of mind inasmuch as the accused must know as to whether he is summoned to defend himself against the accusation of "criminal breach of trust" or "cheating", for, he cannot be, in one and the same breath, be accused of having committed both the said offences.

18. Coupled with the discussions held above, though prosecution of a corporate body, in the light of the law, as discussed in Criminal Petition No. 250/2007 (R.S. Sodhi v. Partha Pratim Saikia), decided on 3-9-2009, may be possible for offence of "criminal breach of trust" and/or for offence of "cheating", the fact remains that a corporate body cannot be prosecuted for the said offences unless mens rea is shown to exist in such human mind, which has the control of the company and whose will is the will of the company.

19. In the present case, the complainant is completely silent, he makes no accusation and identifies no such natural person, who had criminal intent and whose criminal intent is attributable to the accused company. In this regard, it has been contended by Mr. Bhuyan that since the accused No. 2 is the Managing Director of the accused company, accused No. 2 is liable for prosecution for offences of "cheating" and "criminal breach of trust" which the company is alleged to have committed. In view of the fact that the complainant has not made any accusation, in the complaint, to show that the present accused company can be prosecuted for the offence of "cheating" or "criminal breach of Trust", it logically follows that when the company cannot be held responsible, its Managing Director cannot be made vicariously liable for the offence of "cheating" or "criminal breach of trust".

20. As far as the case of SMS Pharmaceuticals Ltd. (supra) relied upon by Mr. Bhuyan, is concerned, it is a case under the Negotiable Instruments Act, which makes specific provisions for vicarious criminal liability of a person in charge of, and responsible to, a company for the conduct of the business of the company.

No such provision has been made under the Indian Penal Code. Be that as it may, and as already pointed out above, referring to a three-Judge Bench decision, in *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, Mr. U. Bhuyan, learned Counsel, appearing for the complainant-opposite party, has submitted that the Petitioner No. 2, in this Criminal Petition, is the Managing Director of the accused company and, being Managing Director of the Company, he must be held responsible for the offence(s), which his company has committed.

21. Before entering into the discussion of the law laid down in *SMS Pharmaceuticals Ltd. (supra)* it needs to be noted that the decision, in *SMS Pharmaceuticals Ltd. (supra)*, was rendered on a reference being made for determination of the following questions:

(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.

(b) whether a director of a company would be deemed to be in charge of and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Director or Joint Managing Director, who, admittedly, would be in charge of the company and responsible to the company for conduct of its business, could be proceeded against

22. As the three-Judge Bench, in *SMS Pharmaceuticals Ltd. (supra)*, has answered the question (c) in the affirmative, Mr. Bhuyan, learned Counsel, contends that even in the present case, wherein the accused company is alleged to have committed offences under Sections 420 and 409. IPC, the Petitioner No. 2. being the Managing Director of the said company, shall be held liable.

23. While considering the case of *SMS Pharmaceuticals Ltd. (supra)*, it may be noted that no one can be held criminally liable for an act of another unless this general rule is deviated from by making statutory provision(s). In other words, the normal rule, as observed, in *SMS Pharmaceuticals Ltd. (supra)*, is that an accused cannot be made vicariously liable unless an exception, in this regard, is made specifically by statutes extending liability to persons, apart from those, who can commit the offence. This is what has been precisely pointed out, even in *S.K. Alagh Vs. State of U.P. and Others*, The decision, in *SMS Pharmaceuticals Ltd. (supra)*, therefore, clarifies that unless there are statutory provisions making a person vicariously liable for an act of another, no such vicarious liability can be fastened on the person, other than the one, who has committed the acts of omission or commission, which constitute an offence.

24. Having clarified the above position of law, the three-Judge Bench, in SMS Pharmaceuticals Ltd. (supra), interpreted the provisions, contained in the Negotiable Instruments Act, 1881 (in short, the "N.I. Act"), particularly, Section 141 thereof, to determine whether a managing director of a company can be held liable u/s 141 if a cheque is dishonoured by the banker of the company for non-sufficiency of fund. It has been, once again, clarified, in SMS Pharmaceuticals Ltd. (supra), that a company, being a juridical person, cannot but act through others. Therefore, under the N.I. Act, the officers of a company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the act, which result in criminal action being taken against the company. The N.I. Act. points out the Apex Court, in SMS Pharmaceuticals Ltd. (supra), makes every person, who, at the relevant time of commission of the offence, was in-charge of, and was responsible to, the company for the conduct of the business of the company, liable for the offence along with the company. The proviso to the Sub-section (1) of Section 141 contains an escape route for persons, who are, otherwise, liable if such a person can prove that the offence was committed without his knowledge or that the offence was committed despite the fact that he had exercised all due diligence to prevent commission of the offence. The relevant observations, made at paragraph 5, in this regard, read as under:

5.... The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence u/s 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Since the provision creates criminal liability the conditions have to be strictly complied with. The conditions are intended to ensure that a person, who is sought to be made vicariously liable for an offence of which the principal accused is the company, had a role to play in relation to the incrimination act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a company, who are responsible for acts done in the name of the company, are sought to be made personally liable for acts, which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The proviso to the Sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.

25. In SMS Pharmaceuticals Ltd. (supra), it has been clarified that the officers, responsible for conducting the affairs of a company, are, generally, referred to as

directors, managers, secretaries, managing director, etc. Dealing with the role of directors, the Court has observed, in paragraph 10 of its judgment, as under:

10. There is a whole chapter in the Companies Act on directors, which is Chapter II, Section 291 to 293 refer to powers of Board of Directors. A perusal of these provisions shows that what a Board of Directors is empowered to do in relation to a particular company depends upon the role and functions assigned to Directors as per the Memorandum and Articles of Association of the company. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the Company where usually they decide policy matters and guide the course of business of a company. It may be that the Board of Directors may appoint sub-committee consisting of one or two directors out of the Board of the company who may be made responsible for day-to-day functioning of the company. There are matters which form part of resolutions of Board of Directors of the company. Nothing is oral. What emerges from this is that the role of a director in a company is question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in-charge of its every day affair. We have discussed about the possession of a director in a company in order to illustrate the point that there is no magic as such in a particular work, be it Director, Manager or Secretary. It shall depend upon respective roles assigned to the officers in a company. A company may have Managers or Secretaries for different departments, which means, it may have more than one Manager or Secretary. These officers may also be authorized to issue cheques under their signatures with respect to affairs of their respective department. Will it be possible to prosecute a secretary of department-B regarding a cheque issued by the Secretary of department-A which is dishonoured ? The Secretary of department-B may not be knowing anything about issuance of the cheque in question. Therefore, mere use of a particular designation of an officer without more, may not be enough by way of averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in-charge of, and responsible to, the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements ? Not every person connected with a company is made liable u/s 141. Liability is cast on persons, who may have something to do with the transaction complained of. A person, who is in-charge of and responsible for conduct of business of a company, would naturally know why the cheque, in question, was issued and why it got dishonoured.

26. From the observations made above, it is clear that simply because of the fact that a person has been functioning as a director, manager or secretary of a company, he cannot be made vicariously liable for the act done by the company, for, it will depend upon the role, which such a man is assigned by the company.

This apart, the vicarious liability, which is sought to be extended to a company's officers, will not arise until the time the statute provides therefor. I must point out that the concept of vicarious liability, in respect of offences punishable under Sections 406 and/or 420, IPC (which we are concerned with) has not even been conceived of.

27. For academic interest, it may be pointed out that the three-Judge Bench, in SMS Pharmaceuticals Ltd. (supra), has held that the managing director or joint-managing director, who is, admittedly, in charge of, and responsible to, the company for the conduct of the business of the company, would, by virtue of his office, be treated as the person, who is in charge of, and responsible to, the company for the conduct of the business of the company. In such circumstances, his prosecution, u/s 141, N. I. Act, is possible unless they can be shown that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. The Indian Penal Code does not, however, make any such provisions as regards vicarious liability of the functionaries of a corporate body; hence, the decision, rendered in SMS Pharmaceuticals Ltd. (supra), is wholly inapplicable to the facts of the present case.

28. Be that as it may, what, now, needs to be pointed out is that in terms of the agreement, in question, executed by the parties concerned, the accused-company was, admittedly, authorised to take possession of the vehicle if there was default in making repayment of the loan amount. It is also not in dispute that the accused company was also authorized, in terms of the agreement, in question, to dispose of the vehicle for realization of its dues. In the light of these admitted facts, when the contents of the complaint, in question, are scrutinized, it clearly transpires that even according to the complainant, complete repayment of loan, in terms of the agreement, had not taken place. In fact, there is not even a whisper in the complaint that repayment had been made by the complainant consistent with the terms of the loan. Hence, the fact that there was default on the part of the complainant in honouring the terms of the agreement, in question, is not in dispute. In such circumstances, the accused Petitioners cannot be said to have cheated the complainant inasmuch as the agreement, whereunder the complainant had received the money, cannot be said to be an illegal or fraudulent agreement and, when, on the failure of the complainant to repay dues in consonance with the terms of the agreement of loan, the vehicle was taken possession of by the accused-company, the accused-company cannot be said to have received possession of the vehicle by deception or fraudulent means. By no means, therefore, the accused company can be said to have committed offence of "cheating". So far as the offence of "criminal breach of trust" is concerned, it is imperative to note that the complainant, nowhere, claims that he either entrusted the vehicle or any money with the accused company or its authorized agents or representatives inasmuch as the vehicle was, admittedly, taken possession of by the accused company and as far as the payments of money were concerned, the same were made by the complainant

against his own outstanding dues. The complainant was, even according to the complaint, a defaulter and, in such circumstances, the mere fact that the accused-Petitioners had taken possession of the vehicle and disposed of the same, in terms of the loan agreement, cannot be stretched to hold, even tentatively, that the accused-company has committed offence of "criminal breach of trust".

29. In the result and for the reasons discussed above, the order, dated 7-8-2008, cannot, to the extent that it directs issuance of processes against the two accused-Petitioners, be sustained and the same shall accordingly stand set aside and quashed.

Order accordingly.