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Crl.R.C.Nos.872 & 956 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2026

PRONOUNCED ON : 19.01.2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.Nos.872 & 956 of 2023
and
Crl.MP.Nos.7771 & 6805 of 2023

Crl.RC No.872 of 2023

R.Kalaivani

... Petitioner/A3

Vs.

Deputy Commissioner of Income Tax,
(Benami Prohibition),
Initiating Officer, Chennai.

... Respondent/Complainant

Crl.R.C.No.956 of 2023

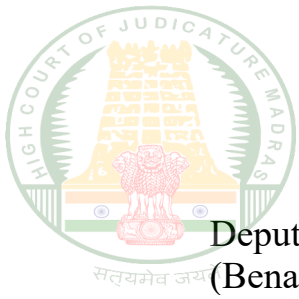
1. M/s.V.P.C. & Co.,
No.3/11, Natesan Colony,
Dadubaikuttai, Salem-636 015,
Rep. by its Partners
-R.Ramesh & R.Kalaivani

... Petitioner/A1

2.R.Ramesh

... Petitioner/A2

Vs.



Crl.R.C.Nos.872 & 956 of 2023

Deputy Commissioner of Income Tax,
(Benami Prohibition),
Initiating Officer, Chennai – 600 034

... Respondent/Complainant

COMMON PRAYER: Criminal Revision Petitions filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1973, to call for the records in Crl.MP.No.5042/2022 in C.C.No.20/2021 on the file of the learned IX Additional Special Judge, for CBI Cases, Chennai and set aside the Order dated 20.03.2023 passed by the learned IX Additional Special Judge, for CBI Cases, Chennai in Crl.MP.No.5042/2022 in C.C.No.20/2021 and consequently discharge the petitioners from the above case in C.C.No.20 of 2021.

For Petitioner
in Crl.RC.No.872 of 2023

: Mr.R.John Sathyan, Sr. Counsel
for Mr.S.Manuraj

For Petitioner
in Crl.RC.No.956 of 2023

: Mr.S.Manuraj

For Respondent
in both cases

: Ms.M.Sheela
Spl. Public Prosecutor (Income Tax)

COMMON ORDER

These two Criminal Revision Cases have been filed by the accused facing prosecution in C.C.No.20 of 2021 filed under Section 53 of the Prohibition of Benami Property Transactions Act, 1988 (as amended by Act 43 of 2016) [hereinafter referred to as '*the PBPT Act*']. Crl.R.C.No.872 of



2023 has been filed by Accused No.3 and Crl.R.C.No.956 of 2023 has been filed by Accused Nos.1 and 2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

2. (i) It is the case of the respondent that post-demonetisation in the year 2017 there were cash deposits to the tune of Rs.68.71 Crores made into the bank of the Partnership Firm viz., first accused, in which the second accused and the third accused are the Partners; that the accused did not have the requisite sources to make such a huge deposits; that the accused could not produce the source of making such huge deposits; that the income declared during the previous years was very less; that the sudden increase in profits declared by the first accused is improbable and does not commensurate with the business and financial standing of first accused and hence, first accused along with second accused, who is its Managing Partner and third accused, who is the Director, are jointly liable for the aforesaid offence.

(ii) The petitioners sought for discharge on various grounds before the trial Court. The learned Judge dismissed the discharge petitions on the



ground that the Court at the stage of charge framing cannot shift and weigh the evidence and that the respondent has made out a prima facie case to proceed further against the petitioners. Being aggrieved, the petitioners are before this Court.

3. Mr.R.John Sathyan, the learned senior counsel appearing for the third accused, the petitioner in Crl.RC.No.872 of 2023 would submit that the petitioner was only a dormant partner in the partnership firm/first accused; that all the affairs was taken care of only by her husband/second accused; that the petitioner had sent a reply to the show cause notice, although a separate show cause notice was not sent to the petitioner; that in the reply, the petitioner had stated that she is only a dormant partner; that even thereafter, the respondent has not chosen to collect any evidence to establish her role in the affairs of the firm; and that in any case, the respondent has not even made the requisite averments in the complaint to invoke the provisions of Section 62 of the PBPT Act, which provides for vicarious liability of officers of the firm/company if the offence is committed by the firm/company



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4.(i) Mr.S.Manuraj, the learned counsel appearing for the first and second accused/petitioners in Crl.RC.No.956 of 2023 would submit that the 1st petitioner/first accused viz., the firm had sufficient means to make the deposit; that merely because in the previous years the profit shown is less, the respondent cannot assume that the petitioners could not have earned the money deposited in the bank account; that the sum of Rs.68.71 Crores is the turn over of the first accused firm from cash sales and cash advances which is accumulated for a period of seven months before the period of demonetisation and was deposited after the commencement of the scheme of demonetisation; that the alleged beneficial owner has not been traced by the respondent and therefore, the learned Judge ought to have discharged the petitioners.

(ii) As regards the role of the 2nd petitioner/second accused, the learned counsel would submit that the respondent has not made any averments in the impugned complaint stating that the Managing Partner/second accused was in-charge of and responsible for the conduct of the business of the first accused firm and in the absence of averments, the impugned prosecution cannot be sustained.



WEB COPY (iii) The learned counsel relied upon the judgments of the Hon'ble Supreme Court in *Sanjay Dutt & Ors. vs. The State of Haryana & Anr.*, [Crl.A.No.11 of 2025 @ SLP(Crl.) No.7464/2024 -decided on 02.01.2025], reported in **2025 INSC 34** and that of this Court in *Umanga Vohra vs. The State of Tamil Nadu*, reported in **2025-1-LW(Crl) 848**.

5.(i) Ms.M.Sheela, learned Special Public Prosecutor (Income Tax cases) per contra submitted that the turn over of the firm for the assessment year 2015-16 was Rs.2,31,449/-; for the year 2016-17 was Rs.1,70,203/-; and for the year 2017-18, it was raised to Rs.24,36,212/- and such being the financial status of the firm in the previous years, the claim of the firm that they had made a sale of Rs.68 Crores, is a concocted story; that the documents filed by the respondent would show that the firm had an over due of Rs.4,93,77,687.51 as on 05.11.2016 and it is therefore impossible to believe that an amount of Rs.68.17 Crores was the turn over of the firm and was deposited post-demonetisation; and that the petitioners are therefore bound to explain as to why they had kept an outstanding balance of Rs.4.93 Crores, when they had cash of Rs.68 Crores.



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(ii) The learned Special Public Prosecutor also submitted that the respondent had examined several witnesses to establish that the petitioners had filed bogus bills and the registration numbers of the vehicles shown in the bills are that of two-wheelers and not of lorries or trucks as stated by the petitioners; and that in the light of such evidence, the learned Judge was justified in dismissing the discharge petitions.

(iii) The learned Special Public Prosecutor further submitted that admittedly the second accused is the Managing Partner and all the business activities of the firm was only carried out by him and the third accused, being his wife, actively assisted him in the business transactions; that her claim that she was not in-charge and responsible for the conduct of the business of the firm cannot be adjudicated in a discharge petition; and that unlike the company where the Directors can claim ignorance, the first accused in this case is a partnership firm with only two partners and therefore prayed that the revisions may be dismissed. The respondent has filed a common counter in both cases.



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6. As stated earlier, it is the case of the respondent that a sum of Rs.68.71 Crores was credited to the account of the first accused firm post-demonetisation. It is seen from the counter and the other records that the income of the first accused firm was less in the previous Academic Years. That apart the respondent has alleged that the petitioners have filed bogus bills and sales bills to falsely claim the sale of the products that they were dealing with. In such circumstances, this Court is of the view that the petitioners' defence that they had enough income and the deposits made by them were genuine cannot be adjudicated at this stage. In fact, under Section 2(9)(D) of the PBPT Act, '**Benami Transactions**' include the transaction in respect of the property where the person providing the consideration is not traceable or is fictitious. Therefore, the fact that the beneficial owner has not been identified would not be a ground for discharge.

7. As regards the submission with regard to the second accused that there is no averment in the impugned complaint stating that the 2nd accused was in-charge of and responsible to the firm for the conduct of its business, it is seen that admittedly, the 2nd accused is the Managing Partner of the



Firm. The learned counsel has relied upon the judgement of the Hon'ble Supreme Court in *Sanjay Dutt's case* [cited supra]. In that case, the Managing Director was prosecuted for the offence under the Punjab Land Preservation Act, 1900. The allegation in the said case was that the company destroyed a few trees belonging to the Forest Department using a JCB machine. In the facts of that case, the Hon'ble Supreme Court had held that there is no evidence to suggest that the Managing Director was aware of the acts committed by its employees. In fact, the company in that case was not made an accused. In such circumstances, the Hon'ble Supreme Court held that the Managing Director cannot be made liable for acts committed by its employees vicariously, especially since the company itself was not made an accused. Therefore, the said judgment relied upon by the learned counsel for the second accused would be of no avail to him.

8. Similarly, the judgment of this Court in *Umanga Vohra's case* [cited supra], relied upon by the learned counsel for the petitioners/Accused 1 and 2, also would not be applicable to this case, as that was a prosecution under the Drugs and Cosmetics Act wherein the officer had been specifically named in the licence and instead of prosecuting the said person,



the Managing Director was sought to be prosecuted in the absence of any allegation that he was aware that the drugs so manufactured were not of standard quality. Therefore, that case also would not be applicable to the facts and circumstances of this case.

9. In this case, the first accused is the partnership firm and the second accused is its Managing Partner without whose consent the said cash deposits would not have been made. Even according to the third accused, the second accused was taking care of the affairs of the firm. He had also signed the Balance Sheet and other relevant documents, which indicates his knowledge and consent prima facie. Therefore, this Court is of the view that the order of the learned Magistrate in refusing to discharge the second accused also cannot be faulted.

10. As regards the third accused [petitioner in Crl.R.C.No.872 of 2023] who happens to be the wife of the second accused, it is the case of the respondent that she was a partner and hence, liable. The petitioner/third accused though not issued a separate show cause notice had replied stating that she was only a dormant partner and that the affairs of the partnership



firm were taken care of by her husband/second accused. In the Sanction Order relied upon by the respondent dated 21.10.2019, a reference is made to the reply sent by the petitioner. However, there is no reference to the exact role played by the petitioner and as to how she was in-charge and responsible to the firm for the conduct of its business.

11. In the impugned complaint, the respondent have not made the requisite averments to hold her vicariously liable for the offences committed by the firm. The petitioner cannot be equated with her husband, who was the Managing Partner. Therefore, the respondent should have specifically averred that the petitioner was in-charge and responsible to the firm for the conduct of its business.

12. In *Dilip Hariramani vs. Bank of Baroda*, reported in **2024 (15) SCC 443** the Hon'ble Supreme Court had reiterated the legal position in a case arising out of a complaint under Section 138 of the Negotiable Instruments Act, which has a similar provision as regards vicarious liability. The relevant portion from the judgment reads as follows:

“12. We would also refer to the summarisation of law on Section 141 by this Court in *National Small Industries Corporation Limited v.*



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Harmeet Singh Paintal and Another [10 (2010) 3 SCC 330] to the following effect:

“39. From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

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(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business



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of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

13. In the present case, we have reproduced the contents of the complaint and the deposition of PW-1. It is an admitted case of the respondent Bank that the appellant had not issued any of the three cheques, which had been dishonoured, in his personal capacity or otherwise as a partner. In the absence of any evidence led by the prosecution to show and establish that the appellant was in charge of and responsible for the conduct of the affairs of the firm, an expression interpreted by this Court in *Girdhari Lal Gupta v. D.H. Mehta and Another* [(1971) 3 SCC 189] to mean ‘a person in overall control of the day-to-day business of the company or the firm’, the conviction of the appellant has to be set aside. [*State of Karnataka v. Pratap Chand and Others*, (1981) 2 SCC 335.].

14. The appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. The Partnership Act, 1932 creates civil liability. Further, the guarantor's liability under the Indian Contract Act, 1872 is a civil liability. The appellant may have civil liability and may also be liable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of the civil liability. Vicarious liability under sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day to-day business of the company or firm. Vicarious liability under sub-section (2) to Section 141 of the NI Act can arise



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because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day-to-day business of the company when the offence was committed. Vicarious liability under sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company.

13. From the above observations, it would be clear that although a firm is not a juristic person, a partner could not be liable unless one of the twin requirements to make him/her vicariously liable is satisfied. In the PBPT Act, the twin requirements are stipulated in Section 62.

14. Thus, in the light of the specific stand taken by the petitioner/third accused in the reply to the show cause notice and in the absence of any material to establish the role played by the petitioner/third accused, this Court is of the view that the petitioner/third accused cannot be made vicariously liable, especially since even the necessary averment to invoke vicarious liability is absent in the complaint. Therefore, this Court is inclined to set aside the impugned order insofar as the petitioner/third accused is concerned.



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15. Accordingly, the impugned order dated 20.03.2023 passed by the learned IX Additional Special Judge, for CBI Cases, Chennai in Crl.MP.No.5042/2022 in C.C.No.20/2021 is set aside insofar as the petitioner/third accused alone is concerned. However, it is made clear that if the respondent is able to adduce any evidence to prove the role played by the petitioner/third accused to make her vicariously liable, then the respondent is at liberty to invoke Section 319 of the Cr.P.C., corresponding to 358 BNSS.

16. With the above observations, the Crl.RC No.872 of 2023 filed by the third accused stands allowed and the Crl.RC.No.956 of 2023 filed by the first and second accused stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

19.01.2026

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To



Crl.R.C.Nos.872 & 956 of 2023

SUNDER MOHAN, J.

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1. The IX Additional Special Judge for CBI Cases,
Chennai.
2. The Deputy Commissioner of Income Tax,
(Benami Prohibition)
Initiating Officer, Chennai.
3. The Public Prosecutor,
High Court, Madras.

Pre-delivery Common Order in
Crl.R.C.Nos.872 & 956 of 2023

19.01.2026