

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Petition No.5055 OF 2018**

Between:

Tushar R.Desai

... Petitioner/Accused No.3

And

The State of Telangana,

Rep. by its Public Prosecutor

High Court at Hyderabad and another ... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 25.09.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments?   | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals       | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.P. No. 5055 of 2018**

% Dated 25.09.2023

# Tushar R.Desai

... Petitioner/Accused No.3

And

\$ The State of Telangana,

Rep. by its Public Prosecutor,

High Court at Hyderabad and another ... Respondent/Complainant

**! Counsel for the Petitioner:** Sri Mohammed Omer Farooq

**^ Counsel for the Respondents:** Public Prosecutor for R1

Sri M.Hamsa Raj for R2

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> (2019) 17 Supreme Court Cases 193

<sup>2</sup> (2011) 13 Supreme Court Cases 412

<sup>3</sup> (2010) 10 Supreme Court Cases 479

<sup>4</sup> (2008) 5 Supreme Court Cases 662

<sup>5</sup> (2005) 8 Supreme Court Cases 89

<sup>6</sup> (2015) 4 Supreme Court Cases 609

<sup>7</sup> 2021 SCC OnLine SC 1012

<sup>8</sup> (2020) 3 Supreme Court Cases 240

<sup>9</sup> 2003 BomCR (Cri) 793

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No.5055 OF 2018****ORDER:**

1. This Criminal Petition is filed by the petitioner/A3 seeking to quash the proceedings in CC No.931 of 2015 on the file of VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.
2. The 2<sup>nd</sup> respondent, who was the Managing Director of Andhra Pradesh State Financial Corporation, Hyderabad filed a criminal complaint which was investigated by the Economic Offences Wing, Crime Investigation Department, Hyderabad. The complainant alleged that this petitioner being one of the Directors of M/s.Asia Pacific Investment Trust Limited failed to return the fixed deposit amount of Rs.80.00 lakhs to the Sainik Welfare Department. The promoters who are Directors of the accused company approached Sainik Welfare Department with a request to invest Government funds in their Non-Banking financial institution. They suppressed the fact that they did not have required permission from the RBI to accept such deposits. After obtaining deposits to the extent of Rs.80.00 lakhs in the shape of fixed deposits, the company defaulted in repayment.

3. It is further alleged that there was a sale agreement in between Nagarjuna Investment Trust Limited and M/s.Asia Pacific Financial Services Limited, Kolkata and the name was changed to M/s.Asia Pacific Investment Trust Limited on 15.09.1994. The funds of Sainik Welfare Department were transferred into M/s.Asia Pacific Investment Trust Limited on 20.10.1994. The said amounts were allegedly misappropriated. Accordingly, the company M/s.Asia Pacific Investment Trust Limited and all its Directors were charge sheeted for the offence under Sections 409, 420 r/w Section 34 of IPC. The petitioner worked as Director from 28.04.1994 to 10.02.1996. He along with other accused are responsible for misappropriation of the funds.

4. Learned counsel appearing for the petitioner would submit that there is no specific allegation against this petitioner that he was responsible for the management of the company. Vicarious liability is unknown to criminal law unless specified by the enactment. The petitioner was acquitted by the Sessions Court in Criminal Appeal No.212 of 2008 in the case filed regarding the very same transactions by the RBI, holding that the petitioner cannot be held responsible and vicariously liable.

5. In support of his contentions, he relied on the judgment of Hon'ble Supreme Court in the case of **Shiv Kumar Jatia v. State of NCT of Delhi**<sup>1</sup>, wherein it is held as follows:

**“19.** The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in *Sunil Bharti Mittal* [*Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] . In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

**20.** Though there are allegations of negligence on the part of the hotel and its officers who are incharge of day-to-day affairs of the hotel, so far as appellant-Accused 2 Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 IPC. Taking contents of the final report as it is we are of the view that, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Ltd., which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent, so far as appellant-Accused 2. Applying the judgment in *Sunil Bharti Mittal* [*Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] we are of the view that the said view expressed by this Court, supports the case of appellant-Accused 2.”

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<sup>1</sup> (2019) 17 Supreme Court Cases 193

6. He also relied on the following judgments: **i) Thermax Limited and others v. K.M.Johny and others<sup>2</sup>; ii) Maharashtra State Electricity Distribution Company Limited and another v. Datar Switchgear Limited and others<sup>3</sup>; iii) S.K.Alagh v. State Uttar Pradesh and others<sup>4</sup>; iv) S.M.S.Pharmaceuticals Limited v Neeta Bhalla and another<sup>5</sup>; v) Sunil Bharti Mittal v. Central Bureau of Investigation<sup>6</sup>; vi) Dayle De'souza v. Government of India through Deputy Chief Labour Commissioner (C) and another<sup>7</sup>; Sushil Sethi and another v. State of Arunachal Pradesh and others<sup>8</sup> and Mr.Homi Phiroz Ranina and others v. The State of Maharshttra and others<sup>9</sup>** to support his argument that Director of a Company cannot be made vicariously liable unless specific overt acts are attributed to the Director.

7. On the other hand, it was argued on behalf of the respondents that it is for the trial Court to decide whether an offence is made against the petitioner or not.

8. It is admitted that the Reserve Bank of India had earlier lodged a complaint against M/s.Asia Pacific Investment Trust

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<sup>2</sup> (2011) 13 Supreme Court Cases 412

<sup>3</sup> (2010) 10 Supreme Court Cases 479

<sup>4</sup> (2008) 5 Supreme Court Cases 662

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<sup>9</sup> 2003 BomCR (Cri) 793

Limited. This petitioner was added as A4 in the said complaint. The XIV Additional Chief Metropolitan Magistrate, Hyderabad convicted the petitioner herein under Section 58B R/W 58C of Reserve Bank of India Act. The petitioner preferred appeal before the learned Metropolitan Sessions Judge, Hyderabad vide Criminal Appeal No.212 of 2008. The learned Sessions Judge found that this petitioner was practicing as an Advocate at Mumbai since the year 1974 and it is not the case of the RBI that contrary to the provisions of the Advocates Act and Maharashtra Bar Council Rules petitioner became full time director of A1 company and was looking after the day-to-day affairs of the A1 company. Further, since the evidence did not disclose that this petitioner was in any manner responsible for the affairs of the company, Criminal Appeal was allowed vide judgment dated 30.04.2009.

9. In the present charge sheet filed by the Economic Offences Wing, on the basis of the complaint of the 2<sup>nd</sup> respondent, the petitioner has been added as accused only for the reason of being one of the Directors of M/s.Asia Pacific Investment Trust Limited. Not even a single incident is narrated whereby this petitioner had in any manner acted on behalf of M/s.Asia Pacific Investment Trust Limited for obtaining fixed deposits. Further, there is no allegation

that this petitioner had in any manner dealt with any of the officials of the Sainik Welfare Department for the transfer of the amounts to the company. Petitioner cannot be made vicariously liable when there are no specific allegations that are alleged against him. Placing reliance on the judgment of Hon'ble Supreme Court in **Shiv Kumar Jatia v. State of NCT of Delhi's** case (supra), the petitioner cannot be tried only for the reason of being Director of the company.

10. In the result, the proceedings against the petitioner in CC No.931 of 2015 on the file of VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

11. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications pending, if any, shall stand dismissed.

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**K.SURENDER, J**

Date: 25.09.2023

Note: LR copy to be marked.

B/o.kvs



**THE HON'BLE SRI JUSTICE K.SURENDER**

**CRIMINAL PETITION No.5055 OF 2018**

**Dt. 25.09.2023**

kvs