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In A company has none of features that characterize a living person, a mind that can have knowledge or intention or be negligent.[1] But company, being a body corporate can sue and be sued in its own name.[2] In the statutes defining crimes, the prohibition is frequently directed against any person who commits the prohibited act, in many statutes the term - **person** is defined.[3] Section 3(42) of General Clauses Act, 1897 defines **person** as:

Person shall include any company or association or body of individuals, whether incorporated or not.[4] Even **person** is not specifically defined, it is necessarily includes a corporation. It is usually construed to include a corporation so as to bring it within the prohibition of the statutes and subject it to punishment.[5] Various kinds of punishments are mentioned under various

statutes. As section 53 of I.P.C, 1860 tells that the punishments to which offenders are liable under the provisions of I.P.C are death, imprisonment of life, imprisonment, forfeiture of property and fine.

There is no controversy when fine is only punishment given under any statute. There is also no lis when statute entrusts the court with discretion to inflict fine or imprisonment, as in this case court shall inflict only fine on company. Because a company being a Juristic person cannot obviously be sentenced to imprisonment as cannot suffer imprisonment. Judicial controversy lies in that situation when statute prescribes mandatory imprisonment with fine as a punishment for an offence. In 2003 Supreme Court in Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr.[6] took the view that since an artificial person like a company could not be physically punished to a term of imprisonment, such a section, which makes it mandatory to impose minimum term of imprisonment, cannot apply to the case of artificial person. However, Supreme Court in 2005 in **Standard Chartered Bank v. Directorate Of Enforcement**[7] in majority decision of 3:2 expressly overruled the Velliappa Textiles case[8] on this issue. K.J Balkrishnan J. in majority opinion held:

We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles on this point.[9]

In **Standard Chartered Bank v. Directorate Of Enforcement** [10] appellant filed a writ petition before High Court Of Bombay challenging various notices issued under section 50 read with section 51 of Foreign Exchange Regulation Act, 1973 & contended that the appellant company was not liable to be prosecuted for an offence under section 56 of FERA Act, 1973 against the decision of High Court appellant filed a special leave before Supreme Court, contended that no criminal proceeding can be initiated against appellant company under section 56(1) of FERA Act, 1973 as the minimum punishment prescribed under section 6(1) (i) is imprisonment for a term which shall not be less than six months and with fine. Section 56 of FERA Act, 1973 read as follow:

56. Offences and prosecutions (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act (other than section 13, clause (a) of subsection (1) of section 18, section 18A, clause (a) of subsection (1) of section 19, sub-section (2) of section 44 and sections 57 and 58, or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable, -

(i) **In the case of an offence the amount or value involved in which exceeds one lac of rupees, with imprisonment for a term not less than six months, but which may extend to seven years and with fine:**

Provided that the court may, for any adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a term of less than six months.

The question for consideration before court was:

Whether a company or a corporation being a juristic person, can be prosecuted for an offence for which mandatory punishment prescribed is imprisonment & fine

Prosecution is pre-requisite for inflicting any punishment. But it is natural when no punishment can be inflicted, no prosecution can be launched. So it is clear from Standard Chartered case[11] that prosecution can be initiated and fine can

be imposed even when imprisonment is given as mandatory punishment with fine.

Lex non cogit ad impossibilia

The maxim *lex non cogit ad impossibilia* only tells us that law does not contemplate something, which cannot be done. This maxim is used by both sides (majority and minority) in standard charted case [12]. As Srikrishna J. in minority observed:

The maxim *lex non cogit ad impossibilia* like all maxims, only tells us that law does not contemplate something which cannot be done. The maxim applies, in so far as persuading the court to hold that it is impossible to send a company to prison. The maxim by itself does not empower the court to break up the section into convenient parts and apply them selectively nor does the maxim *impotentia excusat legem* apply here for the same reason. *Au contraire* [13], the application of these maxims could equally persuade the court to ignore the language of the statutory provision in the case of juristic person, there being no warrant for the dissecting of the section and treating only one part as capable implementation when the mandate of the section is to impose the whole of the prescribed punishment. [14]

K.J Balkrishnan J. in majority opinion held:

It is an acceptable legal maxim that law does not compel man to do that which cannot possibly be performed [*impotentia excusat legem*]. This principle can be found in Bennion's statutory interpretation 4th edn. At page 969. **All civilized systems of law import the principle that *lex non cogit ad impossibilia*.** As Patterson, J. said, **the law compels on impossibility.** Bennion discussing about legal impossibility at page 970 states that, **If an enactment requires what is legally impossible it will be presumed that parliament intended it to be modified so as to remove the impossibility element.** This court applied doctrine of impossibility of performance [*Lex non cogit ad impossibilia*] in numerous cases... [15]

Law Commission Report

Law commission in its 41st report suggested amendment to section 62 of the Indian penal code by adding the following lines:

In every case in which the offence is only punishable with imprisonment or imprisonment and fine and the offender is the company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only.

This recommendation got no response from the parliament and again in the 47th report, the law commission in paragraph 8(3) made the following recommendation:

In many of the acts relating to economic offences, imprisonment is mandatory. Where the convicted person is corporation, this provision becomes unworkable and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the penal code also, but it is likely to arise more frequently in the case of economic laws. We, therefore, recommended that the following provision should be inserted in the penal code as, say, Section 62:

(1) In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is the corporation, it shall be competent to the court to sentence such offender to fine only.

(2) In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.

(3) In this section, **corporation** means **an incorporated company or other body corporate, and includes a firm and other association of individuals.**

But this bill prepared on the basis of the recommendations of the law commission lapsed and it did not become law. However few of these recommendations were accepted by parliament and by suitable amendment some of the provisions in the taxation statutes were amended.

Mens Rea

In as much as all criminal and quasi-criminal offences are creatures of statute, the amenability of the corporation to prosecution necessarily depends upon the terminology employed in the statute. In the case of strict liability, the terminology employed by the legislature is such as to repeal an intent that guilt shall not be predicted upon the automatic breach of the statute but on the establishment of the *actus reus*, subject to the defence of due diligence the law is primarily based on the terms of the statute. In the case of absolute liability where the legislature by the nearest intendment establishes an offence here liability arises instantly upon the breach of the statutory prohibition, no particular state of mind is a pre requisite of guilt. Corporations and individuals persons stand on the same footing in the face of such a statutory offence. It is a case of automatic primary responsibility. It is only in the case requiring *mens rea*; a question arises whether the corporation could be attributed with requisite *mens rea* to prove the guilt. [16]

U.S. Supreme Court in *New York Central and Hudson River Rail Road Co. v. U.N* [17] clearly held that a corporation is

liable for crimes of intent.

In **H.L BOLTON (engg.) co. ltd v. T.J Graham and sons**[18]. Lord Denning Observed:

A company may in many ways be likened to a human body. They have a brain and a nerve centre, which controls what they do. They also have hands, which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what

they do. The state of mind of these managers is state of mind of company and it treated by law as such. So you will find that in case where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of company.

That is made clear in Lord Haldene's in **Lennard's Carrying Company Ltd v. Asiatic Petroleum Co. Ltd** [19](Ac at pp. 713,714). So also in the criminal law, in cases where the law requires a guilty mind of directors or the managers will render the company themselves guilty. [20] In **Standard Chartered case** [21] there was no issue of mens rea, so why it was left open. But in **Velliappa Textiles case**[22] Supreme Court held that mens rea of person in charge shall be treated as mens rea of corporation. Srikrishna J. in majority on this point observed:

Though, initially, it was supposed that a corporation could not be held liable criminally for offences where mens rea of person in charge of the affairs of the corporation, the alter ego, is liable to be extrapolated to the corporation, enabling even an artificial person to be prosecuted.[23]

Conclusion

Corporation undoubtedly rule the world today and due to which there is rise in crime by corporate bodies. People, especially human rights groups described judgment in **Velliappa Textiles case**[24] a failure of imagination. But **Standard Chartered case** [25] must satisfy them. However, it is also true that principles of interpretation of statutes in **Standard Chartered case** [26] are wrongly applied. **Velliappa Textiles case**[27] is expressly overruled on issue of imposition of fine when imprisonment is given as a mandatory punishment. But still it holds good on issue of mens rea. Alter ego doctrine is upheld in **Velliappa Textiles case**[28]. These two cases (**Standard Chartered case**[29] and **Velliappa Textiles case**[30]) are jointly made code for deciding criminal liability of corporate world.

[1] Lord Reid in **Tesco Supermarkets Ltd. v. Natrass** [1971] All ER 127

[2] Avtar Singh's Company Law at p.10 (14th Edition)

[3] K.J Balkrishnan J.in **Standard Chartered Bank v. Directorate Of Enforcement** at p. 284 JT 2005 (5) SC 267; (2005) 4 SCC 50

[4] Section 11 of I.P.C, 1860 tells The word **person** shall includes any company or association or body of persons, whether incorporated or not.

[5] **Standard Chartered Bank v. Directorate Of Enforcement** JT 2005 (5) SC 267; (2005) 4 SCC 50

[6] JT 2003(suppl. 2) SC 99] ; (2003)11 SCC 405

[7] JT 2005 (5) SC 267; (2005) 4 SCC 50

[8] , **Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr.** [JT 2003(suppl. 2) SC 99]; (2003) 11 SCC 405

[9] At p. 293 JT 2005 (5) SC 267; (2005) 4 SCC 50

[10] supra.

[11] **Standard Chartered Bank v. Directorate Of Enforcement** JT 2005 (5) SC 267; (2005) 4 SCC 50

[12] *ibid.*

[13] *Au contraire*: to the contrary

[14] at p.280, JT 2005 (5) SC 267; (2005) 4 SCC 50

[15] at p.292, JT 2005 (5) SC 267; (2005) 4 SCC 50

[16] **Standard Chartered Bank v. Directorate Of Enforcement** JT 2005 (5) SC 267

[17] 53 L Ed 613: 212 US 481 (1908)

[18] (1956) 3 ALL ER 624 at p.632

[19] 1915 AC 705:113 LJ 195

[20] at p. 630; (1956) 3 ALL ER 624 at p.632

[21] **Standard Chartered Bank v. Directorate Of Enforcement** JT 2005 (5) SC 267

[22] **Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr.** [JT 2003(suppl. 2) SC 99] (2003) 11 SCC 405

[23] at p. 429 ; (2003) 11 SCC 405

[24] **Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr.** [JT 2003(suppl. 2) SC 99] ; (2003)11 SCC 405

[25] **Standard Chartered Bank v. Directorate Of Enforcement** JT 2005 (5) SC 267

[26] *ibid.*

[27] **Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr.** [JT 2003(suppl. 2) SC 99] ; (2003)11 SCC 405

[28] *ibid.*

[29] **Standard Chartered Bank v. Directorate Of Enforcement** JT 2005 (5) SC 267

[30] **Assessment-II, Bangalore & Ors. v. Velliappa Textiles Ltd & Anr.** [JT 2003(suppl. 2) SC 99] ; (2003)11 SCC 405

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