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(2009) 09 GAU CK 0036

Gauhati High Court

Case No: None

R.S. Sodhi and Another and Manoranjan Pani and Others		APPELLANT
	Vs	
Partha Pratim Saikia		RESPONDENT

Date of Decision: Sept. 3, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155, 156, 173, 190, 200
- Income Tax Act, 1961 - Section 2, 277, 278, 278B, 279
- Penal Code, 1860 (IPC) - Section 11, 120B, 193, 196, 2

Citation: (2009) 151 CompCas 583 : (2010) 3 GLR 512 : (2009) 4 GLT 685

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

Bench: Single Bench

Judgement

I.A. Ansari, J.

By this common judgment and order, I propose to dispose of both these criminal petitions inasmuch as both these petitions have arisen out of the same order, which stands impugned in these criminal petitions, and both have been, on the request made by learned Counsel for the parties, heard together.

2. By making these applications u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code"), the petitioners have sought for setting aside and quashing the order, dated May 30, 2007, whereby cognisance of offences under Sections 406/409/420/120B/34 of the IPC has been taken by the learned Additional Chief Judicial Magistrate, Kamrup, and summons have accordingly been directed to be issued against the present petitioners as accused.

3. I have heard Mr. J.M. Choudhury, learned senior counsel, appearing on behalf of the accused-petitioners, and Mr. G.N. Sahewalla, learned senior counsel, appearing on behalf of the complainant-opposite party. I have also heard Mr. N. Dutta, learned senior counsel, who has appeared as amicus curiae.

4. Before proceeding further, it is apposite to take note of certain facts, which are not in dispute. These facts may, in brief, be set out as under :

(i) M/s. Gujrat Co-operative Milk Marketing Federation Ltd. (hereinafter referred to as "the accused Federation") is a federation of co-operative societies formed to safeguard the interest of the milk producers, farmers and other manufacturers of various milk based food products, distribution and sale thereof. Whereas the accused Federation and accused R.S. Sodhi, chief general manager of the accused Federation, are petitioners in Criminal Petition No. 250 of 2007, accused Manoranjan Pani, assistant general manager of the accused Federation at Kolkata, accused Kamakhya Pradad Chaliha, sales manager of the accused Federation at Guwahati, and accused Apurba Mishra, depot-in-charge of the accused Federation at Guwahati, are the petitioners in Criminal Petition No, 273 of 2007.

(ii) The complaint, lodged against the accused-petitioners and some others, is, in brief, thus : The accused-Federation sells its products under the name and style of "Amul" products. The complainant is the proprietor of M/s. Brahmaputra Agency having office at Nagaon. The complainant sells the said products of the accused Federation in the district of Nagaon. In terms of the agreement, which the complainant has had with the accused Federation, the complainant was required to send demand draft, in advance, along with the list of items required and the accused persons used to send the products at the address of the complainant, immediately, on receiving the demand draft and also the list of items required as aforementioned. On July 28, 2006, the complainant sent his manager, namely, Rafique Ahmed, to prepare two demand drafts, each of rupees three lakhs, in favour of the accused-Federation, and the complainant''s manager, as per instructions of the complainant, prepared the said two demand drafts in favour of the accused Federation, but made the mistake of drawing the drafts in the name of the State Bank of India (in short, "the SBI"), Jorhat Branch, instead of the SBI, Guwahati Branch. On July 31, 2006, the employee of the complainant was asked by the complainant to prepare another demand draft amounting to rupees two lakhs in favour of the accused Federation to be drawn at the SBI, Guwahati Branch; but this time too, the complainant''s employee, by mistake, prepared the demand draft of rupees two lakhs payable at the SBI, Jorhat Branch. The accused-persons used to dispatch food articles within a week from receiving the demand draft. In the present case, when the complainant did not receive any material, which he was supposed to receive, in terms of the said demand drafts, the complainant made an inquiry, over phone, from the office of the accused Federation and also sent a letter, dated August 8, 2006, to accused. Apurba Kr. Mishra and accused Ujjal Baruah, who were

depot-in-charge of the accused Federation at Guwahati, requesting them to dispatch the goods immediately. The complainant, however, came to know that the accused persons had not received the said two demand drafts. On making further inquiry, the complainant came to learn that by mistake, the complainant and his employees had made the drafts payable at the SBI, Jorhat Branch, instead of the SBI, Guwahati Branch. The complainant, on August 10, 2006, wrote a letter to the Chief Manager, SBI, Nagaon Branch, requesting him to stop payment of the said three drafts, but the SBI, Jorhat Branch, informed the complainant that the accused persons had already encashed, on August 5, 2006 and August 7, 2006, the said bank drafts, dated July 28, 2006 and July 31, 2006, respectively, whereupon the complainant, on August 11, 2006, wrote a letter to accused S.S.S. Bhoi, regional manager of the accused Federation, informing the latter that the complainant''s employee had, by mistake, purchased three demand drafts amounting to Rs. 8 lakhs, payable at SBI, Jorhat Branch, instead of SBI, Guwahati Branch, and though these drafts had been encashed by the accused Federation, the goods had not been received in terms of the said three demand drafts. Accused S.S.S. Bhoi neither gave any reply to the complainant''s letter nor did he dispatch the goods against which the demand drafts had been received by the accused Federation. The complainant, then, approached the Nagaon District Distributors Association and the said association also wrote to the accused requesting them to settle the matter amicably, but the complainant''s grievances were not met. The complainant, then, got prepared one demand draft amounting to Rs. 3,75,000 in favour of the accused Federation payable at SBI, Guwahati Branch, and despite the fact that the accused persons encashed this draft too on August 18, 2006, they did not dispatch any goods. Though the complainant repeatedly requested the accused persons to dispatch the goods against the said total amount of Rs. 11,75,000 the goods were not sent to the complainant. This apart, the complainant also sent a notice, dated October 9, 2006, demanding that either the amount of Rs. 11,75,000 be returned with interest to the complainant or the goods be dispatched to him, but the accused-persons, despite having received the notice, did not respond. The complainant, then, wrote a letter, on November 6, 2006, to the depot-in-charge for settlement of his claims, but the accused-persons did not pay any heed to the request of the complainant. Though the said association wrote a letter, on November 7, 2006, to the managing director of the accused Federation requesting him to settle the dispute, no action was taken by the said accused. Eventually, a letter, dated November 21, 2006, was received by the complainant from accused S.S. Bhoi, whereby accused S.S. Bhoi made allegations against the complainant that the complainant had hatched a conspiracy with accused Ujjal Barua and pursuant to this criminal conspiracy, the complainant, with the help of accused Ujjal Barua, who was depot-in-charge at Jorhat, had played fraud on the accused Federation and accordingly, Ujjal Baruah had been placed under suspension. Thus, the complainant had sent four demand drafts amounting to Rs. 11,75,000 in favour of the accused Federation, but the accused persons, instead of sending the goods, has misappropriated the said amount and thereby

committed offences of criminal misappropriation, cheating and criminal conspiracy under Sections 406/409/420/120B/34 of the IPC.

5. Before entering into the merit of these petitions, 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 561A 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, ordinarily, 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. Kapur (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.

6. 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.

7. Laying down the scope of interference by the High Court in the 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 (page 378):

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XTV 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 the 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 entirely, 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 cognisable 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 the 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 cognisable offence but constitute only a non-cognisable 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 grudge.

(emphasis here printed in italics is added)

8. In the case of Bhajan Lal (supra), the apex court gave a note of caution on the powers of quashing of criminal proceeding in the following words (page 379 of [1992] Supp. (1) SCC):

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 here printed in italics is added).

9. It is clear from a close reading of the principles laid down in the case of R.P. Kapur (supra) and Bhajan Lal (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.

10. Bearing in mind the ambit of the High Court''s power to quash the FIR or complaint as delineated above, let me, now, point out that though, at the time of hearing of these petitions, it has been submitted, on behalf of the accused-petitioners, that the complainant, in conspiracy with accused No. 6, who was the depot-in-charge of the accused Federation at Jorhat, had committed fraud and had helped the accused Ujjal Baruah (who is not a petitioner in these petitions) in misappropriating huge sums of money from the accounts of the accused Federation at Jorhat and, on the basis of the FIR lodged, in this regard, by the accused Federation with the police, accused Ujjal Barua was arrested and stands placed under suspension till date and that the accused-petitioners have not committed any of the offences, which they are accused to have committed, the fact remains that at this stage, this Court cannot enter into the truth or correctness of the allegations and counter-allegations made by the parties. What the court has to examine, at this stage, is whether the allegations, made in the complaint, even if are accepted as true, would constitute commission of any offence and if so, whether all the petitioners or some of the petitioners can be held responsible for commission of such offence (s) as the complaint discloses. This apart, this Court also has the responsibility to decide if the dispute between the parties is, in substance and law, a civil dispute, which is sought to be given the colour of a criminal case.

11. It may, now, be pointed out that according to the complaint, the demand drafts, in question, were encashed by the accused Federation (i.e., accused No. 7 in the complaint), which is, admittedly, a registered association, which stands, on the same footing as does a company within the meaning of Section 11 of the IPC inasmuch as Section 11 of the IPC defines the word "person" to include any company or association or body of persons, whether incorporated or not.

12. The question, therefore, is as to whether in the case at hand, accused No. 7, as an association of co-operative societies, can be prosecuted for the offences, which the present complaint alleges to have been committed. Another important question,

which arises, is as to whether the contents of the complaint and the statements made by the complainant disclose commission of any offence by those petitioners, who are other than the accused Federation. Yet another question, which confronts this Court is as to whether any person can be held responsible for an offence committed by a company or an association merely because of the fact that he or she occupies the office of the managing director of the company or the chief general manager of an association or some other functionary of such a company or association, as the case may be. The last, but not the least important question, is as to whether a juristic person, such as a company, can be prosecuted for offences of "criminal conspiracy", "criminal breach of trust" and "cheating". The last question brings us to the fundamental question and the question is if a company can be held to have mens rea, for, "mens rea" or criminal intent is one of the ingredients of the offences of "criminal conspiracy", "criminal breach of trust" and "cheating".

13. Before entering into the discussion as to whether the impugned order taking cognisance of offences aforementioned and directing issuance of processes against the accused-petitioners is sustainable in law or not, one needs to point out the principal distinction between "criminal breach of trust" and "cheating". In "criminal breach of trust", the accused comes into possession of the property or acquires dominion over the 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.

14. 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.

15. 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.

16. In the present case, there is no such allegation, express or implied, which can reflect that the accused-petitioners had induced the complainant to send to the accused Federation money by way of demand drafts, which the complainant alleges to have sent. In fact, what the complainant alleges is that in the usual course of business, he has given the demand drafts and though the same were encashed by the accused Federation, neither the goods were sent against which the demand drafts were encashed by the accused Federation nor were the money covered by the said demand drafts returned by the accused Federation to the complainant. What, in effect, the complainant alleges is that in the usual course of business, he had paid money by way of demand drafts. Thus, there being no allegation that the complainant was induced by the accused-petitioners to make payment by way of demand drafts, the offence of cheating, as defined u/s 415 of the IPC or as punishable u/s 420 of the IPC, cannot be said to have been prima facie committed by the accused-petitioners. The ingredients of Section 415 of the IPC having not been satisfied, no offence can be said to have been committed by the present accused-petitioners u/s 420 of the IPC. The accusations against the accused-petitioners are, in effect, accusations of "criminal breach of trust", for, the complainant alleges, in substance, that the accused having acquired dominion over the said demand drafts, in the usual course of business, dishonestly misappropriated the same or converted the same into their own use.

17. Let me now turn to the question as to whether a juristic person, such as a company or association or body of persons, whether incorporated or not, can be convicted of an offence if mens rea forms an ingredient of such an offence.

18. My quest for an answer to the question, posed above, brings me to the decision in The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others,

19. In Velliappa Textiles Ltd. (supra), the question for determination was as to whether prosecution of a company and its managing director, for an offence allegedly committed under Sections 276C and 277 read with Section 278B of the Income Tax Act, 1961, is permissible in law. Three questions, in this case, arose before the Supreme Court, namely:

(i) Whether the sanction, granted, u/s 279(1) of the Act, by the Commissioner of Income Tax can be said to stand vitiated for violation of the principles of natural justice inasmuch as no opportunity of hearing was given to the respondents before

sanction for their prosecution was accorded?

(ii) Whether a company can be prosecuted if the relevant provisions of law contemplate only corporal punishment and not fine, or is it possible to sentence a company to pay fine alone, when the relevant provisions of law prescribe a minimum period of imprisonment and payment of fine as punishment?

(iii) Whether mens rea can be attributed to a company, which is a juristic person, on the basis of the acts done by the person, who was in charge of the affairs of the company and responsible for running the business of the company?

20. On the first question, namely, whether sanction granted, as indicated hereinabove, without affording prior opportunity of hearing to the respondents, can be said to be valid, the three judge Bench, in Velliappa Textiles Ltd. (supra), unanimously held that granting of sanction did not, as a legal proposition, require opportunity of hearing and, hence, the contrary view taken by the High Court/that granting of sanction ought to have preceded by an opportunity of hearing to the respondents, was held to be erroneous in law.

21. As regards the second question, which arose in Velliappa Textiles Ltd. (supra), as to whether a company can be prosecuted for an offence, which is punishable by imprisonment and not fine, or when an offence entails a minimum prescribed period of imprisonment and fine, the opinion of G.P. Mathur J., was that it is permissible in law to prosecute a company for an offence, which is punishable not only by fine, but also by imprisonment. This view did not, however, find favour with the majority and the majority view, as expressed by Dr. S. Rajendra Babu J., (as his Lordship, then, was) and B.N. Srikrishna, J., was that prosecution, in such a case, was not legally possible, for, it is not possible to imprison a juristic person and since sentence of imprisonment cannot be imposed on a juristic person, prosecution of a juristic person for an offence, which prescribes corporal punishment with or without fine, is legally not feasible.

22. Thus, what the majority, in Velliappa Textiles Ltd. (supra), held was that where punishment provided is mandatory imprisonment and fine, the court cannot impose only fine and, hence, a company cannot be prosecuted for an offence, which prescribes only corporal punishment or prescribes mandatory term of imprisonment coupled with fine. This majority view, as expressed in Velliappa Textiles Ltd. (supra), came to be doubted in Standard Chartered Bank and Others etc. Vs. Directorate of Enforcement and Others etc., where the question raised was : Where the offence is punishable with mandatory sentence of imprisonment coupled with fine, whether a company''s prosecution is possible? It was contended, in Standard Chartered Bank (supra), that a company, in such a case, cannot be prosecuted as the sentence of imprisonment cannot be enforced against a company. In short, thus, the question raised, in Standard Chartered Bank (supra), was, once again, whether a company or body corporate could be prosecuted for an

offence in respect whereof the sentence of imprisonment is a mandatory punishment?

23. The majority, speaking through K.G. Balakrishnan J., (as his Lordship, then, was), while overruling Velliappa Textiles Ltd. (supra), held that there is no immunity to the companies from prosecution merely because prosecution is in respect of offences for which punishment prescribed is mandatory imprisonment. It was, therefore, held by the majority, in Standard Chartered Bank (supra), that when mandatory imprisonment and fine are provided, it is permissible to impose fine only and a corporate body can be prosecuted for an offence, which prescribes corporal punishment coupled with fine, though such prosecution, agreed the majority in Standard Chartered Bank (supra), is impermissible, where the sentence prescribed is corporal punishment only. The relevant observations, made, in this regard, in Standard Chartered Bank (supra), read as under (pages 526, 528 and 537 of 125 Comp Cas):

4. The question that arises for consideration is whether a company or a corporate body could be prosecuted for offences for which the sentence of imprisonment is a mandatory punishment. In The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others, by a majority decision it was held that the company cannot be prosecuted for offences which require imposition of a mandatory term of imprisonment coupled with fine. It was further held that where punishment provided is imprisonment and fine, the court cannot impose only a fine. In The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others, the prosecution was launched against the respondent, a private limited company, for the offences punishable under Sections 276C, 277 and 278 read with Section 278B of the Income Tax Act. Under Sections 276C and 277 of the Income Tax Act, the substantive sentence provided is the sentence of imprisonment and fine. Speaking for the majority, one of us, (Srikrishna, J.) held that the first respondent-company cannot be prosecuted for offences under Sections 276C, 277 and 278 read with Section 278B since each of these sections requires the imposition of a mandatory term of imprisonment coupled with a fine and leaves no choice to the court to impose only a fine. The majority was of the view that the legislative mandate is to prohibit the courts from deviating from the minimum mandatory punishment prescribed by the statute and that while interpreting a penal statute, if more than one view is possible, the court is obliged to lean in favour of the construction which exempts a citizen from penalty than the one which imposes the penalty. Following the decision in State of Maharashtra Vs. Jugamander Lal, , it was held that the expression used is "imprisonment and fine" and the court is bound to award sentence of imprisonment as well as fine and that there is no discretion on the part of the court to impose only a fine and that the court cannot interpret the statutory provisions in a way so as to supply a lacuna in a statute.

5. The view expressed in The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others, is seriously assailed before us by the Additional Solicitor General, Mr. Malhotra, who appeared for the respondents. Senior counsel Shri K.K. Venugopal, Shri Andhiyarujina, Shri Ashok Desai and other counsel supported the contention that a company cannot be prosecuted for an offence, for which the mandatory sentence is imprisonment. Shri Ram Jethmalani appearing for the appellant in the appeal arising out of SLP (Crl.) No. 4995 of 2003 supported the view that the company is liable to be prosecuted even if the offence is punishable both with a term of imprisonment and fine. He submitted that in case the company is found guilty, the sentence of imprisonment cannot be imposed on the company and then the sentence of fine is to be imposed and the court has got the judicial discretion to do so. He further submitted that this course is open only in a case where the company is found guilty but if a natural person is so found guilty, both sentence of imprisonment and fine are to be imposed on such person.

10. In series of offences punishable under various statutes, sentence of imprisonment and fine are prescribed as the punishment. In some of these enactments, for certain offences a minimum period of imprisonment is prescribed as punishment. u/s 56(1)(i) of the FERA Act, in respect of certain offences, if the amount or value involved therein exceeds one lakh of rupees, the punishment prescribed is imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine. In any other case, the punishment prescribed is imprisonment for a term which may extend to three years or with fine or with both.

32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles Ltd. [2003] 263 ITR 550 (SC) on this point and answer the reference accordingly. Various other contentions have been urged in all appeals, including this appeal, they be posted for hearing before appropriate Bench.

24. The question as to whether a company can have mens rea or criminal mind was, however, not specifically decided in Standard Chartered Bank (supra). Though this question was left open, in Standard Chartered Bank (supra), some of the observations made by K.G. Balakrishnan, J., (as his Lordship, then, was) are of great relevance and significance. These observations read as under (pages 527 and 528 of 125 Comp Cas):

6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that, except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed

through its agents.

7. As in the case of torts, the general rule prevails that the corporation may be criminally liable for the acts of an officer or agent, assumed to be done by him when exercising authorised powers, and without proof that his act was expressly authorised or approved by the corporation. In the statutes defining crimes, the prohibition is frequently directed against any ''person'' who commits the prohibited act, and in many statutes the term ''person'' is defined. Even if the person is not specifically defined, it necessarily includes a corporation. It is usually construed to include a corporation so as to bring it within the prohibition of the statute and subject it to punishment. In most of the statutes, the word ''person'' is defined to include a corporation. In Section 11 of the Indian Penal Code, ''person'' is defined thus:

The word "person" includes any company or association or body of persons, whether incorporated or not.

8. Therefore, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability.

9. Inasmuch 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 reveal an intent that guilt shall not be predicated 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 statutes. In the case of absolute liability where the Legislature by the clearest intendment establishes an offence where liability arises instantly upon the breach of the statutory prohibition, no particular state of mind is a prerequisite to guilt. Corporations and individual 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 a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue.

25. What, thus, emerges from the discussions held, and the conclusions reached by the majority, in Standard Chartered Bank (supra), is that it is not possible to prosecute a company in respect of an offence, which prescribes corporal punishment as the only punishment; but it is possible to prosecute a company and sentence the company to pay fine if the punishment prescribed is corporal punishment coupled with fine even if the corporal punishment, so prescribed, is mandatory. The majority has, however, expressed no conclusive opinion on the question as to whether mens rea can be attributed to a body corporate, or whether

a body corporate can be prosecuted for an offence, which has mens rea as its essential ingredient.

26. Let me, therefore, revert to the case of Velliappa Textiles Ltd. (supra),; wherein, as already indicated above, the third issue raised was : Whether mens rea can be attributed to a company, which is a juristic person, on the basis of the acts done by the person, who was in charge of the affairs of the company and responsible for running the business of the company?

27. While dealing with the above aspect of the case, it needs to be borne in mind, as already mentioned above, that in Velliappa Textiles Ltd. (supra), the company and its managing director were prosecuted for offences allegedly committed under Sections 276C and 277 of the Income Tax Act read with Section 278 thereof. Sections 276C, 277 and 278 read:

276C. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable--

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provisions of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable--

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

278. If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income or any fringe benefits chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under Sub-section (1) of Section 276C, he shall be punishable,--

(i) in a case where the amount of tax, penalty or interest which would have been evaded if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

28. In view of the fact that Section 276C uses the word "wilfully" and Section 277 uses the expression "that which he either knows or believes to be false or does not believe to be true", the High Court of Karnataka, relying upon the three important decisions, namely, S.M. Badsha v. ITO reported in [1987] 168 HR 332 (Ker) , Shree Singhvi Brothers and Others Vs. Union of India (UOI) and Others, and Kusum Products Ltd. Vs. S.K. Sinha, ITO, , came to take the view, in P.V. Pai, B.R. Shetty, Biyar Rubbers Pvt. Ltd. and Smt. Lasha B. Shetty Vs. R.L. Rinawma, Deputy Commissioner of Income Tax, that mens rea being an essential ingredient for an offence of false statement in a verification u/s 277 of the Income Tax Act, it is only a natural person, who can be prosecuted, because it is only a natural person, who can be said to have specific knowledge or intent, which is necessary for constituting an offence u/s 277. The High Court, in P.V. Pai (supra), further held that though u/s 2(31) of the Income Tax Act, the definition of "person" is wide enough to include a company or any juristic person, the word "person" could not have been used by Parliament in Section 266B or 277 in the sense of a juristic person, because imprisonment has been made compulsory for an offence under these sections and a company being a juristic person cannot be sent to prison.

29. Having taken into account the fact that in P.V. Pai (supra), the High Court had taken the view that a juristic person is incapable of committing an offence, which involves mens rea as its ingredient, Mathur, J., traced, in Velliappa Textiles Ltd. (supra), the development of the history of law with regard to criminal liability of body corporate and came to the conclusion that prosecution of a body corporate is permissible even in a case where offence needs mens rea or knowledge as its essential ingredient. It was also concluded, in this regard, by Mathur J., that the acts and state of mind of the officer or agent of a body corporate, who functions as the directing mind and will of the body corporate and controls its functions, shall, in law, be the acts and state of mind of the corporation itself.

30. No doubt, Dr. Rajendra Babu, J., and Srikrishna J., had disagreed with the views expressed by Mathur J., that even a company can be prosecuted for an offence, which prescribes mandatory term of imprisonment plus fine. What is, however, interesting to note is that Shrikrishna J., did not disagree with the views expressed by Mathur J., that a company can be prosecuted even for an offence, which requires criminal intent or mens rea; what was disagreed by Srikrishna J., was that a company can be prosecuted even for an offence which prescribes mandatory term of imprisonment plus fine.

31. The above inference gets strengthened when one reads the observations made by Srikrishna J., at paragraph 28, in Velliappa Textiles Ltd. (supra), wherein his Lordship has observed that though, initially, it was the prevailing view that a corporation could not be held criminally liable for offences, where mens rea was required, the current judicial thinking appears to be that mens rea of the person, in charge of the affairs of the corporation, as the alter ego, is liable to be extrapolated to the corporation enabling even an artificial person to be prosecuted for such an offence and that his Lordship is in full agreement with the views expressed, in this regard, by Mathur, J., and what his Lordship was not agreeing to was that a corporation cannot be prosecuted for an offence, which prescribes mandatory sentence of imprisonment. The relevant observations, made at paragraph 28, read (page 558 of 263 ITR):

The question of criminal liability of a juristic person has troubled Legislatures and judges for long. Though, initially, it was supposed that a corporation could not be held liable criminally for offences where mens rea was requisite, the current judicial thinking appears to be that the mens rea of the 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 for such an offence. I am fully in agreement with the view expressed on this aspect of the matter in the judgment of my learned brother Mathur J. What troubles me is the question whether a corporation can be prosecuted for an offence even when the punishment is a mandatory sentence of imprisonment.

32. Thus, as already pointed out above, Shrikrishna, J., held, in agreement with Mathur, J., that it is possible to prosecute a company for an offence, which requires mens rea, and that such prosecution is possible by inputting the criminal state of mind of the person in charge of the affairs of the corporate body to the corporate body itself, though the corporate body is, as such, not being a natural person cannot, ordinarily, be said to have any criminal intent or mens rea.

33. As far as Rajendra Babu, J., (as his Lordship, then/was) is concerned, his Lordship pointed out that his Lordship agrees with the views expressed by Shrikrishna, J., and Mathur, J., that the sanction granted by the Commissioner of Income Tax did not stand vitiated on account of the fact that no opportunity of hearing had been given to the accused, his Lordship was unable to agree on the issue, namely, whether a

company can be attributed mens rea.

34. With regard to the question as to whether a company can be prosecuted for an offence which requires mens rea, Dr. Rajendra Babu, J., observed as follows (page 555 of 263 ITR):

55. The constitution of a modern company consists of two documents usually bound up as one--the memorandum and articles of association. A company''s authority always remains circumscribed by the object clause of its memorandum and it cannot contain anything unlawful. Anything done outside the object and powers of the company is ultra vires. With regard to criminal activities, the agents are beyond their authority and corporate capacity. Company is thus a potentially complex organisation, which is assimilated into the preexisting individualistic framework of the law by pursuit of fiction and analogy with a natural person.

56. In order to trigger corporate criminal liability for the actions of the employee (who must generally be liable himself), the actor-employee who physically committed the offence, must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the alter ego of the employer corporation or its directing mind. Since the company/corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. To this extent there are no difficulties in our law to fix criminal liability on a company. The common law tradition of alter ego or identification approach is applicable under our existing laws. But the problem crops up in mens rea offences. Mens rea and negligence are both fault elements, which provides a basis for the imposition of liability in criminal cases. Mens rea focuses on the mental state of the accused and requires proof of a positive state of mind such as intent, recklessness or wilful blindness. Negligence, on the other hand, measures the conduct of the accused on the basis of an objective standard, irrespective of the accused''s subjective mental state. Criminal liability of a company arises only where an offence is committed in the course of the company''s business by a person in control of its affairs to such''a degree that it may fairly be said to think and act through him so that his actions and intent are the actions and intent of the company. And it is not possible to attribute the element of mens rea to a juristic person, which requires a positive act of omission or commission. Since this cannot be attributed to a juristic person, it is difficult to accept the proposition of "punishing a company" wherein the mens rea element is necessary. It is all the more difficult in the event of mandatory punishment that leads to imprisonment. However, I need not dilate on this aspect of the case and reserve that answer for consideration in a more appropriate case.

35. From the above observations, made by Dr. Rajendra Babu J., what transpires is that constitution of a modern company rests on two documents, namely, the memorandum of association and articles of association and that a company''s

authority always remains circumscribed by the object clause of its memorandum and it cannot, therefore, contain anything unlawful. Consequently, anything done outside the object and powers of the company, as envisaged in the memorandum of association and articles of association, is ultra vires. Hence, when the agents of a company commits, any offence, the act is beyond their authority and corporate capacity. Dr. Rajendra Babu J., points out, in this regard, that since the company has no mind of its own, its action and direction must consequently be found in the person of somebody, who, for some purposes, may be called agents, but who is really the directing mind or will of the corporation, the very ego and centre of the personality of the corporation. Dr. Rajendra Babu, J., has also pointed out that the common law tradition of alter ego or identification approach is applicable under our existing laws; but the problematic area is the offence, which requires mens rea, for, mens rea focuses on the mental state of the accused and requires proof of a positive state of mind, such as, intent, recklessness or wilful blindness; whereas, negligence, on the other hand, measures the conduct of the accused on the basis of an objective standard, irrespective of the subjective mental state of the accused. According to what Dr. Rajendra Babu J., observed, the criminal liability of a company arises only when an offence is committed in the course of the company''s business by a person in control of its affairs to such a degree that the company may fairly be said to think and act through him so that his actions and intent are the actions and intent of the company, but it is not possible to attribute the element of mens rea to a juristic person, which requires positive act of omission or commission. Dr. Rajendra Babu J., therefore, concluded that since mens rea cannot be attributed to a juristic person, it is difficult to accept the proposition of "punishing a company", wherein mens rea, as an element, is necessary and it is all the more difficult in the event of mandatory punishment that leads to imprisonment.

36. In the light of the various observations, made in Velliappa Textiles Ltd. (supra), it becomes transparent that majority opinion, as expressed by Mathur, J., and Srikrishna, J., in Velliappa Textiles Ltd. (supra), was that a corporate body, though a juristic person, can be prosecuted for an offence, which involves mens rea as an ingredient inasmuch as the acts and state of mind of a person, who functions as the "directing mind and will" of the body corporate and controls its function, shall, in law, be attributed to the corporate body and the acts and guilty state, of mind of such a person shall be treated as the acts and state of mind of the body corporate itself. In short, a corporate body, according to the majority view, in Velliappa Textiles Ltd. (supra), can be prosecuted for an offence, which requires mens rea as its ingredient; but the minority view, as expressed by Dr. Rajendra Babu, J., was that mens rea, as an element of offence, cannot be attributed to a company, because a company is a juristic person and it cannot be punished for an offence which requires mens rea or criminal intent. In effect, what the observations of Dr. Rajendra Babu J., reflect is that while it is possible to make a company criminally liable for an offence, which can be attributed to have been committed by a company by neglecting the

requirements of law, it is not possible to prosecute a company for an offence, which would require positive criminal state of mind for, such criminal state of mind cannot be attributed to a company, which is a juristic person.

37. Having pointed out that the majority view, in Velliappa Textiles Ltd. (supra), was that even a juridical person, like company, may be prosecuted for an offence, which has mens rea as an essential ingredient, it is the duty of this Court to also point out, at once, that in Kalpnath Rai v. State AIR 1998 SC 201, a two-judge Bench, speaking through K.T. Thomas, J., held that since mens rea is an essential ingredient of an offence u/s 3(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, an artificial person, like company, is incapable of committing such an offence and the apex court accordingly set aside the conviction of the accused-company and the sentence passed against it.

38. In fact, K.T. Thomas J., (as a judge of the Kerala High Court), had held, in S.M. Badsha Vs. Income Tax Officer, that Section 193 of the IPC, which deals with punishment for intentionally giving false evidence, Section 196 of the IPC, which deals with corruptly using any evidence as genuine, which one knows to be false or fabricated, and Section 420 of the IPC, which defines the offence of cheating, are all offences, which could only be committed by natural persons and, hence, a firm cannot be proceeded against for offences under Sections 193, 196 and 420 of the Indian Penal Code, for, all these offences need mens rea. Thus, while in Kalpnath Rai (supra), a two-judge Bench of the Supreme Court had held that a company, being an artificial person, is incapable of committing an offence, which has mens rea as an essential ingredient, Velliappa Textiles Ltd. (supra), clearly takes the view, per majority, that prosecution of even an artificial person is, in the light of the developments, which have taken place in the field of criminal law, possible for offences, which have mens rea as their ingredient. The view, so taken, in Velliappa Textiles Ltd. (supra), has not been dissented from in Standard Chartered Bank (supra). Hence, the majority opinion, in Velliappa Textiles Ltd. (supra), as regards prosecution of a corporate body, in respect of offences involving mens rea, must be treated, at this stage, as the subsequent view of the apex court. Considered from this angle, it becomes clear that the position of law, in India, today, is that it is possible to prosecute a company, though an artificial person, for offences, which involve mens rea as their essential ingredient. What impelled such a change in the judicial thinking or why such a change in the judicial thinking took place need to be, now, taken note of. This brings me to the history of development of law in the realm of corporate criminal liability.

39. The development of the law relating to corporate criminal liability, in general, and corporate criminal liability, in relation to offences requiring mens rea, in particular, makes fascinating reading. In earlier stages of development of criminal law, the judicial interpretation with regard to criminal liability of a company, in general, was that a company cannot be held criminally liable, for, it is a juristic

person and can have no criminal intent or mens rea.

40. With the growth of industrialisation and with the expansion of corporate activities, the courts, world over, started extending the concept of criminal liability to the corporate bodies in respect of some offences, such as, public nuisance and such other offence(s), which do not really need criminal intent. In course of time, however, criminal corporate liability started being extended to even those offences, which require presence of mens rea or criminal intent. Let me, first, consider as to how the concept of corporate criminal liability developed in the United States.

41. In New York Central and Hudson River Railroad Co. v. United States reported in [1908] 212 US 418, the US Supreme Court held that there are some crimes, which, in their very nature, cannot be committed by corporations, but there is a large class of offences, wherein crime consists in purposely doing an act, which is prohibited by a statute, and a corporation, which indulges in such acts, must be held to be criminally accountable; otherwise, many offences may go unpunished, though the statute requires, as a public policy, all persons, corporate or private, to refrain from doing certain things, which are prohibited by a given statute in the interest of public policy.

42. It was further observed, in New York Central and Hudson River Railroad Co. (supra), that since a corporation can act only through its officers and agents, there is no reason as to why the knowledge and acts of its officers and agents shall not be attributed to the corporation.

43. The 19 American Jurisprudence 2d (paragraph 1434), while dealing with the subject of criminal liability of corporations, states as under:

Lord Holt is reported to have said (Anonymous, 12 Mod 559, 88 Eng Reprint 1164) that ''a corporation is not indictable, but the particular members of it are''. On the strength of this statement, it was said by the early writers that a corporation is not indictable at common law and this view was taken by the courts in some of the earlier cases. The broad general rule is, now, well established, however, that even a corporation may be criminally liable.

As in case of torts, the general rule prevails that a corporation may be criminally liable for the acts of an officer or agent, assumed to have been done by him, when exercising authorised powers, and without proof that his act was expressly authorised or approved by the corporation. A specific prohibition made by corporation to its agents against violation of the law is no defence. The rule has been laid down, however, that corporations are liable, civilly or criminally, only for the acts of their agents, who are authorised to act for them, in the particular matter out of which the unlawful conduct, with which they are charged, grows or in the business to which it relates.

44. Paragraph 1435 of the 19 American Jurisprudence 2d states that there is conflict of judicial opinion as to whether a specific or malicious intention may be imputed to

the corporation on behalf of which an act is done in order to render it criminally responsible therefor; but in most cases, it has been held that a corporation may be indicted for a crime to which a specific intent is essential.

45. As regards the question as to whether a corporation can be prosecuted for offences, which need guilty mind or mens rea as an essential ingredient, paragraph 1363 of the 19 Corpus Juris Secundum states as under:

A corporation may be criminally liable for crimes, which involve a specific element of intent as well as for those which do not, and, although some crimes require such a personal, malicious intent, that a corporation is considered incapable of committing them, nevertheless, under the proper circumstances, the criminal intent of its agent may be imputed to it so as to render it liable, the requisites of such imputation being essentially the same as those required to impute malice to corporations in civil actions.

46. From what have been quoted above, it clearly transpires, as already indicated above, that the earlier concept of criminal liability, in the United States, was that a corporation is not indictable, though its particular members may be; but this concept, with passage of time, has changed and it is well recognised that even a corporation may be criminally liable. Same, as in the case of torts, the development of law is that corporation may be criminally liable for the acts of its officers and an agent, which such an officer or agent does, while exercising powers, which he is authorised to exercise.

47. It must, however, be remembered, with regard to the above, that in order to fasten a corporate body with criminal liability for an act or omission done by its officers or agents, it is not necessary that the act or omission, which constitutes the offence, was, in particular, or specifically, authorised by the corporate body. What is, therefore, imperative is that the offence is committed by the officer or the agent, while exercising such powers, which he was authorised to exercise, irrespective of the fact as to whether the corporate body had or had not specifically authorised the officer or agent concerned to do or omit from doing an act, which constituted the offence with which the corporate body stands charged.

48. It is, thus, the concept of vicarious liability, which had its origin in the field of tort, has come to be applied, in the field of criminal law, to a corporate body. It is nothing, but (I shall, later on, show a little more elaborately) a principle of "attribution", which has been developed by the courts to ensure that the object of a penal provision is not defeated and a corporate body does not escape by taking the plea that a juristic person is incapable of committing any crime, far less an offence involving mens rea. The fall-out of the development of the principle of "attribution" is this: in order to make a corporation liable for an offence, which requires criminal intent or knowledge, the criminal intent or knowledge of its officer or agent may, in a given case, be imputed to the corporation so as to render it liable.

49. To put it a little differently, a corporation would be liable only when the acts are done by those, who are authorised to act for the corporation for a particular matter out of which the unlawful conduct, with which the charge relates to, arises. In the United States, therefore, a corporation may be criminally liable for the crimes which involve a specific element of intent or knowledge as well as for those crimes which do not involve any such specific element of intent or knowledge.

50. In tune with the development of law, in the United States, as regards criminal liability of corporate bodies, the English courts have also come to take the view that a company can be prosecuted for the unlawful conduct of its officers subject to limitation that the unlawful conduct has arisen out of an act done or omitted to be done by an officer or agent, who was authorised by the company to deal with such matters. How this development has taken place?

51. In Reg v. Brimingham and Gloucester Ry. Co. reported in [1842] 3 QB 223, the judgment of Patteson, J., begins with the quotation from a note of Holt, C.J., (which already stands quoted above), reads: "A corporation is not indictable, but the particular members of it are". Referring to the said observations of Holt, C.J., Patteson J., in Brimingham and Gloucester Ry. Co. (supra), pointed out : "What the nature of the offence was to which the observation was intended to apply does not appear; and, as a general proposition, it is opposed to a number of cases, which show that a corporation may be indicted for breach of a duty imposed upon it by law, though not for a felony, or for crimes involving personal violence as riots or assaults".

52. Thus, in Brimingham and Gloucester Ry. Co. (supra), the court did not agree with the proposition that a company can never be indicted of an offence and, in this regard, it was pointed out that a corporate body may be indicted for breach of a duty imposed on it by law, though it may not be indictable for a felony or for crimes involving personal violence.

53. What Brimingham and Gloucester Ry. Co. (supra), thus, clearly laid down was that a corporate body can, indeed, be prosecuted for breach of a duty imposed by law, though it may not be possible to prosecute a corporate body for a felony or for crimes involving personal violence? However, since the pronouncement of the decision, in Brimingham and Gloucester Ry. Co. (supra), the law, as regards the corporate criminal liability, developed further and came to take, somewhat concrete shape in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. reported in [1944] 14 Comp Cas 133 : [1944] 1 KB 146.

54. How the journey between the case of Brimingham and Gloucester Ry. Co. (supra) and the case of Kent and Sussex Contractors Ltd. (supra) was travelled may, now, be noted.

55. In Ranger v. Great Western Ry. Co. reported in [1854] 5 HLC 72, Lord Cranworth observed as under:

Strictly speaking, a corporation cannot itself be guilty of fraud. But where a corporation is formed for the purpose of carrying on a trading or other speculation for profit, such as, forming a railway, these objects can only be accomplished by the agency of individuals; and there can be no doubt that if the agents employed conduct themselves fraudulently, so that if they had been acting for private employers, the persons, for whom they were acting, would have been affected by their fraud, the same principles must prevail, where the principal, under whom the agent acts, is a corporation.

56. From the above observations made by Lord Cranworth, in Great Western Ry. Co. (supra), it becomes clear that as early as in 1854, the court took the view that where a corporation is formed for the purpose of carrying on a trade or any speculative business, the objects of such a corporation can only be achieved by the agency of individuals; and, hence, if the agents of a company act fraudulently, the principle of agency shall be attributable to the company in the same manner as is applicable to a private employer as far as acts of his agents are concerned.

57. The above observations of Lord Cranworth, made in Great Western Ry. Co. (supra), were accepted in Mackay v. Commercial Bank of New Brunswick reported in [1874] LR 5 PC 394.

58. In Pearks, Gunston and Tee, Ltd. v. Ward reported in [1902] 2 KB 1, is one of those few cases, which have led to the growth of the concept of strict and absolute liability. In Pearks, Gunston and Tee, Ltd. v. Ward (supra), Channell, J., dealt with Section 6 of the Sale of Food and Drugs Act, 1875, which states: "No person shall sell to the prejudice of the purchaser any article of food or any drug, which is not of the nature, substance and quality of the article demanded by such purchaser". Section 3 of the Act provides, "No person shall mix, colour, stain, or powder or order or permit any other person to mix colour, stain or powder any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured stained or powdered."

59. While referring to the provisions of the said two sections, Channell, J., said: "By the general principles of the criminal law, if a matter is made a criminal offence, it is essential that there should be something in the nature of mens rea, and, therefore, in ordinary cases, a corporation cannot be guilty of a criminal offence nor can a master be liable criminally for an offence committed by his servant." (page 11 of [1902] 2 KB)

60. Having pointed out that, as a general principle, a company cannot be prosecuted for any offence nor can it be made liable for an offence committed by its servant, Channell, J., however, made a pertinent point, by observing, in Pearks, Gunston and Tee, Ltd., thus: "But there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by

law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of payment of a fine; and the reason for this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done, the offender is liable to a penalty whether he had any mens rea or not and whether or not he intended to commit a breach of the law." (page 11 of [1902] 2 KB)

61. Channel, J., then, further observed, in Pearks, Gunston and Tee, Ltd. v. Ward (supra), "As to Section 3, there is a slight difference, because, reading Sections 3 and 5 together, it seems that mens rea is involved in the offence, though it need to be proved by the prosecution, as it must in ordinary criminal cases. It is, however, so far an element in the offence that if the defendant succeeds in proving that he had no mens rea, he is to be acquitted, the burden of proof thus being shifted from the prosecution to the defence. A provision of that kind is enacted, where the Legislature desires to prevent the act from being done, though it is recognised that there may be cases in which the act is done innocently, and in which the person ought, therefore, not to be convicted, in those cases, the defendant can prove his innocence; but, as it would be difficult for the prosecution to prove mens rea if the onus were upon them to do so in the ordinary way that the enactment is, consequently, framed in this particular way. There may, therefore, be more difficulty in applying the rule in those cases to a corporation then there is u/s 6. Speaking for myself, I am inclined to think that a corporation would come u/s 3 as well as u/s 6, but the question is not quite so clear, and possibly it may have to be argued hereafter." (page 12 of [1902] 2 KB)

62. Thus, what was observed by Channell, J., in Pearks, Gunston and Tee, Ltd. v. Ward (supra), was that as a general principle of law, it is correct to suggest that a corporation cannot be held guilty of any criminal offence, nor can a corporation be liable for an offence committed by its servant; but there may be cases, where legislative intent can be inferred to be that even when mens rea forms an integral element of an offence, the person, whose acts give rise to the offence, shall not escape, whether the person is a corporate body or a private individual and, in such a case, it is not required to determine whether there was any mens rea or not, for, it would remain open for the corporate body, which is proceeded against, to prove that it did not have mens rea, in other words, what was pointed out, in Pearks, Gunston and Tee, Ltd. v. Ward (supra), by Channell J., was that it is possible to create an offence, wherein the prosecution does not have the burden to prove mens rea, but the defence can escape the liability of punishment by taking the plea and proving that the act of the corporate body did not suffer from any criminal intent. Thus, the decision, in Pearks, Gunston and Tee, Ltd. v. Ward (supra), helped develop the concept of strict liability in criminal law, whereunder mens rea was treated to be not a necessary ingredient for an offence, prosecution did not have the burden to prove mens rea, but the defence could escape by showing that the act or omission, which had given rise to the offence, was not actuated by any criminal-intent.

63. What is, now, of immense importance to note is that in Pearks, Gunston and Tee, Ltd. v. Ward (supra), the crucial question, which was left open was whether a corporation can be prosecuted for an offence, where the burden to prove the acts, constituting mens rea, is on the prosecution, in other words, whether a corporation can be prosecuted for an offence, which involves mens rea as its ingredient and when the prosecution has the burden to prove existence of a mens rea. This question, as indicated above, was left open in Pearks, Gunston and Tee, Ltd. v. Ward (supra) and

was raised, once again, as noted by Viscount Caldecote, C.J., in Kent and Sussex Contractors Ltd. (supra).

64. Though I will deal with the case of Kent and Sussex Contractors Ltd. (supra) a little later, let me, at the moment, refer to Chuter v. Freeth and Pocock Ltd. reported in [1911] 2 KB 832. In Freeth and Pocock Ltd. (supra), the prosecution was u/s 20(6) of the Sale of Food and Drugs Act, 1899. According to Section 20(6), every person, who, in respect of an article of food or drug sold by him, gives to the purchaser a false warranty, in writing, shall be liable, on summary conviction, to a fine as therein mentioned, unless he proves that when he gave the warranty, he had reason to believe that the statements or descriptions contained therein were true.

65. Having regard to the scheme of the enactment showing that every seller of drug was required to give warranty and the warranty so given by the seller, exposed the seller to prosecution if the statement, made in the warranty, was false and the seller failed to prove that he had believed the statement made, or description given, in the warranty, was true, the Magistrate inferred, in Freeth and Pocock Ltd. (supra), that since the law makes the person, who gives a false warranty, liable for prosecution unless he proves that when he gave the warranty "he had reason to believe" that the statements or descriptions, contained in the warranty, were true, the expression "person", referred to in Section 20(6), must be construed to mean a natural person, who is capable of forming a belief. Consequently, the Magistrate held that a corporation cannot be made liable for such an offence, because it is incapable of forming its belief. Rejecting this interpretation of the word "person", which occurs in Section 20(6), the King''s Bench remarked that the view, so taken by the Magistrate, was too narrow a construction. The King''s Bench further observed that there is no reason as to why a warranty should not be given by a corporation through its agents and when the warranty, so given by the corporation, contains false statement, the corporation can be held liable unless the agent, who gave the warranty, is proved to have reasons to believe, at the time when the agent issued the warranty, that the statements given or the descriptions contained in the warranty, were true.

66. The relevant observations, made, in this regard, in Freeth and Pocock Ltd. (supra), by Lord Alverstone, C.J., read: "The Magistrate has held that inasmuch as ''the person'', who gives a false warranty, is made liable unless he proves that when

he gave the warranty, ''he had reason to believe'' that the statements or descriptions contained therein were true, therefore ''the person'' cannot be construed as including a corporation, but must be limited to natural person capable of belief. In my view that is too narrow a construction. Where a person is capable of giving a warranty that the person is liable to fine. There is no reason why a warranty should not be given by a corporation. It can give a warranty through its agents, and through its agents, it can believe or not believe, as the case may be, that the statements in the warranty are true." (page 836 of [1911] 2 KB)

67. In Freeth and Pocock Ltd. (supra), Lord Alverstone, C.J., further observed (page 836 of [1911] 2 KB): "A similar point has been raised in cases concerning the liability of a corporation in actions, which, in the case of an individual, would involve an inquiry into a state of mind, such as, fraud, libel, or malicious prosecution. It is well-settled that a corporation may be liable in all those actions". Further, the question, in this case, i.e., Freeth and Pocock Ltd. (supra), points out, Lord Alverstone, C.J., has, in substance, been decided by Channell J., in Pearks, Gunston and Tee, Ltd. v. Ward reported in [1902] 2 KB 1, and taking the same principle into consideration, there is no reason why in Section 20(6), the expression, "person", should not be read to include corporation.

68. From what have been observed by Lord Alverstone, C.J., in Freeth and Pocock Ltd. (supra), it becomes clear that even as early as in 1911, the courts, in England, had held that a false warranty can be given not only by a natural person, but also by a corporate body and, in this regard, it was pointed out that a corporate body can give a warranty through its agents and through its agents, a corporate body can believe or not believe, as the case may be, that the statements made in the warranty are true. In other words, what was pointed out, in Freeth and Pocock Ltd. (supra), was that it is possible to attribute to a corporate body the knowledge of the person, who acts as an agent of the corporate body. The decision, in Freeth and Pocock Ltd. (supra), also indicates, though, perhaps faintly, that a corporate body can have, through its agent, not only knowledge of a statement made as false, but even criminal intent, in a given case, in respect of offences, such as, fraud.

69. In Mousell Brothers Ltd. v. London and North-Western Railway Co. reported in [1917] 2 KB 836, a question arose on Section 99 of the Railway Clauses Consolidation Act, 1845. Section 98 provided: "Every person, being the owner or having the care of any carriage or goods passing or being upon the railway, shall, on demand, give to the collector of tolls, at the places, where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account, in writing, signed by him of the number or quantity of goods conveyed by any such carriage and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point, the same are intended to be unloaded or taken of the railway; and if the goods, conveyed by any such carriage or brought for

conveyance as aforesaid, be liable to the payment of different tolls, then, such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls."

70. Close on the heels of Section 98, Section 99 provided: "If any such owner or other such persons failed to give such account or to produce his way-bill or bill of lading, to such collector or other officer or servant of the company demanding the same or if he give a false account or if he unload any part of his goods at any other place, then, shall be mentioned in such account with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence be liable to a penalty."

71. Having taken note of the provisions contained in Sections 98 and 99 of the Railway Clauses Consolidation Act, 1845, Atkin J., in Mousell Brothers Ltd. (supra), said (page 845 of [1917] 2 KB): "The authorities cited by my Lord makes it plain that while prima facie, a principal is not to be made criminally responsible for the acts of his servants yet the Legislature may prohibit an act or enforce a duty in such works as to make the prohibition or the duty absolute; in which the principal, is liable if the act is, in fact, done by his servants. To ascertain whether a particular Act of Parliament has that effect or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would, in ordinary circumstances, be performed and the person upon whom the penalty is imposed". Then, while reaching the concluding stage in the judgment, Lord Atkin, J., held (page 846): "I see no difficulty in the fact that intent to avoid payment is necessary to constitute the offence. That is an intent, which the servant might well have, inasmuch as he is the person, who has to deal with the particular matter. The penalty is imposed upon the owner for the act of the servant--of course, the result could only be reached, where a person is given express or implied authority or the principal is estopped from saying that he had not the authority. Once it is decided that this is one of those cases, where a principal may be held liable criminally for the act of his servant, there is no difficulty in holding that a corporation may be the principal. No mens rea being necessary to make the principal liable, a corporation is in exactly the same position as a principal, who is not a corporation."

72. What was, thus, pointed out, in Mousell Brothers Ltd. (supra), was that ordinarily, a principal is not made criminally responsible for the acts of its servant, but the Legislature may prohibit an act or enforce a duty in a manner as to make the prohibition or the duty absolute. When such provisions have been made, the principal, even if a corporate body, becomes liable for the act done by his servants and, in order to ascertain whether a given enactment has such effect or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom the duty is imposed, the person by whom the duty would, in ordinary circumstances, be performed and the person upon whom the

penalty is imposed. The decision, in Mousell Brothers Ltd. (supra), further makes it clear that when a particular state of mind is required for holding a person guilty of an offence, a principal, even if a corporate body, may, in the light of the provisions of a given statute, be held criminally liable if the servant of the principal, who may be a corporate body, has the state of mind, which the penal statute requires. In other words, in a given case, it is possible to hold a principal, even if such principal is a corporate body, criminally liable for the acts of his servant, and when the intent, which is required to be proved in order to constitute an offence, is proved to exist in the mind of such a servant, it is idle to enquire if a corporation can be held liable for an offence, which requires mens rea.

73. I, now, turn to another important decision of Kings Bench, namely, Law Society v. United Service Bureau Ltd. reported in [1934] 1 KB 343, in Law Society (supra), at a court of summary jurisdiction held, at Marlborough Street Police Court, London, the appellants (i.e., the Law Society) preferred two information against the respondents, a limited company, named United Service Bureau Ltd., u/s 46 of the Solicitors Act, 1932, charging the respondents, namely, United Service Bureau Ltd., for having "wilfully" pretended to be qualified, or recognised by law as qualified, to act as solicitors, though they were not so qualified inasmuch as the respondents did not have a practising certificate, which was to be issued u/s 43. The Magistrate held that the words, "any person", in Section 46 did not include a limited company and he, therefore, dismissed the information. An appeal was, then, preferred by the Law Society. Since the expression, used in Section 46, was "wilfully pretending to be a solicitor", it was contended, in the appeal, on behalf of the respondents, that the expression, "wilfully pretending to be a solicitor", refers to a natural person and not a corporate body. Taking a queue from the decision, in Mousell Brothers Ltd. v. London and North-Western Railway Co. reported in [1917] 2 KB 836, the court held that when a statute absolutely prohibits an act, then, even a company may become liable for the acts of an individual, who does the prohibited act. Interestingly, in Law Society (supra), while the court agreed that none other than a natural person can apply to be admitted a solicitor and no one, other than a natural person, can practise as a solicitor. However, the Kings Bench held that the expression, "wilfully pretending to be a solicitor", hot only covers a natural person, but even a corporate body inasmuch as a corporate body too is prohibited from practising without a certificate and since a corporate body is not qualified to practise as a solicitor, it can be penalised for having "wilfully" pretended to be a solicitor.

74. Let me, now, return to the Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. reported in [1944] 14 Comp Cas 133 : [1944] 1 KB 146, wherein the facts were as under:

(i) Under Motor Fuel Rationing (No. 3) Order, 1941, made under the Defence (General) Regulations, 1939, a person, applying for fuel, was required to fill, fortnightly, a form for the purpose of recording the distance, which a vehicle had

covered, and the quantity of fuel which it had consumed. As the information furnished, in this regard by the respondent, a limited company, namely, Kent and Sussex Contractors Limited, were found to be false to the knowledge of the company, the company was prosecuted.

(ii) It was proved, at the hearing, that on December 27, 1941, the respondent-company had, on the prescribed form, sent to the authority concerned, a fortnightly vehicle record containing alleged misstatement, the documents being signed by the transport manager of the company. The justices found that the record was-false, in material particular, to the knowledge to the servants of the company; but the justices held that a body corporate could not, in law, be held guilty of the offence charged, because an act of will or state of mind cannot be imputed to a corporation. The case against the company was accordingly dismissed. The Director of Public Prosecution, then, preferred appeal.

75. The question, which, thus, arose, in appeal, in Kent and Sussex Contractors Ltd. (supra), was : whether a limited company, being a body corporate, can, in law, be guilty of an offence, when the offence requires any act or will or state of mind. How this momentous question came to be answered by the court, in Kent and Sussex Contractors Ltd. (supra), needs to be carefully and patiently considered.

76. Referring to the observations, made by Lord Cranworth, which already stand quoted above, in Great Western Ry. Co. (supra), it was pointed out, in Kent and Sussex Contractors Ltd. (supra), that a corporation can be held liable for the acts of its agents if its agent, just like an agent of a private employer, has, while committing an offence of fraud, been acting as the agent of the corporation. It was also pointed out in Kent and Sussex Contractors Ltd. (supra), that the real question is 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.

77. In Kent and Sussex Contractors Ltd. (supra), Viscount Caldecote C.J., observed (page 150 of [1944] 1 KB): "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 category. They are offences in which it is not material to consider whether there is or is not mens rea, which I understand to mean criminal intention, because the ingredients are stated in-the regulation creating the offence. For instance, in the present case, one of the necessary ingredients of the second offence charged is an intent to deceive. When that intent is stated to be necessary it seems to me idle to enquire whether mens rea is or is not involved."

78. From the above observations, what transpires is that when an offence requires, as its ingredient, a particular state of mind, the court is required to determine as to whether such a state of mind existed or not and in such cases, it is immaterial and unwarranted to enquire into the question as to whether a company can be

attributed mens rea or not.

79. Referring to the case of Mousell Brothers Ltd. (supra), it was pointed out, in Kent and Sussex Contractors Ltd. (supra), by Viscount Caldecote C.J., that when, in a given case, in the light of the provisions of a statute, a principal can be held criminally liable for the acts of his servant, it is immaterial as to whether the principal had any mens rea or not and, similarly, when a person, acting as an agent of the corporation, can be held criminally liable, there is no reason why the corporation shall also not be treated as a natural person and be held responsible for the acts of its agent.

80. Viscount Caldecote C.J., then, referred to the case of Pharmaceutical Society v. London and Provincial Supply Association reported in [1880] 5 AC 857, 870, wherein Lord Blackburn had observed: "A corporation may, in one sense, for all substantial purposes of protecting the public, possesses a competent knowledge of its businesses if it employs competent directors, managers and so forth. But it cannot possibly have a competent knowledge in itself. The metaphysical entity, the legal ''person'', the corporation cannot possibly have a competent knowledge". The observations, so made in Pharmaceutical Society (supra), clearly indicate that though a corporation, as a metaphysical entity, may not possibly have knowledge, the corporation, for protecting public, must, nevertheless, be held, to possess competent knowledge of its business through its directors, managers, etc.

81. Having taken note of the decisions, in Pearks, Gunston and Tee, Ltd. (supra), Mousell Brothers Ltd. (supra) and Law Society (supra), Viscount Caldecote C.J., in Kent and Sussex Contractors Ltd. (supra), observed (pages ,155 and 156 of [1944> 1 KB):

Bearing that in mind, I think that a great deal of Mr. Carey Evens'' argument on the question whether there can be imputed to a company the knowledge or intent of the officers of the company falls to the ground, because although the directors or general manager of a company are its agents, they are something more. A company is incapable of acting or speaking or even of thinking except in so far as its officers have acted, spoken or thought. In Law Society v. United Service Bureau Ltd. reported in [1934] 1 KB 343, the matter seems to me to have been made even clearer than in the case to which I have referred. Section 46 of the Solicitors'' Act, 1932, provided that: ''Any person, not having "in force, a practising certificate, who wilfully pretends to be" ...qualified or recognised by law as qualified to act as a solicitor, shall be liable on summary conviction to a penalty.... ''Avory, J. said: ''Mr. Strauss has taken two points in support of the magistrate''s decision. The first is that the qualification, contemplated by Section 46, can only be possessed by a natural person. With that I have already dealt. The second is that the words "wilfully pretends" in Section 46 could have no application to a corporate body because "wilfully" involves some mens rea, which a corporate body cannot have. I think that that point fails and that a corporate body might "wilfully pretend", within the

meaning of Section 46, to be qualified to act as solicitors. It has been laid down over and over again that where a stature absolutely prohibits the doing of an act, it is sufficient to show that the person accused did the forbidden act intentionally and that'' it is not necessary to go further and prove what is commonly known as mens rea or any intention other than to do the thing forbidden''.

In the present case, the first charge against the company was of doing something with intent to deceive, and the second was that of making a statement, which the company knew to be false in a material particular. Once the ingredients of the offences are stated in that way, it is unnecessary, in my view, to inquire whether it is proved that the company''s officers acted on its behalf. The officers are the company for this purpose. Mr. Carey Evans stoutly maintained the position that a company cannot have a mens rea, and that a mens rea cannot be imputed to it even if and when its agents have been shown, to have one, but the question of mens rea seems to me to be quite irrelevant in the present case. 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. The case must go back to the justices with an intimation of our opinion to this effect, and for their determination on the facts.

82. From the observations made by Viscount Caldecote C.J., in Kent and Sussex Contractors Ltd. (supra), it becomes abundantly clear that what Viscount Caldecote C.J., held, in Kent and Sussex Contractors Ltd. (supra), was that when the agent of a company, acting within the scope of his authority, puts forward, on behalf of the company, documents, which the agent knows to be false and whereby the agent intends to deceive, the knowledge and intention of the agent must be imputed to the company and, consequently, in such cases, the question as to whether a company can have mens rea or not becomes irrelevant and idle. Factually speaking, in Kent and Sussex Contractors Ltd. (supra), since there was ample evidence to show that the documents, which the company had put forward, contained false statements and these false statements "were intended to deceive those for whom the documents were meant, it was held that since the company (in the said case) could have acted, spoken or thought through those people, who had prepared the documents, there could be no reason to hold that the company was incapable of being found guilty for the false statements made in the documents with intent to deceive those for whom documents were meant.

83. Referring to the above quoted observations, made by Viscount Caldecote C.J., in Kent and Sussex Contractors Ltd. (supra), Macnaghten, J, pointed out, in Kent and Sussex Contractors Ltd. (supra), that a body corporate is a "person" to whom, there

should be imputed the attributes of a mind capable of knowing and forming an intention and, hence, the knowledge of the agent must be imputed to the body corporate. Macnaghten, J, therefore, concluded, in Kent and Sussex Contractors Ltd. (supra), that if, in a given case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, then, his knowledge and intention must be imputed to the body corporate.

84. The relevant observations, made in Kent and Sussex Contractors Ltd. (supra), by Macnaghten, J., read as under:

A body corporate is a ''person'' to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention--indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L. C.J., has cited, his knowledge and intention must be imputed to the body corporate.

85. Hallett J., too was on the Bench, in Kent and Sussex Contractors Ltd. (supra). While agreeing with the conclusions reached by Viscount Caldecote, C. J., and Hallett, J., pointed out that since a body corporate, being a fictitious person, can only act through a servant or agent, it can never commit a tort or a crime except through the act or omission of a servant or agent. Hence, concluded, Hallett J., that it would not be correct to suggest that though a body corporate can commit an act of tort or even an offence, through its servant or agent, yet it would not be liable for an offence, when the intention or knowledge of such a servant or agent is required to be attributed to the corporate body.

86. Hallett J., then, referred to a number of authorities and came to the conclusion that the state of mind of the servants or agents of a body corporate, through whom the body corporate works, shall be attributed to the body corporate so as to make the body corporate liable for conviction of an offence, which needs a particular state of mind.

87. What transpires from the above discussion is that in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. reported in [1944] 14 Comp Cas 133 : [1944] 1 All ER 119, a limited company, namely, Kent and Sussex Contractors Ltd., faced prosecution along with its officers for an offence, under the Defence (General) Regulations, on the ground that with intent to deceive, they had produced documents and furnished information, which were false in material particulars. In

this case, it was contended, on behalf of the accused, that the offence, with which the company stood charged, required dishonest state of mind and a body corporate cannot be said to have dishonest state of mind. This contention was turned down by holding that a body corporate is a person and since it is a person, it should be imputed the attributes of a mind capable of knowing and forming an intention, in short, what was held, in Kent and Sussex Contractors Ltd. (supra), was that a company can know or form an intention through its human agents and, in a given case, knowledge or intent of a body corporate''s agent may be attributed to the body corporate. Hence, when the responsible officers of a body corporate put forward a document knowing it to be false and intending that it should deceive, the knowledge and intent of the officers must be imputed to the body corporate.

88. From the decision in Kent and Sussex Contractors Ltd. (supra), it becomes more than abundantly clear that a body corporate had no knowledge and intention of its own, but since a body corporate cannot exist without the knowledge or intention, it must be held to have the knowledge or intention of the officer or agent through whom the body corporate functions. In such a case, the knowledge or intention of such an officer or agent, as the case may be, shall be attributed to the body corporate. Hence, when such officer or agent, through whom a body corporate acts, makes statement knowing it to be false or makes a statement with intent to deceive, the knowledge or intention of such an officer or agent must be attributed to the body corporate. In short, thus, the state of mind of such an officer or agent of a company is the state of mind of the body corporate.

89. The position of law with regard to criminal liability of corporate bodies, as had been laid down in Kent and Sussex Contractors Ltd. (supra), came to be considered by the King''s Bench in its subsequent decision, in Rex v. I.C.R. Haulage Ltd. reported in [1944] 1 KB 551, wherein a company was prosecuted for a common law conspiracy to defraud. Before hearing of the charge, an objection was raised, on behalf of the accused-company, that an indictment, alleging common law conspiracy to defraud, would not lie against a limited company. As the commissioner of assizes refused to quash the indictment and the jury convicted the company, the company appealed, in the appeal, it was contended, on behalf of the company, that since the offence charged involved mens rea, a company, such as, the appellant, could not have been held guilty of such an offence in the absence of any expressly made provisions in any statute making a company liable. While conceding that a company may be civilly liable for conspiracy on the basis of the damage suffered by the plaintiff, it was contended, on behalf of the accused-company, that in a criminal prosecution, the gist of the offence is the actual intention in the mind of the accused and that there is no principle, which allows imputation of such an intention to a company, which is a juristic and not a natural person.

90. Resisting the submissions made on behalf of the appellant-company, it was contended, on behalf of the Crown, in I.C.R. Haulage Ltd. (supra), that the appellant-company was rightly convicted. In support of this contention, it was submitted that where the state of mind or an intention is required as an element of a criminal offence, the state of mind or intention of a servant or agent of the company is the mind or intention of the company. Amongst others, reference was also made, on behalf of the Crown, to the case of Kent and Sussex Contractors Ltd. (supra) to show that the court, in Kent and Sussex Contractors Ltd. (supra), has attempted to reconcile earlier decisions on this subject and bring the same in tune with the developed position of law by holding that a company could rightly be convicted of an offence, which involves an act or will or state of mind. Responding to the contentions, so raised, Stable J., remarked, in I.C.R. Haulage Ltd. (supra), as under (page 553 of [1944] 1 KB):

It was conceded by counsel for the company that a limited company can be indicted for some criminal offences, and it was conceded by counsel for the Crown that there were some criminal offences for which a limited company cannot be indicted. The controversy centered 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 recognised 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.

91. Pointing out to the rival contentions, raised in I.C.R. Haulage Ltd. (supra), Stable, J., further remarked (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 attached 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 for 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." Stable, J., then, having considered a number of authorities, which had been cited at the Bar, and also taking into account the views expressed by Viscount Caldecote, C.J., and Lord Macnaghten, J, in Kent and Sussex Contractors Ltd. (supra), finally concluded at page 559 thus:

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.

93. Thus, in tune with the decision in Kent and Sussex Contractors Ltd. (supra) and I.C.R. Haulage Ltd. (supra) also lays down that where, in any particular case, there is evidence to show that criminal act of an agent including his state of mind, intention, knowledge or belief is the act of the company, there is no impediment in holding and in convicting the accused-company on the basis of the conclusion that the state of mind, intention, knowledge or belief of the officer or agent of the company is the state of mind, intention, knowledge or belief, as the case may be, of the company concerned and when the acts of the managing director are proved to be the acts of the company, the fraud committed by such a person can be held to be the fraud committed by the company itself.

94. The law, laid down in Kent and Sussex Contractors Ltd. (supra) and J.C.R. Haulage Ltd. (supra), with regard to corporate criminal liability, in respect of offences involving mens rea, was further helped and strengthened by the decision in H.L.

Bolton (Engineering) Co. Ltd. v. T.J. Graham and Sons Ltd. reported in [1956] 3 All ER 624 (CA), wherein Lord Denning held that a company may, in many ways, be compared to a human body, for, a company must be held to have a brain and nerve center, which controls what the company does. Similarly, a company has the hands, which holds the tools and acts in accordance with the directions from the nerve center. However, some of the persons, in the company, are mere servants, who are nothing more than hands to do the work and cannot be said to represent the mind or will of the company; but there are some others, such as, directors and managers, who represent the directing mind and will of the company. Hence, in such circumstances, the state of mind of those directors or managers is the state of mind of the company and is treated by law as such. Hence, where law requires personal fault as condition precedent for imposing criminal liability, the personal fault of manager shall be treated as the personal fault of the company. Consequently, observed Lord Denning, in H.L. Bolton (Engineering) Co. Ltd. (supra), that where the law requires a guilty mind as condition of an offence, the guilty mind of the directors or the managers of a body corporate will render the company guilty.

95. The relevant observations, made by Lord Denning, in H.L. Bolton (Engineering) Co. Ltd. (supra), read (page 630):

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 the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane''s speech in Lennard''s Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] AC 705 (HL) at pages 713 and 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty.

96. In Tesco Supermarkets Ltd. v. Nattrass reported in [1971] 2 All ER 127 (HL), Lord Reid developed, further, the concept of criminal liability, by pointing out that a living person has a mind, which can have knowledge or intention or be negligent and he has hands to carry out his intentions; whereas, a corporation has none of these and, consequently, the corporation must act through living person, though the living person may not always be one and the same. In such circumstances, such a living person is not living, speaking or acting for the company; rather, he is acting as the company and his mind, which directs his acts, is the mind of the company. A company cannot be made vicariously liable in criminal law; hence, the person, who

is the mind behind the company, is not living, or acting as a servant, representative, agent or delegate; rather, he is an embodiment of the company or, as put in Tesco Supermarkets Ltd. (supra), he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind, then, such guilt is the guilt of the company. The relevant observations, made in this regard, by Lord Reid read (page 131):

I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one of the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company''s servant or agent. In that case any liability of the company can only be a statutory or vicarious liability.

97. The expression, "directing mind and will of the company" used by Lord Denning in H.L. Bolton (Engineering) Co. Ltd. (supra), which was based, to a great degree on Lord Haldane''s speech in Lennard''s Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] AC 705 (HL), became a subject of controversy and interpretation in subsequent decisions of the English courts inasmuch as the court was required to determine as to whether the expression "directing mind and will of the company" should be treated as an expression, which is metaphysical or which was just a way of expression. The expression, "directing mind and will of the company", became a subject of controversy, because of the fact (as I would show) that occasions arose, when the court had to decide as to whether the directing mind of the company must necessarily be the will of the company too so as to impute the criminal intent of the person, who acted as the directing mind of the company, to the company itself. In order to understand this controversy, let me point out as to what the case in Lennard''s Carrying Co. Ltd. (supra) was. In Lennard''s Carrying Co. Ltd. (supra), because of unseaworthy condition of the ship''s boilers, cargo had been destroyed by fire caused by the ship''s boiler. The statutory provisions, which were, in question, namely, Section 2, excluded application of vicarious liability and the provisions, contained in Section 502, were such as would apply only to an individual owner. Notwithstanding the fact that Section 502 appeared to involve an individual owner, Viscount Haldane, L.C, rejected the contention that Section 502 did not apply to company at all. Having rejected the contention, Viscount Haldane, L.C, looked for the

person, whose function, in the company, was same as those, which could have been expected from an individual ship owner. The person responsible for managing the condition of the ship, authorising repairs, etc., was found to be Mr. Lennerd. As Mr. Lennerd was found to be both the "mind and will" of the company, Viscount Haldane, L.C, described, in his famous and often quoted expression, Mr. Lennerd as the "directing mind and will" of the company. Because of the fact that Mr. Lennerd was found to be the directing mind as well as the will of the company, it was held that the company could not dissociate itself from him so as to say that there was no actual fault or privity on the part of the company. Viscount Haldane L. C, said, at pages 713 and 714:

For if Mr. Lennard was the directing mind of the company, then his action must, unless a corporation is not to be liable at all, have been an action which was the action of the company itself within the meaning of Section 502. It must be upon the true construction of that section in such a case as the present one that the fault or privity is the fault or privity of somebody who is not merely a servant or agent for whom the company is liable upon the footing respondent superior, but somebody for whom the company is liable because his action is the very action of the company itself.

98. Explaining as to how liability of a corporate body with regard to an act, which requires a particular state of mind, shall be determined, Viscount Haldane, L.C, in Lennard''s Carrying Co. Ltd. v. Asiatic Petroleum Co. ltd. [1915] AC 705, explained, at page 713, thus:

My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself, or it may be, and in some companies it is so, that that person has an authority co-ordinate with the board of directors given to him under the articles of association, and is appointed by the general meeting of the company, and can only be removed by the general meeting of the company.

99. From the observations, as made above, it becomes clear that a corporation would be liable for an offence, which involves mens rea if the act has been done by the person, who is the directing mind and will of the corporation, for, such act of such a person would be attributed to the corporate body.

100. As observed in Tesco Supermarkets Ltd. (supra) by Lord Reid, a living person has a mind, which can have knowledge or intention or be negligent and he has hands to carry out his intentions ; a corporation has none of these and it must act through living persons, though not always one or the same person; then, the

person, who acts, is not speaking or acting for the company, he is acting as the company and his mind, which directs his acts, is the mind of the company and, in such circumstances, there is no question of the company being vicariously liable, for, he is not acting as a servant, representative, agent or delegate; rather, he is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. Hence, opined Lord Reid. if it is a guilty mind, then, that guilt is the guilt of the company and it must be a question of law whether, once the facts have been ascertained, a person, in doing particular things, is to be regarded as the company or merely as the company''s servant or agent.

101. Lord Reid, however, points out, in Tesco Supermarkets Ltd. (supra), that there have been attempts to apply Lord Denning''s words to all servants of a company, whose work is brain work, or who exercise some managerial discretion under the direction of superior officers of the company, though Lord Denning, according to Lord Reid, did not intend to refer to such servants, whose work is brain work or who exercise some managerial discretion under the directions of the superior of the company. Lord Denning, J., meant, according to Lord Reid, only those persons, who "represent the directing mind and will of the company, and control what it does".

102. In Tesco Supermarkets Ltd. (supra), a distinction was drawn between those, who act as the company, and those, whose acts are not acts of the company. Referring to H. L. Bolton (Engineering) Co. Ltd. (supra), it was held that while the act and the power of directors or other superior officers of a company, who manage, act and speak as the company, their subordinates do not; and that, while the acts and the power of the directors, managing director or persons, who function as the company, can make the company liable even criminally, such liability of a company will not arise if the acts have been done by persons, who, though officers of the company, may be subordinates to those, who manage, act and speak as the company. The relevant observations, made, in this regard, by Lord Reid, read as under (page 132 of [1971] 2 All ER):

I think that is right for this reason. Normally the board of directors, the managing director and perhaps other superior officers of a company carry out the functions of management and speak and act as the company. Their subordinates do not. They carry out orders from above and it can make no difference that they are given some measure of discretion. But the board of directors may delegate some part of their functions of management giving to their delegate full discretion to act independently of instructions from them. I see no difficulty in holding that they have thereby put such a delegate in their place so that within the scope of the delegation he can act as the company, it may not always be easy to draw the line but there are cases in which the line must be drawn. Lennard''s case [1915] AC 705 (HL) was one of them.

103. Concluded, therefore, Lord Reid in Tesco Supermarkets Ltd. (supra), that while adjudging the criminal liability of a corporate body, what is necessary is the determination of the fact as to whether the criminal act of the officer, servant or agent including his state of mind, intention, knowledge or belief is the act of the company or not. If the guilty man was, in law, identifiable with the company, then, whether his offence was serious or venial, his act was the act of the company but if he was not so identifiable, then, no act of his, serious or otherwise, was the act of the company itself.

104. The contribution of Lord Diplock in shaping the concept of criminal liability, as expressed in Tesco Supermarkets Ltd. (supra), cannot be ignored. Lord Diplock described the changing scenario of the corporate business transactions, and the fallout thereof, in the following words (pages 151 and 155 of [1971] 2 All ER):

Nowadays most business transactions for the supply of goods or services are not actually conducted by the person, who in civil law, is regarded as the party to any contracts made in the course of the business, but by servants or agents acting on his behalf. Thus, in the majority of cases, the physical acts or omissions, which constitute or result in an offence, under the statute, will be those of servants or agents of an employer or principal on whose behalf the business is carried on. That employer or principal is likely to be, very often, a corporate person, as in the instant appeal.

In my view, therefore, the question: what natural persons are to be treated in law as being the company for the purpose of acts done in the course of its business, including the taking of precautions and the exercise or due diligence to avoid the commission of a criminal offence, is to be found by identifying these natural persons, who by the memorandum and articles of association or as a result of action taken by the directors, or by the company, in general meeting, pursuant to the articles, are entrusted with the exercise of powers of the company.

105. Lord Diplock, referring to the decision in H.L. Bolton (Engineering) Co. Ltd. (supra), remarked as under (page 156):

There has been, in recent years, a tendency to extract from Denning L.J.''s judgment in H. L. Bolton (Engineering) Co. Ltd. v. T.J. Graham and Sons Ltd. [1957] 1 QB 159, 172, 173 his vivid metaphor about the ''brains and nerve centre'' of a company as contrasted with its hands, and to treat this dichotomy, and not the articles of association, as laying down the test of whether or not a particular person is to be regarded in law as being the company itself when performing duties, which a statute imposes on the company. In the case in which this metaphor was first used, Denning L. J., was dealing with acts and intentions of directors of the company in whom the powers of the company were vested under its articles of association, The decision in that case is not authority for extending the class of persons, whose acts are to be regarded in law as the personal acts of the company itself, beyond those

who by, or by action taken under, its articles of association are entitled to exercise the powers of the company. In so far as there are dicta to the contrary in The Lady Gwendolen [1965] P. 294 : [1965] 3 WLR 91 : [1965] 2 All ER 283 (CA), they were not necessary to the decision and, in my view, they were wrong.

106. From the observations made by Lord Diplock in Tesco Supermarkets Ltd. (supra), what becomes transparent is that in the modern expanding world of commercial activities, an offence may, quite often, be committed by the servants or agents of an employer or principal, who may be a corporate body. In such circumstances, it would become the duty of the court to determine, on the basis of the materials available, particularly, the memorandum and articles of association of the corporate body, as to who are the natural persons, who have been entrusted with exercise of powers of the company. Such a person need not necessarily be the director or managing director, but and may also be a servant or agent of the corporate body.

107. Yet another decision of the Privy Council, which takes the view that holding a corporate body liable for a criminal act is based on the principle of attribution, where an individual''s act is attributable to the corporate body and, further, that it is possible to hold a corporate body guilty for the act of a person, who may be the directing mind of the corporate body, but not its will. This case is the case of Meridian Global Funds Management Asia Ltd. v. Securities Commission reported in [1995] 3 WLR 413 (PC), wherein the facts were, in brief, thus: K, the chief investment officer of an investment management company, and N, its senior portfolio manager, with the company''s authority but unknown to the board of directors and managing director, used funds managed by the company to acquire shares in a public issuer. The company, thus, became, for a short period, a substantial security holder in that public issuer; but the company did not give notice thereof as required by Section 20(3) of the Securities Amendment Act, 1988. The Securities Commission instituted proceedings, in the High Court of New Zealand, against the company for failing to comply with Section 20. The High Court held that, for the purpose of Section 20(4)(e), the knowledge of K and N should be attributed to the company. On this basis, the High Court declared that the company had committed breach of its duty by not giving notice u/s 20(3). The Court of Appeal of New Zealand upheld that decision on the basis that K was the directing mind and will of the company and so his knowledge was attributable to the company. The company, then, appealed to the judicial committee.

108. In Meridian Global Funds Management Asia Ltd. (supra), it was contended that investment manager, Koo, is only the directing mind and not the will of the company inasmuch as the will was that of the board of the company. It meant that according to the appellant, while one person can be the mind of a corporate body, the will of the corporation may be its board of directors or some persons other than the person, who may be the directing mind of the corporate body, in such

circumstances, the company cannot be held liable for the acts of its investment manager, Koo, who did the alleged act of investment without the will of the company inasmuch as the company remained completely in the dark about what its manager had done.

109. In Meridian Global Funds Management Asia Ltd. (supra), Lord Hoffmann, speaking for the Privy Council, pointed out, that the phrase "directing mind and will" comes from the celebrated speech of Viscount Haldane L.C, in Lennard''s Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] AC 705, 713 (HL), but there has been some misunderstanding of the principle upon which that case was decided.

110. The Privy Council points out, in Meridian Global Funds Management Asia Ltd. (supra), that any proposition about a company necessarily involves a reference to a set of rules. A company exists, because there is a rule (usually in a statute), which says that a persona ficta shall be deemed to exist, and to have certain of the powers, rights and duties of a natural person, but there would be little sense in deeming such a persona ficta to exist unless there were also rules to tell one what acts were to count as acts of the company. It is, therefore, observes the Privy Council, a necessary part of corporate personality that there should be rules by which acts are attributed to the company and these may be called "the rules of attribution".

111. It is also pointed out, in Meridian Global Funds Management Asia Ltd. (supra), that the company''s primary rules of attribution will, generally, be found in its constitution, typically the articles of association, but there may be such primary rules of attribution, which are not expressly stated in the articles, but implied by company law. These primary rules of attribution, according to the Privy Council in Meridian Global Funds Management Asia Ltd. (supra), are obviously not enough to enable a company to go out into the world and do business. Not every act, on behalf of the company, could be expected to be the subject of a resolution of the board or a unanimous decision of the shareholders. The company, therefore, points out the Privy Council in Meridian Global Funds Management Asia Ltd. (supra), builds general rules of attribution upon its primary rules of attribution, which are equally available to natural persons, namely, the principles of agency. It will, observes the Privy Council, in Meridian Global Funds Management Asia Ltd. (supra), appoint servants and agents, whose acts, by a combination of the general principles of agency and the company''s primary rules of attribution, count as the acts of the company and having done so, it will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons, such as, estoppel or ostensible authority in contract and vicarious liability in tort. The Privy Council, then, proceeds to point out in Meridian Global Funds Management Asia Ltd. (supra), as follows (page 419 of [1995] 3 WLR):

The company''s primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not

provide an answer. This will be the case, when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated, in language, primarily applicable to a natural person and require some act or state of mind on the part of that person ''himself, as opposed to his servants or agents. This is generally true of rules of the criminal law, which, ordinarily, impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?

One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e., if the act giving rise to liability was specifically authorised by a resolution of the board or a unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory ; in which case, the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would, in practice, defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act, etc., of the company? One finds the answer to this question by applying the usual canons of interpretation, raking into account the language of the rule (if it is a statute) and its content and policy.
In short, what the Privy Council held, in Meridian Global Funds Management Asia Ltd. (supra), is that the rule of attribution is a matter of interpretation or construction of the relevant substantive rule.

112. In Meridian Global Funds Management Asia Ltd. (supra), the Privy Council pointed out that once it is appreciated that the question is one of construction rather than metaphysics, the answer, in this case, seems to their Lordships to be as straightforward as it did to Heron J. The policy of Section 20 of the Securities Amendment Act, 1988, is to compel, in fast-moving markets, the immediate disclosure of the identity of persons, who become substantial security holders in public issuers. Notice must be given as soon as that person knows that he has become a substantial security holder. In the case of a corporate security holder, what rule should be implied as to the person, whose knowledge for this purpose is to count as the knowledge of the company? Surely,''the person who, with the authority of the company, acquired the relevant interest. Otherwise, the policy of the Act would be defeated. Companies would be able to allow the employees to acquire interests on their behalf, which made them substantial security holders, but

would not have to report them until the board or someone else, in senior management, got to know about it. This would put a premium on the board paying as little attention as possible to what its investment managers were doing. Their Lordships would, therefore, hold that upon the true construction of Section 20(4)(e), the company knows that it has become a substantial security holder, when that is known to the person, who had authority to do the deal. It is, then, obliged to give notice u/s 20(3). The fact that Koo did the deal for a corrupt purpose-and did not give such notice, because he did not want his employers to* find out cannot, in their Lordships'' view, affect the attribution of knowledge and the consequent duty to notify.

113. In Meridian Global Funds Management Asia Ltd. (supra), it has been pointed out that every act of a company cannot be expected to be the subject of resolution of the board or a unanimous decision of the shareholders. In every case, therefore, it is a question of fact as to whether a particular person is not only the directing mind, but will of the company. Thus, Viscount, C.J., recognises that it is possible to have a case, wherein the will may be of one person and the directing mind of the other. It has, however, been reiterated in Meridian Global Funds Management Asia Ltd. (supra), that the determination of the question as to whether a natural person''s act is binding on a corporate body is nothing, but resort to rule of attribution for the purpose of determining as to whether the natural person''s action can be treated as the will and directing mind of the corporate body. In Meridian Global Funds Management Asia Ltd(supra), it has been held that the phrase "directing mind and will" is not to be understood in such a manner that the court would start looking into the question as to whether a natural person was not only the directing mind of an act, which has been done, but also the will of the company.

114. In Meridian Global Funds Management Asia Ltd. (supra), it has been pointed out that it has always been a matter of construction of facts, in a given case, as to whether a person''s knowledge or state of mind shall be attributed to a corporate body or not. There may be a case illustrating its view that it is a question of fact in a given case as to whether the rules of attribution would be attracted or not, the Privy Council has pointed out that it was, therefore, not necessary, in this case, to inquire into whether Koo could have been described, in some more general sense, as the "directing mind and will" of the company. The Privy Council, however, observed that their Lordships would wish to guard themselves against being understood to mean that whenever a servant of a company has authority to do an act on its behalf, knowledge of that act will, for all purposes, be attributed to the company. It is, observed by the Privy Council, in Meridian Global Funds Management Asia Ltd. (supra), a question of construction, in each case, as to whether the particular rule requires that the knowledge that an act has been done, or the state of mind with which it was done, should be attributed to the company. Sometimes, as Supply of Ready Mixed Concrete (No. 2), In re [1995] 1 AC 456 and this case (i.e., Meridian Global Funds Management Asia Ltd.)(supra), it will be appropriate. Likewise, in a

case in which a company was required to make a return for revenue purposes and the statute made it an offence to make a false return with intent to deceive, the divisional court held that the mens rea of the servant, authorised to discharge the duty to make the return, should be attributed to the company: see Moore v. I. Bresler Ltd. [1944] 2 All ER 515 (KB). On the other hand, the fact that a company''s employee is authorised to drive a lorry does not in itself lead to the conclusion that if he kills someone by reckless driving, the company will be guilty of manslaughter. There is no inconsistency. Each is an example of an attribution rule for a particular purpose, tailored as it always must be to the terms and policies of the substantive rule.

115. What transpires from the decision in Meridian Global Funds Management Asia Ltd. (supra), is that the court will have to determine, as a question of fact, in each case, as to how the management of the company has, in reality, been conducted so as to determine as to who is the person, in the area of activity, whose act or omission has constituted the offence. This exercise may become a question of interpretation or construction of the statute, which makes an act or omission an offence. The person responsible need not, in every case, be in exalted position of the board of directors or the managing director. Hence, in Moore (supra), a company was convicted of an offence requiring proof of intention to deceive, though the persons, who were found responsible, were company''s secretary and the branch manager.

116. Halsbury''s Laws of England, volume 9(2), paragraph 1184, states, on the above aspect of law, as under:

A corporation may not be found guilty of criminal offences, such as treason or murder, for which death or imprisonment is the only penalty, nor may it be indicted for offences which cannot be vicariously committed, such as perjury or bigamy. Subject to these exceptions, a corporation may be indicted and convicted for the criminal acts of the directors and managers who represent the directing mind and will of the corporation and control what it does. The acts and state of mind of such persons are, in law, the acts and state of mind of the corporation itself. A corporation may not be convicted for the criminal acts of its inferior employees or agents unless the offence is one for which an employer or principal may be vicariously liable.

Wherever a duty is imposed by statute, in such a way, that a breach of the duty amounts to a disobedience of the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence for which a corporation may be indicted, whether or not the statute refers in terms to corporations.

117. What has been quoted above signifies the development of law, in England, with regard to corporate criminal liability and the position of law, in England, is that there

are some offences, which a corporation, being a juristic person, is incapable of committing, such as, treason or murder, which are punishable by death or imprisonment and not by any other means. A corporation can also not be indicted for an offence, which cannot be vicariously committed, such as, perjury or bigamy. Subject to these exceptions, a corporation may be indicted and convicted for the criminal acts of its directors and managers, who represent the directing mind and will of the corporation, and who control what the corporation does. The acts and state of mind of such persons are, in law, the acts and state of mind of the corporation itself.

118. From what is stated in Halsbury''s Laws of England, volume 11(1), at paragraph 35, which deals with the capacity of a corporation to commit a crime, it also transpires that according to the prevailing view, in the UK, even a company can be convicted under the common law and for statutory offences including those, which require mens rea. Criminal liability of a corporation arises, when an offence is committed, in the course of the corporation''s business, by a person in control of the affairs of the corporation and the control being to such a degree that it may be fair to say that the corporation thinks and acts through the person concerned so that his actions and intent are the actions and intent of the corporation. Thus, the position of law, in England, is that the corporations are liable for criminal prosecution even when a given offence requires criminal intent.

119. The judicial pronouncements by the courts, in Canada, are same as those in England. The courts, in Canada, have developed, in respect of a person, who acts as the mind of a corporation, a doctrine, popularly known as the alter ego. Briefly put, the doctrine of alter ego implies that in order to make a body corporate liable for the actions of its officers and employees, the officer or employee, who physically commits offence, must be the centre of the corporate personality, the chief organ of the body corporate, its directing will and mind and, therefore, tfre alter ego of the body corporate. The doctrine of alter ego came to be clearly established by the decision of the Canadian Supreme Court, in Canadian Dredge and Dock Co. v. The Queen reported in [1985] 11 RCSC 662, wherein it was held that not only the board of directors would be seen as the directing mind of the company, but also the managing director or any other person, to whom authority has been delegated by the board of directors, and it suffices that the act has been committed by a person on behalf of, and within the capacity of the corporation.

120. What emerges from the above discussion is that though, at the initial stage of the development of law in the field of corporate criminal liability, the views of the courts had been that it is only natural person, who can have criminal state of mind and that a juristic person, such as, a corporate body, not being a natural person, does not have a mind of its own and cannot, therefore, have criminal state of mind or mens rea. Consequently, it had been the view of the courts that a juristic person cannot be prosecuted for an offence, which requires mens rea. It is this concept of

law, which Kalpnath Rai (supra) reflects. In course of time, however, when the courts found that an act or omission committed by a company, is in clear contravention of the statutes, it came to take the view that without entering into the question as to whether a juristic person can have mens rea or not, when a court finds that a company has done an act or omission, which, having contravened the provisions of law, contained in that behalf, constitutes an offence, it is the duty of the court to sustain prosecution of the company for such an offence. The case of Kent and Sussex Contractors Ltd. (supra) is one of such cases, wherein a person, applying for fuel was required to fill, fortnightly, a form for the purpose of recording the distance, which a vehicle had covered, and the quantity of fuel, which it had consumed. As the information, furnished, in this regard, by the company, namely, Kent & Sussex Contractors Ltd., were found to be false, the comT pany was prosecuted. The justices found that the record was false, in material particulars, to the knowledge of the servants of the company; but the justices held that a body corporate could not, in law, be held guilty of the offence charged, because an act of will or state of mind cannot be imputed to a corporation. The case against the company was accordingly dismissed. The director of public prosecution, then, preferred appeal. The moot question, therefore, which arose in Kent and Sussex Contractors Ltd. (supra), as already indicated above, was: whether a limited company, being a body corporate, can, in law, be guilty of an offence, when the offence requires an act of will or state of mind.

121. In appeal, the court held, in Kent and Sussex Contractors Ltd. (supra), 1 that when an offence requires, as its ingredient, a particular state of mind, the court is required to determine as to whether such a state of mind existed or not and in such cases, it is immaterial and unwarranted to enquire into the question as to whether a company can be attributed mens rea or not. In Kent and Sussex Contractors Ltd. (supra), what eventually the court concluded was that when the agent of a company, acting within the scope of his authority, puts forward, on behalf of the company, documents which the agent knows to be false and whereby the agent intends to deceive, the knowledge and intention of the agent must be imputed on the company and, consequently, in such cases, the question as to; whether a company can have mens rea or not becomes irrelevant and idle. In Kent and Sussex Contractors Ltd. (supra), Macnaghten, J., pointed out, as mentioned above, that a body corporate is a "person" to whom, there should be imputed the attributes of a mind capable of knowing and forming an intention and, hence, the knowledge of the agent must be imputed to the body corporate. Macnaghten, J., therefore, concluded, in Kent and Sussex Contractors Ltd. (supra), as already mentioned above that if, in a given case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, then, his knowledge and intention must be imputed to the body corporate. The views expressed, on this aspect, by Hallett, J., were brdadly speaking the same.

122. From the decision in Kent and Sussex Contractors Ltd. (supra), it becomes, as already indicated, more than abundantly clear that a body corporate has no knowledge and intention of its own, but since a body corporate cannot exist without knowledge or intention, it must be held to have the knowledge or intention of the officer or agent through whom the body corporate functions. In such a case, the knowledge or intention of such an officer or agent, as the case may be, shall be attributed to the body corporate. Hence, when such officer or agent, through whom a body corporate acts, makes statement knowing it to be false or makes a statement with intent to deceive, the knowledge or intention of such an officer or agent must be attributed to the body corporate. In short, thus, the state of mind of such an officer or agent of a company is the state of mind of the body corporate.

123. In tune with the decision in Kent and Sussex Contractors Ltd. (supra) and I.C.R. Haulage Ltd. (supra) also laid down, as has been referred to above, that where, in any particular case there is evidence to show that criminal act of an agent, including his state of mind/intention, knowledge or belief, is the act of the company, there is no impediment in holding and in convicting the accused-company on the basis of the conclusion that the state of mind, intention, knowledge or belief of the officer or agent of the company is the state of mind, intention, knowledge or belief, as the case may be, of the company concerned and when the acts of the managing director are proved to be the acts of the company, the fraud committed by such a person can be held to be the fraud committed by the company itself.

124. I have also mentioned that in H.L. Bolton (Engineering) Co. Ltd. v. T.J. Graham and Sons Ltd. reported in [1956] 3 All ER 624 (CA), Lord Denning, in typical style, held that a company may, in many ways be compared to a human body, for, a company must be held to have a brain and nerve centre, which controls what the company does. Similarly, a company has the hands, which holds the tools and acts in accordance with the directions from the nerve centre. However, some of the persons, in the company are mere servants, who are nothing more than hands to do the work and cannot be said to represent the mind or will of the company; but there are some others, such as, the directors and managers, who represent the directing mind and will of the company. Hence, in such circumstances, the state of mind of those directors or managers is the state of mind of the company and is treated by law as such. Hence, where law requires personal fault as a condition precedent for imposing criminal liability, the personal fault of the manager shall be treated as the personal fault of the company. Consequently, observed Lord Denning, in H. L. Bolton (Engineering) Co. Ltd. (supra), that where the law requires a guilty mind as condition of an offence, the guilty mind of the directors or the managers of a body corporate will render the company guilty.

125. The question, which, then, arose was whether a corporation can be liable vicariously for the criminal acts of its officer or agents, which may be the directing mind and will of the corporation. This question arose in Tesco Supermarkets Ltd. v.

Nattrass reported in [1971] 2 All ER 127 (HL). Concluded the court, in Tesco Supermarkets Ltd. (supra), that a company cannot be made vicariously liable in criminal law; hence, the person, who is the mind behind the company ; is not living or acting as a servant, representative, agent or delegate; rather, he is an embodiment of the company or, as was put in Tesco Supermarkets Ltd. (supra), he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind, then, such guilt is the guilt of the company. In Tesco Supermarkets Ltd. (supra), Lord Denning''s, conclusion that a company can be held liable for the acts of that person, who may be the directing mind and will of the company (an expression, which was borrowed from the speech of Viscount Haldane, L.C, in Lennard''s Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915] AC 705, was explained, at page 713 by Lord Reid by pointing out, in Tesco Supermarkets Ltd. (supra), that there have been attempts to apply Lord Denning7 s words to all servants of a company, whose work is brain work, or who exercise some managerial discretion under the direction of superior officers of the company, though Lord Denning, according to Lord Reid, did not intend to refer to such servants, whose work is brain work or who exercise some managerial discretion under the directions of the superior of the company. Lord Denning, J., meant, according to Lord Reid, only those persons, who "represent the directing mind and will of the company, and control what it does". In Tesco Supermarkets Ltd. (supra), a distinction was, thus, drawn between those who act as the company, and those, whose acts are not acts of the company. Referring to H.L. Bolton (Engineering) Co. Ltd. (supra), it was held that while the act and the power of directors or other superior officers of a company, who manage to act and speak as the company, their subordinates do not; and that, while the acts and the power of the directors, managing director or persons, who function as the company, can make the company liable even criminally, such liability of a company will not arise if the acts have been done by persons, who, though officers of the company, may be subordinates to those, who manage, act and speak as the company. What is, however, of immense importance to note, in the decision of Tesco Supermarkets Ltd. (supra), is that having held that while adjudging the criminal liability of a corporate body, what is necessary is the determination of the fact as to whether the criminal act of the officer, servant or agent including his state of mind, intention, knowledge or belief is the act of the company or not, the court nevertheless pointed out that if the guilty man was, in law, identifiable with the company, then, whether his offence was serious or venial, his act was the act of the company but if he was not so identifiable, then, no act of his, serious or otherwise, was the act of the company itself. The need to identify the person, whose act may be attributable to the company has been further made it clear and explicit in Meridian Global Funds Management Asia Ltd. v. Securities Commission reported in [1995] 3 WLR 413 (PC), wherein the court took the view that though a person may have acted as the directing mind of the company, but not its will, such person''s act too will be attributable to the company. Similar was the view in Moore v. I. Bresler Ltd. [1944] 2

All ER 515 (KB).

126. From the discussion held above, what further becomes inescapable from being concluded is that the view, expressed by the apex court, in Kalpnath Rai (supra), that a juristic person cannot, have mens rea, is not in tune with the modern judicial thinking and it is in this context that the majority view, as expressed by Mathur, J., and Srikrishna, J., is that a company can be prosecuted for an offence, which requires mens rea, needs to be understood; more so, when Srikrishna, J., in clear terms, has held that though, initially, a corporation was held not liable criminally for offences, where mens rea is required, the current judicial thinking appears to be that mens rea of a person in charge of the corporation, the alter ego, must be extrapolated to the corporation.

127. In the light of the conclusions reached above, let me now deal with the question as to whether a juristic person, such as a company or association or body of persons, can be prosecuted for an offence u/s 406 of the Indian Penal Code. This question, in turn, brings us to a fundamental question and the question is: whether it is possible to prosecute a company or association or body of persons for any offence, under the Indian Penal Code, if such an offence involves mens rea as its essential ingredient. The questions posed above bring one to Section 11 of the IPC, which defines the word "person". It may be noted that Section 11 of the IPC defines the word "person" as including any company, or association, or a body of persons, whether incorporated or not. This definition is not exhaustive, but it is inclusive. The word "person", thus, means not only a natural person, such as, a man, woman, or child, but also an artificial person, or a juridical person, like a company or corporation.

129. Let us pause for a moment and patiently take note of Section 405 of the IPC, which defines criminal breach of trust, and Section 415 of the IPC, which defines cheating. Sections 405 and 415 read as under:

405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that 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 willfully suffers any other person so to do, commits criminal breach of trust.

Explanation 1.--A person, being an employer, who deducts the employee''s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of

the said contribution in violation of a direction of law as aforesaid.

Explanation 2.--A person, being an employer, who deducts the employees'' contribution from the wages payable to the employee for credit to the Employees'' State Insurance Fund held and administrated by the Employees'' State Insurance Corporation established under the Employees'' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit 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, is said to ''cheat''. Explanation.--A dishonest concealment of facts is a deception within the meaning of this section.

130. Before proceeding further, it needs to be noted that unlike special penal statutes, such as, Prevention of Food Adulteration Act, Essential Commodities Act, etc., the Indian Penal Code does not make specific provisions for prosecution of a company or of the directors or managing directors of a company. Can, in such circumstances, a company be said to be beyond the reach of the Indian Penal Code in respect of offences, which require mens rea as essential ingredient?

131. While considering the above aspect of law, it may be pointed out that a reading of the penal provisions, contained in Section 405 of the IPC, which defines the offence of "criminal breach of trust", and Section 420 of the IPC, which defines the offence of "cheating", shows that none of these sections uses the word "person" with reference to the offender. Instead of using the word "person", while referring to an offender, it uses the expression "whoever" ; whereas, while referring to a victim, both Section 405 as well as Section 415 uses the expression "person". In fact, the Indian Penal Code, when defining offences and prescribing punishments, has, generally, used the expression "whoever" while referring to the offender and not the word "person". Only some sections, such as, the penal sections, contained in Chapter 5, relating to abetment and criminal conspiracy, which have used the expression "person", while defining as to what abetment means, or when a person can be said to have abetted the commission of an offence or what a criminal conspiracy is and when a person is liable for punishment for an offence of "criminal conspiracy".

132. In the face of the fact that Section 11 states that a "person" includes a company, or association, or a body of persons, whether incorp6rated or not, there

can be no dispute that any "person", natural or artificial, can be deceived or cheated. Similarly, any "person", natural or artificial, can become a victim of the offence of criminal breach of trust. It cannot, therefore, be said that it is a natural person only, who can be deceived or cheated or whose property can be dishonestly misappropriated ; rather, even a company or an association can be deceived or even a company or an association may suffer from criminal misappropriation of its property even at the hands of its own servants. The question, however, is as to whether the expression "whoever", which occurs in Section 405 of the IPC, while defining the offence of "criminal breach of trust" would include both a natural person as well as a juridical person. In other words, when a victim of "criminal breach of trust" can be a juridical person, like a company, whether a juridical person, such as, a company, can be made an accused and be prosecuted for an offence of "criminal breach of trust" as defined by Section 405 of the IPC?

133. There is no dispute and there can be no dispute that the offence of "criminal breach of trust" involves mens rea as an essential ingredient. This becomes clear from the fact that Section 405 uses the expression "dishonestly or wilfully". u/s 24 of the IPC, whoever does anything with the intention of causing "wrongful gain" to one person or "wrongful loss" to another person is said to do that thing dishonestly. It, therefore, logically follows that the expression "whoever" is alleged to have committed the offence of "criminal breach of trust" must be treated to be a "person" capable of having requisite mens rea.

134. The question, therefore, is as to whether a company can be said to have mens rea in respect of an offence of "criminal breach of trust" as defined in Section 405 of the IPC? If one goes by the majority view, expressed, in Velliappa Textiles Ltd. (supra), on the question as to whether a company can be prosecuted for an offence, which needs mens rea as an ingredient, it becomes clear that it is possible to prosecute even a company for an offence of "criminal breach of trust" inasmuch as the majority view, as expressed by both Mathur, J. and Srikrishna, J., is that a company can be prosecuted even for such an offence which requires mens rea, if the alter ego of the company had mens rea, while doing an act or while omitting to do an act, which constitutes the offence. No wonder, therefore, that the Explanation 1 to Section 405 of the IPC states that a person, being an employer, who deducts the employee''s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law, for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in viqlation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

135. A person, in the context of Explanation 1 to Section 405 of the IPC, would necessarily have to be read to include a company and not merely a natural person, for, if the person appearing in Explanation 1 to Section 405 of the IPC is treated to

exclude an artificial person, the resultant effect would be that, while a natural person, in the circumstances, as conceived by Explanation 1 to Section 405 of the IPC, would be exposed to prosecution, an artificial person, such as, a company, would be beyond the reach of law even if the artificial person, such as, a company, being an employer, withholds the amount deducted by it from the wages of its employees.

136. However, while considering the penal provisions of the Indian Penal Code vis-a-vis other such statutes, it needs to be borne in mind that the Indian Penal Code does not contain any provision specifically making a company liable for offences, which involves mens rea as an essential ingredient; whereas the Income Tax Act, the Essential Commodities Act, the Prevention of Food Adulteration Act, etc., contain specific provisions to deal with the offences committed by companies. In fact, under some of these penal statutes, mens rea is not an essential ingredient of the offence.

137. Let me now turn to Section 2 of the Indian Penal Code, which declares as to who is punishable for commission of offences under the Indian Penal Code within India. It states: "Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provision thereof, of which, he shall be guilty within India.

138. u/s 2 of the IPC, none except those persons, who are contemplated by Section 2, can be punished for an offence under the Indian Penal Code. What is, however, extremely important to note is that the Legislature, in Section 2 of the IPC, while using the word "person" in the beginning of Section 2, has used the word "he", while providing as to who can be punished under the Indian Penal Code. The use of the word "he", which is a pronoun, refers to the word, "person", occurring in the beginning of Section 2 of the IPC. The question, which, therefore, arises, is this: whether the pronoun "he", occurring in Section 2 was intended to include a juridical person like a company? My quest for an answer to this question brings me to Section 8 of the IPC, which gives the meaning of the word "he". According to Section 8 of the IPC, the pronoun "he" and its derivatives are used to signify any person, whether male or female.

139. Thus, a cursory reading of Section 8 of the IPC would show as if under the Indian Penal Code, the pronoun "he" or its derivatives, like "his", "him", or "her" can mean only a natural person, male or female, and will not include an artificial person like the "company", because, a company would be a neuter gender. Does Section 8 of the IPC signify the legislative intent that in Section 2, the word "person" shall mean a natural person and not an artificial person. If such a restricted meaning is attributed to Section 2, then, the consequence would be that a company would be completely immune from prosecution under the Indian Penal Code. The aim of the Indian Penal Code is made explicit by its preamble, which indicates that the Indian Penal Code was enacted as a general Penal Code for India. Necessarily, therefore, Section 2 of the IPC and also various definitions, contained under Chapter-II of the

Indian Penal Code, have to be read subject to the context in which the word "person" has been used. No wonder, therefore, that it may not be possible to prosecute a company for committing offence, such as, murder or rape, a company''s prosecution for offences, such as, cheating or criminal breach of trust cannot be said to be beyond the scope of the Indian Penal Code. Yet another reason why Section 405 or 415 of the IPC must be read to include, and be applicable to, a company, as an offender, is that Section 415 uses the word "he", while referring to the "person", who may be deceived. If the word "he" is treated to refer to only a natural person, then, a company, though a person, in the light of Section 11 of the IPC, would have no remedy against a "person", who may commit the offence of cheating against the company nor would a company be entitled to prosecute its servant if its servant dishonestly misappropriates the property entrusted to him by the company as his employer.

140. Generally accepted view, in the United Kingdom, is that a company would be held liable for its officer''s that act only, which will fall within the scope of his office. As an illustration Black Stone''s Criminal Practice (2008 edition) cites the case of a director of a company, who, while driving his car to a board meeting, causes death by his reckless driving. For such an act of its director, the company would not be liable for the offence, which the director commits, because the director was not exercising his managerial act, whilst driving, even though he was on the way to his office, where he would have exercised his managerial function. On the other hand, if the acts are done, within the scope of an officer''s duty, his act would become the act of the company. It is in this context that false purchase tax return made by the company secretary was attributed to the company itself in Moore v. I. Bresler Ltd. [1944] 2 All ER 515 (KB). In fact, in Regina v. Robert Millar (Contractors) Ltd. [1970] 2 QB 54 (CA), the company was convicted of aiding and abetting the offence of causing death by dangerous driving, because its director knew the relevant facts.

141 Though it was held, as already pointed out above, in R.v. Cory Brothers and Co. Ltd. [1927] 1 KB 810, that a company could not be held guilty of manslaughter, the opposite view was taken in Coroner for East Kent, ex parte Spooner [1987] 88 Cr App R 10, and by Turner, J., in R. v. P and O European Ferries (Dover) Ltd. [1991] 93 Cr App R 72.

142. I may point out that in Rai Bahadur Seth Shreeram Durgaprasad v. Director of Enforcement reported in [1987] 3 SCC 27; [1988] 63 Comp Cas 151, the Supreme Court had an occasion to interpret the word "whoever", appearing in Sub-section (1) of Section 23 of the Foreign Exchange Regulation Act, 1947, before its amendment by Act XXXIX of 1957 inasmuch as the question, raised in Rai Bahadur Seth Shreeram Durgaprasad (supra), was as to whether the word "whoever", which appeared in Section 23(1), denoted only a natural person and not association of persons, such as, firm. Explaining as to why the word, "whoever", occurring in Section 23 of the said Act, shall be treated as comprehensive enough to include association of persons,

such as, firm and not necessarily a natural person alone, the apex court observed as follows (page 156 of 63 Comp Cas):

6. It is clear from these provisions that the word ''whoever7 in Sub-section (1) of Section 23 of the Act before its amendment was comprehensive enough to include and association of persons, such as a firm, and did not connote a natural person alone. There is no reason why the word ''whoever7 in the section should not receive its plain and natural meaning. According to the Shorter Oxford English Dictionary, volume 2, page 2543, ''whoever'' means ''any one who, any who''. The meaning given in Webster Comprehensive Dictionary, international edition, volume 2, at page 1437 is ''any one without exception'' ''any person who''. In our judgment, the word ''whoever7 in the unamended Section 23(1) must be read in juxtaposition with Section 12(2) and must mean any person who commits a contravention of that section without exception. That must be the legal connotation of the word ''whoever7 and it necessarily takes in corporate liability and includes any association of persons such as a partnership firm.

143. I may, however, hasten to add that the Foreign Exchange Regulation Act, 1973, specifically provided, with the help of Section 23C, prosecution for offences committed by companies. There is no such specific provision, as I have already indicated above, in the Indian Penal Code. Nevertheless, in the face of the fact that the word "person" includes even a corporate body, the "person" or the word "whoever", contained in the Indian Penal Code, cannot be treated, while interpreting the penal provisions, to signify only natural persons and not artificial persons, such as, company.

144. I may, at this stage, pause here to point out that in Maksud Saiyed v. State of Gujarat reported in [2007] 140 Comp Cas 590: [2008] 5 SCC 668, the Supreme Court has taken the view that the question of vicarious liability of the managing director and director of a body corporate would arise only when the statute makes specific provisions fixing vicarious liability and not otherwise. In S.K. Alagh v. State of U.P. reported in [2008] 142 Comp Cas 228: [2008] 5 SCC 662, the Supreme Court has held that the Indian Penal Code does not, save and except, some provisions specifically providing therefor, contemplate any vicarious liability on the part of a party, who is not charged directly for commission of an offence.

145. Thus, in the light of Maksud Saiyed v. State of Gujarat (supra) and S.K. Alagh (supra), when a bank draft is drawn in the name of a company and the amount covered by the bank draft, is allegedly misappropriated by the company dishonestly, its managing director or even its general manager cannot be held vicariously liable for offence of criminal breach of trust, which their company might have committed, for, when a statute contemplates creation of such legal fiction of vicarious liability, the statute, as noted in Maksud Saiyed (supra) and S.K. Alagh (supra), specifically provides therefor, whereas and the Indian Penal Code does not contain any such specific provision making the director or the managing director vicariously liable for

the offence of "criminal breach trust", which their company might have committed.

146. Hence, though S.K. Alagh (supra) lays down that it is not possible to vicariously hold the managing director or the general manager of a company liable for "criminal breach of trust" even if such offence of "criminal breach of trust" has been committed by their company, it does not, as a corollary, follow that a company cannot commit an offence of "criminal breach of trust". In fact, a microscopic reading of the decision, in S.K. Alagh (supra), makes it explicit that as far as prosecution of a company for commission of an offence of "criminal breach of trust" is concerned, it is permissible ; what has, however, been held, in S.K. Alagh (supra), as already indicated above, is that since the Indian Penal Code does not make a person vicariously liable for the act or omission of another, unlike some other statutes, such as, the Essential Commodities Act and the Negotiable Instruments Act, etc., (which provide for prosecution of directors or persons, who are in charge of, and responsible to, the company for the conduct of the business of the company), prosecution of the director of a company is not possible u/s 406 of the IPC even if he is prosecuted along with the company, for, he cannot be held vicariously liable for the offence, u/s 406 of the IPC, which his company might have committed unless and until it is alleged or shown that the director and/or the managing director, as the case may be, was/were not only the brain behind the company''s acts, constituting the offence of "criminal breach of trust", but also that the will of the director and/or the managing director, as the case may be, to commit the offence, was the will of the company too. In S.K. Alagh (supra), though the demand drafts issued by the complainant, had been received by the company concerned for supply of goods, the company, instead of supplying the goods, in consideration of the demand drafts received, terminated the dealership of the complainant. It was in such circumstances that the complainant lodged a complaint against S.K. Alagh, who was the managing director of Britania Industries Ltd., a company, which was however, not impleaded as an accused. The apex court held, in S.K. Alagh (supra), that even when a company is prosecuted along with its directors for an offence u/s 406 of the IPC, the prosecution of the director is nor permissible inasmuch as he cannot be held vicariously liable for the commission of offence of criminal breach of trust by his company. It has, thus not, been held, in S.K. Alagh (supra), that prosecution of a company, u/s 406 of the IPC is not maintainable. The relevant observations made, in this regard, which appear at paragraph 15, in S.K. Alagh (supra), read as under (page 234 of 142 Comp Cas):

We may, in this regard, notice that the provisions of the Essential Commodities Act, 1955, Negotiable Instruments Act, 1881, Employees'' Provident Funds Miscellaneous Provisions Act, 1952, etc., have created such vicarious liability. It is interesting to note that Section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the Explanations appended to Section 405 of the Indian Penal Code, 1860, a legal fiction has been created to the effect that the employer shall be

deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling u/s 406 of the Indian Penal Code, 1860, vicarious liability has been held to be not extendable to the directors or officers of the company.

147. What is, however, important to note is that in order to hold a company liable for "criminal breach of trust", the complainant must identify the natural person or persons, who was/were acting as the "directing mind and will" of the company so that the state of mind of such persort(s) can be attributed to the corporate body. In other words, it is the state of mind of natural persons, which becomes by legal fiction, the state of mind of the company so as to attract criminal liability of the company for an offence, under the Indian Penal Code, which has mens rea as its essential, ingredient.

148. What emerges from the above discussion is that the majority opinion, in Velliappa Textiles Ltd. (supra), as expressed by Mathur, J. and Srikrishna, J., (which, as already indicated above, has not been overruled in Standard Chartered Bank''s case (supra)), is that in order to attract criminal liability of a company for an offence involving mens rea, it is necessary to show that mens rea existed in the mind of a natural person, whose such criminal intent was attributable to the company. In other words, it is not possible to prosecute an artificial person, such as a company, for an offence, involving mens rea unless mens rea, existing in the mind of a natural person, is attributed or can be attributed, to the company. As against the views, so expressed in Velliappa Textiles Ltd. (supra), Maksud Sayed (supra) and S.K. Alagh (supra) take the view that while prosecution of a company for an offence, such as, "criminal breach of trust", is possible, prosecution of the director of such a company for such an offence is not permissible if the offence has been committed by the company, for, Maksud Sayed (supra) and S.K. Alagh (supra) hold that a director cannot be made vicariously liable for the offence of criminal breach of trust if committed by the company, whose director he is.

149. To put it a little differently, while Maksud Sayed (supra) and S.K. Alagh 1 (supra) hold that a director cannot be prosecuted for an offence of criminal breach of trust committed by his company even if he is prosecuted along with the company for such an offence, the majority view, on this aspect of law, in Velliappa Textiles Ltd. (supra), which has not been overruled in Standard Chartered Bank Ltd. (supra), is that a company cannot be prosecuted for an offence of criminal breach of trust without a natural person''s criminal state of mind being attributable to the company meaning thereby that if a company has to be prosecuted for an offence involving mens rea as its ingredient, some natural person, who can be regarded as the alter ego of the company and whose criminal state of mind is attributable to the company, must, necessarily, be prosecuted. In other words, independent of a natural person, whose criminal state of mind is attributable to a company,

prosecution of the company is not possible under the penal provisions of the Indian Penal Code in respect of offences, which require mens rea.

149. The two irreconcilable views, which the cases referred to hereinbefore, 1 express, can be resolved by holding that it is possible to prosecute a company along With its director or managing director for an offence involving mens rea as its ingredient, such as, an offence u/s 406 of the IPC, if the criminal state of mind of the natural person, such as, a director or a managing director, is attributable to the company. In such a case, the natural person is prosecuted not because of the fact that he is the director or managing director of the company, but because there is no real difference between him and his company inasmuch as he is the mind and will of the company and his decision is the decision and will of the company. The logical extension of this conclusion is that a person cannot be prosecuted for an offence of criminal breach of trust, u/s 406 of the IPC, committed by his company, merely because he happens to be the director of the company; but when there is no real and substantive difference between him and his company and when his criminal state of mind is attributable to his company, such a natural person''s prosecution, even for an offence u/s 406 of the IPC, along with his company, is permissible. It is, in this light, that the decision in Jaikrishnadas Manhordas Desai v. State of Bombay AIR 1960 SC 889, which Mr. Sahewalla relies upon, needs to be. considered.

151. In Krishan Kumar v. Union of India AIR 1959 SC 1390, the apex court has pointed out that it is not necessary or possible, in every case, to prove in what precise manner the accused person dealt with or misappropriated the goods of his master. The question is one of intention and not a matter of direct proof, in case of a servant charged with misappropriating the goods of his master, the ingredients of criminal offence of misappropriation will be treated established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account is due to an accidental loss, then, such facts too, being within the servant''s knowledge, are for the servant to explain and that it is not the law of this country that the prosecution has to eliminate all possible defences or circumstances, which may exonerate an accused. If such facts are within the knowledge of the accused, then, he has to prove them.

152. It needs to be borne in mind that in Jaikrishnadas Manhordas Desai v. State of Bombay AIR 1960 SC 889, the Supreme Court held that to establish a charge of criminal breach of trust, prosecution is not obliged to prove precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion, which may not, ordinarily, be a matter of direct proof, entrust-ment of property and failure, in breach of an obligation to account for the property entrusted, if proved, may, in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

153. What crystallises from the above discussion is this: Even a company, though a juristic person, can be prosecuted for an offence, which needs mens rea as its ingredient provided that there are materials to show that a natural person, who has been the directing mind and will of the company or who was alter ego of the company, had mens rea or criminal state of mind at the time of doing the act, which satisfied the ingredients of the given offence.

154. It is, therefore, necessary, in order to sustain prosecution of a juridical person, like company, for an offence, involving mens rea, that the complainant identifies the natural person(s), whose act(s) can be said to constitute the offence alleged and whose state of mind is attributable to the juridical person. Viewed from this angle, it also becomes clear that in order to sustain a complaint against a company or a body of persons, it is necessary for the complainant to make it clear, in the complaint, as to whose acts or omissions, reflecting criminal state of mind, shall be attributed to the company. This apart, merely because of the fact that a person is a director, general manager or managing director, he cannot be vicariously held liable, or be prosecuted, for an offence committed by the company if the law does not provide for prosecution of the director, general manager or managing director as the case may be, for the offence committed by the company unless it is alleged or shown that the director, managing director or the general manager, as the case may be, is the brain behind the commission of the offence by the company and that it was his will to commit the offence, which became the will of the company.

155. Before proceeding further, I may also pause to point out that, though subtle, there is, indeed, a very fine but firm line of demarcation between taking of "cognisance", u/s 190(1)(b) of the Cr.P.C. on the basis of a police report (i.e., "charge sheet" or "final report"), which is submitted, u/s 173(2) of the Cr.P.C. to a magistrate, and issuance of process on the basis of a police report, on the one hand, and taking pf "cognisance", u/s 190(1)(a) of the Cr. P. C, and issuance of process on the basis of a complaint, on the other, although processes are issued by a magistrate in both the cases, i.e., in a complaint case and also in a case, instituted otherwise than on complaint, which would obviously include a case registered on the basis of a police report, u/s 204 of the Cr.P.C.

When a "company" has to be prosecuted on the basis of first information report:

156. When the prosecution of a "company" for an offence involving mens rea as its ingredient is possible, it would be, consequently, permissible to file an FIR alleging commission of an offence by a "company" for criminal breach of trust or for cheating or for any other offences, which require mens rea as ingredient. In the FIR, the informant may not be able to identify the natural person, whose mental state of mind can be attributed to the "company", which has been made accused in such an FIR. Upon "investigation", however, when the police report, in terms of Section 173(2) of the Cr. P. C, is submitted, the magistrate, before proceeding to take cognisance of offence(s) on the basis of such a police report, must determine if the

"investigation" has been able to identify the natural person(s), whose state(s) of mind can be attributed to the "company". If the police investigation reveals the identity of the natural person(s), whose criminal intent can be attributed to the "company", it would be possible for the court to take cognisance of an offence on the basis of such a police report and, then, issue process, u/s 204 of the Cr. P. C, to the "company" along with the natural person(s), so identified, to face prosecution, for, Section 204 of the Cr. P. C, makes it clear that no magistrate can issue process unless he forms an opinion that there is ground for proceeding. Leaving the "natural person(s)", whose act(s) is (are) attributable to the "company", the "company" cannot be summoned to face prosecution unless the offence is such, which does not involve mens rea as one of its ingredients or when the offence committed is under a statute of strict liability.

157. The fall-out of the above discussion, as already pointed out above, is that in respect of an offence, which involves mens rea as ingredient, summoning a "company" to face trial is not possible unless natural person(s), whose criminal state(s) of mind is (are) attributable to the "company" is identified and made an accused.

When a "company" has to be prosecuted on the basis of a "complaint":

158. Similarly, though a magistrate may, perhaps, take cognisance of an offence u/s 190(1)(a) of the Cr.P.C, on the basis of a "complaint", which makes allegations against a "company" of commission of an offence, which involves mens rea as its ingredients, without indicating the natural person(s), whose act{s) is (are) sought to be attributed or is (are) attributable to the "company", the magistrate, taking "cognisance", may examine the complainant and his witnesses, if any, present, and the magistrate may also, in such a case, even hold inquiry in terms of Section 202 of the Cr. P. C. But on completion of such inquiry, if the "complainant" is unable to show as to who is (are) the natural person(s), whose criminal state(s) of mind is (are) sought to be attributed to the "company", the magistrate cannot issue process against the "company" to face trial, for, a magistrate cannot, in the light of the provisions of Section 204 of the Cr.P.C, issue process merely because he has taken cognisance on the basis of the complaint, but only when, after completion of the examination of the complainant and his witnesses), if any, u/s 200 of the Cr. P. C, and, after holding inquiry, if any, u/s 202 of the Cr. P. C, he forms the opinion that there is sufficient ground for proceeding. In such a case, having taken cognisance and upon holding "inquiry", if deemed necessary, the magistrate would be competent to dismiss the "complaint" in exercise of his powers u/s 203 of the Cr. P. C, if he finds that no natural person(s), whose mental state(s) of mind is (are) attributable to the "company", has been identified or identifiable. If, however, the complainant or his witness(es), if any, on being examined u/s 200 of the Cr.P.C, or, upon holding inquiry, in such a case, as provided u/s 202 of the Cr.P.C, materials on record disclose or are able to indicate the "natural per-son(s)" whose criminal

state(s) of mind is (are) attributable to the "company", then, the magistrate would be justified in issuing processes not only to the "company", but also to the natural person(s), whose act(s) is (are) attributable to the "company", to face prosecution.

159. In effect, thus, prosecution of a "company", in respect of an "offence",involving mens rea as its ingredient, is not possible without having brought on record the natural person(s), whose state(s) of mind is (are) attributable to the "company" inasmuch as a company''s prosecution in respect of an offence, requiring mens rea as its ingredient, is, in essence, nothing but vicarious liability of the "company" for the acts of omissions or commissions of such a natural person, who has been the "alter ego" of the "company" or the "controlling mind and will of the company.�

160. In the light of the position of law as indicated above, when I revert to the 1 complaint, I find that according to the contents of the complaint, the dispute between the parties is a dispute of civil nature inasmuch as there are, even according to the complaint, assertions and counter-assertions of monetary claims and liabilities by both the parties, i.e., the complainant, on the one hand, and the accused Federation and its functionaries, on the other, inasmuch as the accused Federation (i.e., accused No. 7), which was a juridical person, is alleged to have encashed the bank drafts, which the complainant claims to have sent to the offices of the accused Federation at Jorhat and Guwahati, whereas, the accused-petitioners claim that in collusion with accused No. 4, namely, Ujjal Baruah, who is an employee of the accused Federation, the complainant had committed fraud and made the Federation suffer loss.

161. Coupled with the above, there is no specific act alleged against accused 1 No. 1, who is the chief general manager of the accused Federation, to show that it was on his direction or with his connivance or previous knowledge that the bank drafts, in question, were encashed by the Federation nor is there any allegation, in the complaint, showing that it is pursuant to the decision of accused No. 1 that the goods were not dispatched to the complainant or the money, covered by the bank drafts, in question, were not refunded to the complainant. There is not even a whisper, in the complaint, that it is accused No. 1, whose decision is the decision of the Federation or his will is the will of the Federation. In such circumstances, prosecution against the petitioner, R.S. Sodhi, chief general manager (i.e., accused No. 1) cannot be sustained, merely because he is the chief general manager of the accused Federation, who came, admittedly, to the picture only after the bank drafts, in question, already stood encashed, in other words, when there is no specific allegation, as already indicated above, that it was on the direction of accused No. 1 or with his connivance or previous knowledge that the bank drafts, in question, were encashed and/or that it was due to his decision that in respect of the money, which the accused Federation (i.e., accused No. 7) had so received, no goods were dispatched to the complainant, the prosecution of accused No. 1 is not legally possible.

162. Coupled with the above, one can also not ignore the fact that the complainant has named the accused Federation as accused No. 7. The demand drafts, in question, were, as in the case of S.K. Alagh (supra), in the name of the accused Federation and it was also encashed by the said juridical person. In the absence of any provision making the chief general manager of the accused Federation (i.e., accused No. 7) vicariously liable for the offence, which the accused Federation might have committed, accused No. 1 cannot, in the light of the decision, in S.K. Alagh (supra), be tried and, consequently, his prosecution for the offence of criminal breach of trust, even if committed by the accused Federation (i.e., accused No. 7), is not permissible in law. So long as the law, laid down in S.K. Alagh''s case (supra), holds the field, the prosecution of accused No. 1, namely, R.S. Sodhi, is not permissible inasmuch as he cannot be held vicariously liable for the alleged misappropriation of the amount, which the drafts, in question, covered.

163. Similarly, no specific allegation has been made against the accused No. 2, namely, Sri Manoranjan Pani, assistant general manager of the accused Federation (i.e., accused No. 7). Merely because of the fact that accused No. 2 is the assistant general manager of the accused Federation, posted in Kolkata, he cannot be made, in the absence of any specific accusation, vicariously liable for the criminal misappropriation, which has been allegedly committed by the accused Federation (i.e., accused No. 7).

164. In the complaint, in question, specific accusations have, however, been made against accused Nos. 3, 4 and 5, namely, Sri S.S.S. Bhoi, Regional Manager, Sri Kamakhya Prasad Chaliha, Sales Manager, and Sri Apurba Kumar Mishra, depot-in-charge, at Guwahati, that they had received the bank drafts, encashed the same and did not send the goods against which the said bank drafts were sent. Since accused No. 3 is the regional manager, accused No. 4 is the sales manager and accused No. 6 is the depot-in-charge of accused No. 7, they could have, perhaps, been treated as the natural persons, whose states of mind were attributable to the accused Federation. Viewed from this angle, prosecution of accused Nos. 3, 4 and 5, namely, Sri S.S.S. Bhoi, regional manager, Sri Kamakhya Prasad Chaliha, sales manager, and Sri Apurba Kumar Mishra, depot-in-charge, at Guwahati, respectively, might have been possible, but for the reason that the letter, dated November 21, 2006, aforementioned, which the complainant relies upon, shows that these accused persons had made it clear to the complainant that it is their head office, which would take the decision in the matter of demand of refund of the amounts, which the complainant had been making. This shows that accused Nos. 3,4 and 5 are neither the mind nor the will of the accused Federation. In other words, the letter, dated November 21, 2006, which the complainant relies upon, clearly shows that accused Nos. 3, 4 and 5 have no power to decide as to whether the accused Federation shall or shall not refund the money, covered by the drafts aforementioned, and/or supply, in consideration of the said drafts, requisite goods to the complainant. In such circumstances, their prosecution too is not possible. To

put it, somewhat, differently, the case against these accused persons cannot be considered de hors, or independent of, the correspondences made between the accused persons, on the one hand, and the complainant, on the other, when the complainant places reliance on such correspondences. The letter, dated November 21,2006, issued by accused No. 2, namely, Sri Manoraman Pani, clearly shows that accused Nos. 3, 4 and 5, had no independent discretion to either refund the amounts, which the demand drafts, in question, covered or give to the complainant, in consideration of the said drafts, the goods, which the complainant wanted to receive. Thus, accused Nos. 3, 4 and 5 were neither the mind nor the will of the accused Federation (i.e., accused No. 7). It is, therefore, neither possible to prosecute accused Nos. 3, 4 and 5 for withholding of the amounts covered by the said demand drafts nor can they be prosecuted for non-delivery of the goods, which the complainant had been asking for.

165. Because of the fact that the states of mind of accused Nos. 3, 4 and 5 1 cannot, in the light of the discussions held above and in the fact situation of the present case, be attributed to the accused Federation, the prosecution of the accused Federation is also not permissible. This apart, as far as accused Federation (i.e., accused No. 7) is concerned, it, being a juristic person, cannot be prosecuted for an offence u/s 406 of the IPC, as already pointed out above, until the time a natural person is identified as the mind and will of the accused Federation. It is, therefore, necessary that the complainant identifies the natural person or persons, whose criminal intent can be attributed to the artificial person, in question, namely, the accused Federation (i.e., accused No. 7). In the present case, there is nothing to show as to which natural person''s act(s) shall be treated, as the act(s) of the accused Federation. Hence, in the absence of any identified natural person, whose state of mind is attributable to the accused Federation, prosecution of the accused Federation (i.e accused No. 7) is not permissible in law.

166. Though Mr. G.N Sahewalla, learned senior counsel, appearing on behalf of the complainant, has placed reliance, on Jaikrishnadas Manhordas Desai v. State of Bombay AIR 1960 SC 889, to sustain prosecution of all the accused persons, it needs to be noted that Jaikrishnadas Manhordas Desai (supra) is a case, where the company as well as the directors, who were at the helm of affairs, had dishonestly misappropriated the clothes entrusted to them for dyeing and it was, in such circumstances, particularly, when there was specific finding of common intention that the prosecution and conviction of the accused were upheld by the apex court. The present one is not such a case inasmuch as petitioner No. 1, namely, the chief general manager, as well as accused No. 2, namely, Sri Manoranjan Pani, assistant general manager of the accused Federation, as already indicated hereinbefore, came to the picture, even according to the complaint, after the bank drafts, in question, already stood encashed.

167. What surfaces from the above discussion is that in the face of the allegations made in the complaint and the materials on record, prosecution of none of the accused-petitioners is permissible in law and, hence, their prosecution cannot be sustained and must be interfered with, in exercise of this court''s power, u/s 482 of the Cr.P.C.

168. In the result and for the reasons discussed above, the complaint, in question, to the extent that the same concerns the accused-petitioners and also the impugned order dated May 30, 2007, whereby the issuance of summons to these accused have been directed, are hereby set aside and quashed. The interim directions, passed in these criminal petitions, shall accordingly stand modified.

169. With the above observations and directions, these criminal petitions shall stand disposed of.

170. No order as to costs.