IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 13TH DAY OF JANUARY 2022/23RD POUSHA, 1943

CRL.MC NO.8 OF 2020

AGAINST THE ORDER/JUDGMENT IN CC 532/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, TRIVANDRUM

PETITIONER/1st ACCUSED:

AROON PURIE,
CHAIRMAN AND WHOLE TIME DIRECTOR, TV TODAY NETWORK LIMITED HAVING HIS OFFICE AT F 26, FIRST FLOOR, CONNAUGHT CIRCUS, NEW DELHI-110 001.

BY ADVS.
SRI.P.M.JOSEPH
SRI.JOHN VARGHESE

RESPONDENTS/STATE & COMPLAINANT:

1. *STATE OF KERALA, THROUGH THE PUBLIC PROSECUTOR, KERALA HIGH COURT, ERNAKULAM-682 031.*
2. *ANIL KUMAR @ CHENTHI ANI, SON OF LEKSHMANAN, RESIDING AT DAIVADESAKOM, CHENTHY PONGUMMOODU, MEDICAL COLLEGE.P.O, THIRUVANANTHAPURAM-695 011, KERALA STATE.*

BY ADVS.SRI.R.SUNIL KUMAR

SMT.A.SALINI LAL

R1 BY SRI.SUDHEER GOPALAKRISHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13.12.2021, THE COURT ON 13.01.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 13TH DAY OF JANUARY 2022/23RD POUSHA, 1943

CRL.MC NO. 23 OF 2020

AGAINST THE ORDER/JUDGMENT IN CC 532/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, TRIVANDRUM

PETITIONER/ACCUSED NO.3:

*THE CHAIRMAN AND MANAGING DIRECTOR,
ADITYA BIRLA GROUP, OWNER OF LIVING MEDIA INDIA LTD.,
(INDIA TODAY GROUP), ADITYA BIRLA GROUP HEADQUARTERS,
ADITYA BIRALA CENTRE, 3RD FLOOR, S.K.AHIR MARG,
WORLI, MUMBAI.*

*BY ADVS.
S.SREEKUMAR (SR.)
SRI.A.KUMAR
SMT.G.MINI(1748)
SRI.P.MARTIN JOSE
SRI.P.S.SREEPRASAD*

RESPONDENT NO.1/COMPLAINANT:

1. *ANILKUMAR @ CHENTHI ANI,
RESIDING AT DAIVADESAKOM, CHENTHY, PONGUMOODU,
MEDICAL COLLEGE P.O., PIN - 695 011,
TRIVANDRUM, SOUTH KERALA.*
2. *THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.*

*BY ADVS.R.SUNIL KUMAR
A.SALINI LAL
ARUN KRISHNA
R2 BY SRI.SUDHEER GOPALAKRISHNAN, PUBLIC PROSECUTOR*

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13.12.2021, THE COURT ON 13.01.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 13TH DAY OF JANUARY 2022 / 23RD POUSHA, 1943

CRL.MC NO. 1663 OF 2020

AGAINST THE ORDER/JUDGMENT IN CC 532/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,TRIVANDRUM

PETITIONER/2ND ACCUSED:

ASHISH BAGGA,
CHIEF EXECUTIVE OFFICER, LIVING MEDIA INDIA LIMITED,
HAVING ITS REGISTERED OFFICE AT F-26, FIRST FLOOR,
CONNAUGHT CIRCUS, NEW DELHI-110001,
NOW RESIDING AT A-4/2, DLF PHASE 1, DEODHAR MARG, GURGAON-122 002.

BY ADV.JOHN VARGHESE

RESPONDENTS/STATE & COMPLAINANT:

1. *STATE OF KERALA,*
THROUGH THE PUBLIC PROSECUTOR,
KERALA HIGH COURT, ERNAKULAM PIN-682 031.

2. *ANIL KUMAR @ CHENTHI ANI,*
SON OF LEKSHMANAN, RESIDING AT DAIVADESAKOM,
CHENTHY PONGUMMOODU, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM-695 011, KERALA STATE.

BY ADVS.
R.SUNIL KUMAR
A.SALINI LAL
ARUN KRISHNA
R1 BY SRI.SUDHEER GOPALAKRISHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13.12.2021, THE COURT ON 13.01.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 13TH DAY OF DECEMBER 2021 / 22ND AGRAHAYANA, 1943

CRL.MC NO. 1666 OF 2020

AGAINST THE ORDER/JUDGMENT IN CC 532/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,TRIVANDRUM

PETITIONER/4TH ACCUSED:

TV TODAY NETWORK LIMITED,
A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT F-26, FIRST FLOOR, CONNAUGHT CIRCUS, NEW DELHI-110 001.

BY ADVS.
JOHN VARGHESE
SRI.A.L.GEORGE

RESPONDENTS/STATE & COMPLAINANT:

1. *STATE OF KERALA,*
   THROUGH THE PUBLIC PROSECUTOR, KERALA HIGH COURT, ERNAKULAM-682 031.
2. *ANIL KUMAR @ CHENTHI ANI,*
   SON OF LEKSHMANAN, RESIDING AT DAIVADESAKOM, CHENTHY, PONGUMMOODU, MEDICAL COLLEGE.P.O, THIRUVANANTHAPURAM-695 011, KERALA STATE

BY ADVS.
R.SUNIL KUMAR
A.SALINI LAL
ARUN KRISHNA
R1 BY SRI.SUDHEER GOPALAKRISHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13.12.2021, THE COURT ON 13.01.2022 PASSED THE FOLLOWING:

“CR”

O R D E R

These Crl.M.C.s are filed by accused Nos.1 to 4 in C.C.No.532 of 2019 on the file of the Judicial First Class Magistrate Court-I, Thiruvananthapuram. Crl.M.C.No.8 of 2020 is filed by the 1st accused, Crl.M.C.No.1663 of 2020 is filed by the 2nd accused, Crl.M.C.No.23 of 2020 is filed by the 3rd accused and Crl.M.C.No.1666 of 2020 is filed by the 4th accused.

2. The aforesaid calendar case was registered on the basis of a complaint submitted by the 2nd respondent in Crl.M.C.No.8 of 2020 (hereinafter referred as complainant). Offences alleged against petitioners are under Sections 499 and 500 IPC. Gist of the allegation is as follows:

The 1st accused, is the Chairman and Managing Director of M/s TV Today Network Ltd., owned by M/s Living Media, 2nd accused is the Chief Executive Officer of M/s.Living media, 3rd accused is the Chairman and Managing Director of Aditya Birla Group, owner of M/s.Living Media India Ltd. and the 4th accused is M/s.TV Today Network Ltd. On 03.08.2017, India

Today TV, which is a news channel, telecasted a news item at about 10 pm showing one Manikkuttan as the main accused in the murder of one Rajesh, which occurred on 29.07.2017. While, telecasting the aforesaid news item, photo shown in the channel was that of the 2nd respondent, by stating that, it is the photograph of the said Manikkuttan. It is averred that telecasting of the said news item along with the photograph of the complainant with the wrong description, mentioned as above, continued for about three days. Consequently, a notice was issued on 07.10.2017 and thereafter, the said complaint was submitted by the complainant before the learned Magistrate and cognizance was taken thereof. Annexure-A6 in Crl.MC.No.8 of 2020 is the aforesaid complaint.

3. These Crl.M.Cs are filed for quashing all further proceedings in the said complaint by raising the contention that the averments in the said complaint do not disclose any offence as against the petitioners herein.

4. Heard Sri.Hrishikesh Baruah, learned Senior counsel assisted by Sri.John Varghese, learned counsel appearing for

petitioners in Crl.M.C.Nos.8 of 2020, 1663 of 2020 and 1666 of 2020, Sri.S.Sreekumar, learned Senior Counsel, assisted by Sri.A.Kumar, learned counsel appearing for the petitioner in Crl.M.C.No.23 of 2020 and Sri.R.Sunil Kumar, learned counsel for the complainant.

5. Sri.Hrishikesh Baruah, Learned senior counsel mainly contended that the averments contained in the complaint do not disclose the role of the petitioners in preparing, editing or telecasting the news item, which is the subject-matter of the complaint. According to the learned senior counsel, even without any specific allegation, the Chairman and Managing Director of the company which runs the TV channel were arraigned as accused. It was also contended that, in criminal law the concept of vicarious liability is not applicable unless the same is specifically mentioned in the statute itself. It was also contended that, accused No.4 being a juristic person, it cannot be implicated for an offence under Section 499 IPC. The learned counsel relies on judgments reported in **Ravindranatha Bajpe v. Mangalore**

Special Economic Zone Ltd. [V(2021) SLT 755], Maksud Saiyed v. State of Gujarat and Ors. [(2008) 5 SCC 668], Rajan Bihari Lal Raheja & Ors. v. Planman Consulting India Pvt.Ltd. [(2011) 126 DRJ 468], Sanjai Pinto v. A.Kamaraj [2012(2) CTC 352], Raimond Ltd. & Ors. v. Rameshwar Das Dwarakadas P.Ltd. [II(2013) DLT (Crl.) 853] and **GHCL Employees Stock Option Trust v. India Infoline Ltd.[IV (2013 SLT 191].**

6. The learned Senior counsel Sri.S.Sreekumar, supported the contentions put forward by the Sri.Hrishikesh Baruah and made an additional contention that the petitioner in Crl.M.C.No.23 of 2020 was wrongfully arrayed as an accused. It was contended that the 3rd accused is the Chairman and Managing Director of Adithya Birla group and he was implicated as an accused in the complaint under the impression that he is the owner of M/s.Living Media India Ltd., which owns India Today news channel. It was contended that India Today news channel is owned by TV today news network, in which 56.92% shares alone are owned by M/s.Living Media India Ltd.

The aforesaid company is not a subsidiary company of Adithya Birla Group and the 3rd accused does not have any control over the affairs of India Today news channel. Apart from the above, the learned senior counsel also contended that there is no specific allegation as to the role played by the petitioner in telecasting objectionable news item. In the absence of such allegation, no complaint can be sustained against him. Reliance was placed on **Rajan Bihari Lal Raheja** *(supra),* order rendered by this court in **M.M.Hassan v. State of Kerala dated 08.04.16, in Crl.M.C.No.3534 of 2014, Sunil Bharati Mittal v. CBI [2015(4) SCC 609]** and **Ravindranatha Bajpe** *(supra).*

7. On the other hand, the learned counsel for the 2nd respondent contends that, there are sufficient allegations contained in the complaint for attracting the offence against the petitioners herein. He brought my attention to the contents of

the complaint particularly in paragraph Nos.2, 3, 5, 6, 7 and 14 thereof.

8. The main question that arises is as to whether a case is made out for attracting the offences punishable under Sections 499 and 500 IPC from the averments contained in Annexure-A6 complaint (in Crl.M.C.No.23 of 2020). I have carefully gone through the averments in the complaint. From the contents of the same, it is discernible that, apart from the averment to the effect that the accused persons were Chairman and Managing Director, Chief Executive Officer, and the owner of India Today Ltd., the specific role played by the aforesaid accused persons in selecting, editing and telecasting the said news item has not been stated therein. All the allegations contained therein are general in nature. Conspicuously, the persons who were directly responsible for airing the programme and have presented the news item, were not made as accused persons. Therefore, the question that emerges here is whether merely because of the fact that the accused persons were holding high positions in the company, which is running the news channel, can they be implicated for the offence

alleged. Before going into further details, the requirements to attract offences under Sections 499 and 500 IPC are to be examined. Section 499 IPC reads as follows:

> "499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.
> Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
>
> Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
> Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.
> Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or

> lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

9. From the perusal of the definition of defamation as contained under Section 499 IPC, it can be seen that, in order to attract the said offence, there must be a positive act from the part of the accused by words either spoken or intended to be read, or by signs or by visible representations, which contain any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, Therefore, it is evident that the offence is person centric and only if, the particular accused has made any act with the specific intention or knowledge of its consequences, he can be prosecuted for the said offence. In such circumstances, it is absolutely necessary that the complaint should contain specific averments, pointing out the specific role played by each of the accused persons in expressing, making or publishing the objectionable imputations

with the intention or knowledge of consequences of such imputations.

10. The aforesaid question was a subject-matter of large number of litigations. In **K.M.Mathew v. State of Kerala and Anr. [AIR 1992 SC 2206],** the Honourable Supreme Court specifically considered the said question in the matter of news papers. After referring to the provisions contained in Press and Books Registration Act, 1867 it was observed in paragraph Nos.9 and 10 in the manner as follows:

> "9. In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption under Section 7 of the Press and Registration of Books Act, 1867 (the Act),. But Section 7 of the Act has no applicability for a person who is simply named as Chief Editor. The presumption under Section 7 is only against the person whose name is printed as editor as required under Section 5(1). There is a mandatory (though rebuttable) presumption that the person whose name is printed as Editor is the editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines Editor to

mean the person who controls the selection of the matter that is published in a newspaper. Section 7 raises the presumption in respect of a person who is named as the editor and printed as such on every copy of the newspaper. The Act does not recognise any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper. there is no presumption against him under Section 7 of the Act. See State of Maharashtra v. Dr. RB. Chowdhary & Ors., 1967(3) SCR 708; U.P. Mishra v. Kamal Narain Sharma & Ors., 1971(3) SCR 257, Narasingh Charan Mohanty v. Surendra Mohanty, 1974(2) SCR 39 and Haji C.H. Mohammed Koya v. T.K.S.M.A. Muthukoya, 1979(1) SCR 664.

10. It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima

facie case. The view taken by the High Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside.”

11. In **Rajan Biharilal’s case**, the Delhi High Court after referring to various judgments rendered by the Honourable Supreme Court and other High Courts summarized the legal position in the manner as follows:

“25. From the afore-noted judicial pronouncements, the legal position which emerges is as follows:

"(i) Besides persons declared as editor, printer and publisher of a newspaper, only such person could be prosecuted for an action of defamation against whom specific and clear allegations have been made in the complaint that either he was responsible for selection of the defamatory matter or had personal knowledge about the contents of the defamatory matter. In addition, it must also be averred in the complaint that such person had the intention to harm or knowledge or reason to believe that the imputation will harm the reputation of the complainant.

(ii) The Chairman or the Managing Director of the company owning a newspaper is neither the editor, nor the printer nor the publisher and therefore no presumption could be drawn against holder of these offices even though they are, by reason of the offices

> held by them, in charge of, and responsible to, the company for the conduct of its business".

12. In **Raveendra Bajpay's** case, the Honourable Supreme Court considered the question of culpability of Directors of the company in respect of the offences punishable under Sections 407, 148, 420, 456, 506 etc. In paragraph No.7.1 it was observed as follows:

> "7.1 Except the above allegations, there are no further allegations in the complaint. It was not even the case on behalf of the complainant that at the time when the compound wall was demolished and trees were cut, accused nos. 2 to 5 and 7 & 8 were present. Except the bald statement that accused nos. 2 to 5 and 7 & 8 have conspired with common intention to lay the pipeline within the schedule properties belonging to the complainant, without any lawful authority and right whatsoever and in furtherance they have committed to trespass into the schedule properties of the complainant and demolished the compound wall, there are no other allegations that at that time they were present. Accused nos. 2 to 5 and 7 & 8 are stationed at Hyderabad. There are no further allegations that at the command of A2 to A5 and A7 & A8, the

> demolition of the compound wall has taken place. All of them are arrayed as an accused as Chairman, Managing Director, Deputy General Manager (Civil & Env.), Planner & Executor, Chairman and Executive Director respectively. Therefore, as such, in absence of any specific allegations and the specific role attributed to them, the learned Magistrate was not justified in issuing process against accused nos. 1 to 8 for the offences punishable under Sections 427, 447, 506 and 120 B read with Section 34 IPC."

13. From the aforesaid judgments, the necessity of specific allegation as to the role played by the accused persons in commission of the offence alleged against them is specifically highlighted. In **M.M.Hassan v. State of Kerala,** *(Crl.M.C.No.3534 of 2014)* this Court considered the above issue in the case of a TV news channel in respect of offence under Section 499 of IPC and arrived at the conclusion that the Managing Director of the news channel cannot be implicated as accused, unless there are specific allegations indicating his role in such imputation. In paragraph No.12 of the said judgment it was observed as follows:

> "12. In the present case, it is blatantly obvious that there is no allegation against the present petitioner

> that he was having knowledge of the publication of such imputation or that he was directly responsible for publication of such imputation. The Managing Director is supposed to have the control over the management of the Television Channel and its financial aspects. He is not directly concerned with the airing of the news items and unless there are materials to come to such a conclusion, he cannot be roped in for having committed the offence under section 499 of the IPC. Principles of vicarious liability is not applicable to Criminal offences and in the absence of any provision laid down in the statute, the Managing Director cannot be held vicariously liable for the offence committed by the Company or its employees. Merely because the accused happened to be the Managing Director of the T.V. News Channel, no criminal case can lie against him for offence punishable under Section 500 of the IPC."

14. Another relevant contention in this regard is the non applicability of principles of vicarious liability. It is a well settled position of law that as far as criminal law is concerned, no principles of vicarious liability can be made applicable unless the statute specifically contemplates for the same. The aforesaid question was considered by the Honourable Supreme

Court in **Maksud Sayed** (*supra*) in paragraph No.13 of the said judgment, it was observed as follows:

> "13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. "

16. In **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla and others [AIR 2005 SC 2512]** the Honourable Supreme

Court considered the question of culpability on the basis of vicarious liability even in respect of special statutes providing for such liability on the Directors of the company. In paragraph No.5 of the said judgment it was observed as follows:

> "In the present case, we are concerned with criminal liability on account of dishonour of cheque. It primarily falls on the drawer company and is extended to officers of the Company. The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the

> incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a Company who are responsible for acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every person who, at the time the offence was committed, was incharge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. ”

16. The principle that can be deduced from the said decisions is that there is no concept of vicarious liability applicable in respect of criminal offence, unless otherwise specifically provided for, in the statute itself. Therefore, the complaint must contain averments indicating the specific role of all the accused persons in commission of the crime. In this

case, on going through the averments contained in the complaint, apart from the official position, which they are holding in the respective companies, absolutely nothing is seen mentioned with regard to the specific role. In the absence of any such allegation, no offence could be attributed against the said accused persons.

17. With regard to the 4th accused, there is yet another aspect. The 4th accused is a juristic person. Offences under Section 499 IPC is attracted only if the offence is committed with *mens ria.* The concept of *mens ria* is applicable only in respect of a mind. As far as a juristic person is concerned, it cannot have a mind of its own so as to have any *mens ria* for conducting the offence. The said question was also considered in various judicial pronouncements. In **South Indian Bank v. Paul Vareed Cheruvathoor [2013 4 KLJ, 815]**, this Court considered the said question after referring to a large number of decisions rendered by the Honourable Supreme Court. Paragraph No.11 of the said judgment, reads as follows:

> "Further, for the purpose of attracting the offence under Section 499 of the Indian Penal Code, mens rea is an ingredient to be proved. No offence of defamation will lie if there is no mens rea established. Admittedly, the first accused is a bank, registered under the provisions of the Indian Companies Act and it is only a juristic person and not a real person. So, in such cases, mens rea cannot be attributed to a juristic person. If mens rea cannot be attributed to such person, then, no offence under Section 500 of the Indian Penal Code can be attracted against such persons. In the case of statutory offences, a company can be made liable for the offence alleged under that statute, where mens rea is not an ingredient to be proved. Where in a statute, it was specifically mentioned that a company can also be implicated as an accused under certain circumstances, then, a company can be proceeded against for such offences under that statute as mens rea is irrelevant in such statutory offences committed by the company. This was so held in the decisions reported in Anath Bandhu v. Corporation of Calcutta (AIR 1952 Cal 759), B.N.Mehrotra and others v. State (AIR 1956 Cal 137), Sunilakhya Chowdhury v. H.M.Jadwet and another (AIR 1968 Cal 266) and Standard Chartered Bank v. Vinay Kumar Sood and others (2010 Crl.L.J.1277). ……."

18. In the light of the above judicial pronouncement, the 4th accused being a juristic person, cannot be roped in as an accused. It is having no mind of its own and hence cannot have any *mens ria* and the offence punishable under Section 499 IPC is not attracted.

19. The learned counsel for the 2nd respondent brought my attention to the judgment rendered by the learned single Judge of this Court in **Mammootti v. Rajaji Mathew Thomas [2006(3) KLT 335]**. A different view is seen to have taken by the learned single Judge in the said case. It can be seen that, in the said decision the learned Single Judge, after referring to **K.M.Mathew’s** case (*supra*), rejected the contention of the petitioner therein that, the specific averment in the complaint is necessary for constituting the offence under Section 499 IPC. One of the main reasons based on which such a conclusion arrived at by the learned Single Judge in **Mammootti's case**

(supra) was by placing reliance upon the second explanation of Section 499 of IPC. It was observed by the learned Single Judge

that, “if a juridical person can maintain an action, such an action can be maintained by against a juridical person also”. It was further observed that, in the absence of any statutory provision, it is not possible to limit the liability on the Directors who are in charge of and responsible for the conduct of the business of the Company so far it relates to the prosecution for publication of defamatory statement by a company telecasting television programmes. However, the aforesaid observations are not in time with principles laid down by the Honorable Supreme Court in the judgments referred above. Moreover, second explanation to section 499, only provides that, an imputation against the said company or an association or collection of persons, may amount to defamation. The said provision does not provide for making out a case of defamation, if imputation is made by a company or an association or collection of persons. Normally, in order to attribute criminal liability upon a person, it must be shown that, such person had played some role in the commission of the said offence with mens rea. Only exception to the said principle is

vicarious liability. It is well settled position of law that, criminal liability cannot be fastened upon a person, on the basis of vicarious liability unless the statute specifically provides for the same. However, this aspect is not seen taken into consideration in Mammooti's case. I have already referred to the observations made by the Honourable Supreme Court in **Maksud Syed's case**, in para 14 hereinabove, wherein, legal position with regard to vicarious liability has been clearly mentioned. Similar view is expressed in **S.M.S Pharmaceuticals Ltd (supra)** as well. In **Radhey Shyam Khemka v. State of Bihar (1993) 3 SCC 54),** it was observed by the Honourable Supreme Court as follows:

> '6. But, at the same time, while taking cognizance of alleged offences in connection with the registration, <u>issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the shareholders which constitute one offence or other under the Penal Code, court must be</u>

satisfied that prima facie and offence under the Penal Code has been disclosed on the materials produced before the court. If the screening on this question is not done properly at the stage of initiation of the criminal proceedings, in many cases, some disgruntled shareholders may launch prosecutions against the promoters, Directors and those in charge of the management of the company concerned and can paralyse the functioning of such company. It need not be impressed that for prosecution for offences under the Penal Code, the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions, which constitute the different ingredients of the offences under the Penal Code. It cannot be overlooked that there is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient ; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But, for framing a charge for an offence under the Penal Code, the traditional rule of existence of mens rea is to be followed.'

20. Similarly, in **K.M.Mathew's** case *(supra)* also, which is a case dealt with the offence under section 499 of IPC, the Honourable Supreme Court reiterated the necessity to have specific averments in the complaint as to the role of the accused in commission of the offence, except for the persons coming within the ambit of section 7 of Press and Registration of Books Act.

21. In the light of the legal principles set out by the Honourable Supreme Court as above, it is not possible to implicate the Directors, in the absence of specific averments indicating their role in commission of the offence. Further, there is also no provision in IPC, providing for vicarious liability upon the Directors of the Company. In the absence of any provision imposing criminal liability upon the Directors of the Company merely because of the position which they are holding in the company, the question of limiting the liability, as observed in **Mammooti's case**, would not arise. In such circumstances, I am unable to accept the contention put forward by the learned counsel for the 2nd respondent by placing reliance upon the judgment in **Mammootti's case**

(*supra*). This is particularly because, the observations in **Mammootti's case** are against the legal principles laid down by the Honourable Supreme Court, in **K.M.Mathew's (supra), Maksud Syed (supra), Radhey Shyam Khemka (supra), S.M.S Pharmaceuticals Ltd (supra)** and several other judgments.

22. With regard to the petitioner in Crl.M.C.No.23 of 2020, there is an additional contention to the effect that they were implicated unnecessarily. They have also produced a chart showing the share holding pattern of M/s TV Today network, which is running India Today news channel where the programme was telecasted. However, I do not have any materials before me to adjudicate the sustainability of the said contention. In this case, I have already held that the complaint lacks any averments indicating the role played by each and every accused person individually and therefore no offences are attracted against any of the petitioners. In such circumstances, I am not going into the question of share holding pattern of the company which runs the TV channel and the said question is left open.

Thus, I am of the view that the complaint does not disclose the offences punishable under Sections 499 and 500 IPC against any of the petitioners herein. Accordingly, all these Crl.M.Cs. are allowed and the complaint in C.C.No.532 of 2019 on the file of the Judicial First Class Magistrate Court –I Thiruvananthapuram and all further proceedings are hereby quashed.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

DG

APPENDIX OF CRL.MC 8/2020

PETITIONERS' ANNEXURES:

ANNEXURE A1	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT.30.07.2017.*
ANNEXURE A2	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT.31.07.2017.*
ANNEXURE A3	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT.01.08.2017.*
ANNEXURE A4	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT.02.08.2017.*
ANNEXURE A5	*COPY OF THE LEGAL NOTICE DATED 07.10.2017 ISSUED BY THE COMPLAINANT TO THE PETITIONER.*
ANNEXURE A6	*COPY OF THE COMPLAINT IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A7	*COPY OF THE STATEMENT OF THE COMPLAINT RECORDED ON 21.11.2018 IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A8	*COPY OF THE STATEMENT OF THE WITNESS (I.E CHANDRASEKHARAN NAIR) RECORDED ON 07.03.2019 IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAURAM.*
ANNEXURE A9	*COPY OF THE STATEEMNT OF THE WITNESS (IE.NITHYA KS) RECORDED ON 28.03.2019 IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A10	*COPY OF THE ORDER SHEET IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*

APPENDIX OF CRL.MC. 23/2020

PETITIONER ANNEXURES:

ANNEXURE A	*TRUE COPY OF THE COMPLAINT CC NO.532/2019.*
ANNEXURE B	*TRUE COPY OF ORDER SHEET IN CC NO.532/2019 OF JUDICIAL FIRST CLASS MAGISTRATE -I COURT AT THIRUVANANTHAPURAM.*
ANNEXURE C	*TRUE COPY OF SWORN STATEMENT OF COMPLAINANT.*
ANNEXURE C(a)	*TYPED COPY OF ANNEXURE C.*
ANNEXURE C1	*TRUE COPY OF SWORN STATEMENT OF NITHYA K.S.*
ANNEXURE C1(a)	*TYPED COPY OF ANNEXURE C1.*
ANNEXURE C2	*TRUE COPY OF SWORN STATEMENT OF CHANDRASEKHARAN NAIR.*
ANNEXURE C2(a)	*TYPED COPY OF ANNEXURE - C2.*

APPENDIX OF CRL.MC 1663/2020

PETITIONER ANNEXURES:

ANNEXURE A1	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DATED 30.7.2017.*
ANNEXURE A2	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DATED 31.7.2017.*
ANNEXURE A3	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DATED 1.8.2017.*
ANNEXURE A4	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DATED 2.8.2017.*
ANNEXURE A5	*COPY OF THE LEGAL NOTICE DATED 7.10.2017 ISSUED BY THE COMPLAINANT TO THE PETITIONER.*
ANNEXURE A6	*COPY OF COMPLAINT IN CC NO 532 OF 2019 OF THE LEARNED JUDICIAL FIRST-CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM.*
ANNEXURE A7	*COPY OF THE STATEMENT OF THE COMPLAINANT RECORDED ON 21.11.2018 IN CC NO 532 OF 2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM.*
ANNEXURE A8	*COPY OF THE STATEMENT OF THE WITNESS (I.E CHANDRASEKHARAN NAIR) RECORDED ON 7.3.2019 IN CC NO 532 OF 2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM.*
ANNEXURE A9	*COPY OF THE STATEMENT OF THE WITNESS (IE NITHYA KS) RECORDED ON 28.3.2019 IN CC NO 532 OF 2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM.*
ANNEXURE A10	*COPY OF THE ORDER SHEET IN CC NO 532 OF 2019 OF THE LEARNED JUDICIAL FIRST-CLASS MAGISTRATE COURT-1 THIRUVANANTHAPURAM.*
ANNEXURE A11	*COPY OF THE ORDER DATED 19.2.2020 IN CRL.MA NO 01/2020 IN CRL.MC NO 8 OF 2020 OF THIS HON'LE COURT.*

APPENDIX OF CRL.MC 1666/2020

PETITIONER ANNEXURES:

ANNEXURE A1	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT 30.07.2017.*
ANNEXURE A2	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT 31.07.2017.*
ANNEXURE A3	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT 01.08.2017.*
ANNEXURE A4	*PHOTOCOPY OF THE RELEVANT EXTRACT OF KERALA KAUMUDI FROM THE NEWSPAPER DT 02.08.2017.*
ANNEXURE A5	*COPY OF THE COMPLIANT IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A6	*COPY OF THE STATEMENT OF THE COMPLAINANT RECORDED ON 21.11.2018 IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A7	*COPY OF THE STATEMENT OF THE WITNESS (I.E CHANDRASEKHARAN NAIR) RECORDED ON 07.03.2019 IN CC NO.532/2019 OF THE LEARNED JUDICIAL FIRST-CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A8	*COPY OF THE STATEMENT OF THE WITNESS(IE.NITHYA KS) RECORDED ON 28.03.2019 INCC NO.532/2019 OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A9	*COPY OF THE ORDER SHEET IN CC NO.532/2019 OF THE LEANED JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.*
ANNEXURE A10	*COPY OF THE ORDER DATED 19.02.2020 IN CRL.M.A.NO.01/2020 IN CRL.M.CNO.08/2020 PASSED BY THIS HON'BLE COURT.*