The Judgement Of The Supreme Court Of India In Iridium India Telecom Ltd. V. Motorola Incorporated And Ors

This article examines the judgement of the Supreme Court of India in Iridium India Telecom Ltd. v. Motorola Incorporated and Ors (AIR 2011 SC 20, [2010] 160 Comp Cas 147). The choice is groundbreaking as it explains the situation under Indian law that a legal person, for example, an organization is equipped for having mens rea. It is a significant advance in advancing the utilization of criminal sanctions to manage corporate conduct.

Simultaneously, it is pivotal to take note of that the Supreme Court holds back in deciding convincingly on the strategies by which mens rea of an organization can be demonstrated. It places dependence on the human methodology of the English courts in Tesco Supermarkets Ltd. v. Nattrass ([1972] AC 153 (HL)) without in any capacity considering the ensuing critical improvement as the more adaptable methodology in Meridian Global Funds Management Asia Ltd. v. Protections Commission ([1995] 2 AC 500 (PC)). Also, the Supreme Court does not decisively manage the impact of Risk Factors in deciding the presence of 'misdirection' as an element of an offense of swindling because of deception in a private arrangement offering archive. Obviously, the Supreme Court was concerned distinctly with an intrigue on primer perspectives identifying with a request of subduing under segment 482 of the Code of Criminal Procedure, 1973.

The article argues that while Iridium must hold the field on the capacity of an organization to have mens rea, its decisions on different perspectives must be acknowledged in estimated terms just as conceivable direction for further explicit legal assurance.

An organization, or company, has a separate legal existence from its proprietors and from those who deal with its everyday issues. Despite the fact that the separate legal entity of an organization has been an entrenched idea, regardless of whether an organization's bad behavior can be liable to the authorization of criminal law has been a vexed inquiry. While it is trite law that the people dealing with an organization might be at risk under criminal law for unjust acts completed by them, the thornier issue relates to whether the demonstrations of such chiefs can be credited to the organization (through its different legitimate presence) along these lines making it at risk to the outcomes of an offense under criminal law. Over a century prior, rebuffing an organization was not viewed as conceivable: it was seen that an organization was without an inner voice as it had 'no soul to be damned, and no body to be kicked'. Gradually, notwithstanding, the law started to perceive that lawful people for example, organizations could be at risk under criminal law. This was not only for exacting obligation offenses, however notwithstanding for offenses that require mens rea, where the applicable mental component of the fitting individual (or gathering of people) inside an organization was inferable to the organization itself. Albeit monster steps were taken during a century ago, especially in England, to grow the extent of corporate criminal obligation, the advancement of the law in India has been progressively beginning.

It is simply after the turn of this century that the Supreme Court respected the chance to explain crucial parts of corporate criminal liability in the Indian setting, and its judgment in Iridium India Telecom Ltd. v. Motorola Incorporated and Ors is one such key advance in hardening the

structure for criminal liability of organizations.

Factual matrix

Iridium India Limited lodged a criminal complaint against Motorola Inc. under section 420 (deceiving) read with section 120B (conspiracy) of the Indian Penal Code (IPC). The complaint claimed that Motorola Inc. had floated a private placement memorandum (PPM) to acquire reserves/ventures to back the 'Iridium venture'. The venture was the'… the world's first business framework intended to give worldwide advanced hand held phone information … and it was proposed to be a remote correspondence framework through a constellation of 66 satellites in low circle to give advanced support of cell phones and other endorser gear locally.' On the premise of the data contained in and portrayals made through the PPM, a few financial institutions put resources into the project. The criminal complaint claimed that the portrayals were false and that the project ended up being economically unviable bringing about huge misfortune to the financial specialists.

In light of Iridium India's objection, a magistrate in Pune initiated criminal procedures against Motorola. Oppressed by this, Motorola recorded an appeal before the Bombay High Court under article 227 of the Constitution and section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to quash the procedures against it. By method for a request dated August 8, 2003, the Bombay High Court quashed those procedures. 8 Against this request, Iridium India favored an appeal to the Supreme Court.

Supreme Court’s observations

The Supreme Court started by looking into whether it was proper for the High Court to quash the procedures under section 482 of the Cr.P.C. It noticed that the High Court 'should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy' and where the imperative proof has not yet been delivered.

The court refers to past case law characterizing the extent of obstruction of the High Court under sec 482 of the Cr.P.C. Concerning substantive issues, the Supreme Court was worried about the wide inquiry of corporate criminal obligation. It inferred that there was no uncertainty organizations can be held criminally subject, as they could never again guarantee resistance from prosecution.

In that sense, an organization can be treated in a similar way as a person for being indicted of an offense, including one that requires mens rea. Relying upon its judgement in Standard Chartered, the Supreme Court found that an organization can't escape liability basically in light of the fact that the offense requires obligatory imprisonment.

With regards to the particulars of an offense of cheating as characterized in section 415 of the IPC, the Court decided that a complainant needs to demonstrate that an incitement of the person in question was brought about by cheating practiced by the denounced.

Moreover, 'non-exposure of significant data would likewise be treated as a mis-portrayal of actualities prompting cheating'. On the certainties of the case, the Supreme Court found that the High Court had surpassed its brief by analyzing the PPM and different archives in detail in

exercise of purview under area 482 of the Cr.P.C. In doing as such, the Supreme Court paid insufficient respect to the presence of hazard components and disclaimer language in the PPM that may have advised speculators with respect to dangers of the venture and along these lines weaken the charge of double dealing. It in this way permitted the intrigue and put aside the judgment of the Bombay High Court.

Analysis

The facts of the case and the observations made by the supreme court would open the window of discussion on two important issues i.e attribution of mens rea to corporations for the objectives of criminal liability criminal liability for errors with regards to securities offerings made to explicit financial investors on a private premise

At the start, in any case, it is appropriate to take note that the Supreme Court did not indisputably manage the issue relating to securities offerings by organizations on a private premise and conceivable criminal liability for misquotes subsequently. This is reasonable given the idea of procedures under the watchful eye of the Court. In a request including subduing of criminal procedures under 482 of the Cr.P.C., courts are required to as it were think about whether an at first sight case is made out in the complaint. They should consider regardless of whether the actualities as unveiled in the protest are adequate to bring about conviction, without analyzing inquiries of how those realities would be proved. Thus, while courts considering an appeal under area 482 would look at inquiries of law (in the feeling of choosing whether, expecting the realities as expressed in the grumbling are right, an offense is not made out), the standard of their audit on inquiries of truth or on blended inquiries of certainty and law will in general be essentially less stringent.

On this premise, the main inquiry of whether an enterprise is fit for having mens rea is an absolutely lawful inquiry, which the Court had the option to significantly expand on. As to the next inquiry of criminal obligation in instances of protections contributions, the Court's audit needed to essentially continue on the premise that the certainties as asserted in the grievance were valid; and the Court was not ready to consider potential protections which may be accessible at the phase of the preliminary.

Thus, while we basically center in this note around the subject of attribution of mens rea to a company, we try to embrace a wide discourse on the key issues that emerge in the utilization of the criminal offense of tricking in reaction to a charge of misquote in an archive which is utilized to offer securities.

Attribution

As a general issue, standards of attribution are invoked to learn the identity of people inside an organization whose psychological component will be ascribed to that of the organization to foist criminal liability.19 In Iridium, the Supreme Court held:

“The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person

or the body of persons”

The Court in this way rules on two angles. To start with, it insists that an enterprise is prepared to do having mens rea. Second, it sets out a to some degree rigid test – affirming the judgment of the House of Lords in Tesco Supermarkets Ltd. v. Nattrass that the person whose mens rea is to be attributed to the corporation must be the directing mind. The Supreme Court seems to have acknowledged the unbending 'directing mind and will' test of Tesco and, in doing as such, has neglected to allude to a resulting huge judgment of the Privy Council in Meridian Global Funds Management Asia Ltd. v. Protections Commission that leaves scope for a progressively adaptable examination for attribution.24 Some further remark on both the parts of this holding in Iridium is apt.

Mens rea of corporates

As we noted before, the topic of whether a company is fit for having mens rea is one which – until Iridium – was not settled under Indian law. The way that Indian courts have shown irresoluteness in holding a company guilty of acts including mens rea raises a element of surprise given the advancements in English law on the topic, which have been broadly depended upon by Indian courts.

Under standards of corporate law, in specific circumstances the acts or mental condition of certain people can be credited directly to the organization, where the organization conveys the essential or direct liability. In such circumstances, there is no necessity to invoke principles of either agency or vicarious liability. The supposed 'alter ego' hypothesis, which is based on the organization's liability, was at first propounded by Viscount Haldane as a premise of attribution particular from agency or vicarious liability. The Supreme Court of India had before considered this hypothesis in JK Industries v. chief inspector of Factories and Boilers. The Court explicitly endorsed of Lennard's, however at that point it continued nevertheless expressed the doctrine of vicarious liability comes into play. This organization of the expression 'vicarious liability' all things considered was disastrous.

Despite the fact that the court was dealing statutory statutory strict liability (where the mental element is unimportant or even pointless) and the issue turned on wordings of the significant resolution, the thesis under Indian law that the 'directing mind and will' precept identifies with vicarious liability can maybe be followed to this dicta of the Supreme Court.

In this way, in 2005, the Supreme Court held that Tesco managed vicarious liability. Again, this judgement was dicta and the Court was occupied with deciphering a strict liability offence . In India, a few rules force vicarious obligation (for strict liability offenses) on officials who are accountable for and capable to the organization for the administration of its undertakings. The Supreme Court in JK Industries and PC Agarwala were both depending on Lennard's and Tesco so as to decide the character of people would be 'accountable for what's more, capable' with the end goal of the resolution being referred to, which just forced strict liability. The Court needed to take part in this activity as it was worried about deciding the criminal liability of directors or officials of the organization. Under resolution, an 'individual in charge of and dependable' is considered to be a guilty party, and the Court was as it were communicating that the particular statutory definition all things considered made a special case from the general criminal law decide that there is no vicarious liability in criminal law. The Court was only

explaining that under explicit strict liability rules, an individual accountable for and mindful would be vicariously at risk for the acts of the organization.

The Supreme Court was not express on this point. In that background,perhaps this inquisitive amalgamation of statutory strict liability with the Tesco guidelines of attribution had the unfortunate outcome of lower courts getting to be careful and subsequently backing out in utilizing these doctrines for holding that an organization can have mens rea – for it is a settled suggestion of Indian criminal law that there can be no broad vicarious liability and mens rea can't be vicariously attributed. In reality, nothing in either JK Industries or PC Agarwala recommends the Court looked to hold that mens rea can't be attributed to corporations. As expressed above, Tesco was being talked about just in a constrained setting; not with regards to attribution all things considered. These improvements in English law bring up the issue – was the Supreme Court in Iridium defended in invoking just Tesco and not Meridian? To start with, it is important that the Meridian methodology could yet have been brought into Indian law. The court appears to have rejected this on the facts of the case, given the idea of procedures (in view of the reason inborn in procedures under section 482 of the Cr.P.C. that the claims in the protest were valid), the Court was not required to express an assessment decisively with regards to the test for attribution. What was in issue was the 'whether' question; not the 'how' question: regardless of whether an organization can have mens rea – not in what capacity can mens rea be demonstrated.

In this way, these comments are obiter; and however obiter of the Court is viewed as authoritative on High Courts, will tie that at the phase of procedures under section 482, when the imperative charges have been made, the method of demonstrating mens rea ought not be considered as a pertinent factor.Nonetheless, it is far-fetched that Courts will don't hesitate to dismiss a Tesco approach;particularly thinking about that Meridian finds no notice at all in the Supreme Court judgment. Rather, the Supreme Court has wanted to depend on cases, for example, Bolton – which were dismissed in Meridian as being excessively human.

The Indian enquiry gives off an impression of being more human than adaptable. The discourse above will demonstrate this is maybe obvious even in England with the flexibility,if any, presented distinctly through the standards of statutory elucidation. One other factor which shows that an inflexible methodology is maybe progressively appropriate in Indian law is the

tremendous structure of administrative intercessions in a few sorts of offenses. Where the council has thought that it was fit to loosen up mens rea necessities, it has completely done as such through explicit 'offenses by organizations' and by actualizing severe risk offenses.

The eagerness of the council in such activities is maybe an extra explanation behind caution by the legal executive. On the other hand, Iridium itself need not be perused as an extreme guideline – Iridium was chosen with regards to the necessities of the IPC; and need not be connected to situations where the arrangement fundamental statutory enactment, as comprehended as per the standards of understanding, leaves open an increasingly adaptable window.

What is also important is to note that the Supreme Court has left open issues of when a directing mind’s acts will not be attributed to the company. That issue was not at all before the Court; and thus, a rigid approach based on the Iridium judgment will not be suitable when – say – a directing mind is playing a fraud on the company itself and third parties are incidentally

affected by such a fraud. In such a case, it appears unfair to

nonetheless hold the company criminally liable. But can this unfairness be reconciled with legal principles? According to us, it can. Cases such as the Canadian Supreme Court’s decision in R v. Canadian Dredge & Dock Co. 66 provide a jurisprudential rationale by showing that when the company is a victim of a fraud by its so-called directing mind, that so-called directing mind is not really the directing mind of the company. It would seem that such a plea will have to be raised as a defence. Therefore, in Iridium, the Supreme Court could not possibly have dealt with this situation.

Thus, we contend that while there may have been purposes behind the Court to embrace an evidently inflexible methodology in Iridium, caution must be practiced to guarantee that the Court's choice isn't treated as the last word on all angles identifying with attribution under Indian law. Iridium ought to be viewed as the initial step headed straight toward legitimizing Indian law on the point – not as the last goal all by itself.

Misstatements in securities offerings

Now the subsequent issue close by in Iridium, specifically the criminal liability of organizations for errors with regards to securities offerings. At the start, it is important to take note of that the extent of the Supreme Court's judgement in Iridium was constrained uniquely to issues that have an orientation at the generally untimely phase of settling on an application for suppress procedures under section 482 of the Cr.P.C.

In any case, since the court was constrained (while making its assurance looking into the issue) to remark on lawful issues emerging out of the particular realities, we think of it as basic to endless supply of those issues of substance.

Conclusion

The Supreme Court's decision in Iridium is ground breaking as it explains the already uncertain position under Indian law that a lawful individual, for example, an organization is equipped for having mens rea.

It is a significant advance in advancing the utilization of criminal authorizations to manage corporate conduct. Simultaneously, it is essential to take note of that the Supreme Court holds back before decision convincingly on the strategies by which mens rea of an organization can be demonstrated. It places dependence on the human methodology of the English courts in Tesco without in any capacity thinking about the resulting urgent improvement as the more adaptable methodology in Meridian. Correspondingly, the Supreme Court does not indisputably manage the impact of Risk Factors in deciding the presence of 'trickery' as an element of an offense of swindling because of deception in a private situation offering report. Obviously, it is difficult to be condemning of the Supreme Court as it was concerned distinctly with an intrigue on fundamental angles identifying with a request of suppress under area 482 of the Cr.P.C. In aggregate, we contend that while Iridium must hold the field on the capacity of an organization to have mens rea, its decisions on different perspectives must be acknowledged in estimated terms just as conceivable direction for further explicit legal assurance.