

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of Article
128 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

The Officer in Charge,
Police Station,
Wellawatte.

Complainant

SC Appeal No: 12/2019
SC (SPL) LA No. 109/2018
CA (PHC) APN No. 159/2016
HC Colombo No. HC RA 31/2013
MC Colombo No. 90151/3/11

Vs.

1. Royal Hospital (Pvt.) Ltd.,
No. 62, W.A. de Silva Mawatha,
Wellawatte,
Colombo 06.

2. Widanagama Arachchige Nalin Sankha
Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

3. Ratnayake Premachandra Weerasinghe,
No. 12, Woodland Avenue,
Kohuwela.
4. Susila Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.
5. Dinesh Thiwanka Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.
6. Menaka Erangi Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

Accused

AND BETWEEN

1. Royal Hospital (Pvt.) Ltd.,
No. 62, W.A de Silva Mawatha,
Wellawatte,
Colombo 06.
2. Widhanagamaarachchige Nalin Sankha
Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

3. Ratnayake Premachandra Weerasinghe,
No. 12, Woodland Avenue,
Kohuwela.
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No. 12, Sukustan Garden,
Ward Place,
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Ward Place,
Colombo 07.
6. Menaka Erangi Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

Accused-Petitioners

Vs.

1. The Officer in Charge,
Police Station,
Wellawatte.

Complainant-Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

AND BETWEEN

1. Royal Hospital (Pvt.) Ltd.,
No. 62, W.A de Silva Mawatha,
Wellawatte,
Colombo 06.

2. Widhanagamaarachchige Nalin Sankha
Ranaweera,
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Ward Place,
Colombo 07.

5. Menaka Erangi Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

Accused-Petitioners-Petitioners

Vs.

1. The Officer in Charge,
Police Station,
Wellawatte.

Complainant-Respondent-
Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondent

AND NOW BETWEEN

1. Royal Hospital (Pvt.) Ltd.,
No. 62, W.A de Silva Mawatha,
Wellawatte,
Colombo 06.
2. Widhanagamaarachchige Nalin Sankha
Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.
3. Susila Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
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No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

5. Menaka Erangi Ranaweera,
No. 12, Sukustan Garden,
Ward Place,
Colombo 07.

Accused-Petitioner-Petitioner-

Appellants

Vs.

1. The Officer in Charge,
Police Station,
Wellawatte.

Complainant-Respondent-

Respondent-Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondent-

Respondent

Before: **Justice Murdu N.B. Fernando, PC**
 Justice E.A.G.R. Amarasekara
 Justice A.L. Shiran Gooneratne

Counsel: Rienzie Arseculeratne, PC with Thilina Punchihewa, Eranga Yakandawala, Punsisi Gamage and Erandi Pathirana for the **Accused-Petitioners-Petitioners-Appellants.**

V. Hettige, SDSG for the **Respondent-Respondent-Respondent.**

Argued on: 23/03/2023, 10/05/2023 and 21/02/2024

Decided on: 05/06/2024

A.L. Shiran Gooneratne J.

By an amended charge sheet dated 17/01/2012, the 1st Complainant-Respondent-Respondent-Respondent (hereinafter referred to as ‘the Complainant-Respondent’) instituted action No. M.C. Colombo 90151/3/11 against the 1st to 5th Accused-Petitioners-Petitioners-Petitioners (‘the 1st to 5th Accused-Appellants’) for committing an offence punishable under Section 31 of the National Water Supply and Drainage Board Act No. 02 of 1974 [as amended] (hereinafter referred to as the NWSDB Act) and further sought to recover damages in a sum of Rs. 671,622. 40.

The 1st Accused-Petitioner, Royal Hospitals (Pvt) Ltd., is a company incorporated under the Companies Act. The 2nd Accused-Petitioner is the Chairman of the said hospital and 3rd to 5th Accused-Petitioners are members of the Board of Directors of the said hospital.

The circumstances which led to the institution of this action, are briefly set out below-

To expand and improve the wellness outreach of the existing hospital, the 2nd Accused-Appellant acquired a leasehold interest in an adjacent property bearing No. 66/3 W.A. De Silva Mawatha, Colombo 6, for a period of 99 years. In order to facilitate the building contractor, an application dated 29/06/2011 was made to the NWSDB to obtain a temporary water connection for construction purposes. Consequent to the receipt of the said application, the NWSDB officers arrived at the premises and having observed an old water connection in the said leasehold property, arrested a female employee of the said hospital alleging, that an illegal water connection had been obtained to the said premises. Upon being informed, the 2nd Accused-Appellant, the Chairman of the said hospital who visited the Wellawatta Police Station was arrested by its officers and the female employee was released.

On 07/07/2011 the said 2nd Accused-Appellant was produced before the Magistrate's Court Colombo in Case No. MC Colombo 90151/3/11 for committing the offence under Section 31 of the NWSDB Act and for causing damage in a sum of Rupees 671,622.40 to the NWSDB. The trial commenced and during the testimony of PW1, the 1st Complainant-Respondent by an amended charge sheet dated 17/01/2012, made an application to add Royal Hospitals (Pvt) Ltd. and all its directors as 1st and 3rd to 5th Accused respectively. The said amended charge sheet refers to all the Accused. However, it is noted that no specific charge is made to any act or wrongdoing on the part of Royal Hospitals (Pvt.) Ltd. or its directors in count 1 or count 2 of the said amended charge sheet dated 17/01/2012. The Accused-Appellants thereafter moved the Magistrate's Court to file objections to the said amended charge sheet dated 17/01/2022 for naming the Accused-Appellants as accused in the said case.

By order dated 25/09/2012, the learned Magistrate held that the case should proceed against the hospital and all its directors as charged. Subsequent orders made by the High Court Judge of Colombo dated 04/03/2013 and the Judges of the Court of Appeal dated 21/03/2018 affirmed the said order delivered by the Magistrate's Court.

When this matter was taken up for argument, with the concurrence of respective counsels, the following question of law was formulated to be answered by this Court;

Did the Court of Appeal err in fact and law by deciding that the Directors of Royal Hospital (Pvt) Ltd. are liable in terms of Section 31 of the *National Water Supply and Drainage Board Act No. 02 of 1974* as amended.

Section 31 of the NWSDB Act reads as follows;

“It shall not be lawful for the owner or occupier of any premises supplied with water from the Board, or any consumer of the water of the Board, or any other person to affix or cause or permit to be affixed any pipe or apparatus to any pipe or apparatus provided for the conveyance, reception, or control of water from the Board, whether or not such pipe or apparatus is the property of the Board or private property, without the consent in every such case of the General Manager of the Board ; and if any person acts in any respect in contravention of the provisions of this section, he shall, for every such offence, be liable on conviction after trial before a Magistrate to a fine not less than five thousand enactment, rupees and not more than ten thousand rupees, without prejudice to the right of the Board to recover damages from him in respect of any injury done to the Board's property, and without prejudice to its right to recover from him the value of any water wasted, misused, or unduly consumed.”

Accordingly, Section 31 makes it unlawful for the owner or an occupier of any premises supplied with water from the Board or a consumer or any other person to affix or cause or permit to affix any pipe or apparatus to any pipe or apparatus provided for the conveyance, reception, or control of water from the Board, without the consent of the General Manager of the Board. Any person acting in contravention would be in breach of the provisions of that section. Therefore, the act of affixing or causing or permitting the affixing of any pipe or apparatus to any pipe or apparatus provided for the conveyance, reception, or control of the water from the Board is a necessary and a vital

ingredient to be established. In effect, the offence is established by the *actus reus* of the owner or the occupier.

In this case, the facts in issue must necessarily be placed before the Magistrate's Court for due consideration at a later stage. The question before this Court is, when Royal Hospitals (Pvt) Ltd, as the owner or occupier of the premises is brought before the Magistrate's Court for acting in contravention of the provisions of Section 31 of the NWSD Act, should the Directors of the said company too be brought before Court as Accused in the same proceedings.

On this question of law, by Judgment dated 21/03/2018, the Court of Appeal concluded that;

- I. *“...the business premises is owned by the directors of the company. therefore, when there is a breach of section of an Act the owners (directors of the company) are liable. This is the substantial law.*
- II. *in the present case water was illegally obtained, it was done for the benefit of the private limited company, which would ultimately benefit the directors, although the water bill may have been forwarded in the name of the company, the initial decision makers and ultimate beneficiaries are the directors. Hence, they were named as accused persons in this case the directors have ample opportunity to state otherwise, if that is the case at the trial, by cross examination, leading of defence evidence etc.”*

At the very outset I note, that the said Judgment makes reference to material facts yet to be placed by the prosecutor before the Magistrate's Court.

In agreement with the above findings, the learned SDSG appearing for the Honorable Attorney General (2nd Respondent-Respondent) in her written submission's filed of record states that, *“Royal Hospitals (Pvt) Ltd. is a family or a very privately held business. The directors in such a business are alone active in the business thus a director becomes liable as the owner...”* Further states that *“the owner or occupier in*

either description the intention of the legislature is if one does not own the premises but engage in breach of the Act, the person who is in occupation is held liable.”

Is this position sustainable in law?

Royal Hospitals (Pvt) Ltd. is a company incorporated under the Companies Act No. 7 of 2007 [P1(a)]. On 22/02/2013, the Board of Directors of Royal Hospitals (Pvt) Ltd., by a special board resolution, appointed an authorized person to represent the company in the Magistrate’s Court regarding Case No. 90151/3/11. In terms of Section 261 of the Code of Criminal Procedure Act, at a trial in any court in which a corporation is the accused, a person so appointed may exercise on behalf of the accused corporation all or any of its rights.

The learned Presidents Counsel appearing for the Accused-Appellants contended that Royal Hospitals (Pvt) Ltd., the owner of the said premises, can be prosecuted for a violation of Section 31 of the NWSDB Act by proving, either by direct or circumstantial evidence regarding the causation of the offence. However, in the absence of a semblance of evidence that any of the directors of Royal Hospital was responsible for committing an offence, proceedings under Section 31 cannot be brought against its directors. It was also contended that unlike the deeming provisions contained in Acts such as Employees Provident Fund Act¹ and Employees Trust Fund Act², in the absence of such provisions, it is not lawful to prosecute all directors of the company for a violation under Section 31 of the NWSDB Act. Reference was made to the Judgment of *K.A, Dayawathi vs. D.S Edirisinghe and four others*³.

In the said case Shiranee Thilakawardane J. held that;

¹Act No.15 of 1957

²Act No.46 of 1980

³[2009] BLR 258.

“...in terms of Section 40 of the Act [EPF], where an offence under the Act is committed by a body of persons then if such body of persons is a body corporate, every director and officer of such body corporate shall be deemed to be guilty of the offence”.

Section 40 of the EPF Act reads as follows;

“Where an offence under this Act is committed by a body of persons, then-

- a) if that body of persons is a body corporate, every director and officer of that body corporate,*
 - b) if that body of persons is a firm, every partner of that firm, and*
 - c) if that body of persons is a trade union, every officer of that trade union,*
- shall be deemed to be guilty of that offence.*

Provided that a director or an officer of such body corporate, or a partner of such firm or an officer of such trade union, shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

The Employees Provident Fund Act (EPF Act) has incorporated a deeming provision to attribute vicarious liability in the said offence however, it specifies that no vicarious liability would be attributed if the offence was committed without that person’s knowledge or if that person has exercised due diligence to prevent such an offence being committed.

Central Bank of Sri Lanka and Others vs. Lankem Tea and Rubber Plantations (Pvt) Ltd.⁴; examined corporate criminal liability under the Exchange Control Act⁵. Perusal of Section 51 of the said Act indicates a similar approach, as described above. The said section states as follows:

⁴[2009] 2 SLR 75.

⁵Act No. 17 of 1971

- (1) *Any person in or resident in Sri Lanka who contravenes any provision of this Act or of any regulation made under this Act or fails to comply with any direction given or condition or requirement imposed under this Act shall be guilty of an offence, notwithstanding that the offence may, by virtue of Part IV of this Act, be also punishable under the provisions of the Customs Ordinance.*
- (2)
- (3) *Where an offence against this Act is committed by a body corporate, any person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.*

The conclusions reached in the above case confirmed the established legal principle that a corporate entity is distinct from its members and its directors. It was determined that the offence outlined in Section 51(1) does not require the demonstration of any specific *mens rea* or culpable state of mind. Furthermore, it held that, even in situations where a specific state of mind is required, common law has developed the doctrine of 'identification,' which assigns criminal liability directly to the company, regardless of whether the acts or omissions that constituted a violation of the law were carried out by its employees or agents.

The Court acknowledged Section 51(3) of the Exchange Control Act, which extends liability to directors or officials of a corporate body unless they can demonstrate that the offence occurred without their knowledge or cooperation, and that they took all reasonable steps to prevent it. However, in the said case where only the company was charged, the mental state of a director or official was ruled to be irrelevant as per the provision.

*In Dias vs. Commissioner General of Inland Revenue*⁶, a certificate of tax liability was issued in the name of the petitioner, who served as the managing director of the company, by the Deputy Commissioner of Inland Revenue. This certificate demanded a specific sum of money. Although the company was the entity that had defaulted on the taxes, and not the petitioner, the trial court ruled that under Section 166(1), legal action could be initiated against the petitioner to recover the unpaid taxes. This decision was based on the principle of vicarious liability.

It was held that;

- (1) Imposition of vicarious liability under a statute is not lightly to be presumed and such liability must necessarily be imposed on clear and unambiguous language.
- (2) There is no provision in the Act which makes the principal officer liable for tax due from the Company - he is not liable to pay from his personal assets.

Corporate criminal liability

The law as it stands now, consolidates the position that companies are as culpable as any living person and can be prosecuted and punished for a violation.

In the case of *Iridium India Telecom Ltd. vs. Motorola Inc.*⁷, the Supreme Court addressed the issue of whether a company could be held accountable under Section 420 of the Indian Penal Code. The court affirmed that a company can indeed be held liable, even if proving *mens rea* is necessary. This ruling clarified that the culpable intent of individuals managing the company can be attributed to the company itself.

In the Judgment of *Sunil Bharti Mittal vs. Central Bureau of Intelligence*⁸, the following cases were cited with approval:

⁶[2011] 2 SLR 15.

⁷[2011] AIR SC (CRI) 134.

⁸[2015] AIR SC 923.

Standard Chartered Bank vs. Directorate of Enforcement⁹: This case held, that there is no dispute regarding the ability to prosecute a company for criminal offences. The Court stated that corporations can indeed be indicted except in cases where it is deemed incapable of committing a crime due to the absence of personal malicious intent. Even when a crime is executed by an officer or agent of the corporation, the corporation itself can be prosecuted.

Hira Lal Hari Lal Bhagwati vs. CBI¹⁰: The Court emphasized that under the penal law, vicarious liability does not inherently apply unless explicitly included within the statute.

Maksud Saiyed vs. State of Gujarat¹¹: In this case, the Court held that vicarious liability of the Managing Director and Director would only be established if there is a specific provision in the statute outlining such liability. It is a fundamental principle that statutes must include provisions setting out such vicarious liability. Additionally, the complainant must include necessary allegations in their claim that would trigger the provisions establishing vicarious liability.

These cases collectively highlight aspects of corporate and vicarious liability under Indian law, and it emphasizes the necessity for statutes to expressly define such liability.

In ***National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal***¹²: The Supreme Court of India held that, directors cannot be held vicariously liable for criminal actions of the company without specific allegations against them. These descriptions must be clear, leaving no room for ambiguity, and should outline how these directors were in charge of and accountable for the company's actions.

⁹[2005] 4 SCC 530.

¹⁰[2003] 5 SCC 257

¹¹[2008] 5 SCC 668.

¹²[2010] AIR SCW 1508.

In *M.V. Javali vs. Mahajan Borewell & Co. and Others*¹³: The discussion was on legal interpretations and principles related to holding individuals and companies accountable for certain offences. It distinguishes between individuals (such as directors, managers, secretaries, or other officers) who can be held vicariously liable for an offence committed by a company and the company itself.

In the amended charge sheet dated 17/01/2012, all accused (Royal Hospitals (Pvt) Ltd. and all its directors) charged with the commission of the offence are treated as principal offenders.

As noted, before, Section 40 of the EPF Act has made express provisions attributing liability on the part of a body of persons which has a legal personality that is separate from a director, partner, or officer. Section 31 of the NWRDB Act has made no such express provision separate and distinguishable from that of a natural person and a corporate entity. Then the question arises as to the transfer of liability between entities that are natural persons and corporate entities.

Liability of a body of persons will depend on whether the offence is one of which there is vicarious liability or if there is not, and whether the prohibited act by the natural person can be attributed to the body of persons. *“Where vicarious liability exists a company will have imputed to it the acts and state of mind of those of its directors and managers who represent its “directing mind and will.” (Tesco Supermarkets Ltd. vs. Natrass*¹⁴)

It is also important to distinguish between the law which determines the offences on which a corporation may be convicted and the liability of such corporation for an offence on which it can be convicted. As discussed before companies are culpable as any living person and can be prosecuted and sentenced.

¹³[2003] ALL SCR (Cri) 317

¹⁴ [1972] AC 153.

Where an offence has been held to be a strict liability offence in that, *mens rea* is not required to be proved “*the person on whom a duty is thrown is responsible whether he has delegated or whether he has acted through a servant*” [**R vs. Winson**¹⁵]. The offence under Section 31 of the NWSDB Act is a strict liability offence which are also known as absolute offences. Therefore, the requirement of proving *mens rea*, (intention, knowledge etc.) is not required.

Certain statutes expressly and validly impose criminal liability on body of persons, be it a body corporate, a body unincorporate, a firm, or a trade union, separately from any liability imposed on individual directors, partners, or officers of that body of persons. Where there is no express provision for separate liability on a body corporate (as is the case here), questions may arise as to whether the said incorporated body has a distinct and separate liability.

Section 31 of the NWSDB Act refers to “*any person acts in any respect in contravention of the provisions of this section*”.

A general provision is made in the Interpretation Ordinance No. 21 of 1901 (as amended), to the word “person” as “includes any body of persons corporate or unincorporate.

Section 31 of the NWSDB Act also refers to “*and if any person acts in any respect in contravention of the provisions of this section, he shall, for every such offence be liable on conviction after trial before a Magistrate to a fine of not less than five thousand rupees and not more than ten thousand rupees, without prejudice to the right of the Board to recover damages from him in respect of any injury done to the Board’s property, and without prejudice to its right to recover from him the value of any water wasted, misused, or unduly consumed*”.

¹⁵ [1969] 1 QB 371 (CA).

Reference to “owner or occupier” in that section is not defined in the NWSDB Act. However, as mentioned before, the word “person” defined in the Interpretation Ordinance includes, any body of persons corporate or unincorporate.

The statutory construction of Section 31 of the Act, does not attribute vicarious liability on any person. Criminal accountability of an incorporated body, when acting through its officers and agents extends to those responsible for such acts committed by the prescribed law. Thus, as observed in *Sunil Bharti Mittal vs. Central Bureau of Intelligence*¹⁶, an individual who has perpetrated the commission of the offence on behalf of the company can be made an accused along with the company provided that there is sufficient evidence of the individuals active role coupled with criminal intent and the statute itself specifically providing provision for an offence of vicarious liability. Unlike in the statutory construction of the EPF Act as discussed earlier, the NWSDB Act has not incorporated any provision relating to vicarious liability in the offence in Section 31.

The Amended charge sheet dated 17/01/2012 makes the incorporated body the 1st Accused, its chairman the 2nd Accused and its directors the 3rd to 6th Accused. However, the 1st and 2nd substantive charges brought against the said accused are not framed against any defined or an identified person. It is observed that the 1st and 2nd count in the amended charge sheet dated 17/01/2012 are identical to the charge sheet brought against an identified person in the charge sheet dated 07/07/2011. In the circumstances, it is clear that the amended charge sheet dated 17/01/2012, has no application to a defined person be it a body of persons or a natural person.

It is also clear that there is no evidence presented before the Magistrate’s Court implicating the incorporated body or its directors in the commission of the offence. This raises the question: In a strict liability offence (as is the case here), where there are no specific allegations highlighting the primary responsibility of the corporate body or

¹⁶ Ibid, at 14.

indicating an active role and intent in the offence by its directors, can any individual be prosecuted as the principal offender for the “*actus reus*” of affixing or causing the affixing of any pipe or apparatus to the water system provided by the Board for conveyance, reception, or control of water?

It is asserted that the Amended charge sheet dated 17/01/2012 must consist of separate charges attributing criminal liability on the part of Royal Hospitals (Pvt.) Ltd. and its directors since both entities have a legal personality that is separate and distinct from each other. Therefore, in terms of Section 164, 165 (1) and (3) of the Code of Criminal Procedure Act, the failure to frame separate charges on criminal liability against the directors and the body of persons, the failure to define or identify an offender in the commission of the offence as charged, and in the absence of a *prima facie* case against one or more persons mentioned above, (an individual or a body of persons), makes the amended charge sheet dated 17/01/2012, filed in the Magistrate’s Court Colombo, misconceived in law.

As discussed earlier, there are several Acts where the legislation creating the offence has expressly and validly made provisions for criminal liability on the part of a body of persons, since such body has a legal personality that is separate from its members. Apart from the EPF Act, (as observed earlier in this Judgment) several other Acts have provided for separate criminal liability dealing with body of persons and individuals, such as;

1. Food Act No. 26 of 1980 - (Section 27)
2. Employees Trust Fund Act No. 46 of 1980 – [Section 40]
3. Banking Act No. 30 of 1988 – [Section 81]
4. Social Security Contribution Levy Act No. 25 of 2022 – [Section 43(2)]
5. Computer Crime Act No. 24 of 2007 – [Section 30]
6. Prevention of Terrorism Act No. 48 of 1979 – [Section 25]
7. Fisheries and Aquatic Resource Act No. 2 of 1996 – [Section 50]
8. National Gem and Jewelry Authority Act No. 50 of 1993 – [Section 51 (3)]

9. Electricity Reform Act No. 28 2002 – [Section 58]
10. Sri Lanka Ports Authority Act No. 15 of 1979 – [Section 63]
11. Finance Leasing Act of 56 of 2000 – [Section 41(2)]
12. Survey Act No. 17 of 2002 – [Section 64 (3)]
13. Imports and Exports (Control) Act No. 1 of 1969 – [Section 18]
14. National Transport Commission Act No. 37 of 1991 – [Section 41]
15. Bureau of Ceylon Standards Act No. 38 of 1964 – [Section 47]
16. Consumer Affairs Authority Act No. 9 of 2003 – [Section 60 (7)]
17. Excise (Special Provisions) Act No. 13 of 1989 – [Section 25]
18. Regulation of Insurance Industry Act No. 43 of 2000 – [Section 104]
19. Social Security Contribution Levy Act No. 25 of 2022 – [Section 43 (2)]
20. Inland Revenue Act No. 10 of 2006 – [Section 197 (2)]

This is not an exhaustive list. There are several other statutes which impute liability on a defined entity. The absence of specific statutory provisions in dealing with individuals and body corporates in older Acts, has prompted the legislature (as referred below) to amend the existing legislature to create offences making express provisions to ascribe separate liability.

Finance Act No. 11 of 1963, [Principal enactment]:

Section 64

Where a company fails to comply with the provisions subsection 2 of section 60, every director, manager, secretary or other officer of that company shall be guilty of that company shall be guilty of an offence under this part of this act, and shall on conviction summary of trial before a magistrate, be liable to a fine Provided that a director, manager, secretary or other officer of such company shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Amended by: Section 4 of Finance (Amendment). No. 14 of 1982.

Section 64

the principal enactment is hereby amended by the addition at the end of that section of the following sub section: (5)

When an offence under sub (4) is committed by a body of persons then

- A. If that body of persons is a body corporate, every person who is at the time of the commission of the offence was a director, manager, secretary or other similar officer of that body corporate; Or*
- B. If that body corporate is a firm, every person who at the time of the commission of the offence was a partner of that firm, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and in all the circumstances.*

The said amendment essentially broadens the accountability framework by:

- Clarifying and expanding the categories of individuals (now including partners in a firm) who can be held liable.
- Stipulating the conditions under which these individuals can be deemed guilty of an offence.
- Detailing the defence available to these individuals, which now explicitly requires proof not only of lack of knowledge but also the absence of connivance and the exercise of due diligence relative to their role and the circumstances.

Debt recovery (Special Provisions) Act. No. 02 of 1990, [the Principal Enactment]:

Section 25

Any person who:

- (a) draws, a cheque knowing that there are no funds or not sufficient funds in the bank to honor such cheque; or*
- (b) makes an order to a banker to pay a sum of money which payment is not made by reason of there being no obligation on such banker to make payment or by reason of the payment having been countermanded; or*
- (c) gives an authority to an institution to pay a sum of money to itself, in payment of a debt or loan or any part thereof owed to such institution, from, and out of an account maintained or funds deposited, by such person with such institution and such institution is unable to make such payment to itself by reason of such person not placing adequate funds in such account or by reason of the funds deposited having been withdrawn by reason of such person countermanding the authority given or by reason of any one or more of such reasons ; or*
- (d) having accepted on inland bill dishonors it by non - payment, shall be guilty of an offence under this Act and shall on conviction by a Magistrate after summary trial be liable to punishment with imprisonment of either description for a term which may extend to one year or with fine of ten thousand rupees or ten per centum of the full value of the cheque, order, authority or inland bill in respect of which the offence is committed, whichever is higher, or with both such fine and imprisonment,*

Amended by: Section 20 of Debt Recovery (Special Provision) (Amendment) Act No. 9 of 1994

The following new section has been inserted immediately after section 25 of the principal enactment and shall have effect as section 25A of that enactment:

Section 25A.

Where an offence under this Act is committed by a body of persons then

- a) if that body of persons is a body corporate, every director, manager, or secretary of that body corporate;*
- b) if that body of persons is a firm every partner of that firm, and*
- c) if that body of persons is an unincorporated body, every individual who is a member of such body.*

The above amendment expands the scope of liability to include collective or corporate entities. Specifically, it stipulates that when such offences are committed by a body of persons (whether a corporate body, a firm, or an unincorporated body), every director, manager, secretary, partner, or member of that entity can be held accountable.

Therefore, as expressly defined in the said Acts aforementioned, we recommend that suitable amendments be brought to the existing NWSDB Act, where the legislation creating the offence under Section 31 of the Act, makes express provisions to clearly define and distinguish liability of natural persons and that of body of persons in the offence of Section 31 of the NWSDB Act.

Accordingly, I answer the question of law on which leave to appeal has been granted in the affirmative.

For these reasons, this Appeal of the Accused-Petitioners are allowed, the Judgements of the Court of Appeal, the High Court and that of the Magistrate's Court are set aside. The Amended Complaint dated 17/01/2012 stands quashed. No order is made for costs.

Judge of the Supreme Court

Murdu N.B. Fernando, PC J.

I agree

Judge of the Supreme Court

E.A.G.R. Amarasekara J.

I agree

Judge of the Supreme Court