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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 481 of 2026

27th March, 2026

Dalmia Cement (Bharat) LtdApplicant

Versus

State Of Uttarakhand and AnotherRespondents

Presence:-

Mr. Arvind Vasistha, learned senior counsel assisted by Ms. Soniya Chawla, learned counsel for the applicant.

Mr. Deepak Bisht, learned Deputy A.G. along with Mr. Vikash Uniyal, learned Brief Holders for the State.

Mr. Jai Krishan Pande, learned counsel for respondent no.2/complainant.

Hon'ble Mr. Alok Mahra, J.

Present C-528 application has been filed by the applicant seeking to quash the impugned judgment and order dated 14.07.2025 passed by learned 1st Additional Sessions Judge, Kashipur, District Udham Singh Nagar in Criminal Revision No.108 of 2024, as well as to set aside the summoning order dated 16.09.2025 passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar in Criminal Complaint Case No.2999 of 2023, whereby the applicant has been summoned for the offence punishable under Section 120-B I.P.C.



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2. Learned senior counsel for the applicant would submit that respondent no.2/complainant filed a complaint against seven persons including the present applicant. In the complaint it has been alleged that accused no.6, approached the complainant and represented that he would supply cement required for construction of a newly constructed building. On the basis of the said representation, the complainant allegedly purchased 1000 bags of cement of the applicant company. It is further alleged that on 01.08.2023, the complainant utilized the said cement for laying the lintel of his building and after completion of the work some cement bags remained unused. Subsequently, on 21.08.2023, when the complainant examined the remaining cement bags, he allegedly noticed that the manufacturing date mentioned on the bags was 08.02.2023 or 12.03.2023, whereupon he presumed that the cement used in the construction had expired and consequently the strength of the construction had decreased. He would further submit that the complainant and his witnesses were examined under Sections 200 and 202 Cr.P.C., and thereafter the learned Magistrate issued the summoning order dated



18.10.2023 against the applicant.

3. Learned senior counsel would further submit that aggrieved by the summoning order dated 18.10.2023, the applicant initially filed a criminal misc. application, which was dismissed as withdrawn with liberty to file a fresh application vide order dated 12.12.2023. Thereafter, the applicant filed C-482 Application No.492 of 2024, which was disposed of by order dated 22.03.2024, whereby the summoning order was set aside and the matter was remanded back to the learned Magistrate for reconsideration. Pursuant thereto, the learned Magistrate reconsidered the matter and, being satisfied that no sufficient ground existed to proceed against the present applicant, dropped the proceedings against him vide order dated 04.05.2024, while fixing the next date for appearance of the remaining accused persons.

4. It is further submitted that being aggrieved by the said order dated 04.05.2024, respondent no.2 preferred Criminal Revision No.78 of 2024 before the Sessions Court. The said revision was allowed by the learned 1st Additional Sessions Judge, Kashipur vide the impugned judgment and order dated 14.07.2025,



whereby the matter was remanded back to the learned Magistrate for fresh consideration. It is contended that while allowing the revision, the revisional court did not record any specific finding against the present applicant nor did it specify in respect of which accused the matter was required to be reconsidered.

5. Learned senior counsel for the applicant further submits that no criminal offence is made out against the applicant from the allegations made in the complaint. According to him, the dispute essentially relates to alleged deficiency in goods supplied. It is contended that the complainant admittedly utilized the entire cement for construction of his building and has not alleged that any part of the building has collapsed or required demolition due to use of the cement in question.

6. It is further argued that even if the allegations are accepted at their face value, the dispute would at best give rise to a civil liability or a consumer dispute, but the same cannot be converted into a criminal prosecution. It is also contended that the essential ingredients of criminal conspiracy under Section 120-B I.P.C., namely a prior meeting of minds and an



agreement to commit an illegal act, are completely absent in the present case.

7. Per contra, learned counsel appearing for respondent no.2 would submit that accused nos.1 to 5 are engaged in the manufacture and sale of cement, while accused nos.6 and 7 are stated to be Technical Service Engineer and State Technical Service Head of Dalmia Cement. It is contended that accused no.6 approached the complainant and induced him to purchase cement of the applicant company, and due to the use of allegedly expired cement the strength of the construction has been adversely affected. On the strength of these allegations it is submitted that the learned court below has rightly passed the impugned order.

8. Learned Senior Counsel for the applicant submits that the learned Magistrate has passed the impugned summoning order in a mechanical manner without due application of judicial mind. It is contended that, for constituting an offence under Section 120-B I.P.C., there must be prima facie material showing a prior meeting of minds and an intention on the part of the accused to participate in the alleged conspiracy. In



the present case, no such material has been placed on record to indicate the involvement or intention of the applicant; therefore, the order taking cognizance and summoning the applicant is legally unsustainable.

9. It is further submitted that the principle of “alter ego” is also relevant in the present case. In *Commissioner of Income-Tax v. Akshay Textiles Trading and Agencies Pvt. Ltd.*, the Bombay High Court held that the acts and criminal intent of the person who is the “directing mind and will” of a company (its alter ego) may, in appropriate cases, be attributed to the company. However, such attribution arises only when it is first established that the individual concerned was in fact the guiding or controlling mind responsible for the impugned acts. In the present case, there is no material whatsoever to indicate that the applicant was the directing or controlling mind behind the alleged acts. Despite the absence of any such material, the learned Magistrate has proceeded to summon the applicant, which clearly reflects non-application of judicial mind while taking cognizance.

10. He would further submit that it is a settled principle of criminal jurisprudence that there is no



vicarious liability in criminal law unless the statute specifically provides for the same. The Hon'ble Supreme Court in Sanjay Dutt and Another v. State of Haryana (Criminal Appeal No. 11 of 2025 arising out of SLP (Crl.) No. 7464 of 2024, decided on 02.01.2025) reiterated that "It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. An individual who has perpetrated the commission of an offence on behalf of a company can be made an accused only if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility lies upon the complainant to make specific averments in the complaint so as to make the accused vicariously liable. There is no presumption that every officer of a company knows about the transaction in question." In the present case, the complaint does not contain any specific averment demonstrating the active role, criminal intent, or participation of the applicant in the alleged offence. In the absence of such foundational pleadings and material, the summoning of the applicant is legally unsustainable and liable to be set aside.



11. Heard learned counsel for the parties and perused the material available on record.

12. From the perusal of the complaint as well as the statements recorded under Sections 200 and 202 Cr.P.C., it appears that the primary allegation against the accused persons is that cement supplied to the complainant was allegedly of an earlier manufacturing date and, therefore, the complainant presumed that the cement had expired. However, there is no specific allegation demonstrating that the applicant entered into any agreement with the other accused persons with the intention of committing an illegal act or causing wrongful loss to the complainant.

13. It is well settled that to constitute an offence under Section 120-B I.P.C., there must be prima facie material to show the existence of an agreement between two or more persons to commit an illegal act or to commit a lawful act by illegal means. In the present case, neither the complaint nor the statements of witnesses disclose any material indicating the existence of such an agreement involving the present applicant.



Furthermore, the allegations made in the complaint essentially relate to the quality of cement supplied to the complainant. Such allegations, even if accepted, would primarily fall within the domain of civil or consumer dispute regarding deficiency in goods, and cannot by themselves give rise to criminal liability in the absence of any material indicating fraudulent or dishonest intention at the inception of the transaction.

14. The learned revisional court, while setting aside the order dated 04.05.2024, has remanded the matter for fresh consideration without recording any specific finding regarding the role of the present applicant. The impugned order does not disclose any reasoning demonstrating that the learned Magistrate had committed any illegality or perversity while dropping the proceedings against the applicant.

15. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned judgment and order dated 14.07.2025 passed by the learned revisional court cannot be sustained in the eyes of law.

16. Accordingly, the impugned judgment and order dated 14.07.2025 passed by the learned 1st Additional



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Sessions Judge, Kashipur, District Udham Singh Nagar in Criminal Revision No.108 of 2024 is hereby set aside. Consequently, the summoning order dated 16.09.2025 passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar in Criminal Complaint Case No.2999 of 2023 is also set aside.

17. The matter is remanded back to the court concerned. The learned Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar shall pass a fresh order in accordance with law after hearing the parties and after independently considering the material available on record, without being influenced by any observation made in the present order.

18. Accordingly, the C-528 application stands disposed of.

19. Pending applications, if any, also stand disposed of.

(ALOK MAHRA, J.)
27.02.2026

Mamta