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CASE ANALYSIS OF 2022 SCC ONLINE SC 826

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STATE BANK OF INDIA AND OTHERS ... PETITIONERS

VERSUS

DR. VIJAY MALLYA ... RESPONDENT

2022 SCC Online SC 826

Decided on July 11, 2022

**“In the Supreme Court of India (BEFORE UDAY U. LALIT, S.
RAVINDRA BHAT AND P.S. NARASIMHA, JJ.)”**

**“Contempt Petition (C) Nos. 421-424 of 2016 In Special Leave
Petition (C) Nos. 6828-6831 of 2016”**

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In the Supreme Court of India

(BEFORE UDAY U. LALIT, S. RAVINDRA BHAT AND P.S. NARASIMHA, JJ.)

Contempt Petition (C) Nos. 421-424 of 2016

In

Special Leave Petition (C) Nos. 6828-6831 of 2016

State Bank of India and Others ... Petitioners;

Versus

Dr. Vijay Mallya ... Respondent.

Contempt Petition (C) Nos. 421-424 of 2016 and Special Leave Petition (C) Nos.
6828-6831 of 2016

Decided on July 11, 2022

A. Contempt of Court – Punishment for Contempt – Imprisonment and fines – Vijay Mallya Bank Fraud case – Transfer of US\$ 40 million to children instead of repaying his debt of more than Rs. 9000 crores to the banks – Held, is a contempt of Court – Hence, contemnor to undergo four months imprisonment and pay fine of Rs. 2,000/

B. Debt, Financial and Monetary Laws – Banks – Bank Loans – Malpractice/Wilful default by customer – Vijay Mallya bank fraud case – Transfer of US\$40 million to children instead of repaying his debt of more than Rs. 9000 crores to the banks – Held, an invalid transaction – All beneficiaries and Vijay Mallya to deposit the transferred money at 8% interest per annum within four weeks

The Order of the Court was delivered by

UDAY U. LALIT, J.:— These Contempt Petitions have come up before us pursuant to the Judgment and Order dated 9.5.2017 passed by this Court in "I.A Nos. 9-12 & 13-16 of 2016 in SLP (C) Nos. 6828-6831 of 2016 with I.A. Nos. 1-4 of 2016 in and with Contempt Petition (C) Nos. 421-424 of 2016 in SLP (C) Nos. 6828-6831 of 2016".

2. After dealing with the facts which led to the filing of the aforesaid Interim Applications and Contempt Petitions, this Court found Respondent No. 3 (Dr. Vijay Mallya) guilty of committing contempt of Court on two counts. Paragraphs 22 to 30 of said Judgment and Order dated 9.5.2017 were:—

"**22.** We now turn to the alleged violation of orders dated 03.09.2013 and 13.11.2013 passed by the High Court of Karnataka. It is not disputed that such orders were passed restraining the concerned respondents including Respondent No. 3 and that the orders were passed in proceedings arising from O.A. No. 766 of 2013 before DRT Bengaluru. The present proceedings before this court have also arisen from the very same O.A. No. 766 of 2013. The orders of restraints passed by the High Court were therefore in the very same proceedings with which we are presently concerned. Said orders bound the concerned respondents including Respondent No. 3 and restrained them from transferring, alienating, disposing or creating third party rights in respect of movable as well as immovable properties belonging to them till further orders in the proceedings. A question has been raised by Mr. Vaidyanathan learned senior advocate whether the orders would be restricted only so far as the properties which were in the hands of the concerned respondents as on the date when those orders of restraint were passed. In other words, whether any properties which in future or subsequent to the Orders had come in the hands or control of the concerned respondent would be covered by such orders or not. On plain reading of the Orders, in our view, whether the properties were in the hands of the concerned respondents on the date when the orders of restraint were passed by

Citation Title: State Bank of India and Ors. vs. Vijay Mallya (11.07.2022 - SC)

Citation: Contempt Petition (C) Nos. 421-424 of 2016 In Special Leave Petition (C) Nos. 6828-6831 of 2016 Before: “Uday U. Lalit, S. Ravindra Bhat and P.S. Narasimha, Jj.”

State Bank of India and Others ----- Petitioner(s)

Versus

Dr. Vijay Mallya ----- Respondent(s)

FACTS OF THE CASE AS BELOW

1. **Contempt Finding:** Justices “A.K. Goel and U.U. Lalit found Vijay Mallya guilty of contempt of court due to his willful failure to adhere to court orders regarding the disclosure of asset details”.
2. **Violation of Court Orders:** Mallya's actions were deemed a violation of court orders as he failed to provide complete details of his assets. This breach was significant considering his substantial debts to banks, amounting to over Rs. 9000 crores.
3. **Transfer of Funds:** Mallya transferred a significant sum of money, approximately \$40 million, to his children instead of using it to settle his financial obligations to the banks⁴.
4. **Obstruction of Justice:** Banks argued that Mallya's transfer of funds to his children was an attempt to obstruct justice. They claimed that this transfer was made in defiance of the Karnataka High Court's orders and that the money was moved to an offshore account, making it difficult to recover⁵.
5. **Interim Injunction:** “The Karnataka High Court issued an interim injunction preventing Mallya from transferring, alienating, disposing of, or establishing third-party interests in his movable and immovable possessions”⁶.
6. **Guilty of Breaking Restraint Orders:** The Supreme Court found Mallya guilty of breaking the clear orders of restraint imposed by the Karnataka High Court. This ruling was made considering the substantial transfer of money to his children, which violated the injunction.

⁴ Vaishnav Shukla, "Bank Frauds," *Supremo Amicus* 7 (2018): 323-334

⁵ Who Is Vijay Mallya, Vijay Mallya Case, Vijay Mallya Money Laundering Case, Vijay Mallya News Business Standard, <https://www.business-standard.com/about/who-is-vijay-mallya>, last accessed October 29, 2022

⁶ Prachi Bhardwaj et al., "SC Refuses to Review It's 2017 Verdict Holding Vijay Mallya Guilty for Contempt of Court," SCC Blog, August 31, 2020, <https://www.scconline.com/blog/post/2020/08/31/sc-refuses-to-review-its-2017-verdict-holding-vijay-mallya-guilty-for-contempt-of-court/>, last accessed October 27, 2022

7. **Directive to Appear in Court:** In response to the contempt petition, the Court directed Vijay Mallya to appear in court on July 10 to present his arguments and opinions regarding the suggested penalty for his actions.

ISSUES

1. The reasons provided by the board of SBI (State Bank of India) shed light on the complexities and challenges involved in dealing with cases of Vijay Mallya's and Contempt of Court orders?
2. Why did banks continue to give loans to Vijay Mallya? How much has SBI Consortium recovered till now?

ISSUE 1

The reasons provided by the board of SBI (State Bank of India) shed light on the complexities and challenges involved in dealing with cases of Vijay Mallya's and Contempt of Court orders? Let's discuss each point:

1. Multiple Banks Involved: “Mallya's loans were spread across several banks, forming a consortium. In such cases, decision-making becomes more complex as each bank may have different perspectives, risk appetites, and levels of information about the borrower. This diffusion of responsibility can sometimes lead to delays or a lack of decisive action.”

2. Regular Interest Payments: “Mallya's ability to make regular interest payments may have given the impression that he was managing his debt obligations effectively. This could have created a false sense of security among the banks, leading them to believe that Mallya was not a high-risk borrower.”

3. Perceived Value of Mallya's Empire: “Despite his financial troubles, Mallya's business empire still held significant value. SBI and other banks may have hoped that by continuing to support him, they could eventually recover their loans, perhaps by acquiring his assets at a discounted price in the event of a default. This demonstrates a calculated risk-taking approach by the banks⁷.”

⁷ Sweety Gupta and Shiv Gupta, "Case Study From Riches to Rags: The Story of Vijay Mallya," *Pacific Business Review International* 9, no. 7 (January 2017): pp. 205-209, https://doi.org/http://www.pbr.co.in/2017/2017_month/Jan/22.pdf, last accessed October 28, 2022.

4. **Limited Understanding of Mallya's Businesses:** Mallya's businesses, particularly in the airline and hotel industries, were complex and involved various financial and legal intricacies. Banks may not have fully comprehended the risks associated with these sectors or the extent of Mallya's financial troubles until it was too late.⁸

5. **Concerns about Legal Implications and Public Perception:** Pursuing Mallya's assets aggressively could have legal and reputational repercussions for the banks. They may have been hesitant to take decisive action against him, fearing accusations of unfair treatment or negligence, especially if Mallya had not been formally charged with any wrongdoing in India at that time.

ISSUE 2

Why did banks continue to give loans to Vijay Mallya? How much has SBI Consortium recovered till now?

The justifications provided by the board of SBI for the delayed realization of Vijay Mallya's deceptive practices highlight several systemic issues and decision-making challenges within the banking sector. The involvement of numerous banks in the loan arrangement likely led to a diffusion of responsibility, where each bank may have assumed that others were closely monitoring Mallya's loans. "This diffusion of responsibility can lead to a lack of proactive oversight and accountability. Mallya's consistent payment of interest on his loans may have created a false sense of security among the banks, giving the impression that he was managing his finances responsibly and could eventually repay the loans. This reliance on superficial indicators of financial health without deeper scrutiny can lead to complacency and oversight failures".

"The perception that Mallya's business empire held significant value for SBI could have influenced the decision to continue supporting him despite warning signs. This valuation-based approach may have blinded decision-makers to the underlying risks and vulnerabilities within Mallya's businesses, leading to a misguided belief that the potential rewards outweighed the risks".

"The banks' purported lack of awareness regarding the financial and legal intricacies of Mallya's hotel and airline ventures indicates a broader issue of due diligence and risk assessment. Failure to thoroughly understand the complexities and potential pitfalls of Mallya's businesses left the banks

⁸ Jayshree P Upadhyay and P R Sanjai, "Kingfisher Airlines Brand Valuer Grant Thornton Now in Dock," mint, March 15, 2016, <https://www.livemint.com/Companies/ha3FmyHooYZLVRDolic8O/Kingfisher-Airlinesbrand-valuer-Grant-Thornton-now-in-dock.html>, last accessed October 28, 2022

ill-equipped to anticipate and mitigate risks effectively. Overall, these justifications underscore the need for improved risk management practices, enhanced regulatory oversight, and a culture of accountability within the banking sector to prevent similar lapses in judgment and oversight in the future”.

THE CONTENTION OF BANKS

“The Crown Prosecution Service (CPS)⁹ questioned the validity of Vijay Mallya's defense and advocated for his extradition from the UK to face fraud charges in India”.¹⁰ “In May 2018, a court upheld a global asset freeze against Mallya, favoring banks seeking debt recovery.¹¹ His offer to repay the principal loan in December 2018 came amid ongoing legal battles. Despite extradition orders and bankruptcy judgments, Mallya's challenges persisted, with legal firms like TLT LLP involved.¹² Indian financial institutions, including SBI, pursued bankruptcy protection in the UK due to debts exceeding GBP 1 billion, highlighting the extensive fallout from Mallya's actions”¹³

“The Debt Recovery Tribunal (DRT), acting on behalf of a consortium of banks headed by the SBI, sold Vijay Mallya shares with a market value of Rs 792.12 crore that had been confiscated by the Enforcement Directorate (ED) in a money laundering investigation.¹⁴ Proceeds from the Consortium's previous share sales of Mallya were Rs 5,824.50 crore and Rs 1,357 crore. After negotiating with Mallya, the bank was able to receive Rs 8,900 crore or 81% of their total claim”¹⁵

⁹ Vijay Mallya v. Government of India, [2020] EWHC 924 (Admin), High Court of Justice, Queen's Bench Div., Divisional Court, Case No: CO/650/2019, Apr. 20, 2020

¹⁰ Shardul Amarchand Mangaldas & Co, "India's Recent Successes in Extraditing Fugitives from the United Kingdom - Human Rights - India," India's Recent Successes In Extraditing Fugitives From The United Kingdom - Human Rights - India (Shardul Amarchand Mangaldas & Co, June 8, 2020), <https://www.mondaq.com/india/human-rights/948934/india39s-recent-succes-ses-in-extraditing-fugitives-fromthe-united-kingdom>, last accessed October 28, 2022.

¹¹ Republic World, "Bank Loan Fraud, Escape to UK, Bankruptcy: Timeline of Vijay Mallya's Grand Downfall," Republic World (Republic World, January 19, 2022), <https://www.republicworld.com/india-news/generalnews/bank-loan-fraud-escape-to-uk-bankruptcy-timeline-of-vijay-mallyas-grand-downfall-articleshow.html>, last accessed October 16, 2022

¹² "UK Judge Critical of Indian Banks in Providing Loans to Vijay Mallya," The Economic Times, December 11, 2018, <https://economictimes.indiatimes.com/news/politics-and-nation/uk-judge-critical-of-indian-banks-inproviding-loans-to-vijay-mallya/articleshow/67045891.cms?from=mdr>, last accessed October 28, 2022.

¹³ Kritti Bhalla, "Jail Time Awaits Vijay Mallya Even as He Tries His Best to Stall Extradition - a Timeline of His Downfall," Business Insider, July 11, 2022, <https://www.businessinsider.in/business/corporates/news/vijaymallya-was-once-the-king-of-good-times-here-is-the-timeline-of-his-fall/articleshow/92800884.cms>, last accessed October 29, 2022

¹⁴ Aditi Khanna, "Vijay Mallya Declared Bankrupt by UK High Court for Indian Banks to Realise Debt," mint, July 26, 2021, <https://www.livemint.com/news/india/vijay-mallya-declared-bankrupt-by-uk-high-court-forindian-banks-to-realise-debt-11627313627714.html>, last accessed October 29, 2022.

¹⁵ Bruce Zagaris, "Extradition," International Enforcement Law Reporter 36, no. 5 (May 2020): 181-182

ANALYSIS OF THE CASE

The Supreme Court declined to reconsider its 2017 ruling¹⁶, which found Vijay Mallya guilty of contempt of court. In an interim judgment, the High Court of Karnataka prohibited Mallya from engaging in various actions concerning his personal property, highlighting his breach of restraint orders. Following a four-month trial, the Supreme Court found Mallya guilty of contempt for his involvement in a bank loan default case and his bankrupt airline, Kingfisher Airlines¹⁷. In response, Mallya was sentenced to four months in jail and fined Rs. 2,000 by a three-judge bench.¹⁸ The judges noted his lack of remorse or apology for his conduct, particularly his decision to gift a substantial amount to his children instead of repaying his debt.¹⁹

The Court emphasized that, beyond punishing Mallya, it was obligated by the law's majesty to nullify any gain resulting from his contumacious behavior.²⁰ Accordingly, Mallya was sentenced to prison and a fine to uphold the dignity of the law. He was given four weeks to pay the fine, failing which he would serve an additional two months in jail. The Ministry of Home Affairs was tasked with ensuring Mallya's incarceration, and a Compliance Report was requested from the Supreme Court Registry²¹.

Banks argued that Mallya's actions were an attempt to obstruct justice by transferring funds to shield himself from recovery actions. In 2017, the Court had ruled Mallya guilty of defying its orders by not providing complete details of his assets.²²

¹⁶ Prachi Bhardwaj et al., "SC Refuses to Review It's 2017 Verdict Holding Vijay Mallya Guilty for Contempt of Court," SCC Blog, August 31, 2020, <https://www.sconline.com/blog/post/2020/08/31/sc-refuses-to-review-its2017-verdict-holding-vijay-mallya-guilty-for-contempt-of-court/>, last accessed October 27, 2022

¹⁷ Prachi Bhardwaj, "Four Months in Prison; Rs. 2000 Fine for Vijay Mallya for Contempt; US\$40 Million to Be Deposited by Him and Beneficiaries at 8% Interest per Annum," SCC Online Blog, July 12, 2022, <https://www.sconline.com/blog/post/2022/07/12/vijay-mallya-four-months-imprisonment-2000-fine-transferred-money-deposit-with-8-percent-interest-per-annum-supreme-court-contempt-legal-updates-newsresearch/>, last access October 26, 2022.

¹⁸ State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022

¹⁹ Rishabh Shroff, "Gifts Deeds Are Not Reversible, so the Giver Can't Get Back the Rights," mint, March 3, 2020, <https://www.livemint.com/money/personal-finance/gifts-deeds-are-not-reversible-so-the-giver-can-t-getback-the-rights-11583220828729.html>, last accessed October 28, 2022

²⁰ "Supreme Court Sentences Vijay Mallya to 4 Months Jail in Contempt Case," The Economic Times, July 11, 2022, <https://economictimes.indiatimes.com/news/india/supreme-court-sentences-vijay-mallya-to-4-months-jail/articleshow/92795651.cms>, last accessed October 26, 2022

²¹ Times Of India, "Vijay Mallya Arrested in London in Money Laundering Case, Gets Bail: India News - Times of India," The Times of India (Times of India, October 3, 2017), <https://timesofindia.indiatimes.com/india/vijaymallya-arrested-in-london-in-money-laundering-case/articleshow/60925479.cms>, last accessed October 29, 2022.

²² Livelaw News Network, "Supreme Court Sentences Vijay Mallya to 4 Months Imprisonment for Contempt of Court; Asks Him to Deposit 40 Million US Dollars," Live Law (Live Law, July 12, 2022) <https://www.livelaw.in/top-stories/supreme-court-sentences-vijay-mallya-to-4-months-imprisonment-for-contempt-of-court-asks-him-to-deposit-40-million-us-dollars-203407>, last accessed October 29, 2022.

Loans provided by various banks to Vijay Mallya

BANK	AMOUNT (in Crores)
SBI	1,600
PNB	800
IDBI	800
Bank of India	650
Bank of Baroda	550
United Bank of India	430
Central Bank	410
UCO Bank	320
Corporation Bank	310
State Bank of Mysore	150
Indian Overseas Bank	140
Federal Bank	90
Punjab and Sind Bank	60
Axis Bank	50

The State Bank of India (SBI)-led Consortium of lenders presented several contentions before the Supreme Court. Firstly, they emphasized that Vijay Mallya had been found guilty of contempt of court. In 2016, **Diagio Plc transferred \$40 million** to an undisclosed bank account at **Switzerland's 'Edmund de Rothschild Suisse Bank'**, with Mallya's son and two daughters named as the sole beneficiaries.²³ This transfer was executed in defiance of a court order, exploiting the contempt ruling to their advantage.

²³ "Supreme Court Asks Vijay Mallya's Children to Repay \$40 Mn 'Gift Deeds'. but It Has Legal Hurdles," India Today (India Today, July 12, 2022), <https://www.indiatoday.in/law/story/supreme-court-asks-vijay-mallya-s-children-to-repay-40-mn-gift-deeds-but-it-has-legal-hurdles-1974884-2022-07-12>, last accessed October 16, 2022.

Secondly, the Consortium sought the Court's guidance in nullifying and invalidating the deals, which were executed in contempt of court orders. Thirdly, the contempt case originated from the banks' efforts to recover the owed money. The legal representative of the State Bank of India mentioned the appointment of a Recovery Officer tasked with executing the judgment against Mallya in the recovery proceedings. They proposed that the Court could direct the Recovery Officer to locate the transferred funds and ensure they are utilized to fulfill the court's orders. If the sum recovered from Mallya is deemed insufficient to purge the contempt, the Consortium suggested that Mallya's assets in India and abroad could be seized.²⁴ Furthermore, the Consortium proposed collaboration with the Union of India and the banks to gather information on the assets owned by the Mallya's.

Lastly, they recommended hiring a forensic auditor to conduct a thorough examination of Mallya's assets on behalf of the Court. These contentions collectively aimed to recover the funds transferred by Mallya in contempt of court orders and to ensure compliance with the court's directives regarding the contempt case.

NAME OF PARTY	AMOUNT
Siddartha Mallya	US\$13,333,331.33
Leena Mallya	US\$13,333,331.33
Tanya Mallya	US\$13,333,331.33
TOTAL	US\$ 39,999,993.99

In the words of the Court, "*the approach may compel the court to provide directions either for reversal of the transactions in question by declaring such transactions to be unlawful or granting suitable instructions to the pertinent*

²⁴ The Transfer of Property Act, 1882

authorities to ensure that the contumacious behavior on the part of the contemnor does not continue to endure to the profit of the contemnor or anyone claiming under him.²⁵ "

Overall, these factors highlight the challenges banks face in dealing with high-profile borrowers like Vijay Mallya, where financial considerations, legal complexities, and public perception all come into play. The case serves as a cautionary tale for financial institutions regarding the importance of thorough due diligence, risk assessment, and prompt action in managing lending relationships, particularly with high-risk borrowers.

CONCLUSION AND CRITICAL ANALYSIS

The conclusion drawn regarding Vijay Mallya's case underscores a common narrative of bankers being complicit in the downfall of a businessman, portraying Mallya as a failed entrepreneur who misused funds for personal gain. It also points out potential negligence on the part of SBI in not conducting a forensic audit and failing to heed warning signs regarding Mallya's intentions. The analysis further criticizes Mallya's evasion of justice and raises suspicions about the involvement of high-ranking officials in the matter.

The researcher's note provides insight into the scope of the project, detailing the focus on legal proceedings and their outcomes, as well as the broader implications for banking laws, recovery procedures, and extradition policies.²⁶ It highlights the interdisciplinary nature of the case, drawing connections between family law and recovery proceedings, and emphasizes the role of power and politics in influencing outcomes.

To critically analyze the situation, one could delve into the systemic issues within the banking sector that allow for such instances to occur, examining regulatory frameworks, corporate governance practices, and the role of accountability mechanisms.²⁷ Additionally, exploring the challenges and complexities of international extradition processes and diplomatic relations between countries could shed light on the difficulties in bringing individuals like Mallya to justice. Finally, considering the societal and economic implications of such cases, including the impact on investors, creditors, and the public perception of the banking system, would provide a comprehensive understanding of the broader context.

²⁵ State Bank of India and Ors. vs. Vijay Mallya, MANU/SC/0842/2022

²⁶ Indian Extradition Act, 1962

²⁷ Harshita Yadav, "An Analysis of Recent Corporate Frauds in India and USA and Their Nexus with Corporate Governance," *International Journal of Law Management & Humanities* 5 (2022): 337-[xxxv]