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CASE ANALYSIS: AVNISH BAJAJ V. STATE (NCT OF DELHI)- Ananya Joshi¹**Citation:** (2008) 105 DRJ 721; (2008) 150 DLT 769**Court:** Delhi High Court (later appealed to Supreme Court, 2012)**Bench:** Justice S. Muralidhar**Appellant:** Avnish Bajaj (Managing Director, Baazee.com)**Respondent:** State (NCT of Delhi)**Relevant Statutes:**

- Indian Penal Code, 1860 – Sections 292 & 294
- Information Technology Act, 2000 – Sections 67 & 85
- Negotiable Instruments Act, 1881 – Section 141 (later referred to by SC, 2012)

Background of the Case

- In November 2004, **Ravi Raj**, an IIT Kharagpur student, uploaded a

¹ Student at Amity University, Noida

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listing on **Bazee.com** (an e-commerce platform, now eBay India) under the username *Alice-elec* for an obscene video clip titled “*Item 27877408 - DPS Girls having fun!!! full video + Baazee points.*” and description/listing read as –

“DPS Girls having fun!!! Do you want to see that video clip which has rocked the whole DELHI and now has become a hot point of discussion in the entire Nation? YES, Then what are you waiting for!!!! Just order for this product and it will be delivered to you within few hours. This video is of a girl of DPS RK PURAM which has been filmed by his boyfriend in very sexual explicit conditions. Please note: This video clip of around 2:30 Minutes and will be send to you as an email attachment.”

- The clip was advertised for Rs. 125 under the *e-books* category to bypass filters, Rs. 3 as commission went to the website, making it a total of Rs. 128 per video purchase.
- The clip was sold to certain buyers before it was taken down two days later upon complaint.
- The **Delhi Police Crime Branch** initiated investigations and filed an FIR.
- The charge sheet named Ravi Raj (seller), **Avnish Bajaj** (MD, Baazee.com), and **Sharat Digumarti** (Trust & Safety Head) as accused.
- Ravi Raj absconded. Avnish Bajaj was charged under **Section 67 IT Act (publication of obscene material online)** and **Sections 292/294 IPC (obscenity provisions)**.

Issues Before the Court

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- Whether a prima facie case under Section 67 of the IT Act could be made out against Avnish Bajaj, given that the obscene MMS was transferred directly between seller and buyer without the website's intervention.
- Whether the website or its MD could be charged under **Sections 292(2)(a) and 292(2)(d) IPC** for publication/advertisement/sale of obscene materials.
- Whether the MD of a company (Avnish Bajaj) could be held personally liable even when the company (Baazee.com/BIPL) was not arraigned as an accused.

Relevant Legal Provisions

- **Section 292 IPC:** Prohibits sale/distribution/advertisement of obscene material.
- **Section 294 IPC:** Penalizes obscene acts and gestures in public.
- **Section 67 IT Act, 2000:** Criminalizes publishing/transmitting obscene material in electronic form.
- **Section 85 IT Act:** Fixes liability on persons in charge of a company, when a company commits an offence.
- **Section 141 NI Act (for interpretation):** Liability of directors in offences by companies under the Negotiable Instruments Act.

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Arguments of the Parties Petitioner

(Avnish Bajaj)

- No direct role of website; transfer of MMS happened directly between users (buyer-seller model).
- Section 67 IT Act covers “**publication**” not “**transmission**” – the site did neither.
- Website ensured due diligence by **removing the listing within 38 hours** of complaint (weekend delay).
- Since the company itself was not arraigned as an accused, MD cannot be held personally liable.
- As director, he did not manually supervise listings; hence, no mens rea.

Respondent (State)

- Website failed to implement **adequate content filters**, allowing obscene content to be listed.
- Website still processed seller payments (27th December 2004), showing complicity.
- Offences under IPC include **illegal omissions** under Sections 32, 35, 36 IPC.
- As MD responsible for the operations, petitioner was liable under Section 85 IT Act (vicarious liability).

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Court's Observations

- **On Section 292 IPC:**
 - Website failed to screen obscene listing; under strict liability of Section 292, knowledge can be *imputed*.
 - Prima facie case made out against the website for **listing and sale of obscene clip**.
- **On Director's Liability:**
 - IPC does not recognize **automatic criminal liability of directors** without the company being arraigned.
 - Hence, Avnish Bajaj could not be held liable under IPC Sections 292/294 if the company itself was not made an accused.
- **On Section 67 r/w Section 85 IT Act:**
 - Court held a **prima facie case** existed, since Section 85 imputes liability on persons in charge even if the company is not arraigned.
 - However, guilt was not proven at this stage – only a ground for trial.
- **On Bail:**
 - Bail was granted with conditions: surrender of passport, restriction on foreign travel, and provision of **two sureties of Rs. 1 lakh**.

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Judgment

- **Prima facie case made out under Section 292 IPC against the website, but not directly against Avnish Bajaj.**
- Avnish Bajaj discharged under **Section 292 & 294 IPC.**
- **Prima facie case under Section 67 r/w 85 IT Act** against Avnish Bajaj was upheld.
- Bail was granted with restrictions.

Ratio Decidendi

- **Strict liability for obscenity (Section 292 IPC) can be attributed to an online platform, even if listings are user-generated, when due diligence mechanisms fail.**
- **No automatic vicarious liability** can be attached to directors under IPC without arraigning the company as an accused.
- Under IT Act, Section 67 read with Section 85 envisages deemed liability of directors/officers for offences committed by a company.

Obiter Dicta

- The court emphasized that **“failure to implement adequate content regulation measures entails serious consequences”** for online intermediaries.

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- Suggested that **knowledge may be imputed to a company** if its systems fail to detect obscene content.
- Observed that **heinous nature of the crime may be attributable to some other individual (Ravi Raj)** rather than the MD.

Supreme Court's 2012 Clarification

- SC held that **vicarious liability cannot be imposed on directors without the company being arraigned as an accused.**
- Drew analogy from **Section 141 NI Act** (company liability provisions).
- Acquitted Avnish Bajaj of IT Act charges as the company (Baazee.com) was not impleaded.

Significance of the Case

- Landmark judgment shaping **cyber law and intermediary liability** in India.
- Highlighted lacuna in IT Act, later corrected by **IT Amendment Act, 2008** introducing **Section 79 IT Act (Safe Harbour Protection)** for intermediaries, shielding platforms if they act as neutral conduits with due diligence.

Conclusion

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- The case demonstrates the early judicial struggle in fixing liability in cyber offences involving intermediaries.
- While the Delhi High Court imputed liability on Avnish Bajaj under IT Act, the Supreme Court clarified that **company liability is a precondition for vicarious liability of its officers.**
- The decision directly influenced legislative reform, granting **conditional safe harbour protections to intermediaries under Section 79 IT Act, 2008.**

Our Analysis

Discharging Avnish Bajaj does not make sense given the responsibilities that come with leading a company, especially under cyber law. International standards, especially Article 12 of the European Convention on Cybercrime (a.k.a Budapest Convention), support holding both companies and their senior managers responsible if crimes happen because they did not supervise properly

Article 12: Company Liability

- Article 12 requires that companies can be held legally responsible if a person at the top (like a director or manager) commits a cybercrime for the company's benefit.
- Companies can also be liable if someone under their control commits a crime because leaders failed to supervise or control them properly.
- Penalties can include criminal or non-criminal consequences, such as fines.

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India has **not ratified** the Budapest Convention. However, since it is the main international treaty on cybercrime, Indian courts can still use its ideas as guidance for fair and modern judgement.

Opinion

- Avnish Bajaj should have been held responsible, as the law should expect senior managers to control what happens on their platforms and step in if harmful or illegal things occur.
- Not holding him liable sets a bad example and does not send a strong message about the need for big companies to protect users and the law.
- Even if India hasn't signed the Convention, courts should use its standards to avoid weak precedents and align with global best practices.

In summary, letting Avnish Bajaj go in this case weakens accountability at the top. Global standards, like Article 12 of the Budapest Convention, show why senior managers should be held liable when they don't properly supervise their companies online.

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