

Lawyers differ on top brass' liability

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NEW DELHI: The jury stands divided on whether the top management of Citibank, named in the [FIR by Gurgaon police](#), could be held liable for the fraud committed by its employee and prime accused Shivraj Puri.

The Gurgaon police on Tuesday registered an FIR against 11 [Citibank](#) officials, including top executives like global CEO Vikram Pandit and chairman William R Rhodes, though on Wednesday it ruled out the possibility of questioning the top global honchos.

Top lawyers had different views on the issue. Rajiv K Luthra, managing partner of Luthra & Luthra, said liability can be held against senior Citibank officials, including those at the company's US headquarters, if a systemic failure is established. "While everything depends on what the investigation throws up, the top management can really be held responsible if a systemic failure can be proved. We have to remember that the buck finally stops with them."

However, Luthra added that the top officials would be safe in case the bank argues that the fraud was committed by the individual concerned and was not due to lax supervision at Citibank's Gurgaon branch.

Noted company law advocate CA Sundaram, however, felt that Citibank's top management should not have a reason for worry. "In my view, there is a difference in criminal and civil liability. In criminal liability, there is no room for them to be held liable unless they are an actual party to the fraud. There is no room for vicarious liability. They can be held responsible only if a crime is made out against them and they have participated in the crime and are personally involved."

Adarsh Priyadarshi, Senior Associate at OP Khaitan & Co., also said that there was no concept of vicarious liability in criminal law. "In order to prosecute under IPC, a specific overt act has to be alleged. To my mind, even if there is an allegation of conspiracy, no case is made out against the foreign management. I do not think the senior officials at the headquarters would have knowledge of the day-to-day activities. It is more of pressure tactic."

Vyapak Desai, who heads the litigation & dispute resolution practice at [Nishith Desai Associates](#), said: "In such cases, under the Indian law, the top management cannot absolve completely from the liability arising out of fraudulent actions by a company's employee. But it would be a good defense to contend that the act was committed independently in the employee's personal capacity without their knowledge or connivance and therefore no criminal or penal consequences should apply to them."

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