

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2125/2006

Date of order: February 26, 2008

YASHWANT JAIN Petitioner
Through Petitioner in person

versus

S.E.B.I & ORS Respondents
Through Mr. Atul Sharma, Advocate
Mr. Navin Sharma, APP for the State

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

Dr. S. Muralidhar, J

1. This petition under section 482 of the Code of Criminal Procedure, 1973 ('CrPC') filed by the Petitioner seeks the quashing of the Complaint Case titled *Securities and Exchange Board of India v. M/s. Glitter Gold Plantations Ltd. & Ors.* pending in the Court of learned Chief Metropolitan Magistrate ('CMM'), Delhi in so far it concerns the petitioner Shri Yashwant Jain who has been shown in the array of accused as 'Promoter/Director'.

2. The learned MM issued summons to the accused. Thereafter by an order

dated 10th February, 2006 the learned MM passed an order framing notice while rejecting the plea of the accused for discharge. Thereafter the case has progressed to trial and the evidence of the complaint has been closed after cross examination by counsel for the accused. It is stated that the case is now at the stage of evidence of the defence.

3. Shri Yashwant Jain, the petitioner who also happens to be a practising Advocate, appears in person. He pleads that there is absolutely no averment in the complaint connecting him with the offences complained of i.e. under Sections 24(1) and 27 of the Security and Exchange Board of India Act, 1992 ('SEBI Act') and therefore the complaint does not satisfy the requirements of the law as explained by the Supreme Court in *SMS Pharmaceuticals Limited v. Neeta Bhalla (I) (2005) 8 SCC 89*. He further seeks to place reliance on the judgment of the Supreme Court in *N.K. Wahi v. Shekhar Singh (2007) 4 SCALE 188*, and submits that the complaint fails to mention the specific role of each of the accused, and in particular the petitioner, in the commission of the offence.

4. Referring to the certified copy of the Form 32 which shows that he was not a Director of the Company at the time of the commission of the offence, Shri Jain submits that in view of the judgment of this Court in *Sarla Kumari Dr. (Mrs.) v. Srei International Finance Ltd. 2006(4) Crime 271* the complaint against him should be quashed.

5. The complaint in question is against a plantation company for its failure to comply with the statutory provisions of the SEBI Act and the Regulations

thereunder pertaining to the Collective Investment Scheme floated by it. As regards the averments in the complaint concerning the Company and its Directors para 7 thereof reads as under:

“7. The accused no. 1 is a company registered under the provisions of the Companies Act and the accused nos. 2 to 8 are the directors of the accused no. 1 company. The accused nos. 2 to 8 are the persons incharge and responsible for the day to day affairs of the company and all of them were actively connived with each other for the commission of offences.”

6. Section 27 of the SEBI Act is more or less in similar terms as Section 141 Negotiable Instruments Act, 1881 (‘NI Act’). In regard to the latter provision the law concerning the minimum averments in a complaint has been explained by the Supreme Court in *Neeta Bhalla (I)*. This has further been reiterated in subsequent judgments in *Saroj Kumar Poddar v. State (NCT of Delhi) (2007) 3 SCC 693*, *Sabitha Ramamurthy v. RBS Channabasavaradhya (2006) 10 SCC 58* and *SMS Pharmaceuticals Limited v. Neeta Bhalla (II) (2007) 4 SCC 70*.

7. The entire law was once again discussed in *N. Rangachari v. Bharat Sanchar Nigam Ltd. AIR 2007 SC 1682*. There the precise averment in the complaint reads as under:

“That accused No. 1 is a company incorporated under the Companies Act. Accused Nos. 2 and 3 are its Directors. They are incharge of and responsible to accused No. 1 for conduct of business of accused No. 1 Company. They are jointly and severally liable for the acts of accused No. 1.”

8. After discussing the entire case law up to that date in *N. Rangachari*, the Supreme Court in para 18 held as under (*AIR SC p. 1688*):

“18. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were incharge of the affairs of the company. **It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour.** We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.”

(emphasis supplied)

9. The judgment in *N.K. Wahi* makes no reference to the precise wording of the complaint in that case. It is therefore not possible to ascertain the context in which the Supreme Court upheld the judgment passed by this Court quashing the complaint after holding that the averment had to precisely point out to the role of the particular director.

10. In any event this Court has in *Sushila Devi v. SEBI* (order dated 13th August, 2007 in Crl.M.C. Nos. 5638-44/2005) followed the decision in *N. Rangachari* and held that the same averments in an identical complaint filed by SEBI were sufficient for a prima facie case to be made out against the director. Accordingly, the first submission of the petitioner is rejected.

11. As regards the Form 32 stated to have been produced before the trial court by the petitioner, since the case is at the stage of trial and the said

document has already been produced before the trial court, this Court is not inclined in the exercise of its powers under Section 482 CrPC to form an opinion thereon at this stage. If indeed the Form 32 proves that the petitioner was not the person in charge of the affairs of the Company or responsible to it for the conduct of its business at the time of commission of the offence, the trial court will pass an appropriate order.

12. For the aforementioned reasons, this court is not inclined to exercise its power under Section 482 CrPC to interfere in the matter.

13. The petition is dismissed with no order as to costs.

S. MURALIDHAR, J.

FEBRUARY 26, 2008

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