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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. No. 179/2010**

% *Judgment delivered on: 20th December, 2011*

MOHAN LAL & ANR. Petitioner
Through : Mr. N.K. Kaul, Sr. Adv.
with Mr. Akhil Sibal and Mr. Diwakar
Maheshwari, Advs.

versus

REGISTRAR OF COMPANIES DELHI
& HARYANA Respondent
Through : Mr. Gaurav Liberhan and
Mr. Neeraj Kr. Gupta, Advs. for R-1.
Mr. Abhishek Maratha, Adv. for R-2.

AND

+ **CRL. M.C. 255/2010**

BHUSHAN STEEL LTD & ORS Petitioners
Through : Mr.N.K. Kaul, Sr. Adv.
with Mr. Akhil Sibal and
Mr. Diwakar Maheshwari, Advs.

versus

REGISTRAR OF COMPANIES DELHI & HARYANA
& ANR. Respondents
Through : Mr. Gaurav Liberhan and
Mr. Neeraj Kr. Gupta, Advs. for R-1.
Mr. Abhishek Maratha, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the instant petitions, the petitioners have sought to quash the impugned order dated 21.02.2009 passed by CMM, Tis Hazari and Criminal Complaint No. 36/2009 titled as **Registrar of Companies v. B.B. Singhal and Ors.** pending before the aforesaid Id. CMM.
2. Since the relief is similar in both the petitions, therefore both are being taken by a common judgment for disposal.
3. The respondent / Registrar of Companies had filed a complaint under Section 207 of the Companies Act, 1956 for non-payment of dividend for the year 2004 and 2005.
4. Mr. N.K. Kaul, Sr. Adv. appearing on behalf of the petitioners submits that Bhushan Group of Companies comprises of two flagship companies i.e. BSL and Bhushan Power and Steel Limited (BPSL). There was an ongoing family dispute between the Promoters, Directors of the Bhushan Group of Companies, with cases pending before the Company Law Board and before this Court, where the father and one son (B.B. Singhal and Neeraj Singhal) were on one side and the other son namely Sanjay Singhal was on the other side. The BSL had kept the dividend in question in abeyance acting *bona fide* on a legal opinion.
5. Ld. Sr. Counsel has further submitted that in terms of Section 55 (A) of the Act in the case of listed public company, as in this case, non payment of dividend under Section 207 of the Act falls within the exclusive domain of (Securities and Exchequer Board of India), SEBI as opposed to the

Central Government. Section 621 of the Act has also accordingly been amended by way of a Proviso enabling SEBI to file a complaint relating to non-payment of dividend.

6. It is further submitted that Sanjay Singhal and the other made complainants before the ROC, also initiated complaints in 2007 before SEBI. As a consequence of such complaints, SEBI sought responses from BSL, which was duly responded pointing out the background of the family dispute and the pending litigation. Once all the relevant facts were placed before SEBI as far back of 2007, since then till date, no adverse action has been taken by SEBI against BSL or its Directors.

7. It is further submitted that in 2002, the Promoter, Directors of Bhushan Group of Companies, namely B.B. Singhal and his two sons Neeraj Singhal and Sanjay Singhal with their respective family members with a view to resolve their disputes and differences and to maintain the family peace, reached an oral family arrangement on 30.11.2002 whereby it was inter-alia agreed as under:

- (i) BSL would be managed and controlled by one of the sons namely Neeraj Singhal under the Chairmanship of his father B.B. Singhal who would also held one-third share in BSL.
- (ii) Bhushan Power and Steel Limited would be managed and controlled by other son namely Sanjay Singhal under the Chairmanship of B.B. Singhal who would similarly held 1/3 share in BPSL.

8. Be that as it may, that all the shareholders have already settled their disputes, therefore they do not want to pursue their case further.

9. It is further submitted that admittedly, Regional Director, Ministry of

Corporate Affairs, Northern Region, NOIDA and Registrar of Companies during the period of 10.03.2007 and around received several complaints regarding non receipts of dividend in respect of shares held by them in the Company. The details of persons / corporate entities are mentioned below:-

1. Bhushan Information Technologies Ltd.
3, Industrial Area, Phase-I, Chandigarh-160002.
2. BTC Investment Pvt. Ltd.
57, Jor Bagh, New Delhi – 110003
3. Gaimda Mal Chiranji Lal Ltd.
3, Industrial Area, Phase-I, Chandigarh-160002.
4. Kishorilal Constructions Ltd.
F-7/21, Krishna Nagar, New Delhi – 110051.
5. ESSENN Investments Pvt. Ltd.
H.NO. 713, Ahata Himalaya Transport, Kalka Distt.,
Panchkula (Haryana)
6. ADHUNIK Investments Pvt. Ltd.
D-818, New Friends Colony, New Delhi
7. DECOR Investment & Finance P. Ltd.
F-7/21, Krishna Nagar, New Delhi – 110051
8. ASL Investment Pvt. Ltd.
C-57/31, Janta Garden, Pandav Nagar, Delhi – 110091.
9. RAILTRACK India Ltd.
57, Jor Bagh, New Delhi – 110003.
10. Flawless Holdings & Industries Ltd.
57, Jor Bagh, New Delhi – 110003

11. Evergrowing Iron and Finvest Ltd.
57, Jor Bagh, New Delhi – 110003.
12. Marble Finvest Ltd.
3, Industrial Area, Phase-I, Chandigarh – 160002
13. Smt. Aarti Singh Lal
57, Jor Bagh, New Delhi – 110003
14. Sh. Sanjay Singhal
57, Jor Bagh, New Delhi – 110003
15. Ms. Priyanka Singhal
57, Jor Bagh, New Delhi – 110003

10. Ld. Sr. Counsel has drawn the attention of this Court to CrI.M.A. 19063/2011 whereby, same prayer has been made as is in the instant petition.

11. I note that this application is supported with a letter regarding withdrawal of complaints submitted against Bhushan Steel Limited (BSL) written by all the shareholders of Bhushan Information Technologies Limited (BPSL) to Registrar of Companies which is as under:-

“This is to inform you that in view of fact that the amicable settlement has been arrived at between the parties and disputes stood resolved, we therefore withdraw all the pending litigations, complaints forthwith, submitted by us to BSL, ROC, BSE, NSE and other Authorities from time to time with regard to non-receipt of Dividend, Annual Accounts, Notices, non-receipt of Split Share Certificates, etc.

Since, we have no complaints / grievances, claims or any rights with respect to shares and its attendant benefits, in view thereof, you are requested to close the complaints against the Bhushan Steel Limited if any with respect to above said matter. This is for your information, record necessary action to close the complaints.

12. I also noted that all the complainants have also filed their affidavits as under:-

“I, Sanjay Singhal, S/o, Sh. B.B. Singhal, R/o 57, Jor Bagh, New Delhi – 110003 aged about 52 years do hereby solemnly affirm and declare on my own behalf and as power of attorney holder of Ms. Priyanka Miglani, my daughter as under:-

- 1. That we had filed complaints against Bhushan Steel Ltd. With the Registrar of Companies regarding non receipt of dividends. However, all disputes, including with regard to the right to receive the dividend, have now been amicably settled by and between us and Bhushan Steel Ltd., in view of which we have withdrawn our complaints filed with the Registrar of Companies.*
- 2. That we have no complaints / grievances, claims or any rights with respect to the shares of Bhushan Steel Ltd. and its attendant benefits, including the right to receive the dividend. Accordingly, we are supporting the prayer of the petitioners for quashing of the complaint filed by the Registrar of Companies and the summons order passed thereon.*
- 3. That I do have read and understood the contents of the present affidavit. No part of it is false and nothing material has been concealed therefrom”.*

13. In the present case, there is neither interest of public at large is involved nor any loss to the exchequer of the ROC / Govt. Institutions, therefore prayed to quash the impugned order and the complaint.

14. Mr. Abhishek Maratha, Ld. Counsel for respondent no. 2 (SEBI) has submitted that his client has no objection, if the prayer as sought is granted by this Court.

15. However, Mr. Gaurav Liberhan, Ld. Counsel for respondent no. 1 (Registrar of Companies) has strongly opposed the prayer as prayed by the

petitioners and submits that though the instant complaint was filed on the complaint received on the violation of Section 207 of the Companies Act, however, the prayer cannot be granted as the offences against the petitioners are non-compoundable, therefore the relief as sought cannot be granted.

16. Sh. N.K. Kaul, Ld. Sr. Counsel appearing on behalf of the petitioner has relied upon the Judgment of this Court in **Yograj Arora v. State 2002 (98) DLT 675** and has referred Para 2 & 3 of the said Judgment which is as under:-

“Learned counsel for the petitioner submits that petitioner was an attorney of the complainant in respect of some portion of his revenue lands and he had authority to sell the land. As per allegations while executing a sale deed in respect of the land of which he was the attorney some khasra number pertaining to three bighas and eleven biswas of land was wrongly mentioned. Assuming that the petitioner had no authority to sell that piece of land, it is submitted that after the petitioner was summoned, he explained the correct position and the matter had been sorted out. There was some clerical mistake in the revenue record which resulted into misunderstanding; the mistake was got corrected and the misunderstanding stands removed. The complainant present in the court. He is duly represented by his Advocate. The petition is duly supported by the affidavit of petitioner as well as of complainant. They are identified by their respective counsel. The offence under Section 420 IPC is compoundable with the permission of the court. In the facts of this case, compromise is allowed. So far as the offence under Sections 467 and 471 IPC is concerned, these are not cognizable offences. Proceedings were instituted on a private complaint. The offence of cheating is the main offence. If the person cheated is satisfied and the compromise is permitted then the continuation of the complaint

for the other offences would be an exercise in futility. It may not be appropriate to compel the complainant to pursue the complaint. On the contrary Section 249 of the Code of Criminal Procedure provides that when the proceedings have been instituted upon a complaint, and on any day fixed for hearing of the case the complaint is absent and the offence may be lawfully compounded or is not cognizable the magistrate has the discretion to dismissed the complaint at any time before the charge has been framed and discharge the accused. Admittedly, petitioners have only have summoned and charge has not been framed. I may hasten to add, if it was a case instituted on a police report, the position may have been different.

In view of the above since all the matters have already been compromised, I feel no useful purpose would be served by permitting further proceedings to continue. Accordingly, the petition is allowed. The complaint filed by the respondent and order of summoning are quashed”.

17. Ld. Sr. Counsel has also relied upon a recent judgment of Hon’ble Supreme Court delivered on 14.11.2011 in case of **Shiji @ Pappu and Ors. v. Radhika and Anr. reported in MANU/SC/1341/2011** and has referred Para 2, 13 and 14, which is as under:-

“This appeal arises out of an order passed by the High Court of Kerala at Ernakulam, whereby Criminal M.C. no. 3715 of 2010 filed under Section 482 of the Code of Criminal Procedure, 1973, with a prayer for quashing criminal proceedings in FIR No.6/2010 alleging commission of offences punishable under Sections 354 and 394 of the IPC, has been dismissed. The High Court has taken the view that the offences with which the appellants stand charged, are not 'personal in nature' so as to justify quashing the pending criminal proceedings on the basis of a compromise arrived at between the first informant-complainant and the appellants. The

only question that, therefore, arises for consideration is whether the criminal proceedings in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at.

It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial Court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may

result in the abuse of the process of law. The High court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

Coming to the case at hand we are of the view that the incident in question had its genesis in a dispute relating to the access to the two plots which are adjacent to each other. It was not a case of broad day light robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them. That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some & misunderstanding and misconception; will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eye witnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 Cr.P.C. could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below.”

18. Ld. Sr. Counsel appearing on behalf of the petitioners submits that there was no violation of Section 207 of the Companies Act because of the fact that admittedly there was a family dispute therefore, dividends were not given.

19. Mr. Gaurav Liberhan, Ld. Counsel for respondent no. 1 has referred the decision of Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Anr.*** in ***SLP (Crl.) No.8989/2010*** wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, ***B.S. Joshi v. State of Haryana (2003) 4 SCC 675***, ***Nikhil Merchant v. Central Bureau of Investigation & Anr. (2008) 9 SCC 677*** & ***Manoj Sharma v. State & Ors. (2008) 16 SCC 1*** to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not. Therefore, he has prayed that till the outcome of the larger Bench of the Apex Court, present petition may be adjourned *sine-die*. Alternatively, he prayed that in the event, the complaint is quashed, heavy costs should be imposed upon the petitioners, as the government machinery has been pressed and precious time of the Court has been consumed.

20. The Division Bench of Mumbai High Court in ***Nari Motiram Hira v. Avinash Balkrishnan & Anr.*** in ***Crl.W.P.No.995/2010 decided on 03.02.2011*** has permitted for compounding of the offences of 'non-compoundable' category as per Section 320 Cr. P.C. even after discussing ***Gian Singh (supra)***.

21. Therefore, I feel that unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme Court, all the above three decision hold the field and are the binding precedents.

22. I am of the view that no purpose would be served to allow the proceedings to continue against the petitioners as each and every dispute

have already been resolved and the complainants do not want to pursue their case further. More so, they do not own shares any longer. Admittedly, neither the interest of public at large is involved nor there is any loss of exchequer of ROC / Govt. Institutions.

23. However, since I found force in the submission of Id. Counsel for respondent, I direct the petitioners to pay a sum of Rs.1,00,000/- each to be deposited in Prime Minister Relief Fund within two weeks from today and the proof of the same shall be placed on record.

24. Keeping the above discussion into view, I quash the impugned order dated 21.02.2009 passed by CMM, Tis Hazari and Criminal Complaint case No. 36/2009.

25. Consequently, CrI.M.C.179/2010 and CrI.M.C.255/2010 are allowed on the above terms.

26. *Dasti.*

SURESH KAIT, J

DECEMBER 20, 2011

Jg