

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

Judgment delivered on: July 11, 2011

+ **CRIMINAL M.C. No.858/2010**

**VARINDER BHARTI**

**....PETITIONER**

Through: Ms. Beenashaw N.Soni with Ms.Sunita Gupta,  
Advocates.

Versus

**SECURITIES & EXCHANGE BOARD OF INDIA  
& OTHERS**

**.....RESPONDENTS**

Through: Ms.Pinki Anand, Senior Advocate with  
Mr.Ashish Aggarwal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE AJIT BHARIHOKE**

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

**AJIT BHARIHOKE, J.(ORAL)**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing of criminal complaint filed by respondent No.1/Securities and Exchange Board of India (SEBI) against M/s Janraksha Green Forests Limited (respondent No.2) and others, including the petitioner under Sections 24(1) and 27 of Securities and Exchange Board of India Act 1992 (for short `SEBI Act'). Quashing has been sought primarily on the ground that the petitioner was neither a Director nor a person in charge of and responsible to the company Janraksha Green

Forests Limited for conduct of its business nor did he have any connection whatsoever with the said company.

2. The Govt. of India, in order to regulate entities which used to issue instruments such as Agro Bonds, Plantation Bonds etc. decided to treat such schemes as 'Collective Instrument Schemes' and brought them under the purview of SEBI Act, 1992, with the object of protecting the investors and promoting investment activities. SEBI (Collective Investment Schemes) Regulations, 1999 were thus framed by SEBI. The Regulations were notified in the year 1999.

3. The accused company M/s Janraksha Green Forests Ltd., under Collective Investment Schemes, had raised an aggregate amount of ₹4.285 crores from the general public. Accused company, pursuant to the regulations, submitted an application with SEBI for registration of the Collective Investment Schemes run by it. Since the company did not fulfil certain requirements for the grant of registration, its application was rejected. Intimation of rejection of application was sent to the accused company vide letter dated 15<sup>th</sup> February, 2002. Pursuant to the rejection of application for registration, in terms of Regulation 73 of SEBI (Collective Investment Schemes) Regulations 1995, the accused company was required to send an information memorandum to the investors who had subscribed to its schemes within two months from the date of receipt of information. Further, on completion of winding up and repayment, the company was also required to file a detailed report within 3 ½ months

from the date of information memorandum. The accused company, however, failed to comply with the said provisions of the Regulations.

4. SEBI, thus, on 27<sup>th</sup> December 2002, in exercise of its powers under Section 11B of SEBI Act, 1992, directed the accused company to refund the money under the aforesaid Collective Investment Schemes to the investors within a period of one month from the date of said directions. Accused company, however, failed to comply with the directions which led to the filing of the complaint against the accused company and its Directors, including the petitioner, under Section 24(1) read with Section 27 of the SEBI Act, 1992. It is alleged that the petitioner was one of the Directors and person in charge of and responsible to the accused No.1 company for conduct of its business, as such, he is also liable for the offence in view of Section 27 of the SEBI Act, 1992.

5. Ms.Beenshaw Soni, Advocate appearing for the petitioner submitted that this is a case of mistaken identity and the complaint against the petitioner is liable to be quashed for the reason that petitioner was never a Director of the accused company, rather he had no connection whatsoever with said company. In support of this contention, learned counsel has drawn my attention to the copy of the winding up petition in respect of accused No.1 company filed in High Court of Punjab & Haryana, wherein the petitioner is not arrayed as a respondent in capacity of Director of the company. She has also referred to the copy of annual return of the company submitted to Registrar of Companies in which petitioner is not shown as Director and petitioner has also referred to the

copy of order dated 6<sup>th</sup> December, 2004 wherein consumer court has recorded that “respondent No.4 Prem Raj Dhand (inadvertently mentioned) in the complaint as Varinder Kumar Dhand”. It is urged that from the above, it is clear that the petitioner was not associated with the accused company in any manner, as such, his inclusion as accused in the complaint is abuse of process of law. Learned counsel has urged for setting aside of impugned order as well as complaint qua the petitioner.

6. Learned counsel for respondent No.1, on the contrary, submits that the petitioner is in the habit of operating with different names. It is pointed out that though Varinder Kumar Dhand has been named as accused No.4 in the complaint, the petitioner has filed the instant petition under the name Varinder Bharti. Learned counsel further submitted that the petitioner was a Director of respondent No.2 company (accused No.1 in the complaint), which is apparent from certain communications made on behalf of the accused company and the petitioner himself to SEBI. In support of this contention, learned counsel for the respondent No.1 has drawn my attention to copy of letter dated 29<sup>th</sup> April, 1998 purported to have been sent by Managing Director of respondent No.2 company to SEBI whereby he had forwarded Memorandum of Articles and Articles of Association, Balance sheet for the year 1996-97, List of Directors and the Certificate. Perusal of the copy of list of Directors annexed to the letter would show that Varinder Dhand s/o Prem Dhand has been shown as one of the Directors of the Company. Respondent No.1 has also placed on record another letter purportedly sent by the Managing Director of the accused company to SEBI vide which list of Directors with the details of

their assets was forwarded. In the said list also petitioner Varinder Dhand is shown as a Director having NIL assets.

7. Respondent No.2 has also placed on record photocopy of list of organisational personnel of respondent No.2/accused company submitted to SEBI wherein also the name of the petitioner occurs. Besides the above, respondent No.1 has placed on record a letter purportedly written by the petitioner whereby he claimed to have resigned from the Board of Directors of the company on 29<sup>th</sup> April, 2000.

8. Only plea of the petitioner is that he was neither a Director nor he had any association with the accused company, namely, M/s. Janraksha Green Forests Limited (respondent No.2). This plea is denied by the respondent No.1 on the strength of certain communications sent by accused company and the petitioner noted above. Since parties are at dispute in this regard, it is apparent that the plea raised by the petitioner is a question of fact, which can be determined only on the basis of evidence, which is the subject-matter of trial. Thus, I find no reason to invoke Section 482 CrPC to quash the impugned summoning order or the complaint qua the petitioner.

9. Petition is accordingly dismissed.

**JULY 11, 2011**  
gg/ks

**(AJIT BHARIHOKE)**  
**JUDGE**