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THE HIGH COURT OF DELHI AT NEW DELHI
Crl. MC 1324/2009 and Crl.MA 4752/2009

Date of Decision: 14.03.2012

Ms. Mariam Mathews & Anr.

.... PETITIONER

Through: Mr. Sanjeev Singh, Advocate.

Versus

Piyush Singhania

.....RESPONDENT

Through: Mr. Manu T. Ramchandran,
Advocate.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present petition is preferred assailing the order dated 21.11.2008 of the Ld. MM summoning the petitioners for offences under section 406/409/420/467/471/472/120-B IPC and for quashing the complaint case CC No. 2283/1 titled "Piyush Singhania v. DBS Cholamandalam Distribution Services Ltd. & Ors.

2. M/s DBS Cholamandalam Distribution Services Ltd. is a company dealing in stock broking, portfolio management, mutual funds, bonds, FDs etc. The petitioner no.1 and petitioner no.2 are its Vice President and Executive Chairman. A complaint was filed under section 190 Cr.P.C. by respondent Piyush Singhania against the company and also the petitioners and one Vikas Jain, the then Regional Head of the company. The allegations as set out in the complaint were that petitioner no.1 and Vikas Jain approached the complainant (respondent herein) and represented themselves to be at senior positions and employees of the company. They represented about the credentials of the company and assured the complainant that if he would

invest his money through them, the same would be invested in different mutual funds yielding him good returns. Based on the representations and assurances, the complainant agreed to invest his money. He was made to sign certain documents and hand over some cheques on the assurance that the money would be used for investment purposes. It was alleged that on 25.10.2008, the complainant received phone from his bank that approximately Rs.60 lac has been invested from his three different accounts i.e. from his personal savings, HuF and his company in different mutual funds and stock shares through cheques and ECS Forms. He contacted the accused company telephonically as also vide letter dated 29.10.2008. It is also alleged that after receiving the copies of CCS Forms, redemption forms and other forms from the bank through which the money was withdrawn, he noticed that his signatures were forged to facilitate the withdrawals by the accused persons.

3. The learned MM summoned the petitioners as also their company and also their Regional Head Vikas Jain under Section 408/409/420/467/471/472 and 120B IPC vide the impugned order. The said order has been assailed by the petitioners in the present petition.

4. Learned counsel for the petitioners submitted that the accused company is merely a broker whose role was to forward the mutual fund applications of investors to the companies and the entire money transaction takes place between the investor and the mutual fund companies and therefore, there is no scope of misappropriation of any money by the company or the petitioners. It was submitted that Puneet Jain had signed two mutual fund ECS Forms and certain mutual fund forms on behalf of complainant / respondent of which present petitioners had no knowledge or any role in the

transaction/ agreement between Puneet Jain and complainant/ respondent. It was submitted that the complainant/ respondent knew all this and so was able to take Rs.8 lac from Puneet Jain towards the aforesaid transaction and also Rs.55,000/- as towards lawyer's fee. It was also submitted that the respondent/ complainant fabricated the false evidence of letter of petitioner no.2 and visiting card of petitioner no.1 and accused Vikas Jain, whereupon the application under Section 340 Cr.PC was filed against him before the learned MM. It was next submitted that the present petitioners being chairman and vice president never had any dealings with the respondent/ complainant and they are based in their Head Office at Chennai and were not in-charge and responsible to the day to day affairs of their company. Based on this premise, it was submitted that there was no averment or allegations in the complaint against the petitioners making them vicariously liable for the day to day conduct of the affairs of the company. It was pointed out that the only averment in the complaint against petitioner no.1 was that she had represented the accused company and initially presented its credentials to the respondent, whereas the only averment against petitioner no.2 was the disputed letter allegedly written by him to respondent/ complainant company stating, "*Thank you for showing interest in our organization....25% annual guarantee return on your investment*". It was submitted that these averments even if taken on their face value to be correct, do not establish commission of any criminal offences against the petitioners. Reliance was placed on the cases of ***Mahindra and Mahindra Financial Services Ltd and another v Rajiv Dubey*** [2008(16) SCALE 62; ***Pepsi Foods Ltd. and another v Special Judicial Magistrate and others*** [AIR 1998 SC 128]; and ***State of Haryana y. Bhajan Lal*** [1992CriLJ 527].

5. On the other hand, learned counsel for the respondent submitted that it was on the assurance of the company and the petitioners that he made investments and that the investments were made by committing forgery of his signatures and without his consent. Learned counsel for the respondent relied upon *M. Viswanathan v S.K. Tiles and Potteries P. Ltd. and others* [(2006) 12 SCC 390]; *Manoj Narian Agrawal v Shashi Agrawal and others* [(2009) 6 SCC 385]; and *Dhanalakshmi v R. Prasanna Kumar and others* [1990 (Supp.) SCC 686].

6. I have heard learned counsel for the parties and perused the record.

7. The Supreme Court in the case of *State of Haryana v. Bhajan Lal* (supra) discussed various decisions as regards to the power of this Court under Article 226 of the Constitution and inherent powers under Section 482 Cr.PC and inter alia observed as under:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. This was followed by the Supreme Court in *Mahindra and Mahindra* (supra) and also *Pepsi Foods* (supra).

9. From the above, it can be said that if the criminal case reported against the parties falls in any of the categories as enunciated in *Bhajan Lal* (supra), the same would call for interference of this Court.

10. It is trite that all persons connected with the company shall not fall within the ambit of vicarious liability for criminal offence. What is required to make a person vicariously liable in a criminal offence is that it would be required to be seen whether at the time of commission of the offence the said person was in charge and responsible to the affairs of the company for conduct of its business. Only those persons who are in-charge and responsible for conduct of day to day affairs of the company, at the time of commission of the offence or against whom there are specific averments of the commission of the offence complained of can be made liable for criminal action. It follows that if a Director of a company, who was not in charge or responsible for the conduct of day to day affairs at the relevant time will not be made liable for criminal offence unless there are specific allegations of commission of such offence.

11. A vicarious liability can be fastened only by reasons of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute, when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible for it, all the ingredients laid down under this statute must be fulfilled. For shedding light on the issue, it would be relevant to

consider the judgment in ***Radhey Shyam Khemka and another v State of Bihar*** [(1993) 3 SCC 54] wherein it was held:

6. But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the share-holders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie an offence under the Penal Code has been disclosed on the materials produced before the court. If the screening on this question is not done properly at the stage of initiation of the criminal proceeding, in many cases, some disgruntled share-holders may launch prosecutions against the promoters, directors and those in charge of the management of the company concerned and can paralyse the functioning of such company. It need not be impressed that for prosecution for offences under the Penal Code the complainant has to make out a prima facie case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. It cannot be overlooked that there is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statute imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the traditional rule of existence of mens rea is to be followed.”

12. A perusal of the complaint and the statement of complainant recorded at the pre-summoning stage, would show that there is no specific allegation made by him against the present petitioners. The mere allegations of

petitioner no.1 having represented accused company at the initial stage to present its credentials by any means would not amount to this petitioner being in charge and responsible to the conduct of day to day affairs of the company or having misrepresented or lured the complainant/ respondent to make investments in their company. The allegations against petitioner no.2 was only that he had written a letter to the respondent/ complainant. It is noted that this petitioner had disputed the said letter having been written by him. In addition a complaint under Section 340 Cr.PC was also filed against the complainant/ respondent before the learned MM alleging fabricating and forging the said letter and visiting cards. In any case taking the said letter to be prima facie written by petitioner no.2, the said letter only states, *“Thank you for showing interest in our organization.... 25% annual guaranteed return on your investments”*. By any mean, this letter itself would not reflect this petitioner to be in charge of and responsible to day to day affairs of the company or that he had dealings with respondent/ complainant or misrepresented or forged his signatures. Undisputedly, both these petitioners are based in the Head Office at Chennai and are holding senior posts of Executive Chairman and Vice President of the company. All the averments which are made against both these petitioners even if they are taken on their face value to be correct, prima facie do not establish commission of any criminal offence by them. Merely because of their high position in the company, they could not be roped in for all the day to day affairs of the company.

13. It is gathered that respondent's own case was that it was Puneet Jain with whom he had the dealings. It is also prima facie seen from the conversation that took place between them in presence of counsel Mr. Sharad

Bansal that Rs.8 lac was returned by Puneet Jain to him for the same transaction. In addition to this, he also returned Rs.55,000/- as costs of lawyer's fees. The Complainant/ respondent invested in the accused company at the instance of Puneet Jain, but has not chosen to array him as an accused in his complaint. It is prima facie because of his having taken refund of the said money from Puneet Jain.

14. The judgments relied upon by the respondent only reemphasize the fact that this Court in the exercise of its extraordinary jurisdiction under Section 482 Cr.PC need not quash the FIR or complaint if they disclose the commission of any offence taken on their face value. This is a settled legal preposition and not in dispute.

15. Thus, in view of above discussion, it can be safely concluded that no vicarious liability can be fastened on the petitioners only due to the fact of their being the Chairman and Vice-President of the company, in the absence of any specific allegation regarding the role played by them or any evidence to this effect. The petitioners case falls in the categories (1), (3) and (7) of ***Bhajan Lal's case*** (supra) Consequently, the petition is allowed and impugned order dated 21.11.2008 passed by Ld. MM summoning the petitioners for offences under section 406/409/420/467/471/472/120-B IPC and complaint case CC No. 2283/1 titled "Piyush Singhania v. DBS Cholamandalam Distribution Services Ltd. & Ors qua the petitioners are hereby quashed.

16. The petition stands disposed of accordingly.

M.L. MEHTA, J.

MARCH 14, 2012/rd