

A.F.R.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:4134

RESERVED

Judgment reserved on 10.01.2024

Judgment delivered on 16.01.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 10730 of 2023

Applicant :- Prashant Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Civil
Sectt. Lko. And 2 Others

Counsel for Applicant :- Lalta Prasad Misra, Prafulla Tiwari

Counsel for Opposite Party :- G.A., Aditya Vikram Singh, Nadeem
Murtaza

Hon'ble Subhash Vidyarthi J.

1. Heard Dr. L. P. Mishra, and Sri Prafulla Tiwari Advocates, the learned counsel for the applicant, Smt. Parul Kant, the learned A.G.A. for the State and Sri Vikas Tiwari and Sri Aditya Vikram Singh Advocates, the learned counsel for the opposite party No.2.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the charge-sheet dated 04.02.2023 for commission of offences under Section 409 and 420 I.P.C., filed in furtherance of F.I.R. No. 572 dated 26.10.2021 under Sections 406, 420 IPC, Police Station Vibhuti Khand, District Lucknow and the order dated 13.02.2023 passed by the Additional Chief Judicial Magistrate-II, Lucknow in Criminal Case No.18415 of 2023, whereby the Court has taken cognizance of the offences and summoned the applicant to face the trial.

3. Opposite party No.2 had lodged the FIR alleging that he is a major shareholder of M/S Piscesia Power Transmission Private Limited (hereinafter referred to as 'PPTPL') and he holds 24% shares of the aforesaid company. A firm - M/s Bigha Infraventures Private Ltd., controlled by the informant holds 26% shares of PPTPL. Thus, the informant has 50% shares in PPTPL. PPTPL holds 98% shareholdings in a company called J. B. Test and Commissioning Private Limited (hereinafter referred to as 'JBTCPL'), which is a subsidiary company of PPTPL. The applicant - Prashant Singh misused his position as a Director of JBTCPL and fraudulently transferred 98% of its shares in his favour without giving any information of the share transfer to the Board of Directors of PPTPL and without execution of any transfer deed against the provisions of the Companies Act, 2013. The applicant forged signatures of the share holders of PPTPL, committed forgery, criminal breach of trust and he committed theft of the shares.
4. Although the FIR was registered for offences under Sections 406 and 420 IPC, after investigation, a charge-sheet was submitted for offences under Sections 409, 420 IPC on 26.10.2021 and on 13.02.2023, learned Additional Chief Judicial Magistrate passed an order taking cognizance of the offences and summoning the applicant to face trial.
5. The case set up by the applicant in the application under Section 482 Cr.P.C. is being briefly stated in the following paragraphs: -

5.1 The applicant had formed JBTCPL in the year 2002 as a proprietorship concern. PPTPL was formed in the year 2012. The applicant and one Vandana Yadav had 50% shares each in the said company and they were the Directors of the Company.

5.2 On 06.11.2015, proprietorship concern JBTCPL was converted to a private limited company with Vandana Yadav holding 25% shares and her husband Vikas Yadav holding 25% shares and the applicant Prashant Singh holding 50% shares and all of them were Directors of the Company.

5.3 On 01.03.2016, 98% shares of JBTCPL were transferred to PPTCL and merely 1% shares remained with the applicant and 1% shares remained with Vandana Yadav. However, no transfer deed was executed for transfer of 98% shares of JBTCPL.

5.4 The first informant, Manoj Kumar Singh was inducted as General Manager (Finance) in PPTPL in the year 2016. He was the head of the Finance Department of the company and he was responsible to facilitate the accounts and finance related transactions of the company. Being the General Manager of PPTPL, the informant was equally responsible for any transaction of the company like the Directors, Chartered Accountant and the Company Secretary of the Company.

5.5 At the time of lodging of the FIR, the informant was holding 24% shares in PPTPL in his individual capacity whereas M/S Bigha Infraventure Private Ltd., a company owned and managed by the informant, had 26% shares, which it had acquired in March, 2020.

5.6. Vivek Yadav was arrested in the year 2017 in Case Crime No. 639 of 2015 under Sections 364, 384 and 506 IPC, Police Station Kalyanpur, District Kanpur Nagar and his bail application was rejected by means of an order dated 10.04.2017 passed by this Court sitting at Allahabad in Criminal Misc Bail Application No.11587 of 2017 and he remained in jail for a period of one year. From the aforesaid judgment and order dated 10.04.2017, the applicant came to know that Vivek Yadav had been falsely using the bank statement of JBTCPL by claiming that JBTCPL had given a loan of Rs.50,00,000/- to Neharjit Construction and Vivek Yadav and his brother-in-law, Shailendra Yadav had been implicated in the false case due to the aforesaid reason. The applicant claims that the loan had been repaid in the year 2012 itself.

5.7 Upon coming to know about the aforesaid facts, the applicant decided to sever his business relations with Vivek Yadav and he

instructed the company's Chartered Accountant Tushar Nagar to prepare the necessary documents for share transfer and change in Directorship of PPTPL and JBTCPL. CA Tushar Nagar and his team had prepared a draft document including a share transfer agreement and had sent the same to the applicant through e-mails dated 25.11.2017 and 27.11.2017 and the same were also forwarded to Vivek Yadav for transferring 98% shares of JBTCPL held by PPTPL to the applicant. Draft documents were modified in February, 2018 when Vivek Yadav was released from custody and thereafter the same were signed and handed over to the company's CA Tushar Nagar for further compliance on the web portal of the Ministry of Corporate Affairs. After February, 2018, shareholdings of PPTPL and JBTCPL were altered and the following changes were incorporated on the portal of the Ministry of Corporate Affairs, balance sheet of both the companies and other relevant e-forms by the Chartered Accountant Tushar Nagar and the Company Secretaries of PPTPL and JBTCPL:-

Changes in PPTPL: -

- i. Vivek Yadav was appointed as Director of PPTPL on 15.02.2018.
- ii. 98% shares of JBTCPL held by PPTPL were transferred to the applicant on 16.02.2018 and JBTCPL ceased to be a subsidiary of PPTPL.
- iii. Vandana Yadav resigned from Directorship of PPTPL on 16.02.2018 as she has sold away her shareholdings in PPTPL to Vivek Yadav.
- iv. Vandana Yadav's shares were transferred to Vivek Yadav on 16.02.2018, without execution of any share transfer deed.

Changes in JBTCPL: -

- i. Vivek Shankar Singh was appointed as Director of the Company.
- ii. 98% shares of PPTPL were transferred to the applicant on 16.02.2018 and JBTCPL ceased to be subsidiary of PPTPL.
- iii. Vandana Yadav resigned as a Director of the company on 16.02.2018 as he had sold away her 1% shareholding in JBTCPL

to Vivek Shankar Singh for a consideration of Rs.70,000/- paid through cheque.

5.8 In the annual return of PPTPL submitted for the financial year 2017-18 under Section 92(1) of the Companies Act and sub rule 11(1) of the Companies (Management and Administration) Rules, 2014, as against the particulars of holding subsidiary and associate companies, the number zero is mentioned.

5.9 Thus, with effect from 16.02.2018, the applicant held 99% shares of JBTCPL and Vivek Shankar Singh held 1% shares of the company and since then no company remained a subsidiary of any other company. All the documents uploaded on the portal of the Ministry of Corporate Affairs are public documents.

6. Dr L.P. Mishra, the learned counsel for the applicant has submitted that the investigating officer had sent a letter to the Ministry of Corporate Affairs seeking some documents and it is recorded in CD Parcha No.17 that the Registrar of Companies had informed the investigating officer that e-forms, namely MGT-7 and AOC-4 filed by PPTPL and JBTCPL are available on the web portal of the Ministry of Corporate Affairs and the same can be looked into by any person. However, the investigating officer did not consider the aforesaid documents available on the portal of the Ministry of Corporate Affairs and he conducted the investigation defectively.
7. It has also been submitted by the learned Counsel for the applicant that the investigating officer had issued a notice under Section 41 Cr.P.C., and the applicant had sent replies dated 24.09.2022 and 27.09.2022 stating that the documents had been prepared by the C.A./C.S. of JBTCPL and PPTPL, but the same were not considered by the Investigating Officer. It is recorded in CD-28 that a registered envelop was received in the police station containing some documents without any applications submitted by the applicant and without attestation of the documents by the applicant. The documents were attached to the case

diary and it was recorded that the same will be verified/perused when the applicant appears and gives his statement, but it was not done.

8. Further submission of the learned counsel for the applicant is that the dispute between the parties is a purely commercial dispute regarding transfer of shareholdings of the Company and the only allegation that can be established against the applicant is that shares were transferred in his favour without execution of share transfer deed. Consequence whereof is directed under Section 56 (6) of the Companies Act and the institution of criminal proceedings is abuse of the process of criminal law and the criminal proceedings are liable to be quashed.
9. The learned counsel for the applicant has submitted that the applicant had dully filled up form SH-4 and handed it over to the company's CA Tushar Nagar and thereafter it was the responsibility of the CA to upload the documents on the web portal of the Ministry of Corporate Affairs. Failure of the Company's Chartered Accountant to upload the share transfer deed on the web portal of the Ministry of Corporate Affairs would not make the applicant liable for commission of any offence.
10. Dr. L.P. Mishra has further submitted that the shares were transferred on 18.02.2018 whereas the FIR has been lodged on 26.10.2021 and the delay in lodging the FIR clearly indicates that the FIR has been lodged maliciously.
11. In support of his submissions, the learned Counsel for the applicant has relied upon the judgments in the cases of **State of Haryana and others versus Bhajan Lal and others**, (1992) Supp. (1) SCC 335, **Harshendra Kumar D. versus Rebatilata Koley and others**, (2011) 3 SCC 351, **Anita Malhotra versus Apparel Export Promotion Council and another**, (2012) 1 SCC 521, **Rajiv Thapar and others versus Madan Lal Kapoor**, (2130) 3 SCC 330 and **Anand Kumar Mohatta and another versus State (NCT of Delhi), Department of Home and another**, (2019) 11 SCC 706.

12. *Per contra*, Sri. Vikas Tiwari, the learned counsel for opposite party No. 2 has submitted that the opposite party No.2 had effectively 50% shares in PPTPL. 98% shares of JBTCPL were held by PPTPL and thus JBTCPL was subsidiary of PPTPL. In this manner, opposite party No.2 indirectly held 49% of JBTCPL. The company's CA 'Tushar Nagar & Co.' had sent an e-mail dated 25.11.2017 to the applicant, attaching therewith some documents regarding share transfer and stating that the holding and subsidiary papers will be provided on Monday. On 27.11.2017, the CA had sent another e-mail to the applicant annexing therewith draft of minutes of Board Meeting of JBTCPL to be held on 27.11.2017 for giving consent of the Board of Directors of the company for transfer of 6,86,000 shares of PPTPL to the applicant. However, the draft resolution was never approved by the Board of Directors of the Company and yet shares were transferred illegally on 18.02.2018, without any transfer deed having been executed and without any consideration having been paid for the alleged transfer.
13. The learned counsel for opposite party No. 2 has further submitted that Form No. SH4, which is the Form for transfer of securities under Section 56 of the Companies Act, 2013 and Rule 11(1) of the Companies (Share Capital and Debentures) Rules, 2014 was also prepared, which mentions consideration payable for the transfer to be Rs.68,60,000/-, at the rate of Rs.10/- per share. The aforesaid documents have been annexed by the applicant himself alongwith the application under Section 482 Cr.P.C., which indicates that the applicant was fully aware about the legal position, that the shares could have been transferred only after a resolution of the board of Directors of the company, execution of a transfer deed and payment of consideration amounting to Rs.68,60,000/-, yet the shares were transferred surreptitiously without any of the aforesaid acts having been done.
14. The learned Counsel for the opposite party No.2 has also submitted that the applicant, being a director of the company, was the custodian of its assets, including the shares of the company and he surreptitiously

transferred the shares to himself, which makes out the commission of offences under Section 409 and 420 IPC.

15. The learned counsel for the opposite party No.2 has submitted that when Vandana Yadav had transferred 10,00,000 shares of PPTPL to her husband, Vivek Yadav, it was done only after a resolution to this effect was passed by the Board of Directors of Company in its meeting held on 16.02.2018, and a copy of the Board resolution dated 16.02.2018 has been annexed with the application. However, the applicant transferred the company's shares in his own favour without any resolution having been passed authorising the transfer.
16. In reply to the submission of the learned Counsel for the opposite party no. 2 regarding non payment of consideration, the learned counsel for the applicant has submitted that the payment of consideration is required only in case of sale of shares. Consideration can be in many a form and it should not necessarily be in the form of payment of money. JBTCPL was a proprietorship concern of the applicant prior to 16.11.2013 and its 98% shares had been transferred to PPTPL on 01.03.2016 without execution of any document and by transferring shares, the applicant has merely adjusted the value of JBTCPL which belonged to the applicant.
17. Before proceeding to examine the submissions made by the learned Counsel for the parties, it would be appropriate to mention the law regarding the scope of interference in exercise of jurisdiction under Section 482 of the Cr.P.C. as explained by the Hon'ble Supreme Court in its various judgments.
18. In **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court held that: -

“102. 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 channelised 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.*

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an

arbitrary jurisdiction on the court to act according to its whim or caprice.”

(Emphasis supplied)

27. The expression “rarest of rare cases” used by the Hon’ble Supreme Court in **Bhajan Lal** (Supra) has been explained in **Som Mittal (2) v. State of Karnataka** (2008) 3 SCC 574 in the following words: -

“9. When the words “rarest of rare cases” are used after the words “sparingly and with circumspection” while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words “sparingly and with circumspection”. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression “rarest of rare cases” is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection.”

28. In **Dineshbhai Chandubhai Patel v. State of Gujrat**, (2018) 3 SCC 104, it was held that in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. That question is required to be examined keeping in view the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is more so, when the material relied on is disputed. In such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.
29. In the case of **Dhruvram Murlidhar Sonar versus State of Maharashtra**, (2019) 18 SCC 191 the Hon’ble Supreme Court held that exercise of powers under Section 482 Cr. P.C. to quash the

proceedings is an exception and not a rule. The inherent jurisdiction under Section 482 Cr. P.C., though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. Appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr. P.C.

30. In **Kaptan Singh v. State of Uttar Pradesh**, (2021) 9 SCC 35, the Hon'ble Supreme Court was pleased to hold that while deciding an application under Section 482 Cr. P.C., the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. The Hon'ble Supreme Court referred to its earlier pronouncements
31. In **CBI v. Aryan Singh**, 2023 SCC OnLine SC 379, the Hon'ble Supreme Court held that: -

“10. ...As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”

19. When we examine the facts of the present case in light of the law regarding the scope of interference under Section 482 Cr.P.C., it appears that the applicant claims that he had formed JBTCPL as a proprietorship concern in the year 2002 and it was converted to a company on 06.11.2015 with the applicant holding 50% shares in it

and he was a Director of the Company. PPTPL was formed in the year 2012 and the applicant and Vandana Yadav each had 50% shares in the company. On 01.03.2016, 98% shares of JBTCPL were transferred to PPTCL without execution of any transfer deed and merely 1% shares remained with the applicant and 1% shares remained with Vandana Yadav.

20. The informant was holding 24% shares in PPTPL in his individual capacity whereas M/S Bigha Infraventure Private Ltd., a company owned and managed by the informant, had 26% shares. Thus the informant had effective control over 50% shares of PPTPL, and PPTPL had 98% shares of JBTCPL.
21. A draft resolution of the Board of Directors of the Company for transfer of shares and a draft deed for transfer of 98% shares of JBTCPL held by PPTPL to the applicant were prepared by the company's CA and those had been sent to the applicant through e-mails dated 25.11.2017 and 27.11.2017. Neither any resolution to this effect was passed by the Board of Directors of the company, nor any transfer deed was executed, yet the 98% shares of JBTCPL held by PPTPL were transferred to the applicant on 18.02.2018.
22. Section 56 (1) of the Companies Act, 2013 provides that a company shall not register a transfer of securities of the company unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution. The shares were transferred in violation of this statutory mandate. The submission of the learned Counsel for the applicant is that the consequence of non-execution of a transfer deed is provided in Sub-section (6) of Section 56, which provides that where any default is made in complying with the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees

and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees. In the past also, the company had transferred shares without execution of any transfer deed. Therefore, the submission of Dr. Mishra is that no criminal proceedings can be drawn against the applicant for the alleged violation of the provisions of Section 56 (1) of the Companies Act.

23. In **Rathish Babu Unnikrishnan v. State (NCT of Delhi)**, 2022 SCC OnLine SC 513, the Hon'ble Supreme Court explained the steps for share transfer as follows: -

“A bare perusal of Section 56(1) of the Companies Act, 2013 indicates that a transfer of securities of a company can take place only when a proper instrument of transfer is effectuated. The operation of legally transferring shares involves several distinct steps. At first, a contract of sale needs to be entered upon. The nature of transaction in this contract logically then requires payment of the price by the prospective transferee to fulfil their promise first. In exchange, transferor would move to fill Form SH-4 and thus, effectuate a valid instrument. Depending on the nature of the company and its Articles of Association, then upon the presentation of the instrument of transfer to the board of the company and its acceptance by the board, the entry of the transferee in the register of the company in place of the transferor, takes place. Thus, the transfer of share is complete.”

24. Therefore, it is clear that the shares could not have been legally transferred without execution of a transfer deed and all other steps mentioned by the Hon'ble Supreme Court in **Rathish Babu Unnikrishnan** (Supra). The mere fact that shares had been transferred at a previous occasion without execution of a transfer deed, will not cure the illegality of the offending act.
25. While dismissing the appeal and upholding the High Court's order rejecting the application under Section 482 Cr.P.C., the Hon'ble Supreme Court held in **Rathish Babu Unnikrishnan** (Supra) that: -

“the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in

the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.”

26. It is to be noted that non-execution of a transfer deed is not the sole ground of prosecution of the applicant. As per the provision contained in Section 179 of the Companies Act, 2013, the power to act on behalf of the company vests in the Board of Directors and, therefore, the decision to transfer 98% shares of JBTCPL held by PPTPL could be taken by the Board of Directors of PPTPL. The documents filed by the applicant himself reveal that on 24.08.2021, the company's CA had sent an email to the applicant annexing therewith a draft resolution to be passed in a meeting of Board of Directors of the company. A draft transfer deed on Form SH-4 was also prepared and it has been annexed with the application under Section 482 Cr.P.C. It mentions that: -

“FOR THE CONSIDERATION stated below the “Transferor(s)” named do hereby transfer to the “Transferee(s)” the named the securities specified below subject to the conditions on which the said securities are now held by the Transferor(s) and the Transferee(s) do here by agree to accept and hold the said securities subject to the conditions aforesaid.”

27. The consideration for transfer of 68,000 shares of JBTCPL mentioned in Form SH-4 is Rs.6,86,000/-, at the nominal value of Rs.10/- per share. The transferor is Piscesia Power Transmission Private Limited and the transferee is Prashant Singh (the applicant).
28. The allegation against the applicant is that acting as a Director of the company PPTPL, he got 68,000 shares of JBTCPL held by PPTPL transferred to himself without any resolution to this effect having been passed by the Board of Directors of PPTPL, although a draft resolution was prepared and sent through email, and without payment of consideration of Rs.6,86,000/- mentioned in the draft resolution of the Board of Directors and in the draft transfer deed.

29. No material has been annexed with the application or the affidavit filed in support thereof to rebut the allegations. The contention of the learned Counsel for the applicant is that being a Director of the company, the applicant was authorised to act on behalf of the company. However, Section 179 of the Companies Act, 2013 provides that the power to act on behalf of the company vests in the Board of Directors. Therefore, in absence of a resolution having been passed, the applicant had no authority to transfer the shares held by the company to himself and the aforesaid contention of the learned Counsel for the applicant is without any force.
30. The next contention of the learned Counsel for the applicant is that JBTCPL was a proprietorship concern of the applicant prior to 16.11.2013 and its 98% shares had been transferred to PPTPL on 01.03.2016 without payment of any consideration that that the applicant has merely adjusted the value of JBTCPL which belonged to the applicant. This factual contention raised by the accused – applicant cannot be examined by this Court by holding a mini trial while deciding the application under Section 482 Cr.P.C. It can only be decided by the trial Court after the parties have the opportunity to lead evidence.
31. In **Harshendra Kumar D. v. Rebatilata Koley**, (2011) 3 SCC 351 placed by the learned Counsel for the applicant, the Hon'ble Supreme Court held that: -

“25...It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents — which are beyond suspicion or doubt — placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look

into the materials which have significant bearing on the matter at prima facie stage.”

32. In Anita Malhotra v. Apparel Export Promotion Council, (2012) 1

SCC 520 also, the Hon’ble supreme Court held that: -

“20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.”

33. In the present case, the applicant could not produce any document which may establish his defence beyond suspicion or doubt and, therefore, the proceedings cannot be quashed in the present case.

34. In Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330, the Hon’ble Supreme Court has delineated the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC: -

“30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

35. In the present case it cannot be said that the material relied upon by the applicant is sound and indubitable or that it would rule out the assertions contained in the charges levelled against him. It cannot be said that the material is such as cannot be justifiably refuted by the prosecution/complainant. Therefore, it cannot be said that the applicant’s case fulfils all the conditions mentioned in **Rajiv Thapar** (Supra) for quashing the proceedings.

36. In **Anand Kumar Mohatta v. State (NCT of Delhi)**, (2019) 11 SCC 706

“16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

37. There can be no dispute against the aforesaid proposition, but it is of no help to the applicant in the present case.

32. Prima facie it appears that transfer of 98% shares of JBTCPL held by PPTPL, made by the applicant acting as a director of the company, in

his own favour, without any resolution to this effect having been passed by the Board of Directors of the company, makes out a case for trial of the applicant for the alleged offences.

33. The contention that the investigating officer has failed to take some material into consideration also does not make out a case for quashing of the proceedings when the material placed before this Court prima facie makes out commission of cognizable offences by the applicant.
34. So far as the next submission of the learned Counsel for the applicant, that the dispute between the parties is purely civil in nature, the investigation has established that the applicant has committed criminal breach of trust the cheating against the informant. From the aforesaid discussion, it appears that the dispute between the parties cannot be said to be purely commercial dispute regarding transfer of shareholdings of the Company. Where the commercial dispute also involves the allegation of cognizable offences and it has been established during investigation, the criminal proceedings cannot be quashed for the reason that a commercial dispute is also made out by the allegations.
35. In **Pratibha v. Rameshwari Devi**, (2007) 12 SCC 369, the Hon'ble Supreme Court held that *"it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts."*
36. In **Mahesh Chaudhary v. State of Rajasthan**, (2009) 4 SCC 439, the Hon'ble Supreme Court held that: -

"11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.

12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied

upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused.”

(Emphasis supplied)

37. In **Priti Saraf v. State (NCT of Delhi)**, (2021) 16 SCC 142, it was held that: -

“31. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482CrPC for quashing such proceedings.”

38. As besides the civil dispute between the parties, the allegations in the FIR make out commission of cognizable offences of criminal breach of trust and cheating by the applicant, which allegations have been established by the material collected during investigation and, accordingly, a charge-sheet has been filed against the applicant, I am of the considered view that as per the law laid down by the Hon’ble Supreme Court in **Pratibha, Mahesh Chaudhary and Priti Saraf** (Supra), the charge-sheet and the criminal proceedings against the applicant cannot be quashed merely because the allegations may also disclose a civil dispute between the parties.

39. So far as the question of delay in lodging the FIR is concerned, the charge sheet and the summoning order cannot be quashed on the sole ground of delay in lodging the FIR where the allegations levelled in the FIR have been established during investigation.
40. In view of the foregoing discussion, I am of the considered view that the allegations make out a prima facie case for trial of the applicant for commission of the offences of cheating and criminal breach of trust while acting as an agent of the company. The allegations have been found to have been established by the material collected during investigation and thereafter a charge-sheet has been filed against the applicant and the trial Court has taken cognizance of the offence. There appears to be no illegality in the charge-sheet or in the impugned order dated 13.02.2023 passed by the Additional Chief Judicial Magistrate-II, Lucknow in Criminal Case No.18415 of 2023, whereby the trial Court has taken cognizance of the offences and summoned the applicant to face the trial.
38. The application under Section 482 Cr.P.C. filed by the applicant lacks merit and the same is **dismissed**.
39. The trial Court shall decide the trial in accordance with the law, without being influenced by any observation made in this order.

(Subhash Vidyarthi, J.)

Order Date : 16.01.2024

prateek