

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.834 OF 2014
TO
WRIT PETITION NO.847 OF 2014

(Criminal Case Nos.1181/13, 1514/13, 1515/13, 1521/13, 1532/13, 1533/13, 1534/13, 1203/13, 1565/13, 1207/13, 1535/13, 1176/13, 1212/13 respectively)

ALONG WITH

WRIT PETITION NO.1474 OF 2014
TO
WRIT PETITION NO.1487 OF 2014

(Criminal Case Nos.436/13, 437/13, 438/13, 442/13, 443/13, 450/13, 451/13, 452/13, 453/13, 454/13, 455/13, 463/13, 464/13, 465/13 respectively)

ALONG WITH

WRIT PETITION NO.1494 OF 2014
WITH
WRIT PETITION NO.1495 OF 2014

(Criminal Case Nos.1417 of 13 and 1418 of 12013 respectively)

WITH

WRIT PETITION NO.2562 OF 2014
TO
WRIT PETITION NO.2568 OF 2014

(Criminal Case Nos. 1272/SS/2014, 1273/SS/2014, 1274/SS/2014, 1275SS/2014, 1276/SS/2014, 1277/SS/2014 and 1278/SS/2014)

ALONG WITH

WRIT PETITION NO.3372 OF 2014
TO
WRIT PETITION NO.3380 OF 2014

(Criminal Case Nos.1960/SS/2013, 1961/SS/2013, 1962/SS/2013, 1729/SS/2013, 1730/22/2013, 1781/SS/2013, 2029/SS/2013, 2031/SS/2013, 37/SS/2014 and 447/SS/2014)

ALONG WITH

WRIT PETITION NO.4099 OF 2014
(CRIMINAL CASE N9O.447/SS/2014)

Alok Sharma & Ors. .. Petitioners

-Versus-

State of Maharashtra & Ors. .. Respondents

Mr.Rishi Bhuta with manish Bohra i/b. A.S.Khan & Associates for petitioners

Mr.M.G.Shukla for respondent No.2

Mr.D.R.More, APP for State.

CORAM : M.L.TAHALIYANI, J.

DATE : 10th February 2015.

P.C.

1] These petitions are being decided by this common order as the common question of law has arisen for determination in these petitions.

2] The question which needs determination is as to whether the independent director can be prosecuted for the offence punishable under section 138 of Negotiable Instruments Act with the help of section 141 of the said Act?.

3] Before I proceed further, it will be appropriate to reproduce the definition of Independent Director as defined in section 149(6) of the Companies Act, 1956 as follows:-

“149(6) An Independent director in relation to a company, means a director other than a managing director or a whole time director or a nominee director :-

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b)(i) Who is or was not a promoter of the company or its holding subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary

relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives -

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(iii) holds together with his relatives two percent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non profit organisation that receives twenty five percent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds

two percent or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.”

4] The petitioners are admittedly Independent Directors of the company known as Glodyne Technoserve Ltd. The learned Counsel Mr.Rishi Bhuta on behalf of the petitioners has submitted that the petitioners had nothing to do with day to day affairs of the company and that they were not in any manner responsible for conduct of the business of the company. Therefore, they cannot be deemed to be held guilty of the offence punishable under section 138 of the N.I. Act.

5] If one goes through the definition of Independent Director, it is absolutely clear that the Independent Director is neither a promoter of the company, its holding, subsidiary or associated company. He is not related to promoters or directors of the company. He has no pecuniary relationship with the company. His relatives cannot have pecuniary relationship or transaction with the company. What the court is required to note is that the Independent Director in relation to the company is a director other than Managing Director or whole

time Director or nominee director, who in the opinion of Board is a person of integrity and possess relevant expertise and experience. As such, the Independent Directors are appointed to assist the company with their expertise and experience in the field in which the company is working. They obviously cannot be responsible for the company's day to day conduct of business. In view thereof, the prosecution launched against such Directors for the offence punishable under section 138 of the N.I. Act with the help of section 141 of the said Act cannot be sustained.

6] It, therefore, follows that the prosecution pending against the petitioners (Alok Sharma, Bryan Kaye Sanderson, Mohan Lal Kaul, Ram Sharan Prasad Sinha and Sameer Ray, Petitioner Nos. 1, 2, 3, 4, and 5 respectively herein) in the criminal cases mentioned hereinabove in the title of this order shall stand quashed. The bail bonds, if any, of the petitioners shall stand cancelled. The petitions are disposed of accordingly.

(M.L.TAHALIYANI, J.)