IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM

The Hon'ble Mr. Justice R.S.RAMANATHAN

Crl.O.P.No.3652 of 2009
and M.P.No.1 of 2009

F.Dadabhoy .. Petitioner

vs.

The Reserve Bank of India,
Represented by its Authorised Officer,
Sr.K.Balakrishnan, Manager,
Department of Non-Banking Supervision,
Chennai. .. Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in respect of the proceedings in E.O.C.C.No.76 of 2000 on the file of the Addl. Chief Metropolitan Magistrate and Economic Offences Court I, Egmore, Chennai and quash the same insofar as this petitioner is concerned.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Mrs.P.V.Rajeswari

For Respondent : M/s.T.Poornam
and N.K.Poongkuntan

O R D E R

The respondent filed a private complaint in EOCC.No.76/2000, on the file of the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai, against the petitioner and 10 others for having committed the offences under Sections 45QA, 58B (4 AAA) and 58C of the Reserve Bank of India Act, 1934 [in short " RBI Act"]. The petitioner is arrayed as fourth accused in the complaint and the petitioner has filed this petition to quash the complaint as against him.

2. Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner submitted that though the petitioner was one of the Director of the first accused Company, he resigned from the Company with effect from 13.08.1998, which is evident from the resignation letter given by the petitioner and also Form 32 filed by the Company, wherein it has been admitted that the petitioner ceased to be the Director from 08.09.1998. Therefore, in respect of the acts

committed by the Company after the date of his resignation, the petitioner cannot be made liable. He submitted that in the complaint it has been stated that the first accused Company failed to repay the depositors, despite orders passed by the Company Law Board and therefore, the Directors are liable to be prosecuted.

3. The learned Senior Counsel for the petitioner submitted that out of 18 instances, the petitioner was the Director during the period in respect of 3 instances, namely 16.04.1998, 23.04.1998 and 23.06.1998 and in respect of other defaults, the petitioner cannot be found fault with. The learned Senior Counsel also submitted that having regard to Section 58C of the RBI Act, where a person committing a contravention or default referred to in Section 58-B is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly and in para 10 of the complaint, the wordings of section 58-C of RBI Act was verbatim reproduced and by reproducing such words, a person cannot be made liable and unless it has been specifically stated in the complaint in what manner the Director has played role resulting in the violation of the orders passed by the Company Law Board or the provisions of the RBI Act and in the absence of providing such details, the petitioner cannot be vicariously held liable.

4. The learned Senior Counsel for the petitioner relied upon unreported judgements of the Hon'ble Supreme Court in Crl.A.Nos.2604-2610 of 2014 arising out of SLP (Crl) Nos.9133-9139 of 2010 in [Pooja Ravinder Devidani v. State of Maharashtra and another] and in Crl.A.Nos.1692-1718 of 2013 arising out of SLP(Crl.)Nos.2970-2996 of 2012 [A.K.Singhania v. Gujarat State Fertilizer Co. Ltd., & Another]. The learned Senior Counsel for the petitioner submitted that in the judgement in Puja Ravinder case cited supra, the Hon'ble Supreme Court held that before taking cognizance of an offence making a person vicariously liable, the Magistrate has to ensure strict compliance of the statutory requirements and when the role of the appellant in the affairs of the company was not explained nor in what manner the appellant was responsible for the conduct of business of the Company, the Court ought not to have issued summons to the person. He therefore submitted that in the present case also, in the complaint except reproducing the words of Section 58C of the RBI Act, nothing has been stated about the specific role played by the petitioner in the Company or the manner in which the petitioner was responsible for the conduct of the business of the Company and in the absence of such particulars, the petitioner cannot be prosecuted on the ground that he was a Director and therefore, this petition is liable to be allowed.

5. I am unable to accept the contention of the learned Senior Counsel for the petitioner. As stated supra, the complaint was filed for the offences under Sections 45QA, 58B (4 AAA) and 58C of the RBI Act. Section 58C deals with offences by Companies. Admittedly, the Company Law Board has passed orders on 06.02.1998, 16.04.1998, 23.04.1998, 23.06.1997, 06.07.1998, 24.08.1998 and on various dates directing the Company, its Directors and concerned officials to comply with the orders by repaying the deposits received by the Company from the applicants. It is not in dispute that during the period between 06.02.1998 to 24.08.1998 when those orders were passed by the Company Law Board, the petitioner was one of the Director of the Company. Under Section 58B (4 AAA) of the RBI Act, whoever fails to comply with any order made by the Company Law Board under Sub-Section (2) to Section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine of not less than rupees fifty per every day during which such non-compliance continues.

6. It is seen from the various orders passed by the Company Law Board referred to above that those orders were passed under Section 45QA of the RBI Act. It is submitted by the learned Senior Counsel for the petitioner that though Company Law Board has passed orders under Section 45QA of the RBI Act, directing the Company and its Directors to comply with the orders, admittedly the Directors were not made parties to those orders and therefore, the Director cannot be held liable for non-compliance of the order. According to me, even though the Director were not parties to the proceedings initiated by the Company Law Board under Section 45QA of the RBI Act and orders were passed on various dates as referred to above, by virtue of the said orders, the Company as well as the Directors were directed to comply with the orders of the Company Law Board. If the petitioner is aggrieved by such orders, he ought to have challenged that orders. In other words, without challenging the orders passed by the Company Law Board, the petitioner cannot contend in this petition that he cannot be held responsible for non-compliance of the orders passed by the Company Law Board.

7. As stated supra, under Section 58B(4 AAA) of the RBI Act, whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA shall be punishable. Admittedly the Company Law Board has passed orders directing the petitioner in the capacity of Director to comply with those orders, but those orders were not complied with and therefore, for non-compliance of the orders passed by the Company Law Board, prosecution can be launched and hence, complaint cannot be quashed.

8. As regards the submission of the learned Senior Counsel for the petitioner that in the absence of any specific allegation made in the complaint regarding the specific role played by the Director, by

merely reproducing the words in the Section, a person cannot be convicted or prosecuted, in my view the same cannot be accepted.

9. In A.K.Sinhania v. Gujarat State Fertilizer Co. Ltd. and Another in Crl.A.Nos.1692-1718 of 2013, the Hon'ble Supreme Court quashed the complaint against those persons against whom there was no averement that they were in-charge and responsible for the conduct of the business of the company at the time the offence was committed. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89], which was referred to by the Hon'ble Supreme Court in the aforesaid judgement, it was held that it is necessary to specifically aver in a complaint that at the time the offence was committed, the person accused was in-charge of, and responsible for the conduct of business of the company. In National Small Industries Corpn. Ltd., v. Harmeet Singh Paintal [(2010) 3 SCC 330], which was also referred to in the aforesaid judgement, the Hon'ble Supreme Court while interpreting Section 141 of the Negotiable Instruments Act, held that criminal liability can be fastened only on those who, at the time of the commission of the offence, were in-charge of and were responsible for the conduct of the business of the company.

10. In Pooja Ravinder Devidasani v. State of Maharashtra & Anr. [Crl.A.Nos.2604-2610 of 2014], having regard to the fact of that case that the appellant who was the petitioner before the Hon'ble Supreme Court, resigned from the post of Director and there was no allegation in the complaint about the role of the appellant in the affairs of the company and the appellant in that case resigned before issuance of the cheque, the Hon'ble Supreme Court held that the complaint cannot be maintained against the appellant.

11. In Mannalal Chamaria and another v. State of West Bengal and another [(2014) 13 SCC 571], it is held that it is necessary for the complainant to state in the complaint that the person accused was in-charge of and responsible for the conduct of the business of the company and though no particular form for making such allegation is prescribed, if a reading of the complaint discloses that substance of the accusation discloses that the accused person was in-charge of and responsible for the conduct of the business of the company at the relevant time, he can be prosecuted. However, having regard to the facts of that case, the Hon'ble Supreme Court held that there was no specific or even general allegation made against the appellant therein.

12. In Monaben Ketanbhai Shah and another v. State of Gujarat and others [2004 (4) CTC 317], the Hon'ble Supreme Court held that criminal liability can be fastened on partners if at the time of commission of offence they were in-charge of and was responsible to firm for conduct of business of firms and when the complaint does not contain such allegation, the partners cannot be prosecuted.

13. As stated supra, in this case it has been stated in the complaint that the petitioner is one of the Directors and he along with other Directors were in-charge of and responsible for the conduct of first accused Company at the time of default and the same was also mentioned in para 10 of the complaint. Admittedly, the petitioner was the Director of the first accused Company till August 1998 between 06.02.1998 and 24.08.1998 seven directions were issued by the Company Law Board and being the Director, the petitioner did not take any action to comply with the orders of the Company Law Board and therefore, the petitioner is liable to be prosecuted as per the provisions of Sections 58B (4 AAA) and 58C of the RBI Act.

14. Hence, this petition for quash has no merits and it is dismissed. However, it is open to the petitioner to prove during trial that he was not in-charge of and responsible for the conduct of business of the company and if evidence is let in by the petitioner to that effect, it is for the Magistrate to consider and pass orders. It is made clear that the findings rendered herein are made only for the purpose of disposal of this petition and this Court has not touched upon the merits of the case. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm
To

1. Addl. Chief Metropolitan Magistrate
and Economic Offences Court I, Egmore, Chennai
2. The Authorised Officer,
The Reserve Bank of India,
Sr.K.Balakrishnan, Manager,
Department of Non-Banking Supervision, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.T. Poornam, Advocate SR.10762
+ 1 cc to M/s.P.V. Rajeswari, Advocate SR.10875

TM(CO)
EU 19.03.2015