HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1526 of 2017

Rakesh Tomar, S/o. Shri Shobharam Tomar, Aged About 51 Years, R/o. 166, Venus Apartment, Sector 19, Rohini, Delhi.

---- Petitioner

Versus

State Of Chhattisgarh, Through The Police Station- New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh

---- Respondent

For Petitioner	:	Mr. N Naha Roy, Advocate
For Respondent	:	Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03.11.2017

Heard

1. The instant petition is filed to quash the proceedings of a Criminal Case No.17129/15 pending before the Chief Judicial Magistrate, Raipur under Section 420, 409 read with Section 34 of Indian Penal Code and Section 3 & 4 of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978 and Section 138 of the Negotiable Instruments Act, 1881, which is arising out of the Crime No.22/2015.

2. Case of the prosecution is that, on 13.03.2015 a complaint was lodged by one Rajendra Giri Goswami before the Police Station Rajendgar Nagar, Raipur that in the year 2008, a scheme was launched by one HBN Dairies & Allied Company wherein he had deposited Rs.1000/- per month up till 66 months and he was assured to be paid Rs.92,250/- for which a bond was issued. After completion of the period of bond, same was deposited in the Bank and a token was given. Subsequently, a cheque which was given of Rs.98,334/- when was deposited in his account was

dishonoured. Likewise, his mother and his brother-in-law had also deposited the cheque and the same was bounced. In such FIR, it is alleged that HBN Dairies & Allied Company and its Directors, who were named in the FIR as Harmandar Singh Saran, Amandip Singh Saran, Jasbir Kaur, Manjit Kaur, Daljit Kaur, Sukhdev Singh Dhillan, Rajiv Kumar, Usha Rani Tomar, Rakesh Tomar (present petitioner) and others have committed fraud and forgery. On the basis of that, the investigation was carried out and thereafter it was found that the Company allured different depositors of the area and collected amount at different point of time with an assurance to return the same with a high interest but eventually did not pay and fled away. Few of the depositors when initially filed the complaint, the administration the office of the Company was sealed thereafter with an assurance of persons who were in helm of affairs that the money would be paid back and thereafter by the order of the C.J.M. the office was again opened and the cheques were given to the different depositors but when deposited in account they were dishonoured. Eventually, the charge sheet was filed after entire investigation by recording the statement of the depositors and the seizure of documents.

3. Learned counsel for the petitioner would submit that the present petitioner was appointed as Director on 29.12.1998 and he further ceased to be Director on 30.09.1999, which would be evident from the document Annexure A-5. It is contended when the alleged incident was committed, the present petitioner was not at all in the helm of affairs of the Company. He referred to a case ***M.A.A. Annamalai v. State of Karnataka & Anr.,*** reported in ***(2010) 8 SCC 524*** and would submit that in the like nature of cases, the Supreme Court when found that the petitioner therein was not a

Director when the offence was committed, he was exonerated. Therefore, in view of the law laid down in such case law, the present petitioner may also be exonerated and the criminal proceeding before the Court below be quashed.

4. Learned State counsel vehemently opposes the same and would submit that the present petitioner was very much in the helm of affairs, therefore, the petition has no merit and is liable to be dismissed at the threshold.

5. Perused the documents filed alongwith the petition. Except the copy of FIR and final report, nothing has been placed on record. The final report would show that voluminous documents have been filed and the statement of numerous witnesses were recorded. The exoneration is claimed only on the basis that the present petitioner was not in the helm of the Director at the relevant time when the alleged offence is said to have been committed.

6. The document which is relied on by the petitioner that he ceased to be Director in the month of September, 1999 cannot be accepted as gospel truth at this stage. The petitioner has also placed on record the order passed by the SEBI dated 12.02.2015. Reading of such order shows that a similar defence was taken that Rakesh Tomar has resigned from the Directorship of the Company, therefore, no liability can be fastened. In such order, it was stated by the petitioner that petitioner has resigned on 01.11.2000 and even after considering such submission, the SEBI did not accept the said averments and it was held that the present petitioner alongwith other persons who said to have been resigned as Directors are also liable. Therefore, what was role played by

the petitioner at this stage cannot be conclusively proved that he is insulated in respect of entire complaint.

7. Apart from that, the statement of the witnesses are not before this Court. The case relied on by the petitioner i.e. ***M.A.A. Annamalai*** (supra) rather leans in favour of the prosecution since in that case, exoneration was made on the ground that there was no allegation against such appellant in the First Information Report whereas in the present case the First Information Report contains the name of the petitioner. It was further one of the ground which was considered in the case referred for exoneration that the complainant had made a statement that he do not want to proceed against the said appellant. Here in this case, the same do not exist. The statement of the complainant is not placed on record but the FIR contains his name. The defence adduced by the petitioner at this stage cannot be appreciated and the material i.e. FIR which is placed on record would lead to show that there is strong suspicion which is also fortified by the order of the SEBI that the present petitioner was also involved in the commission of crime and was holding the reins in same manner or other. This Court cannot ignore the fact that only one of the complainant/ depositor had filed the complaint and large depositors who were deceived are in the que. It is not clear before the Court as to whether during the tenure of the petitioner such offence was being continued or not, while he was a Director, as number of statements have been recorded by the prosecution but the petitioner has chosen not to file the same.

8. In view of the above, considering the facts that the way the organised offence has been committed and money has been

collected from middle class and grass root people by the Company, who were eventually deceived, I am not convinced to quash the criminal proceeding against the petitioner. Therefore, the petition being devoid of merit is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok