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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1571/2016 & CrI.M.A. 8160/2016

N. RANGACHARI

..... Petitioner

Through Mr.R.P. Bhat, Sr. Adv. with
Mr.Raghavendra Rao & Ms.Meera
Kaura , Adv.

versus

BHARAT SANCHAR NIGAM LIMITED

..... Respondent

Through Mr.Suryakant Singla, Adv. with
Ms.Shivani Lahoti & Mr.Virender
Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **11.07.2017**

The petitioner has sought quashing of the charges/trial proceedings qua him in complaint case no.1902/1 of 2004 (BSNL vs. Data Access (India) Ltd. and Ors.) pending before the Court of learned Metropolitan Magistrate-01, Saket, NI Act, South, New Delhi.

The petitioner, who is 78 years of age and who claims to have been facing trial for more than 12 years since 2004, was made accused in the aforesaid complaint case.

It has been submitted that the petitioner retired as Chairman, Central Board of Direct Taxes (CBDT) and thereafter as Chairman, Insurance Regulatory and Development Authority. After his retirement, the management of the accused company requested the petitioner to become the

Honorary Chairman for the purposes of consultancy only and he was nominated as the Honorary Chairman on 24.07.2004. He resigned on 26.08.2004 i.e. after about a month of his nomination. He states that he never attended any Board meeting. It is further submitted that the petitioner was not an authorised signatory for any cheque on behalf of the company during his tenure as Honorary Chairman.

After about 5 days of his resignation, two cheques bearing nos.809401 and 157946 dated 31.08.2004 issued by the company were presented by the complainant which were dishonoured.

Hence, the complaint under section 138 was lodged against the company, the Chairman and the Managing Director and the petitioner.

It has been submitted that the persons who were in actual control of the affairs of the company namely the Managing Director and other Directors were not made accused.

On receipt of the summons by the Court in the aforesaid complaint, the petitioner moved this Court for quashing of the complaint vide criminal revision no.804/2005 which was dismissed by order dated 06.03.2006. The petitioner was given the liberty to raise all his grievances at the trial. The aforesaid order of this Court was challenged in Supreme Court of India vide SLP No.1844/2006, which too, was dismissed by order dated 19.04.2007.

Thereafter it appears that the complainant led evidence by filing his affidavit. On the petitioner finding not a scintilla of allegations against him, he moved an application seeking his discharge under section 245 of the Cr.P.C. This effort of the petitioner was dismissed by the Trial Court by order dated 28.02.2014 on the ground that there is no provision in the Cr.P.C. for discharge of an accused in a summons case. The aforesaid order

was again challenged before this Court, which was also dismissed by order dated 01.04.2014.

The order of this Court dated 01.04.2014 referred to above, was again challenged before the Apex Court vide SLP (Crl.) No.3648/2014. The Special Leave Petition was dismissed by the order dated 11.08.2014 by the Supreme Court of India.

During the course of trial, the complainant was cross examined by the petitioner.

On the strength of the reply of the complainant in cross examination, the petitioner has again preferred this application seeking quashing of the complaint as no evidence whatsoever, even remotely connected with the petitioner has come on record in the shape of evidence.

The case is at the stage of recording of statement under section 313 of the Cr.P.C. and if the accused person was desired to lead evidence in defence.

The issue of the petitioner not being at the helm of affairs and not attending to day-to-day affairs of the company has been taken note of by this Court as well as by the Apex Court but to no avail to the petitioner.

Learned senior counsel for the petitioner has drawn the attention of this Court to the judgments delivered in **Pooja Ravinder Devidasani vs. State of Maharashtra & Anr.: 2014 (14) SCALE** wherein it has been held that to attract a case under section 138 of the NI Act, a specific role must be shown to have been played by a director of the company for fastening vicarious liability.

Similarly, **Harshendra Kumar D. vs. Rebatilata Koley & Ors.: (2011) 3 SCC 351**, has been cited, wherein it has been held that the High

Court can quash the complaint if materials relied upon by the accused are beyond suspicion or doubt or which are in the nature of public documents and are uncontroverted.

In the cases cited by the learned counsel for the petitioner, the stages of respective cases were different.

In the present case, the grounds raised by the petitioner have been rejected twice by the High Court and those orders have been upheld by the Supreme Court of India.

This Court does not wish to interfere now with the process of trial at this stage.

It would only be appropriate that the petitioner participates in the trial so as to ensure its expeditious disposal.

Devoid of any merits, the writ petition is dismissed.

ASHUTOSH KUMAR, J

JULY 11, 2017
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