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

%   Reserved on: 10th January, 2017
Decided on: 17th January, 2017

+   **CRL.M.C. 4111/2011 & Crl.M.A. 501/2015**

SOUTH ASIAN HUMAN RIGHTS DOCUMENTATION CENTRE & ORS ..... Petitioners

Represented by: Mr. Jawahar Rana and Mr. Chinmay Kanojia, Advocates.

versus

STATE & ANR ..... Respondents

Represented by: Mr. Ravi Nayak, APP for the State with SI Harbir Singh, PS R.K. Puram.
Mr. Nitesh Kumar Singh and Ms. Neha, Advocates for respondent No.2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The respondent No.2 Suhas Chakma filed a complaint before the learned ACMM, Patiala House against the petitioners seeking summoning them for offences punishable under Sections 120-B/201/403/406/420/468/471/477-A/34 IPC.

2. In the complaint, Suhas Chakma alleged that he was the Managing Trustee-cum-Director of Asian Centre for Human Rights (in short ACHR). Petitioner No.1 South Asia Human Rights Documentation Centre (referred to the company hereinafter) was a private limited company with an authorized

share capital of ₹50 lakhs. Petitioner No.2 Ravi Nair was the Director of the company since its inception and was in-charge and responsible for the conduct of its daily activities. Since petitioner No.2 Ravi Nair and Suhas Chakma were known to each other since 1990, the complainant was also made the Director of the company and thus Suhas Chakma and Ravi Nair were the first two Directors of the company with Suhas Chakma holding 50% of the share holdings of the company. In furtherance to the agreement between the parties, in January 2002 Suhas Chakma purchased 5000 shares of the company @ ₹10/- per share for a sum of ₹50,000/- vide cheque No. 630449 dated 3rd January, 2002. All the mandatory requirements were complied in this regard and due to this the share capital of the company stood at 10,002 shares and the paid-up-capital rose to ₹1,000,20/- only and thereafter the complainant Suhas Chakma held 5001 equity shares of the company.

3. In late 2002 the behavior of Ravi Nair became autocratic and whimsical. Suhas Chakma protested to his illegal manner of functioning. When things did not improve Suhas Chakma resigned from the company on 11th March, 2003. Despite tendering his resignation from the company from the post of Director, Suhas Chakma never transferred his 50% equity shares in the company to anyone and retained his ownership over the equity shares to himself. After the resignation, Suhas Chakma requested Ravi Nair to return the letter of allotment, repay the amounts advanced as loans to the company, sought to know about the affairs of the company and its progress. However, Ravi Nair misled him. In September 2003, Suhas Chakma again enquired about the letter of allotment, repayment of the amounts advanced as loans to the company and about the AGM of the company which was

scheduled to be held in September. Ravi Nair informed him that notice of AGM was sent to Suhas Chakma, however Suhas Chakma never received letter of allotment nor any notice of AGM. Despite repeated enquiries, no information was given to Suhas Chakma.

4. Suddenly in 2005-2006 the petitioners filed various cases in different courts against Suhas Chakma alleging embezzlement of funds, money laundering etc. In June 2006 Suhas Chakma applied for the certified copies of the company's MOA, AOA and Annual Returns for the year 2004-05 when it was revealed that he was no more holding 50% shares of the company and in his place Vittal Rao and K. Sharda were holding 2501 and 2500 shares respectively.

5. It was further alleged that shares were transferred illegally and fraudulently to Vittal Rao and K. Sharda which was evident from the fact that in the column for "Date of Registration of Transfer of Shares" no date had been mentioned and the accused persons could not provide the dates of transfer of shares to the office of Registrar of Companies at any point of time. It is clearly established that no transfer deed was executed by Suhas Chakma in favour of Vittal Rao and without any instrument of transfer/ transfer deeds executed by Suhas Chakma, the shares were transferred due to conspiracy amongst Ravi Nair, Vittal Rao and K. Sharda.

6. On the complaint of Suhas Chakma and after examining him, the learned Metropolitan Magistrate issued summons against the petitioners for offences punishable under Section 201/403/406/420/468/471/477-A/120-B and 34 IPC. Aggrieved by the order of the learned Magistrate dated 18th November, 2008, both Suhas Chakma and the petitioners filed two revision

petitions before the learned ASJ which were disposed of by the common impugned order dated 20th July, 2011.

7. Vide the impugned order revision petition of Suhas Chakma was allowed and the petitioners were additionally summoned for offences punishable under Section 409/465/467 IPC and the revision petition filed by the petitioners was dismissed. Hence the present petition.

8. In the present petition the four accused i.e. the company, Ravi Nair, Vittal Rao and Sharda K. have been impleaded as petitioners. The present petition was dismissed for non-appearance on 15th January, 2014 where after application seeking restoration was filed only by petitioners No.1, 2 & 4 i.e. the company, Ravi Nair and Sharda K. Thus this Court vide order dated 21st August, 2014 held that the petition has been recalled only qua petitioners No.1, 2 & 4.

9. After some arguments learned counsel for the petitioners states that he does not press the present petition qua the petitioner Nos.1 & 2 with liberty to raise all the pleas before the learned Trial Court at the time of arguments on charge. Thus, in the present petition this Court is now required to deal with the case of petitioner No.4 Sharda K. only.

10. Learned counsel for the petitioners submits that admittedly Sharda K. was not a Director nor received the equity shares in the first instance. She received 2500 equity shares from Vittal Rao. Thus she could not be a party to the conspiracy alleged by Suhas Chakma. He further states that the FIR in question is a counter-blast to the civil suit and criminal complaint filed by the company against Suhas Chakma in relation to violation of the copyright, plagiarism, passing off the copyright, articles etc. Though Suhas Chakma resigned from the company on 11th March, 2003 the complaint was filed in

March, 2008 about 5 years after resigning from the company. The petitioner had filed a civil suit against Suhas Chakma being CS(OS) No.840/2006 before this Court alleging infringement of the copyright wherein no plea was taken by Suhas Chakma in the written statement that he was a shareholder of the company, thus could not be prosecuted for infringement of his copyright. The written statement clearly reflects that Suhas Chakma was aware that the shares owned by him had been validly transferred to Vittal Rao. Thus, he filed a Criminal Complaint Case No. 141/01/06 before the learned ACMM under Section 63 of the Copyright Act wherein directions were issued to register FIR. Consequently, FIR No. 704/2006 was registered at PS Janak Puri.

11. Per contra learned counsel for the respondent No.2 submits that the action of transfer of the shares to Sharda K. is not an isolated act and she is also part of a larger conspiracy. Thus at this stage order summoning her cannot be quashed. The case of the complainant/ respondent No.2 is fortified from the fact that in the column for 'Registration of Transfer of Shares' no date has been given for the transfer of the shares and further the annual return of the year 2004-05 has also been signed by Sharda K.

12. Summoning of an accused is a serious matter and on mere asking of the complainant, a person cannot be summoned as an accused. There should be a prima facie material to show that the accused was an accomplice at the time when the alleged offence took place. In the present case the complainant resigned from the company on 11th March, 2003. The allegations are that without his signatures and without his knowledge, his equity shares in the company were transferred to Vittal Rao and Sharda K,

thus they were conspirators in the offences committed by the company and Ravi Nair.

13. A perusal of the record reveals that 5001 equity shares of Suhas Chakma were first transferred in the name of Vittal Rao who further transferred 2500 shares in the name of Sharda K. Thus from the chain of circumstances, it is not evident that Sharda K. was a part of the conspiracy. Having received title of 2500 shares, merely by signing the annual return of the year 2004-05, it cannot be held that she was aware of the initial fraudulent transfer of the equity shares. Thus, the order of the learned ACMM summoning Sharda K. for offences punishable under Sections 120-B/201/403/406/420/468/471/477-A/34 IPC and that of learned ASJ summoning Sharda K. additionally for offences under Section 409/465/467 IPC is set aside.

14. As regards petitioner Nos.1 & 2, they will be at liberty to raise the pleas taken in the present petition besides other pleas before the learned Trial Court at the time of arguments on charge.

15. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 17, 2017
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