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

\+ CRL.REV.P. 799/2017, Crl. M.A. no. 17290/2017 & Crl. M.B. no. 1865/2017

RAKESH KUMAR YADAV ..... Petitioner
Through Mr. Bharat Sharma and Mr. Shyam Lal, Advs.

versus

REGISTRAR OF COMPANIES NCT OF DELHI & HARYANA ..... Respondents
Through

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

<u>O R D E R</u>
% 25.10.2017

Respondent filed a complaint under Section 165(6) of the Companies Act, 2013 ("the Act", for short) against the petitioner. It was alleged in the complaint that petitioner was a Director in more than maximum number of companies as laid down in Section 165 of the Act. He continued to hold directorship even after commencement of the Act. A show cause notice was issued to the petitioner. However, no response to the show cause notice was filed by the petitioner. Contravention to Section 165(3) read with Section 165(1) of the Act envisages the offence punishable with fine, which shall not be less than ₹5,000/- or which may extend to ₹25,000/- for every day during which contravention continues under Section 165(6) of the Act. Learned Metropolitan Magistrate summoned the petitioner. Petitioner appeared before the Metropolitan Magistrate on 24th April, 2017. Notice under Section 251 Cr.P.C. was framed against the petitioner to the effect that he had committed the offence punishable under Section 165(3) of the Act. Petitioner pleaded guilty to the notice framed against him. He stated that he does not claim any trial. He was also warned about the consequences of pleading guilty. However, he insisted for pleading guilty. Accordingly, vide order dated 1st June, 2017, learned Metropolitan Magistrate pronounced the sentence and held that contravention continued for 419 days, that is, from 1st April, 2015 to 24th May, 2016. The minimum fine calculated @ ₹5,000/- per day comes to ₹20,95,000/- for 419 days and maximum fine calculated @ ₹25,000/- per day comes to ₹1,04,75,000/-. Learned Metropolitan Magistrate held that by balancing the scale of justice, the imposition of fine of ₹40,00,000/- would be justifiable amount of fine to be imposed. It was further ordered that in case of default of payment of fine, petitioner shall undergo simple imprisonment for three months.

Petitioner preferred a Criminal Appeal bearing no. 130/2017, which has been dismissed by the learned Special Judge – 07 (Central), Delhi vide a detailed judgment dated 27th September, 2017.

Aggrieved by the order dated 27th September, 2017 passed in appeal, petitioner has preferred present petition under Section 397 Cr.P.C. By placing reliance on Section 375 Cr.P.C., appellate court has held that plea of guilt operates as a waiver or right to question the legality of conviction. Appellate Court held that appellant had pleaded guilty voluntarily and the ld. trial court in its discretion rightly accepted the plea, as such it is not open to appellant to question the discretion as being impropriety exercised. The jurisdiction of appellate court extends only to the question of legality of sentence and not to the legality of conviction. As regards legality of sentence is concerned, appellate court held that minimum sentence of fine as envisaged under the Act, was ₹20,95,000/- and maximum sentence of fine imposable was ₹1,04,75,000/-. Accordingly, imposition of fine of ₹40,00,000/- was not improper, harsh or severe. Appellate Court concluded that there was no illegality committed by the trial court while imposing sentence of fine of ₹40,00,000/-.

It would be relevant to refer to Section 375 Cr.P.C. at this stage, which reads as under:-

> "Section 375. No appeal in certain cases when accused pleads guilty. – Notwithstanding anything contained in section 374, whereas accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal. –
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> (a) if the conviction is by a High Court; or
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> (b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence."

Learned counsel for the petitioner has contended that petitioner had filed an application for compounding of the offence before the Registrar of Companies, which was pending, therefore, trial court ought not have convicted the petitioner. It is further contended that petitioner has pleaded guilty on the very first date being ignorant of legal provisions. Petitioner was not aware of the implication of pleading guilty. He was not aware that fine to the extent of ₹40,00,000/- would be imposed on him.

I do not find any force in these contentions. Trial court has recorded in the order dated 24th April, 2017 that petitioner had pleaded guilty and did not claim trial. It has been further noted that petitioner was warned of about the consequences of pleading guilty. It is put on record here that petitioner was accompanied by his counsel before the trial court. Notice was framed in his presence to which petitioner pleaded guilty and appended his signatures. On petitioner pleading guilty conviction order was passed. Sentence was not pronounced on the same day. Sentence was pronounced on 1st June, 2017, that is, after more than one month. In the order dated 1st June, 2017 also, learned Metropolitan Magistrate has recorded that petitioner had pleaded guilty voluntarily. Learned Appellate Court has also perused the record and observed that petitioner had voluntarily pleaded guilty. As regards pendency of compounding application before the Registrar of Companies, this plea taken by the petitioner at this stage is immaterial. Petitioner was present in Court along with his counsel and had pleaded guilty voluntarily. Sentence is also not severe or harsh. Trial court has adopted a balanced approach while awarding the sentence.

For the foregoing reasons, I do not find any illegality and irregularity in the impugned order. Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

OCTOBER 25, 2017
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