IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 16 OF 2017

Bhupali Securities and Ors. **.. Applicants**

Vs.

Securities and Exchange Board of India
and another **.. Respondents**

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Mr. Pritam Runwal, for applicants.
Mr. Omprakash Jha a/w Raghav Shekhar I/b The Law Point for respondent No. 1.
Mr. Y.M. Nakhwa, APP for State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 13th JULY, 2018.

P.C. :-

1. Heard both sides. The complaint was filed by respondent No. 1 before the Court of Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai for offence under Section 12 of SEBI Act, 1992 read with Rule 3 of SEBI (Stock Brokers and Sub-Brokers) Regulation, 1992, Regulation 5(1)(b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 1995 punishable under Section 24(1) of SEBI Act.

2. The applicants preferred an application before the Special Court for SEBI vide Exhibit-2 for discharge. The said application was rejected on 4th October, 2016.

3. The brief facts as alleged in the complaint are as follows :-

(a) Investigations were conducted by SEBI in respect of transactions carried at the Kolhapur terminal of brokers (members of Stock Exchange, Mumbai and The National Stock Exchange) viz., Dangi Finance and Management Consultancy Ltd. and Libord Securities Ltd.(hereinafter referred to as 'Dangi' and 'Libord') pursuant to complaints received from certain investors from Kolhapur.

(b) Accused No. 2 (applicant No. 2) who is one of the partner of Accused No. 1 (applicant No. 1-firm) was found to be an employee of the Dangi and Libord. Investigations revealed that he was working in their Kolhapur branch ever since the commencement of business at that place. The broking terminal of Dangi and Libord at Kolhapur was operative as a branch till the last week of January/first week of February, 1998.

(c) It was further revealed that, accused No. 1 had acted as a sub-broker to the aforesaid concerns, although its application for registration as sub-broker was rejected by both National Stock Exchange and The Stock Exchange, Mumbai.

(d) From 4th February, 1998 the terminals of Dangi/Libord at Kolhapur were used by accused No.1-firm for transactions as a sub-broker. The accused No. 1-firm signed member-Sub-broker agreement and member client agreement with Dangi and Libord on 3rd February, 1998 and on 4th February, 1998 respectively. The transaction reports were also sent by accused No. 1-firm to Dangi and Libord and settlement of shares/moneys was made.

(e) A Memorandum of Understanding (MoU) dated 27th February, 1998 was entered between accused No. 1-firm and Dangi and Libord. The terms of the MoU were such that the accused No. 1-firm would take over, all the assets and liabilities of the Kolhapur branch and all bad deliveries and/or other liabilities arising out of transactions done up to 3rd February, 1998 of Dangi

and Libord at their Kolhapur branch.

(f) The Accused No. 1 gave public notice on 27th August, 1998 in newspaper Sakal in response to public notice made by both Dangi and Libord on 15th August, 1998. This notice by accused No. 1 stated that it was the authorised sub-brokers of Dangi and Libord and the public notice given on 15th August, 1998 by Dangi and Libord to the effect that the accused No. 1-firm was not their sub-broker was false and misleading and the accused No. 1-firm entering in all transactions on behalf of Dangi and Libord.

(g) During the course of investigations, it was found that accused No. 1-firm had violated the provisions of Section 12 of SEBI Act, 1992, Rule 3 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, Regulation 5(1) (b) of SEBI (Prohibition of Fraudulent and unfair Trade Practices relating to Securities Market) Regulations 1995 which is punishable under Section 24(1) of the said Act. The accused No. 2 and 3 were partners of accused No. 1-firm and as such they are the persons in charge and responsible for the conduct of the business of accused No. 1-firm in terms of Section 27 of SEBI Act, 1992. The learned Magistrate

took cognizance of the said complaints and summons was issued to the accused.

4. The applicants preferred an application for discharge before the Sessions Court. The said application was rejected by order dated 4th October, 2016.

5. Learned counsel for the applicants submits that, complaint does not make out any offences. The applicants were acting as sub-broker of Dangi Finance and Libord Securities and from record it can be seen that letter dated 3rd February, 1998 was forwarded by M/s. Dangi Finance Ltd. for the registration of applicant No. 1 as sub-broker to NSE and BSE. It is submitted that, since the application for sub-broker was forwarded and submitted by Dangi and Libord and further there was agreement entered by and between Dangi and applicants annexed to the application submitted to NSE and BSE, the applicants were under a bonafide trust that the application of the applicants is granted and they continued trading through the Stock Broker i.e. Dangi and Libord. It is further submitted that, it is the sole responsibility of the Stock Broker to pay all liabilities as per Rule 3 of the notification publish by the authority on 20th August, 1992. It is submitted that no stock Broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate

granted by the board under the regulations, however, such person may continue to buy, sell or deal in securities if he has made an application for such registration till the disposal of such application. It is submitted that, there is no intimation from BSE, NSE or SEBI to accused No. 1 that their application for Sub-broker ship has been rejected and that they shall stop dealing in share and securities as per Rule 13 of SEBI (Stock brokers and Sub-brokers) regulation 1992 publish in notification dated 23rd October, 1992. No opportunity of hearing was given to the accused and the procedure contemplated therein was not followed. The rejection order was not communicated to the applicants. As per Rule 3 of notification published by authority Bombay on 20th August, 1992 without registration no one can act as a Stock broker or Sub-broker. However, such person may continue to buy, sell or deal in Securities if he has made an application for such registration till disposal of such application. While dealing with the application the procedure laid down as per Rule 13 of SEBI (Stock Brokers and Sub-brokers) regulation 1992 published in notification dated 23rd October, 1992 was not followed. The applicants had stopped the trading since 22nd June, 1998. The complainant did not point out any material to show that as to what were the reasons for rejection of application filed by applicants through M/s. Dangi for sub-broker and also did not point out whether applicants were

heard as per procedure laid down under Section 13 of SEBI regulations, 1992.

6. Learned Counsel for the respondent No. 1 submitted that, the submissions advanced by the applicants are required to be appreciated during the trial, they are in the nature of probable defences which cannot be considered at this stage. The complainant had made out a prima facie case for taking cognizance of the complaint. The complaint was filed in the year 2003. The application for discharge was preferred in 2016 which was rejected on 4th October, 2016. It is submitted that the application is devoid of merits. It is submitted that Rule 3 of the said rules categorically prohibits any broker, sub-broker from buying, selling or dealing in securities unless he holds a certificate granted by SEBI. The existing brokers and sub-brokers who were in business as on 20th August, 1992 were given a window of 3 months to continue in dealing with the certificates pending their registration with the board till the application of this registration was disposed off. The benefit of provision 2 Rule 3 was not available after lapse of 3 months from 20th August, 1992 which was mandatory for every new broker and sub-broker to obtain registration certificate prior to commencement of business of dealing in securities. It is submitted that the applicant No. 1 through applicant No. 2 had preferred an application for registration as

a sub-broker with Bombay Stock Exchange on 2nd February, 1998. The applicant preferred an application for registration as a sub-broker with National Stock Exchange on 3rd February, 1998. It is stated that BSE vide letter dated 20th February, 1998 informed the applicants that the application dated 2nd February, 1998 is incomplete and further requested the applicants to re-submit the same after completion of formalities. The application preferred by applicant No. 1 was returned along with all the original papers received from applicant No. 1 including the demand draft dated 4th February, 1998 of Rs. 1,000/-. The National Stock Exchange vide e-mail dated 8th August, 2017 categorically stated that, as per their database the applicant No. 2 had withdrawn this application dated 3rd February, 1998. The Counsel for the respondent relied upon the decision of the Apex Court in the case of ***Securities and Exchange Board of India Vs. Saikala Associates Limited***[1]**.**

7. The applicants are prosecuted by respondent No. 1 for the offences stated hereinabove for acting as a sub-broker from February, 1998 to June 1998 without a valid certificate. The complaint sets out the factual aspects relating to violation of the said provisions. The complaint alleges that accused No. 2 and 3 are the partners of accused

1 (2009) 7 SCC 432

No. 1-firm and as such they are the persons in charge of responsible for the conduct of the business of accused No. 1-firm in terms of Section 27 of SEBI Act, 1992. The application for discharge preferred by the applicants was rejected by the Special Court. It was observed by the Court while rejecting the said application that, if the accused had filed any application through Mr. Dangi for granting sanction to work as a sub-broker, they were expected to pursue the same at the relevant time. Mere filing application is not sufficient but a valid sanction is necessary to work as a sub-broker. There is nothing on record which permits the accused to work as a sub-broker. Rule 3 of SEBI (Stock brokers and Sub-brokers), 1992 prohibits any broker/sub-broker from buying, selling or dealing in securities unless he holds a certificate granted by SEBI. The existing brokers and sub-brokers who were in business as on 20th August, 1992 were given time of 3 months to continue in dealing with the securities pending their registration with the board till the application of registration was disposed off. The said benefit was not available after lapse of 3 months from 20th August, 1992. It was mandatory for new broker and sub-broker to obtain registration certificate prior to commencement of business of dealing in securities. The applicant No. 1 preferred an application for registration as a sub-broker with NSE on 3rd February, 1998. It is contended by the

respondents that BSE vide letter dated 20th February, 1998 informed the applicants that, the application is incomplete and requested them to resubmit the same on completing formalities. The application was returned with all the documents including the demand draft. It is also contended that NSE had stated that as per their database, applicant No. 2 had withdrawn his application dated 3rd February, 1998. According to respondents, the application dated 2nd February, 1998 was returned to the applicant along with documents and was not forwarded to the respondent No. 1 for consideration. The application was withdrawn by applicant No. 2 and thus, the application is lying with the applicant and it was not forwarded to respondent No. 1 for consideration and the accused was dealing in securities from the period February, 1998 to June, 1998 when obtaining registration certificate as per Rule 3 of the said rules. According to the complainant, the act of applicant has resulted in misleading investors and the public at large.

8. The issues raised by the applicants are debatable which are required to be tested as probable defence during the trial. The proceedings cannot be quashed in exercise of powers under Section 482 of Cr.P.C. On the basis of disputed questions of fact the Hon'ble Supreme Court in the case of ***SEBI Vs. Saikala Associates Limited (Supra)*** while dealing with the questions of the power of tribunal to

modify the penalty imposed by SEBI for violation of Section 12 of the Act and Rule 3 of the said rule had observed that, Rule 3 prohibits any broker/sub-broker from buying, selling or dealing in securities unless he holds a certificate granted by the board under the regulation provided however, those who are already in the said business on the date of coming into force of the rules and regulations were allowed to continue with their business during the period. Till the existing brokers and sub-brokers in business were allowed to continue pending registration but no new person commencing the business of the broker or sub-broker after 20th August, 1992 do the business pending registration and could commence only after being registered. Taking into consideration all the aforesaid aspects, no case is made out for exercising inherent powers and quashing the impugned proceedings. The application is therefore, devoid of merits and deserves to be dismissed.

ORDER

i) Criminal Revision Application No. 16 of 2017 is dismissed.

ii) The application stands disposed off.

(PRAKASH D. NAIK, J.)

Shubham