

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.658 of 2014

Rajender Kumar Gambhir, S/o Shri Kaku Ram Gambhir, aged about 57 years, R/o 48, Friends Colony (East), New Delhi – 110 048.

---- Petitioner

Versus

1. Registrar of Companies, Madhya Pradesh, 3rd Floor, 'A' Block, Sanjay Complex, Jayendra Ganj, Gwalior (M.P.)
2. Registrar of Companies, Chhattisgarh, 1st Floor, Ashok Pingley Bhawan, Municipal Corporation, Nehru Chowk, Bilaspur, Chhattisgarh – 495 001.
3. Nova Iron & Steel Ltd., P.O. & Village Dagori, Tahsil Bilha, District Bilaspur (C.G.)

---- Respondents

For Petitioner: Mr. V.R. Tiwari, Advocate.

For Respondents No.1 and 2: -

Mr. Vaibhav P. Shukla, Advocate on behalf of Mr. B. Gopa Kumar, Assistant Solicitor General of India.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/06/2019

1. The Registrar of Companies under the Companies Act, 1956 laid a complaint before the Chief Judicial Magistrate, Bilaspur on 24-2-2000 against the petitioner herein for commission of offence under Section 113(2) of the Companies Act, 1956. On that day, the Chief Judicial Magistrate was not available being on leave and accordingly, the matter was directed to be placed before the Chief Judicial Magistrate on 28-2-2000 and on 28-2-2000, the learned Chief Judicial Magistrate took cognizance and issued notice to the petitioner for offence under Section 113(2) of the Companies Act, 1956 which has been questioned in this petition under Section 482 of the CrPC.
2. Learned counsel for the petitioner submits that it completely smacks

non-application of mind and in a routine and very casual manner, on 24-2-2000, the offence was directed to be registered and again on 28-2-2000, offence under Section 113(2) of the Companies Act, 1956 was directed to be registered without application of mind which runs contrary to the decision rendered by the Supreme Court in the matter of M/s. Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others¹.

3. Learned counsel appearing for respondents No.1 and 2 would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. The Supreme Court in M/s. Pepsi Foods Ltd. (supra) has clearly held that summoning of an accused in a criminal case is a serious matter and summoning order must show application of mind to the facts of the case and the law applicable thereto.
6. In the instant case, the order dated 28-2-2000 by which offence is directed to be registered against the petitioner and process was issued states as under: -

राज्य द्वारा श्री दुबे डी०पी०ओ० अभि० अनुपस्थित
प्रकरण पंजीबद्ध हो |
अभि० को समंस/ नोटिस जारी किया जावे |
प्रकरण दिनांक 28.04.2000

सही/-

7. The aforesaid order would clearly show that no judicial mind was applied by the learned CJM to the facts of the case and the law applicable thereto while issuing process and in a most casual and

¹ AIR 1998 SC 128

perfunctory manner, the order summoning the petitioner / accused was passed which runs contrary to the decision rendered by the Supreme Court in **M/s. Pepsi Foods Ltd.** (supra). As such, the order taking cognizance dated 28-2-2000 against the petitioner is liable to be and is hereby set aside. However, the matter is remitted to the Chief Judicial Magistrate for hearing and disposal in accordance with law. The CJM will apply his judicial mind to the facts of the case and the law applicable thereto for considering the question of taking cognizance and issuing process thereto. A copy of order be sent to the learned CJM.

8. With the aforesaid observation, the petition stands finally disposed of.

(Sanjay K. Agrawal)
Judge