

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL.M.C. 2050/2010, CrI. M.A. 7855/2010 & CrI. M.A. 13686/2017

Reserved on : 18.02.2020

Date of Decision: 30.07.2020

IN THE MATTER OF:

M/S INTERCORP INDUSTRIES LTD. & ORS. Petitioners

Through: Mr. Visheshwar Shrivastav,
Advocate

Versus

REGISTRAR OF COMPANIES

.... Respondent

Through: Ms. Suparna Srivastava,
CGSC with Ms. Sanjana
Dua, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

1. By way of the present petition, the petitioners had initially sought quashing of the criminal complaint being CC No.1565/2003 filed under Section 383(1A) of the Companies Act, 1956 (hereinafter referred to as 'the Act'). Later, the petitioners filed an application seeking addition of two prayers with respect to setting aside of order dated 14.11.2008 whereby the notice under S.251 Cr.P.C. was framed against the present petitioners and also setting aside of the order dated 12.03.2010 whereby the trial court allowed the respondent's application to place additional documents on record. The aforesaid application for amendment of the prayer clause was allowed by this Court vide order dated 07.02.2013. Thereafter, vide order dated 24.08.2017, the trial court was directed not to deliver the final judgment.

2. Briefly, as per the criminal complaint, filed in the year 2001, the facts relating to the present case are that the petitioner-M/s Intercorp Industries Ltd. is registered with the office of the complainant under Registration No.55-41970. As on 31.03.1996, the paid-up share capital of the company was more than Rs.50 lacs. An inspection of the accounts and other records of the company was ordered under Section 209A of the Act. As per the *Inspection Report*, an inspection was conducted by Mr. J.N. Tikku, Deputy Director (Inspection), Deptt. of Company Affairs for the period relating to financial years 1996-97, 1997-98 and 1998-99 and it was noticed that despite having share capital of more than Rs.50 lacs as on 31.03.1996, the company did not have a Whole-time secretary from 18.09.1997, thus rendering it liable for penal action under Section 383(1A) of the Act. On the basis of the aforesaid inspection report, a complaint was filed before the concerned court through Deputy Registrar of Companies, NCT of Delhi and Haryana against the company as well as its Managing Director i.e., the petitioners herein.

3. Learned counsel for the petitioners contended that the impugned order of framing of notice against the petitioners, show complete non-application of mind as the aforesaid order was passed only on the basis of a bare complaint without any supporting documents despite the fact that in the complaint reliance was placed on five documents but none of them were annexed with the complaint; that initially summoning order was also passed without any application of mind and the same was passed on a pre-typed proforma order wherein certain blanks have been filled; that the complaint is lacking in detail as to the period for which the Whole-time secretary was not available in the accused company and lastly that there is no provision in Cr.P.C. to file any additional documents after

framing of notice and thus the trial court, by permitting the respondent to place on record additional documents after one year of framing of notice, committed a grave illegality. It was urged that the respondent could not be allowed to fill the lacuna at the post-charge stage. In support, he has relied on the decisions in Bhushan Kumar v. State reported as **(2012) 5 SCC 424**; Anand Srivastava v. State and Ors. reported as **(2008) 1 JCC 407** and Yahoo! India Pvt. Ltd. v. State & Anr. reported as **2012 III AD (Del) 733**. Learned counsel for the petitioners has also referred to the decision in the case of Trilok Nath Mittal v. Customs reported as **2008 (106) DRJ 204**, where a Coordinate bench of this Court quashed the impugned order on the ground that the complaint filed on behalf of the respondent was not accompanied by any supporting documents.

4. Per contra, learned counsel for the respondent has supported the impugned order of framing of notice by submitting that in the complaint itself, the supporting documents were mentioned and all the documents pertained to the petitioners' company only. It is further submitted that inadvertently, the documents could not be filed along with the complaint however, these were in the knowledge of the petitioners. It has also been submitted that the trial has proceeded and witnesses have been examined. In support of the submission that the documents can be permitted to be filed subsequently, reliance was placed on the decisions in CBI v. R.S. Pai reported as **(2002) 5 SCC 82** to urge. Although, during the course of arguments no submissions were advanced on the maintainability of the petition, but in the written submissions filed on 11.02.2013, an objection has been taken that a second petition under Section 482 Cr.P.C. is not maintainable.

5. The petitioners had earlier sought quashing of the summoning order by preferring a petition under Section 482 Cr.P.C. being *Crl M.C. No. 109/2005* titled as *Intercorp Industries Ltd. & Ors. v. State of Delhi & Ors.* Initially, vide order dated 02.02.2005, the trial court proceedings were stayed but later, on 30.04.2007, the petition was dismissed as withdrawn with liberty to raise all the defences in the course of the proceedings before the trial court.

6. The abovementioned petition was filed primarily on the ground that the summoning order was passed without application of mind as the documents relied upon in the complaint were not filed along with it. A perusal of the trial court record would show that despite these grounds being urged in the earlier petition, the respondent did not take any corrective steps before the trial court by filing the relied upon documents even till the time, notice under Section 251 Cr.P.C. was framed.

7. Even the ld. ACMM continued to overlook this aspect and rather went on to frame the impugned notice under Section 251 Cr.P.C. against the petitioners vide order 14.11.2008. In other words, even on the date of framing of notice, no documents were available on the trial court record.

8. Much later, an application came to be filed on 23.04.2009 by the respondent to place the documents on record, which was allowed by the trial court on 12.03.2010.

9. So far as the issue raised in the respondent's written submission about non-maintainability is concerned, I deem it apposite to refer to the following observations of the Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh reported as (1975) 3 SCC 706 which have been recently reaffirmed in Anil

Khadkiwala v. State (Government of NCT of Delhi) & Anr. reported as
2019 SCC OnLine SC 941:

“2. The main question debated before us was whether the High Court had jurisdiction to make the Order, dated 7th April, 1970 quashing the proceeding against Respondents Nos. 1, 2 and 3 when on an earlier application made by the 1st respondent, the High Court had by its Order dated 12th December, 1968 refused to quash the proceeding. Mr. Chatterjee on behalf of the State strenuously contended that the High Court was not competent to entertain the subsequent application of Respondents Nos. 1 and 2 and make the Order dated 7th April, 1970 quashing the proceeding, because that was tantamount to a review of its earlier Order by the High Court, which was outside the jurisdiction of the High Court to do...

...The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was

in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice.”

10. The proceedings in the complaint case continued before the learned ACMM. The subsequent order vide which the notice was framed under Section 251 Cr.P.C. was also passed in absence of any supporting documents, a fresh cause of action accrued and in light of the aforementioned decisions, the objection raised as to non-maintainability of the present petition has no merit and the same is rejected.

11. The law on summoning of an accused and the requisite application of mind at that stage is well encapsulated by number of decisions rendered by the Supreme Court. In Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors. reported as (1998) 5 SCC 749, it was held as under: -

“28. Summoning of an Accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the Complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the Accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the Complainant to succeed in bringing charge home to the Accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the Accused. The Magistrate has to carefully scrutinise

the evidence brought on record and may even himself put questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the Accused.”

(emphasis added)

12. Again, in Mehmood Ul Rehman v. Khazir Mohammad Tunda and Ors. reported as **(2015) 12 SCC 420**, the Supreme Court emphasized the need for application of mind at the time of taking cognizance in following words:

“22. ...The Code of Criminal Procedure requires speaking order to be passed under Section 203 Code of Criminal Procedure when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation Under Section 202 Code of Criminal Procedure, if any, the Accused is answerable before the criminal court, there is ground for proceeding against the Accused Under Section 204 Code of Criminal Procedure, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds Under Sections 190/204 Code of Criminal Procedure, the High Court Under Section 482 Code of Criminal Procedure is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an Accused is serious matter affecting one's dignity, self-respect and

image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

(emphasis added)

13. Recently, the Supreme Court in Birla Corporation Limited and Ors. v. Adventz Investments and Holdings Limited and Ors. reported as **(2019) 16 SCC 610** reaffirmed and reiterated the principle as follows:

“38. Extensive reference to the case law would clearly show that the allegations in the complaint and complainant's statement and other materials must show that there are sufficient grounds for proceeding against the accused.”

14. Similarly, in Bhushan Kumar (Supra), the Supreme Court emphasized the application of mind at the stage of framing of notice in following words:

“20. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

(emphasis added)

15. At this stage, I deem it apposite to refer to another decision which came to be passed between the present parties under exactly similar circumstances by a Co-ordinate bench of this Court in the case of Anand Srivastava (Supra). The decision squarely covers the issue of non-

application of mind that has arisen in this case. In the captioned case also, a criminal complaint was filed by the Registrar of Companies against Anand Srivastava (petitioner no.2 herein), who is the Managing Director of the M/s Intercorp Industries Ltd. (petitioner no.1 herein) under Section 211 of the Act. In that complaint also, although reliance was placed on six documents including the company's balance sheet, annual return as well as an *Inspection Report* of inspection of the books of accounts and records of the company conducted by Mr. J.N. Tikku but none of the documents were filed along with the complaint. The petitioners on being summoned, challenged it before this Court. While quashing the summoning order, this Court vide order dated 25.09.2007 noted that none of the documents which were mentioned as annexures in the complaint were filed along it. The court observed that for this reason alone, the complaint ought to have been rejected. The Court was constrained to note another peculiarity, which is also the case in the present case, in the following words:

“13. But before formally quashing the same I would be failing to not to note a trend which is unfortunately emerging. A pre-formatted cyclo-styled proforma order having blank spaces has been used as a summoning order.

14. It reveals a non-application of mind.

15. Had the learned Judge been vigilant and had perused the complaint it would have dawned upon him that document marked and referred to as Annexure 1 to Annexure 6 along with the complaint have not been filed as marked documents. The complaint could have been rejected there and then.”

16. The above decision attained finality between the parties as the respondent did not challenge it before the Supreme Court.

17. Coming back to the facts in present case, the respondent in this case as well, chose to file the criminal complaint without any supporting documents despite referring to them in the body of the complaint.

18. A perusal of the complaint would show that in Para 4, it was stated that the criminal complaint had been filed only on the basis of an *Inspection Report*, conducted at the behest of the respondent which revealed the alleged contravention. However, neither the contents of any *Inspection Report* were reproduced in the complaint nor the same was filed along with the complaint.

19. Learned ACMM, while passing the order on summoning had completely overlooked this aspect that not only the *Inspection Report*, which was stated to be the very basis of filing the complaint, was not filed, but the other supporting documents mentioned in the complaint were also not placed on record. This non application of mind continued when, again in absence of the above referred documents, Id. ACMM framing the notice under S. 251 Cr.P.C. against the petitioners. The respondent was well aware of the objections raised in the earlier petition but still remained in a state of inertia and did not bring on record the requisite documents for 9 years despite being in possession of those document for all these years. It is not a case of inadvertence but rather sheer continued negligence which has caused serious failure and prejudice to the petitioners. It is also worthwhile to mention here that in the present case also, the summoning order was passed on a pre-formatted cyclostyled proforma order where certain blanks regarding name of the petitioners, offending section and next date of hearing, were filled in hand.

20. The application of mind at the time of taking cognizance and framing of notice is sine qua non. As emphasized in Mehmood Ul Rehman (Supra), the application of mind is best disclosed by disclosure of mind. In the opinion of this Court, the impugned order of framing of notice and the earlier order of summoning were passed mechanically & in a perfunctory manner without any application of judicial mind either to the facts or to the records of the case. Accordingly, in the facts and circumstances of the case, the petition deserves to be allowed on this ground only and the other grounds raised need not be gone into.

21. Accordingly, the order framing notice under Section 251 Cr.P.C. is quashed and set aside and the petition is allowed. Miscellaneous applications are disposed of as infructuous.

22. A copy of this order be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

JULY 30, 2020
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