

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2388 OF 2021

Pranav Kumar Sharma and Another ...Petitioners

vs.

The State of Maharashtra and Others ...Respondents

VISHAL
SUBHASH
PAREKAR

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Mr. Aabad Ponda, Senior Advocate a/w. Mr. Sagar Naik i/b. Mr. Akshay Gosavi, for the Petitioners.

Mr. H.S. Venegaonkar, for Respondent No. 2-CBI.

Mr. K.V. Saste, APP for the Respondent-State.

CORAM : **S.S. SHINDE &
N.J. JAMADAR, JJ.**

**JUDGMENT RESERVED ON : 25th AUGUST, 2021
JUDGMENT PRONOUNCED ON : 30th AUGUST, 2021**

JUDGMENT : (Per N.J.Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. The petitioners, who are the Directors of the Update Marketings Private Limited, which is arraigned as an accused No. 10 in Special Case No. 770 of 2020 on the file of learned Special Judge (CBI Court), Pune lodged at the instance of respondent No. 2 – CBI have invoked the writ and inherent jurisdiction of this Court to quash their impleadment as the representatives of accused No. 10 company in the chargesheet

lodged by the respondent No. 2 arising out of First Information Report bearing RC No. 10(A)/2019- CBI Pune.

3. In the light of the limited nature of controversy, which the petition presents, it would be superfluous to note the factual backdrop which led to lodging of the said prosecution except to record that the accused No. 10 company and the co-accused allegedly caused wrongful loss of Rs. 73 Crores to Andhra Bank and corresponding wrongful gain to themselves and in the process allegedly committed the offences of criminal conspiracy, cheating, forgery, forgery for the purpose of cheating, using false documents as genuine and criminal misconduct punishable under section 120B read with 420, 467, 468 and 471 of the Indian Penal Code, 1860 (the Penal Code) and section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

4. In the chargesheet, accused No. 10 has been arrayed as under:

(i)	Name	Update Marketings Private Ltd. (A-10) Represented by Shri Pranav Kumar Sharma, Director, Shri Siddhesh Kumar Sharma, Director.
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5. The petitioners take exception to their impleadment as the representative of accused No. 10 Update Marketings Private Ltd.

6. We have heard Mr. Abaad Ponda, learned senior counsel for the petitioners, and Mr. Venegaonkar, the learned special counsel for respondent No. 2-CBI.

7. With the assistance of the learned counsels, we have perused the material on record.

8. The thrust of the submission of Mr. Ponda was that the petitioners who are the Directors of accused No. 10 'Update Marketings Private Ltd.' have no grievance about the impleadment of the said company as an accused. The petitioners, according to Mr. Ponda, however, could not have been *per force* made to represent the accused No. 10. Had it been a question of mere representation of a corporate body through a human agency the petitioners still would have no grievance but the learned Special Judge by an order dated 15th February, 2021, directed the petitioners to execute bail bonds as if the petitioners were arraigned as accused in their individual

capacity. The said course in the face of the provisions contained in section 305 of the Code of Criminal Procedure, 1973 (the Code) cannot be said to be in consonance with law.

9. Mr. Ponda, would further urge that in the case at hand, accused No. 10 had in fact appointed Mrs. Gopal Sharma to represent it at the trial and the learned Special Judge had even permitted the appearance of the accused No. 10 company through the said Mr. Gopal Sharma, yet, the petitioners continue to be dragged into the proceedings as if they are the accused in their individual capacity.

10. We have perused the order passed by the learned Special Judge on the application (Exhibit 20) whereby the application of accused No. 10 to appear through its above named representative came to be allowed. We have also perused the order dated 15th February, 2021 whereby and whereunder the petitioners were directed to be released on bail on executing bail bonds and furnishing sureties. The said situation, from the perusal of the report under 173 of the Code, appears to have been driven by the fact that while impleading accused No. 10, it

was shown to have been represented by the petitioners-Directors thereof.

11. We find considerable substance in the submission of Mr. Ponda that such *per force* impleadment of the representative, which, for all intent and purpose, partakes the character of arraigning such representative as an accused in individual capacity, is not legally sustainable.

12. Section 305(2) and 305(3) of the Code, reads as under:

Sec.305(2): Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

Sec.305(3): Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

13. On a plain reading of section 305(2) of the Code, it becomes evident that it empowers a corporate entity, which is arraigned as an accused, to appoint a representative for the

purpose of inquiry or trial. Indisputably, where a corporate entity is impleaded as an accused, of necessity, it is required to be represented through a human agency. Section 305(2) thus authorizes the corporation to appoint a representative for the purpose of inquiry or trial. Sub section (3) further provides that the requirement of presence, explanation to and examination of the corporation shall be deemed to have been complied with the presence of, explanation to and examination of such representative.

14. In all fairness, Mr. Venegaonkar, did not dispute the legal position. Mr. Venegaonkar, however, submitted that in the facts of the instant case, during the proceeding in the Special Case No. 770 of 2020 a situation may arise where the complicity of the petitioners in their individual capacity may turn out to be a fact in issue. An apprehension was thus expressed by Mr. Venegaonkar that an order passed by this Court in this petition that the impleadment of the petitioners as the representatives of accused No. 10 company is not legally sustainable may be construed as complete exoneration of the petitioners from the liability for the criminal acts for which the petitioners may be

otherwise liable to be prosecuted.

15. We do not find that the apprehension is well founded. At this juncture, neither there is any occasion nor this Court professes to delve into the aspect of complicity of the petitioners in their individual capacity for the alleged offences. The controversy revolves around the legality and correctness of the process of their impleadment *per force*, as representative of accused No. 10 company. Nonetheless to allay the apprehension, we deem it appropriate to clarify the position by recording that there are adequate provisions in the Code which take care of a contingency where the persons who are not sent up for trial initially, can be impleaded as an accused, provided a case is made out for the same. We observe no more.

16. For the foregoing reasons, the petition deserves to be allowed. Hence, the following order.

ORDER

- i] The petition stands allowed.
- ii] The impleadment of the petitioners as representative of

Accused No. 10 'Update Marketings Private Limited' stands quashed and set aside.

iii] The accused No. 10 company shall, in terms of the order passed by the learned Special Judge on the Application (Exhibit 20) dated 2nd February, 2021, be represented by Gopal Ramkishor Sharma for the purpose of inquiry and trial.

iv] The order dated 15th February, 2021 directing the petitioners to execute the bail bonds and furnish surety also stands quashed and set aside.

v] The bail bonds, if furnished, stand cancelled and sureties, if any, stand discharged.

vi] Rule made absolute in aforesaid terms.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)