

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. 30 of 2016

Krishna Murarai Poddar

Versus

The State of West Bengal & Anr.

For the Petitioner

: Mr. Sandipan Ganguly,
Ld. Sr. Advocate
Ms. Bani Ghosh.

For the Enforcement Directorate

: Mr. Arijit Chakrabarti.

Hearing concluded on : 23/11/2022

Judgment on : 09/12/2022

Rai Chattopadhyay, J. :

1. In this revision the criminal proceeding being Case No. C/2393/2002 under Section 56 of the Foreign Exchange Regulation Act, 1973, has been assailed. The case is pending in the court of the Metropolitan Magistrate, 11th Court at Calcutta. Petitioner appears there to be an accused person following alleged contravention by him of the provisions of the said Act, being the 'Director' of the company, along

with the company and other co-accused persons, for alleged commission of such contraventions/offence.

- 2.** Petitioner's pleading may be summarily stated as follows:
- 3.** Case No. C/2393/2002 was registered on the basis of a complaint filed by the opposite party no.2, i.e, the Enforcement Officer, Enforcement Directorate, constituted under the provision of the said Act. Other accused persons are (i) the juristic person, i.e, one company namely, Mrs. Grapco Industries Limited, (ii) one Mr. T. Swaminatha, (iii) Mr. O.N Jalan and (iv) Mr. S. K. Sharma. Allegedly all the persons including the petitioner were assigned with the duty and responsibility of the management and day to day affairs of the said company being it's 'Directors' and senior official, at the relevant time of contravention of the mandatory provisions of law.
- 4.** In the year 1996 the company affected export and shipment of goods valued at U.S. \$ 2,91,200. Allegedly it had refrained from taking any action to secure the receipt of the export proceeds of the said amount, in respect of the said shipments. The export proceeds were not received in India within a period of six months from the date of shipment and the time period for receipt of such export proceeds has also not been extended by the Reserve Bank of India. Complainant alleged that such an act of the company and other accused persons including the present petitioner as the 'Director' of the company, of

refraining from securing the full export value of the goods exported, from the country of final destination and thereby delaying the securing of the export proceeds beyond the prescribe period, amounts to, inter alia, a contravention of provisions of Sections 18 (2) and 18 (3) of the Foreign Exchange Regulation Act, 1973.

- 5.** Since allegedly the accused persons, at all the material times, were in charge of and responsible for the management, affairs and conduct of business of the accused company, hence, under the provisions of Section 68 (1) and 68 (2) of the said Act, they are also liable for the same offence, as the company itself. They have also contravened the provisions of Section 18 (2) and (3) of the Act as the company itself. This has prompted the opposite party no. 2 to proceed against the petitioner and other accused persons under Section 56 of the Foreign Exchange Regulation Act, 1973.
- 6.** The trial court took cognizance of the offence under Section 56 of the said Act and issued process against the accused persons including the petitioner. Petitioner was also granted bail by the court. At this juncture the petitioner preferred an application before the court praying for his 'discharge' from the aforestated proceedings. The petition was heard in presence of all parties and ultimately the court disposed the same of by dint of its order dated 23rd December, 2010. The court held that such a prayer of the petitioner is not maintainable

in view of the judgment of the Hon'ble Supreme Court reported in (2004) 7 CrLJ 137 (Adalat Prasad vs. Rooplal Jindal) which laid down the law that magistrate has no power to recall process once cognizance is taken and process is issued. Petitioner's prayer, as above, was rejected.

7. After rejection of his prayer for 'discharge', the petitioner endeavored by filing this revision, to espouse jurisdiction of this court, under Section 482, Cr.P.C, 1973, to challenge the legality and propriety of the entire proceedings, initiated against him.
8. It is submitted on behalf of the petitioner that though he was designated as a 'Director', in terms of his responsibility in the company, he was virtually a 'non-executive director'. It is submitted that the petitioner held only an honorary post in the company, never accepted any salary or remuneration there from and was never associated in any way with the day to day affairs of the said company, i.e, accused no.1 in this case.
9. It has further been submitted that the petitioner, by sending a written communication, resigned from the post of directorship of the said accused no.1/company on and from 31st July, 1996. From 32 under the Company Act, 1956 was filed with the register of companies and the date of resignation as the director of the said company became effective on and from 2nd August, 1996. It has further been submitted

that the allegations of non-receipt of export proceed related to export shipment in this case pertains to the months of April and May, 1996. Petitioner states that the statutory period of six months for remittance of the sell proceeds with respect to the said shipments would only expire in the months of October and November, 1996. He has said it to be evidently clear from the relevant documents, which are of the status of public documents, that after expiry of the six months period from the date of consignment, when “contravention” can be said to have set in, the petitioner was already disassociated and no way connected with the accused no.1/company and all his relations with the same were severed by that time. It is his submission that during the period when he was a ‘Director’ of the concerned company, allegation of any contravention to have been made in connection with the concerned shipments would not arise, if the statutory mandates are to be followed because of the reason that he retires before expiry of the period of six months from the date of export. He accordingly states that his implication is only illegal, erroneous and malicious too and that he should be exonerated by way of quashment of the entire proceedings against him.

- 10.** Opposite party no.2 is represented in this case. The crux of contention on behalf of the opposite party no.2 is that the prima facie materials are available against the petitioner, he being a ‘Director’ of the accused no. 1/company at the relevant point of time, though not

at a time after expiry of six months period from the date of shipping consignments. It is submitted that being 'Director' of the said company and having taken part in the affairs of the company, its management and policy making, the petitioner cannot simply shrug off his liability in commission of the contravention of law, as alleged. Against the petitioner's contention counter claim has been raised that proceedings should continue to unearth the truth.

- 11.** Mr. Ganguly, Ld. Sr. Advocate appearing on behalf of the petitioner has taken this court through the various documents annexed with the petition to bring forth the facts as stated below. Firstly, he has pointed out to the complaint filed in the trial court. The status of the petitioner as a 'Director' of the company as mentioned therein has been controverted and challenged. The reasons for such a challenge shall be discussed afterwards. It has been pointed out that the complaint was lodged as regards the shipments that took place in the year 1996. He showed that the complaint mentioned the stake to be 2,91,200 US\$ and the specific allegations to have been made that the accused company refrained from taking any action to effect securing the export proceeds within the specified time, that is a period of six months. He points out that the complainant in the said complaint has specifically made allegations against the accused company to have refrained from taking any action which has the effect of securing the receipt of the full export value of the goods exported and thus

allegedly contravened the provisions under section 18(3) of the Foreign Exchange Regulation Act 1973.

- 12.** After that, petitioners prayer in the trial court for his discharge and the grounds thereof were mentioned, that the petitioner has narrated before the trial court that he was a honorary 'Director' of the accused company and was no way connected with the affairs of the same even during the period he has been attached with the same. There the petitioner mentions that he resigned from the Board of the company on 31st July 1996 and the resignation was registered with the Registrar of Companies, Odisha, on 2nd August 1996. Mr. Ganguly says that after resigning there from, his client was disassociated with the company all together much before the time when the export proceeds were due to be collected. He says further, thus his implication of the petitioner is irrelevant, unnecessary and illegal too. Order of the trial court has dealt with this petition of the present petitioner and rejected the same on the grounds stated earlier in this judgment. Court's attention is drawn to the certified copy of the annual return of the company made up to 31 December 1996, wherein the status of the present petitioner is mentioned as the 'Director' of the company and the date of his seizing to be the same has also been mentioned to be 2nd August 1996, that is the date of registration of his resignation in the books of the Registrar of

Companies. Certified copy of form number 32 dated 5th August 1996 is also relied on.

13. Mr. Ganguly, Learned Sr. Advocate has emphasised about the unimpeachable nature of the documents as mentioned above to address the same to be uncontrovertible public documents.

14. Court's attention is also drawn to the relevant statutory provisions. By referring to section 68(1) of the said act, it has been submitted that according to the said provision of law, when any contravention of the provisions under the act has been made by a company, every person who, at the time of commission of the contravention, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. By pointing out to sections 18(2) and (3) of the said Act, it has been emphasised that a period of six months is the statutory period prescribed and only after expiry of that period law recognises contravention of the provisions there of to have happened unless adequate measures are undertaken to repatriate the sale proceeds into the country. According to him contravention of the provision of law set in at the moment when after expiry of the six months period the sale proceeds are not repatriated as envisaged in law. He says that presumption under section 18 (3) of the Act would

have been applied, if at all, in case of his client when only after expiry of the prescribed period of time the payment therefore has not been made. Otherwise it is his clients case, that, after resigning from the Board of Directors with effect from 2 August 1996 and when in the present case the statutory period expires only in the month of October or November 1996, the question of his client's to be liable under the said Act can never arise. It is his client's further case that even during his directorship in the company he has never been engaged in the management, control, policy-making and day to day functioning of the company, which would have been the necessary prerequisites to book him under the provisions of the Foreign Exchange Regulation Act 1973.

15. The following judgments have been relied on by the petitioner in support of the submission as aforestated:-

- (i) Pooja Ravinder Devidasani vs. State of Maharashtra & Anr. reported in (2014) 16 SCC 1**
- (ii) Anita Malhotra vs. Appael Export Promotion Council & Anr. reported in (2012) 1 SCC 520.**
- (iii) National Small Industries Corporation Limited vs. Harmeet Singh Paintal & Anr. reported in (2010) 3 SCC 330.**

The same shall be discussed at a later and appropriate stage.

16. On the submissions made as aforestated quashment of the proceedings against the present petitioner has been solicited.

17. Arguments made on behalf of the petitioner has been resisted with strong objections on behalf of the opposite party No.2. Pertinent to mention here that the factual aspects and relevant dates have not been objected to on behalf of the opposite party No.2. Mr. Chakrabarti, Ld. Advocate for the same, has emphasised regarding interpretation of the provisions of law, that of section 18(3) of the Act, in particular. According to him, last day of the prescribed six months period is only the outer limit, that is the cut off date, within which the company or any responsible person holding office of the same should not refrain from doing as necessary to repatriate the sale proceeds of exported goods. Therefore he disputes the argument of the petitioner as regards the starting point of alleged contravention which would entangle a person for the same under the provisions of the statute. He says that during the period from the date of shipment of the goods till the date when the six months period expires, the petitioner has been in office as a 'Director' of the accused company for 4 months period. Therefore, he says, that the petitioner cannot simply gloss over his responsibility as to the contravention made of the mandates of law. He points out to the relevant dates of the five shipments spreading from 5th April 1996 to 6th May 1996 and also to the "opportunity notice" given to the present petitioner to which he is said to have not responded at all. It is submitted that exoneration of the petitioner in any way from the proceedings drawn against him would amount to

miscarriage of justice and ultimately the object of the Act of preservation and restoration of the economic health of the country would be jeopardised. He has urged for dismissal of the revision.

18. The oppugnant submissions of the parties prompt this court to find some admitted facts and also some conflicting and contradictory interpretations to have been made in this case, which are required to be discussed in order to come to a finding and decision in this case.

19. Status of the petitioner as the 'Director' of the company, till 2nd August, 1996, is not disputed in this case though his involvements in the company's affairs are. Neither is in dispute the facts, of export of goods by the company during the period from 5th April 1996 to 6th May 1996. Failure by the company to collect the sale proceeds within a period of 6 months therefrom is also a fact admitted in this case.

20. "Director" of a company has not been defined in this Act. Though one may resort to the definition of "Director", as provided under the Companies Act, which may be quoted below :

"Section 2(34) - "director" means a director appointed to the Board of a company."

21. Thus even the Companies Act, 1956, does not contain a detailed definition of the term. It may generally be said that 'Directors' are the persons appointed to direct and supervise the affairs of a company. The company's business is consigned in the hands of directors. Team

of directors of the company is collectively known as its Board of Directors, which wields the supreme executive authority controlling the management and affairs of a company. In practice it is the Board of Directors which looks after the management and protects the interests of all the stakeholders of the Company. A company's director's duties can generally include determining and implementing policies and making decisions, preparing and filing statutory documents with the company's office or other agencies, calling meetings including an annual meeting of shareholders, maintaining and keeping records, binding the company to contract with suppliers, lenders and other dealing with the company and also any other specific duties and responsibilities entrusted to him.

22. Therefore, a 'Director' would generally connote a person who may be in charge of and responsible to the company for conduct of its business.

23. In the case of **N. Rangachari vs. Bharat Sanchar Nigam Limited reported in (2007) 5 SCC 108**, the Hon'ble Supreme Court laid down following, (though in connection with a case under the Negotiable Instruments Act, 1881, however the provisions being *pari materia* with the provisions of this Act, can be followed in this case) :

“20. In other words, the law laid down by this court is that for making a Director of the Company liable for the offences committed by the Company under section 141 of the N.I.Act, there must be specific averments against the Director showing as to how and in what manner

the director was responsible for the conduct of the business of the company". It was further held that "a person in the commercial world having a transaction with company is entitled to presume that the Directors of the company are in charge of the affairs of the company."

- 24.** Here, the provision under section 68(1) of the Foreign Exchange Regulation Act, 1973, and also the relevant portion of Section 18 of the same, may be resorted to, for once. The same has provided as regards **'Offences by companies'** and **'Payment for exported goods'** respectively.

"68. Offences by companies — (1) Where a person committing a contravention of any of the provisions of this act or of any rule, direction or order made thereunder is a company, every person who, at the time of the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to punishment if he proves that the contravention to place without his knowledge or that he exercised all due diligence to prevent such contravention."

and

"18. Payment for exported goods.— (1)(a) The Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereafter in this section referred to as export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing—

(i) the full export value of the goods; or

(ii) if the full export value of the goods is not ascertainable at the time of export the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market, and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.

(b) If the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette specified any goods, from among those goods to which a notification under clause (a) applies, and direct that in respect of the goods so specified, where an exporter makes a declaration under sub-clause (ii) of clause (a) of the

value which he having regard to the prevailing market conditions expect to receive on the sale of such goods in the overseas market, he shall not, except with the permission of the Reserve Bank on an application made to the Reserve Bank by the exporter in this behalf, authorise or permit or allow or in any manner be a party to, the sale of such goods for a value less than that declared:

Provided that no permission shall be refused by the Reserve Bank under this clause unless the exporter has been given a reasonable opportunity for making a representation in the matter:

Provided further that where the exporter makes an application to the Reserve Bank for permission under this clause and the Reserve Bank does not, within a period of twenty days from the date of receipt of the application communicate to the exporter that permission applied for has been refused, it shall be presumed that the Reserve Bank has granted such permission.

Explanation.—In computing the period of twenty days for the purposes of the second proviso, the period, if any, taken by the Reserve Bank for giving an opportunity to the exporter for making a representation under the first proviso shall be excluded.

(2) Where any export of goods, to which a notification under clause (a) of sub-section (1) applies, has been made, no person shall, except with the permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing—

(A) in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1),—

(a) that payment for the goods—

(i) is made otherwise than in the prescribed manner, or

(ii) is delayed beyond the period prescribed under clause (a) of sub-section (1), or

(b) that the proceeds of sale of the goods exported do not represent the full export value of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank; and

(B) in a case falling under sub-clause (ii) of clause (a) of sub-section (1), also that the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade:

Provided that no proceedings in respect of any contravention of the provisions of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full export value has not been made in the prescribed manner within the prescribed period.

(3) Where in relation to any goods to which a notification under clause (a) of sub-section (1) applies the prescribed period has expired and payment therefor has not been made as aforesaid, it shall be presumed, unless the contrary is proved by the person who has sold or is entitled to sell the goods or to procure the sale thereof, that such person has not taken all reasonable steps to receive or recover the payment for the goods as aforesaid and he shall accordingly be presumed to have contravened the provisions of sub-section (2).

.....”.

25. The avowed and evident object of Section 18 is to ensure that the nation does not lose foreign exchange which is very much essential for the economic survival of the nation. The exporter cannot be allowed

to syphon away a part of the foreign exchange or to deprive the nation of the foreign exchange earned by the exports. Such is the philosophy of Section 18.

- 26.** The entire matter pertaining to payment for exported goods and the foreign exchange earnings arising there from has been dealt with in Section 18, which is a complete code in itself. Evidently the section has been very carefully designed. Every possible situation has been conceived and appropriate prophylactic measures to ensure the preservation of foreign exchange and preservation of siphoning off the foreign exchange which is very much essential to the economic life of the nation, have been embedded therein.
- 27.** This provision has taken into its sweep, along with the juristic person, i.e, the company, every other person who might be responsible for conduct of business thereof to be booked for any offence/contravention. Accordingly a 'Director' of a company who is generally entrusted with such a responsibility is similarly liable for an offence as the company itself, in case he is in charge of or responsible for the conduct of the business of the company at the relevant time when the offence was committed. This is an exception to the normal rule in cases involving criminal liability, in which, no one is to be held criminally liable for an act of another.

- 28.** An inquisitive consultation with the complaint in this case has shown that the complainant has mentioned therein that the present petitioner along with the other accused persons were in charge of and responsible to the accused company for the conduct of its business at all material times.
- 29.** Though in this case the proposition of law that it is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence will be liable for criminal action, remained virtually uncontroverted, the specific time when in this case the offence would be said to have been committed, is in dispute. Petitioner's contention is that during the period of shipment of the goods and the date of expiry of the specified period of six months, in the months of October and November 1996, he has already resigned from the directorship of the company with effect from 2nd August, 1996 and was disassociated with all the affairs of the company. According to him the contravention or offence by the company takes place when after expiry of the specified period of six months the sale proceeds could not be collected and only in that case the presumption under section 18(3) of the Act would attract. He says that as on that date he was not at all related with the company, in whatsoever capacity, hence he can never be implicated for any alleged contravention. Or else his involvement in this case would only amount to invalidation of the settled principles of law and gross illegality.

30. In the judgment of **Pooja Ravinder Devidasani vs. State of Maharashtra & Anr.**, the Hon'ble Supreme Court was pleased to hold in connection with a case Negotiable Instruments Act that:-

“17. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision.”

31. The other case is of **Anita Malhotra vs. Apparel Export Promotion Council & Anr.**, where the following finding were noted :-

“22. This court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient.”

32. Finally on behalf of the petitioner the case of **National Small Industries Corporation Limited** was referred to in which the following principles were derived :-

“39. From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the

complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

33. Contra argument is that the date of expiry of the prescribed six months period is only the outer limit of time span, the cut off date, so to say.

34. No doubt this argument is validated by the statutory provision itself. Section 18(3) of the Act reads that where in relation to any goods, to which a notification under section 18(1)(a) of the Act applies and the prescribed period has expired without making the payment, presumption would be that the person who has sold the goods has not taken all reasonable steps to recover payment and shall be presumed to have contravened subsection (2) of section 18 of the Act. This presumption is of course, rebuttable. Profitable here is to mention the provision under section 18(1)(a) of the Act which provides for furnishing a declaration by the exporter in prescribed form disclosing

specified information and affirming therein that the full export value of the goods (whether ascertainable at the time of export or not), has been or will within the prescribed period be, paid in the prescribed manner.

- 35.** The words finding place in section 18(1)(a) assume immense importance, particularly in the backdrop of the present case, in which the relevant time of 'commission of the offence' is in dispute. A conjoint reading of section 18(1) (c) and (a) would definitely propagate that the duty to get the sale proceeds of export to be repatriated does not merely arise after expiry of six months statutory period, but the last day of the sixth month from the date of export is only the outer limit and end of the timespan. Law requires the exporter to affirm in the declaration made under section 18(1)(a) that full export value has already been paid or will be paid within the prescribed period in the prescribed manner. The words 'within the prescribed period' appearing in section 18(1)(a) would definitely mean the prescribed period of six months, as provided under the statute. Therefore it is the mandate of law that all activities for repatriation of export value would be within the outer limit of sixty days time and in case this goal is not accomplished within sixty days from the export date, the statutory presumption of not taking any reasonable steps by the concerned person for recovery of the same would arise. The argument by the petitioner regarding the date of commission of the alleged offence to be

after expiry of the sixty days statutory period is refutable in view of the statutory provisions, as discussed above. Elucidation of the afore stated statutory provisions in any manner other than this would render the provisions of statute, as mentioned above as nugatory and repugnant.

- 36.** A Calcutta High Court judgment may be relied on, i.e, reported in **1992 SCCOnline Cal 188 (Raj Kumar Kajaria vs The State of W.B. & Anr)** when this court held that the mere fact of the person being a 'Director' of the company does not make him liable for the offence committed by the company, unless such director factually comes within the mischief of Section 68 of the Act. In the said case on the ground that the complaint contains specific averment as to the responsibilities of the accused persons therein, to the company for conduct of its business, the court held, the accused persons in that case to be deemed to be guilty of the offence committed by the company. Court further held that the averments made in the complaint prima facie attracts Section 68 of the Act for prosecuting a 'Director' for the offence committed by the company. That there is no positive finding that Section 68 of the Act has not been factually established in this case. On the reasons as stated above the court did not find the case in hand to be fit for quashing the criminal proceeding.

37. Hence, petitioner's argument that after expiry of the period of sixty days from the date of export of goods in this case, when the alleged contravention or offence was committed by not securing the sale proceeds till then and at the said point of time he was already disassociated with the affairs of the company having resigned from the directorship of the company and thus cannot be held liable for the activities of the company on that date ---- does not appear to be acceptable. Contrarily, he admittedly being associated with the accused company, within the six months period of time, from the date of shipment, in case of failure of payment, his part play in the alleged contravention, cannot be overlooked and overruled unless rebutted. Probably, in this case the petitioner imagined to take shelter under the proviso to Section 68 (1), projecting his lack of knowledge about the entire thing, after he left the company, but only untriumphantly so, having admitting his association with the company till months after export of the goods. As discussed earlier, extent of his involvement in the affairs of the accused company as a 'Director' thereof, has been specifically mentioned in the complaint dated 18.06.1998. Overall reading of the said complaint speaks of petitioner's involvement and makes out a case against him. At the moment there is no material available to construe that the petitioner rebuts the presumption of law so arises against him.

Regard may have to the judgment of **Gunmala Sales Private Ltd vs. Anu Mehta**, reported in **(2002) 1 SCC 234**, the Hon'ble Apex Court has been pleased to hold as follows while delineating the scope and the power of High Court under section 482 of the Code:-

“ (a) Once a complaint is filed under section 138 read with section 141 of the Negotiable Instruments Act, the basic averment is made that the Director was in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

(b) If a petition is filed under section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director;”

In **Standard Chartered Bank vs. State of Maharashtra**, reported in **(2016) 6 SCC 62**, the above decision was reiterated regarding duty of High Court while exercising the power of quashing to attract the vicarious liability of the persons responsible under section 141 of the NI Act.

- 38.** Fact remains that goods were exported during the period from 5th April 1996 to 6th May 1996. A declaration was furnished in terms of section 18(1)(a) of the Act. During all these time petitioner was a 'Director' of the accused company. He remained so till 2nd August, 1996, that is a date well within the statutory period of six months time. According to the scheme of this Act, he cannot relinquish his liability as regards the alleged contravention for this period at the time of and after export of the goods, till the time he remained as

company's 'Director' taking part in the affairs thereof, as suggested in the complaint, of course unless he rebuts the same with adequate materials.

- 39.** Under the circumstances, it cannot be said that the allegations made against the petitioner in the complaint do not prima facie constitute any offence, show the involvement of the petitioner therein, or make out a case against him, or that it do not disclose any cognizable offence at all. It can also not be said that the allegations made in the FIR are only absurd and inherently improbable, or that there is no sufficient ground for proceeding against him. The factual aspects of the case as discussed above, would definitely discard any intention of malafide or malice of the complainant, who intends to proceed against the accused person on the basis of available materials against him, prima facie constituting an offence. This should not lead to quashing a proceedings initiated to unearth the truth.

This principle of law has been enunciated in the celebrated judgment of the Hon'ble Supreme Court of **State of Haryana & Ors. Vs. Bhajan Lal reported in AIR 1992 SC 604.**

- 40.** The other point raised by the petitioner is that though being designated or appointed in the accused company as a 'Director', he was not entrusted with the management, affairs or policy of the same as part of his duty as a 'Director'. Company's records and more so the

specific averments in the complaint show otherwise. This, at one end, prima facie constitutes a contravention/offence and make out a case against him and at the other, duly complies with the statutory provision and dictum of the Hon'ble Supreme Court in **N. Rangachari's** judgment (mentioned earlier). Hence this case shall not fall within the category of cases, where the power of this Court under section 482 Cr.P.C, 1973, may be exercised to prevent abuse of the process of the court or otherwise to secure the ends of justice. Contrarily, by following the ratio of the judgment of the Supreme Court, reported in **(2018) 13 SCC 663 (N. Harihara Krishnan vs. J. Thomas)**, it can be stated that taking cognizance of an offence by the court is one of the initial steps in the whole process. Upon existence of prima facie material, the process of the court should not be hampered.

- 41.** Therefore finding no merit in petitioner's case, this revision CRR 30 of 2016 is dismissed.
- 42.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon usual undertaking.

(Rai Chattopahyay,J.)

