

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 493 of 2019

Usha Martin Telematics Limited & ors.

-vs-

The Registrar of Companies, West Bengal

For the Petitioners : Mr. Pradip Kumar Ghosh
Mr. Sayantan Bose
Ms. Madhurima Das

For the Opposite Party : Mr. Rajdeep Mazumder
Mr. Debu Chowdhury
Mr. Moyukh Mukherjee

Heard on : 22.6.2022

Judgment on : 27.06.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been directed to quash the Complaint Case No. 14 of 2018 filed before 2nd Special Court, Kolkata. In the impugned proceeding, learned 2nd Special Court, Kolkata after perusal of application filed by complainant who is a public servant and also on perusal of documents on record issued summons upon the petitioners/accused persons vide order dated 14.12.2018.

2. The facts in relation to the criminal complaint under Sections 149/447/448 of the Companies Act, 2013 as set out in the revisional application by the petitioners are that the petitioner no.1/Company held a meeting of its Board of Directors on 9th December, 2014 and it was held, inter alia, the appointment of Mr. Ajaybir Singh Bakshi (Mr. Bakshi) as an “Additional Director”. Pursuant to such meeting, Mr. Bakshi was appointed as Additional Director of the petitioner No.1 /Company. The petitioner no.1/Company filed Form DIR-12 with the respondent/ Opposite Party recording the appointment of Mr. Bakshi as Additional Director. Furthermore a copy of the letter dated 9th December, 2014 was issued to Mr. Bakshi appointing him as Additional Director which was filed as an attachment to the aforesaid Form DIR-12. Sometimes around February 2016 pursuant to its power under Section 206(5) of the Companies Act, the respondent/Opposite Party conducted an inspection of the petitioner no.1/Company’s record and during such inspection, the respondent/opposite Party noted that the Minutes of the meeting of the Board of Directors of the petitioner no.1/Company held on 9th December, 2014, the following sentence was included under Item No.05 :

“Item No.05.....

Further, the Board took a note of the declaration of independence provided by Mr. Bakshi as per provisions of section 149(6) of the Act, for his appointment as an Independent Director on the Board.”

3. It is further alleged that pursuant to the Board Minutes, the petitioner no.1/Company had appointed Mr. Bakshi as an Independent Director and

made an incorrect declaration in the aforesaid Form DIR-12 that Mr. Bakshi was appointed as Additional Director. Based on this, the opposite party issued show cause notice on 30th August, 2018 to the present petitioners. Pursuant to the said letter dated 20th September, 2018, the petitioner nos. 1 and 2 explained to the opposite party that –

- (a) the one sentence in the Board Minutes was an inadvertent typographical error.
- (b) Mr. Bakshi was in fact appointed as an ‘additional director’ and not as an ‘independent director’.
- (c) The Board Minutes in at least four places record unequivocally that Mr. Bakshi was appointed as an ‘additional director’, detailed as under:
 - (i) At the top of the Board Minutes recording the attendance of the members it is noted that:

“Present

Mr. Ajaybir Singh Bakshi Director (Appointed as an

*Additional Director during the
meeting)”*

- (ii) The heading to the relevant Item No.5 for discussion, records as under:

*“ITEM NO. 05 – APPOINTMENT OF MR. AJAYBIR SINGH
BAKSHI AS AN ADDITIONAL DIRECTOR ON THE BOARD”*

- (iii) The paragraph immediately preceding the incorrect and inadvertent sentence records as under:

“It was proposed to appoint Mr. Ajaybir Singh Bakshi as an Additional Director of the Company in terms of the provisions of Section 161 of the Companies Act, 2013 (“the Act”). The Board was informed that Mr. Bakshi has given consent to act as a Director of the Company with the provisions of Section 152(5) of the Act and applicable Rules.”

- (iv) The actual resolution records as under:

“RESOLVED THAT, in accordance with the provisions of Section 161 of the Companies Act, 2013 (“the Act”) read with applicable rules under the Act, and the articles of association of the Company, Mr. Ajaybir Singh Bakshi be and is hereby appointed as an Additional Director of the Company with immediate effect to hold office upto the date of the next annual general meeting of the Company.”

(d) Form DIR-12 is consistent with the actual resolution passed by the Board Minutes and the intent of the Petitioner No.1/Company of appointing Mr. Bakshi as an ‘additional director’ on its board of directors.

e) Consistent with the resolution passed, the Form DIR-12 , item no. 5 and the intent of the petitioner no. 1 company, the letter dated 9th December, 2014 issued by the petitioner no. 1 company to Mr. Bakshi clearly stated that he has

been appointed as additional Director and said letter dated 9th December, 2014 was filed as an attachment to the aforesaid Form DIR-12.

(f) the inadvertent error in the sentence referred above was without any mala fide intention to deceive or to gain undue advantage from or to injure the interest of the petitioner no. 1 company, its shareholders creditors or any other person. A separate letter dated 4th October, 2018 was also given explaining the aforesaid facts and circumstances of the occurrence which occurred due to inadvertence.

4. Learned senior Advocate for the petitioner Mr. Pradip Kumar Ghosh argued that Mr. Bakshi was appointed as an Additional Director by the petitioner no. 1 company which has been correctly recorded and the word “Independent Director” have not been used in the resolution. Mr. Bakshi, during the relevant period of time was in the full time employment of one group of companies of petitioner no. 1 company and hence was not qualified to be appointed as an “Independent Director”. Actually, the opposite party has ignored the explanation furnished by the petitioners in their reply to show cause and opposite party ignored the Form DIR-12 and the letter dated 9th December, 2014 issued to Mr. Bakshi in relation to his appointment as an additional Director and unfortunately, the opposite party has started the proceeding emphasising on one, inadvertent typographical error in one sentence in the Board minutes which referred to Mr. Bakshi as “Independent Director”. In fact, the proceeding has been initiated ignoring the reply given by the petitioners dated 20th September, 2018 and reply dated 4th October, 2018.

The complaint does not even refer to the reply dated 20th September, 2018 and the reply dated 4th October, 2018 filed by the petitioner and without applying its mind to the explanation submitted by the petitioners in their reply to show cause notice, opposite party is continuing with the present proceeding, which is nothing but an abuse of process of court.

5. Learned counsel for the petitioners argued that the criminal complaint ex-facie does not bring out any case against the petitioners Under Section 149 of the Companies Act as Section 149 is generally in relation to appointment of directors on the Board of a company and Sub-sections (6) to (10) of Section 149 are specific to “Independent Director”. As can be noted from item no. 5 of the Board minutes and in the form of DIR-12, the petitioner no. 1 company had appointed Mr. Bakshi as an additional director under Section 161 of the Companies Act, 2013 and as such the provision in relation to the appointment of “Independent Director” under Section 149 of the Companies Act, 2013 does not arise. Accordingly, the provision in relation to the appointment of an “Independent Director” under Section 149 of Companies Act, 2013 are not triggered at all and has got no application in the present context.

6. Mr. Ghosh, learned advocate for the petitioners further argued that Section 448 of the Companies Act relates to punishment for false statement in any return, report, certificate etc. and the Section itself makes it clear that *mens rea* or guilty mind is an essential ingredient for charging any person under Section 448 which expressly states that the false statement must be made “knowing it to be false” or an omission of any material fact should be

made “knowing it to be material”. Accordingly, Mr. Ghosh, learned advocate for the petitioners submitted that there is no false statement made or material omission made in the board minutes save and except an inadvertent typographical error. Even in the complaint, nowhere it has been stated that the alleged violation was made with knowledge by any of the petitioners. It has further been argued on behalf of the petitioners that Section 447 of the Companies Act, has an explanation which defines fraud for the application of Section 447 of the Companies Act and bare reading of that Section makes it clear that *mens rea* or knowledge or intention is again an essential ingredient for charging any person under Section 447. In other words, in order to attract Section 447 of the Companies Act, fraud must be “with intent”. An inadvertent typographical error can never amount to fraud. There is nothing to show that alleged violations were made “with intent” from any of the petitioners. Factually, the criminal complaint alleged by the opposite party is a result of a trivial error and the Sections namely, Section 149, 448 and Section 447 of the Companies Act has been put incorrectly for which the ingredients for charging a person under Section 447 or 448 of the Companies Act are missing in the criminal complaint.

7. Referring the case of ***Madhavrao Jiwajirao Scindia and others Vs. Sambhajirao Chandojirao Angre and others***, reported in **AIR 1988 SC 709**, Mr. Ghosh, learned advocate for the petitioners argued that the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court as to whether the allegations

has prima facie established any offence or not. The court cannot be utilised for any oblique purpose specially when the conviction is bleak. Accordingly, he submitted that no useful purpose is likely to be served by allowing the present criminal prosecution to continue and as such prayed for quashing the proceeding.

8. Learned counsel appearing on behalf of the opposite party Mr. Rajdeep Mazumder submits that Section 448 or Section 447 of the Companies Act makes it clear that when any person makes any false statement which he knows to be false, these Sections attract. Whether the said statement mentioning Mr. Bakshi as “Independent Director” was made intentionally or not, will be adjudged at the time of trial and not at the time of issuing the process. In this context, referring ***State of Haryana and others Vs. Bhajan Lal and others***, reported in **1992 Supp (1) SCC 335**, Mr. Majumder, learned advocate for the opposite party submits that at this stage, the court is only required to look into whether the materials prima facie discloses any offence or not. The petitioners admitted their mistake in so many terms and in so many places. Accordingly whether in committing admitted “mistake” there exists any *mens rea* or not shall be adjudicated at the time of trial and the proceeding cannot be quashed at its threshold on the ground that it does not disclose any guilty mind. The story of inadvertent typographical mistake is not believable in view of the fact that quoting the relevant Section, it has been specifically stated that Mr. Bakshi is appointed as “Independent Director”. In this context, Mr.

Mazumder, learned counsel for the opposite party also relied upon paragraph 108 (1) of the **Bhajanlal's Case (supra)**.

9. I have carefully gone through the complaint lodged under Section 447 read with Section 448 and Section 149 of the Companies Act and marked as Annexure-A and also the relevant extract of minute book (page no. 429) marked as Annexure-B, the G.A.R. 7 receipt, Ministry of corporate affairs marked as Annexure-C, letter of appointment of Mr. Bakshi as additional Director in the company marked as Annexure-D along with the reply to the show cause notice given by the petitioners marked as Annexure-F and the certified copy of the order sheet passed by Judge, 2nd Special Court, Calcutta dated 14.12.2018, along with other documents in the record.

10. From the order dated 14.12.2018 it is clear that the court concerned has not disclosed in the impugned order as to how he satisfied about prima facie case against the accused persons and what are the grounds for proceeding against the accused persons. The said order is not only very cryptic but also does not reflect that he has applied his mind. The order has been passed in a very casual and routine manner.

In this context Apex Court's observation in **Pepsi Foods Limited and another Vs. Special Judicial Magistrate and others.**, reported in (1998) 5 SCC 749 is very much relevant

"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”.

11. Needless to say that the well settled principle of law is that the final purpose of a criminal proceeding is to secure justice and to prevent the abuse of process of law. The subsequent documents along with the resolutions if taken at its face value makes, it is abundantly clear that Mr. Bakshi was appointed as an Additional Director and there was no intention on the part of the petitioners to appoint him as an “Independent Director” nor any attempt was made to project him as “Independent Director”. One single statement that his consent was taken as “Independent Director” cannot be construed that the board of Directors had actually appointed him as “Independent Director” and not as “additional Director”. Accordingly, the allegations levelled in the complaint appears to be absurd and inherently improbable and if a prudent person tests is applied then the inevitable conclusion would be that there is no chance of conviction as there is nothing to show that the alleged “false statement” was made knowing it to be false or any omission of material fact was made knowing it to be material in order to deceive someone or to gain any undue advantage from the company or it’s share holders or it’s creditors, in order to attract the relevant sections. Furthermore, subsequent documents

makes it abundantly clear that the essential ingredient for Section 447 or section 448 are not present in the present context.

12. In view of the above, the ultimate conclusion is that if the present proceeding is allowed to be continued in view of the aforesaid facts and circumstances of the case, that will be an abuse of process of court because the allegations levelled in the complaint is absurd and inherently improbable in view of the documents available in the record including the Annexures.

13. CRR 493 of 2019 is accordingly allowed.

14. Let all the proceedings in criminal complaint being Complaint Case 14 of 2018 pending before the learned 2nd Special Court, Kolkata is hereby quashed. However, there will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE,J.)