**01.07.2022**

**CRR 905 of 2011**

**M/s. Shalimar Pellet Feed Limited & Ors.**

**The State of West Bengal**

**Mr. Susanta Dutta,**
**Mr. Hitendra Pramanik.**

**...for the Petitioners**

**Mr. Imtiaz Ahmed,**
**Mr. Shibasish Banerjee**
**Ms. Smita Saha.**

**...for the State**

This is an application filed under Section 401 and 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceedings in Case No. C/3522/2008, being renumbered as C/33301/08 pending before the Learned Metropolitan Magistrate, 10th Court, Calcutta, under Section 58A(6) of the Companies Act, 1956, along with all the orders passed therein including the Orders dated November 14, 2008 and November 22, 2008.

Petitioners filed C.R.A.N. No. 279 of 2016 praying for stay of further proceeding and/or extension of order of stay till disposal of the criminal revision application. In the said petition it was averred that one of the Petitioners, namely, Chiranji Lal Agarwal breathed his last on 01.05.2015. A copy of death certificate was annexed to the said application to substantiate the contention. Prosecution, therefore, on death of the Petitioner No.3 abets against him.

The Petitioner No. 1 was a private limited company which became a deemed public limited company with effect from 31.03.2007 under Section 43(A) of the Companies Act. One J. N. Pathak a shareholder of the petitioner no.1 (hereinafter termed as “the company”) advanced a sum of Rs. 3,32,328/- on 23.5.1994 as unsecured loan bearing interest. Interest was paid regularly by the company. Assistance Registrar of Companies, being the Opposite Party No.2 issued show cause notice against the company on 28th August, 2008 alleging that in course of scrutinizing the security of balance sheet and profit and loss of accounts. It was alleged that an unsecured loan amounting to Rs. 3,32,328/- was maintained/renewed from a shareholder. Subsequently, criminal complaint was lodged by the Assistance Registrar of the Companies being the impugned proceeding C/522/2008 renumbered as C/33301/08 which is pending before the Learned Metropolitan Magistrate, 10th Court, Calcutta, under Section 58A(6) of the Companies Act, 1956.

Mr. Susanta Dutta appearing for the petitioners submitted that prima facie the allegations are unsustainable as Mr. J. N. Pathak who advanced loan to the company, was a shareholder. Such a loan to the company or borrowing of a company is permissible as that kind of transactions come within definition of “Deposit” under Section 2(b)(ix) of the Companies (Acceptance and Deposits) Rules, 1975. Borrowing from a shareholder is permissible under the law prevailing at material point of time by a private company. Petitioner No. 1 was a private company at the time of advancement of loan by a person who was shareholder of the company. In such conspectus of facts, according to Mr. Dutta, prima facie the allegation is not tenable there being no material to substantiate such allegation. It is a case of abuse of the process of court as the prosecution is misconceived. In such a case like this, it is apt to invoke jurisdiction under section 482 of the Code of Criminal Procedure, 1973 to quash the pending complaint case. Therefore, according to him the pending prosecution should be quashed.

*Per contra*, Mr. Ahmed submitted that the question whether the advancement of loan by Mr. Pathak was valid or not under the law should be decided on the basis of material documents, namely, resolution of company, resolution of Board of Directors, statutory declaration as contemplated in section 2(b)(ix) of the Companies (Acceptance and Deposits) Rules, 1975 along with others. Without scrutinizing the material documents, there cannot be any abrupt conclusion in this regard. According to Mr. Ahmed, this is not a fit case where this Court should exercise jurisdiction under Section 482 of the Code of Criminal Procedure.

I have heard rival submissions.

It is no longer res integra that power under Section 482 should be exercised sparingly and in exceptional cases and in particular to give effect to an order of the court, to prevent abuse of the process of court and otherwise to secure the ends of justice. This power is to be exercised *ex debito justitiae* to do real and substantial justice. It is also a trite law that while exercising of jurisdiction under Section 482, High Court would not ordinarily embark upon an inquiry or mini trial. In ***State of M.P. v. Awadh Kishore Gupta*, (2004) 1 SCC 691** Supreme Court of India observed that it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. It was further elucidated:

> "When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to

short-circuit a prosecution and bring about its sudden death."

Whether the provisions of section 58A(6) applies in case of the petitioners and whether the petitioners are exempted by virtue of operation of rule 2(b)(ix) of the Companies (Acceptance and Deposits) Rules, 1975 depends on certain contingencies. There is nothing on record to demonstrate the a declaration, as required under rule 2(b)(ix) of the Companies (Acceptance and Deposits) Rules, 1975 was made at the material point of time. Whether the accusation is tenable or not, whether the petitioners have committed the alleged offence or not can only be decided ondetailed scrutiny of material documents as well as on appreciation of evidence. It is not a case where the complaint at its face value does not disclose commission of an offence. Prima facie it appears that there is no abuse of the process of court or that false and frivolous allegations are slapped.

Therefore, it is not fit case where the jurisdiction under Section 482 can be exercised. I agree with the submission of Mr. Ahmed in this regard. Accordingly the petition stands dismissed.

No order of cost.

**(Sugato Majumdar, J.)**