

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**I.A. No. CRAN/1/2022
in
C.R.R. 1372 of 2022**

**Pali Commercial Co. Ltd. & Ors.
Vs.
State of West Bengal & Anr.**

**For the petitioner : Mr. Ayan Bhattacharjee, Adv.
Mr. Anil Choudhury, Adv.
Ms. Sreeparna Das, Adv.**

**For the State : Mr. Neguive Ahmed, Adv.
Mr. Iqbal Kabir, Adv.
Ms. Tina Mitra, Adv.**

Heard on : 29.06.2022

Judgment On : 29.06.2022.

Bibek Chaudhuri, J.

This is an application for extension of interim order of stay. The complaint case being C.Case No.2361/2021 was registered against the petitioners for violation of the provision of Section 204 of the Companies Act, 2013.

It is contended by Mr.Bhattacharjee, learned Advocate for the petitioners referring to sub-section 4 of Section 204 of the Companies

Act that if a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be liable to penalty of two lakh rupees. Thus for violation of Section 204, a penalty is imposed. According to Mr. Bhattacharjee, penalty is not a penal provision within the meaning of criminal liability. It is not as same as fine imposed upon an offender.

Mr. Bhattacharjee also refers to Section 454 of the Companies Act, which deals with adjudication of penalties. Section 454 runs thus:-

"454. Adjudication of penalties.-(1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section(1).

(3) The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating

therein any non-compliance or default under the relevant provisions of this Act; and

- (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit]

[Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of Section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.]

(4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to [such company, the officer who is in default or any other person].

(5) Any person aggrieved by an order made by the adjudicating officer under sub-section(3) may prefer an appeal to the Regional Director having jurisdiction in the matter.

(6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in

such form, manner and be accompanied by such fees as may be prescribed.

(7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

(8) (i) Where company [fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,] within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(ii) [Where an officer of a company or any other person] who is in default [fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,] within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both."

Thus, it is contended by Mr. Bhattacharjee that for adjudication of penalty, a criminal court is not authorized to take cognizance on the basis of a complaint filed by the Registrar of Companies.

I have carefully perused the entire materials on record and the law related therewith.

In my view the instant complaint cannot be entertained in view of the provision of Section 454 read with Section 204 of the Companies Act, 2013.

Mr. Ahmed, learned Public Prosecutor-in-Charge, on the other hand, submits that at this stage the Court cannot adjudicate the matter and similar statement may be made before the Trial Court by the petitioner praying for discharge. I am of the view that when the petition of complaint is barred specifically under the Companies Act, this Court has every jurisdiction under Section 482 of the Code of Criminal Procedure to quash the proceeding. Accordingly, the instant criminal revision is **disposed of** quashing complaint case No.2361 of 2021, pending before the Court of the learned Chief Judicial Magistrate at Alipore.

This will however, not disentitled the opposite party No.2 to take necessary action under Section 454 of the Companies Act against the petitioners.

(Bibek Chaudhuri, J.)