

CRR 1395 of 2010
Til Limited & Ors.
Vs
The State of West Bengal & Anr.

Mr. Phiroze Edulji

... for the petitioners.

Despite service, the opposite parties are not represented.

Let the affidavit of service filed by the petitioners be kept with the records.

The petitioners seek to quash a complaint case being C/5788 of 2010 lodged in the Court of learned Chief Metropolitan Magistrate at Bankshall Court at Calcutta by the opposite party no.2.

Primarily, the allegation levelled in the complaint relates to the violation of Section 196(3) of the Companies Act, 1956, by the petitioners.

Mr. Phiroze Edulji, learned advocate appearing for the petitioners submits that a plain reading of the complaint will make it clear that no cause of action of the case arose within the jurisdiction of the learned Chief Metropolitan Magistrate at Bankshall Court, Calcutta. Therefore the cognizance taken by the learned Magistrate is bad in law.

He, further, argues that the allegations for violation of the provision of Section 196 (3) of the Companies Act, 1956, have not been levelled against the

petitioners respectively. The petitioners cannot be held vicariously liable for the offence committed by the company, unless there are specific allegations against them.

Neither any specific allegation has been made nor any specific role has been attributed to the petitioners by the complainant.

In support of the proposition that since no cause of action arose within the jurisdiction of the learned Chief Metropolitan Magistrate, Bankshall Court, Calcutta, the cognizance taken by the learned Magistrate was bad, Mr. Edulji has relied on the judgments reported at *AIR 2008 SC 2666 (Bhura Ram. v. State of Rajasthan)*, *(1999) 8 SCC 686 (Trisuns Chemical Industry v. Rajesh Agarwal)* and *AIR 2004 SC 4286 (Y. Abraham Ajith vs. Inspector of Police, Chennai)*.

Petitioner no.1 is the company, petitioner nos.2 to 4 are the directors and petitioner no.5 is the secretary of the company.

The relevant part of the complaint is quoted below:

“4. That your petitioner visited the registered office of the company on 07.09.2009 personally to peruse and Inspect the minute books and other books of record of the Accused Company upon payment of the requisite fee but the mens and representative of the Accused Company did not co-operate nor were

inclined to show any of its record and as such inspite of several assurance and visit made by the petitioner the accused deliberately failed to show any of its records.

5. That your petitioner suspect and doubts were more strong due to such act of the Accused Company and as such your petitioner immediately invoked the statutory section of the Companies Act under which the company is bound to allow the Shareholder to inspect the records and minute book upon payment of requisite fees and also provide any information relating to the working the Company. Xerox copy of the said letter dated 07.09.2009 issued Under Section 163 to supply certain information within the statutory period is annexed herewith and marked annexure 'B'.

Section 196 (3) of the Companies Act, 1956 is quoted below :

“196. Inspection of minute books of general meetings.-

(3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to (five thousand

rupees)in respect of each offence.”

It is, therefore, absolutely clear that the opposite party no.2 has not made any specific allegation against the petitioners in their individual capacity.

It has been held in the judgment reported *at AIR 2021 SC 4587 (Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd)* that merely because the accused persons are chairman, managing director, executive director, and other office bearers of the Company automatically they cannot be held vicariously liable for the offence committed by the company unless there are specific allegations against them with respect to their individual role.

In that view of the matter, the present complaint case cannot proceed any further and accordingly the present complaint case no. C/5788 of 2010 under sections 163,196,301, 372A of the Companies Act, 1956, pending before the learned Metropolitan Magistrate 8th Court, Calcutta stands quashed. I have not gone into any other questions as raised by the petitioners.

Accordingly, CRR 1395 of 2010 stands disposed of.

Let urgent certified copies of this order, if applied for, be given to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J)

