Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 2093 of 2002

With

CRAN 2 of 2021

M/s. Nidhan Clinical Laboratory Co. Pvt. Ltd. and another

-Versus-

The State of West Bengal & anr.

For the Petitioner : Mr. Subir Banerjee,
Mr. Sandip Bandopadhyay,
Mrs. Ruxmini Basu Roy

For the Opposite Party no.2 : : Mr. Moyukh Mukherjee,
Mr. Koustav Lal Mukherjee

For the State : Mr. N.P. Agarwal,
Mr. Pratick Bose

Judgment On : 21.11.2022.

This proceeding stems out an application under Section 482 of the Cr P C assails the legality of the proceeding pending before the learned Chief Judicial Magistrate , Alipore in criminal case No.C- 1735 of 1997 .

Briefly stated the petitioner no. 1 is a company within the meaning of Companies Act while petitioner No. 2 is the Director of the Company. On 22nd August, 1991 a term loan of Rs. 20,00,000/- was sanctioned by West Bengal Financial Corporation for setting up the unit of the petitioner no. 1. However due to lower business volume and high rate of interest petitioner no. 1 never earned any profit from 31st March, 1992 to 31st March, 1998. Thereby petitioner no. 1 was left with no other alternative but to borrow money from persons other than shareholders towards working capital. In the year 1994 the petitioner No. 1 procured a temporary accommodation of loan of Rs. 46,500/- and Rs. 56,550/- was repaid with interest. This borrowing of money inspired the Registrar of Companies to take out a petition of complaint under Section 58 (A) of the Companies Act, 1956 read with Rule 3 (2) (ii) of the Companies (Acceptance of deposit) Rules, 1975, before the learned Chief Judicial Magistrate , Alipore who was pleased to take cognizance and to issue process under Section 204 of the Cr P C upon the petitioner.

Mr. Subir Banerjee, learned counsel representing the petitioner company submits that the authorised share capital of the company admittedly is Rs. 10,00,000/- while paid up capital according to the petition of complaint is Rs. 7,41,000/-. Drawing my attention to the paragraph 5 of the petition of complaint Mr. Banerjee submits that admittedly the total amount of deposit of the kind referred to in the rule 3 (2) (ii) of Companies (Acceptance of Deposits) Rules,1975 (hereinafter referred to as the said rule) was Rs. 56,550/- against the total amount of Rs.- Minus Rs. 9,31,061/- being the aggregate paid up capital. According to Mr. Banerjee, the averment made in the petiiton of complaint is factually incorrect inasmuch as paid up capital was Rs. 7,41,000/-. Drawing my attention to Rule 3 (2)(ii) Mr. Banerjee submits it is not permissible for any company other than government company to accept any other deposit if the amount of such deposit together with the amount of such other deposit other than any of the deposits referred to in clause (i) outstanding on the date of accpetance or renewal exceeds 25 per cent of the aggregate of the paid up share Capital and free reserves of the company. According to Mr. Banerjee amount borrowed by the company from persons other than share holders is much below the prescribed limit. The company could have borrowed Rs. 1,85,250/- instead of that company borrowed a sum of Rs. 56,550/- .

Mr. Banerjee, argued that the petition of complaint is palpably barred by limitation as punishment prescribed is only of fine and under Section 468 of the Criminal Procedure Code in such cases the prescribed period of limitation is six months from the date of knowledge.

Refuting such contention of Mr. Banerjee , Mr. Moyukh Mukherjee learned counsel representing the opposite party no. 2 submits that the provision of Section 58A is not restricted to imposition of only fine. It envisages that in appropriate cases the company may be sentenced to suffer imprisonment for five years. Therefore, the limitation of six months cannot create any impediment to initiate a proceeding under Section 58A of the Companies Act, 1956 read with Rule 3 (2) (ii) of the Companies (Acccpetance of Deposit) Rule 1975 after elapse of six months.

Endeavour of Mr. Mukherjee to impress the Court that this company borrowed money exceeding prescribed limit as laid down under Rule 3(2)(ii) of the said rule appears to be futile one. Based on admitted paid up capital of Rs. 7,41,000/- it is found that company was at the liberty to borrow money to the tune of Rs. 1,85,000/- and a sum of Rs. 56,550/- is far below the prescribed limit. In fact in the petition of complaint itself the complainant admitted that company was sustaining loss amounting Rs. 9,31,061/- at the relevant point of time . Mr. Mukherjee very candidly submits that the matter may be adjudicated by way of thorough trial which will not cause prejudice to either of the parties.

When admittedly it is found that the petitioner company did not cause any infraction to the rule prescribed and the proceeding was initiated based on certain incorrect facts,. in my opinion, to allow the proceeding to continue for some more time would the amount to abuse of process of law. This is a fit case to invoke provision of Section 482 of the Cr P C to quash the proceeding which I accordingly do. .

This criminal revision is , thus allowed on contest, but without costs.

The proceeding pending before the Chief Judicial Magistrate at Alipore stands quashed.

All applications stand disposed of. Interim order, if any stands vacated.

The petitoner No. 2 be set at liberty and be discharged from the bail bond.

All parties are to act on the server copy of this order.

Urgent certified copy, if applied for, be given to the parties on usual undertakings.

(Siddhartha Roy Chowdhury, J.)