

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-41011-2021(O&M)

Date of Decision:-28.07.2022

Piyush Kumar.

.....Appellants.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Akshay Bhan, Senior Advocate assisted by
Mr. HPS Sandhu, Advocate &
Mr. Sushant Kareer, Advocate for the Petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.

This petition under Section 482 Cr.PC has been filed seeking quashing of the Complaint No.Summ-273-2019 dated 04.12.2019 under Sections 47/48/50 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Annexure P-11, hereinafter known as the Act), summoning order dated 04.12.2019 (Annexure P-12) passed by the learned Chief Judicial Magistrate, Gurugram and all subsequent proceedings arising therefrom.

2. The facts of the present case in brief as emanating from this petition are given hereinafter:-

(i) M/s IDP Education India Pvt Ltd is a company engaged in the field of international education and is a wholly owned subsidiary of IDP

Education Limited and is said to be a global leader in international education services- helping students studying in English speaking countries. A publicly listed company on the Australian Securities Exchange (ASX) IDP has partnered with more than 700 leading universities schools and colleges across Australia Canada New Zealand the United Kingdom Ireland and the United States. The company is also a co owner of IELTS which helps hopeful applicants book and prepare for the IELTS test.

IDP operates in India through IDP Education India Private Limited (IDP India), a 100% owned subsidiary IDP India has over 41 offices spread across 15 states to support student placement and IELTS operations with 1000 education specialists. The company also has 23 test centers specifically for computer delivered IELTS tests in addition to multiple locations for paper based IELTS examinations.

(ii) One of the India offices of the aforesaid IDP Education India Private Ltd was in Gurugram. In the year 2019 a need was felt to shift to a new premises which was identified as 5th 6th & 7th Floor Tower-B Global Gateway M.G. Road Near Dronacharya Metro Station, Gurugram, Haryana and the same was taken on lease by IDP Education India Private Ltd. To carry out the interior and fit out work of the aforesaid premises, M/s IDP Education India Pvt Ltd entered into an agreement with one CBRE South Asia Private Limited on 09.07.2019. True copy of the agreement dated 09.07.2019 entered into between M/s IDP Education India Pvt Ltd and CBRE South Asia Private Limited is appended to the petition and is marked **Annexure P-1**. As per the petitioners a perusal of the agreement (Annexure P-1) shows that CBRE South Asia Private Limited was to carry out the entire work on the premises in question which was to be completed in a

period of three months

(iii) The aforesaid agreement was executed by its Regional Finance Controller. The Petitioner is not a signatory to this agreement although he was then an employee of M/s IDP Education India Pvt Ltd having the designation of Regional Director South Asia. However at that point in time, the petitioner was not on the Board of Directors of Ms IDP Education India Pvt Ltd. As per the Records of the Registrar of Companies the petitioner was inducted into the Board of Directors of M/s IDP Education India Pvt. Ltd on 24.09.2019. The petitioner is not a signatory to the lease deeds executed on behalf of IDP Education India Private Ltd either True copy of the form submitted to the Registrar of Companies dated 24.09.2019 is appended to the petition and marked **Annexure P-2**.

(iv) Upon execution of the agreement CBRE South Asia Private Limited commenced work at the premises in question on or around 15.07.2019.

(v) Section 7 of the Act requires that within 60 days of the commencement of the applicability of the Act to an “establishment” which in the present case would be the date of commencement of work the “employer” has to make an application for Registration of the said “establishment” under the Act to the Registering Officer treating itself to be the “employer” as per the definition under the Act. CBRE South Asia Private Limited is said to have made an application within the stipulated time in the requisite Form 1 seeking registration of the “establishment” True copy of the application made by CBRE South Asia Private Limited seeking registering of the “establishment” was appended to the petition as **Annexure P-3**.

(vi) The definitions of “Contractor”, “employer” & “establishment” under the Act are reproduced herein under:-

“ **Section 2(g) defines “contractor”** as

“ contractor” means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;”

“**Section 2(i) defines “employer”** as

“ employer”, in relation to an establishment, means the owner thereof, and includes,-

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the Chief Executive Officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor”.

Section 2(j) defines “establishment” as

“ establishment” means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not

being more than rupees ten lakhs”;

(vii) Under Rule 17 of the Rules, the application for registration was to be accompanied by a receipt showing payment of requisite fees. This fees was duly paid by CBRE South Asia Private Limited within the stipulated time. True copy of the receipt of payment of fees dated 06.08.2019 was appended as **Annexure P-4**.

(viii) Rules 20(3) and 86(1) of the Rules require the “employer” to intimate the date of commencement of work with necessary particulars in Form-IV. CBRE South Asia Private Limited is said to have complied with this requirement as well by duly filling up Form-IV and submitted it to the statutory authorities. True copy of the Form-IV submitted by CBRE South Asia Private Limited was appended as **Annexure P-5**.

(ix) An inspection of the premises in question is said to have been carried out by the Assistant Director, Industrial Safety & Health, Gurgaon, Haryana on 06.09.2019. An inspection report was thereafter prepared by him mentioning 18 alleged violations of the provisions of the Act and Rules. In this inspection report, the name of the “establishment” was mentioned as M/S IDP Education Ltd., which as per the petitioner was not the correct name of the employer of the petitioner, which is M/S IDP Education India Pvt Ltd. The name of the “employer” was stated in this report to be "Piyush Kumar", the petitioner herein. True copy of the inspection report dated 06.09.2019 was appended as **Annexure P-6**.

(x) Although the name of the petitioner was mentioned as the “employer”, this report is never said to have been served upon the petitioner. This report eventually made its way to IDP Education India Private Ltd. only through CBRE South Asia Private Limited. Upon being

assured by CBRE South Asia Private Limited that there were no violations as alleged in the inspection report, IDP Education India Pvt Ltd. authorised CBRE South Asia Private Limited to represent it before the statutory authorities. Even on the date of this inspection and the inspection report, the petitioner was not on the Board of Directors of M/s IDP Education India Pvt Ltd.

(xi) As per the petitioner, although M/s IDP Education India Pvt Ltd. had authorised CBRE South Asia Private Limited to represent it, one IDI Designs Pvt. Ltd. sent a letter to the Chief Inspector Inspection, Haryana, that they were engaged as Contractors providing civil & interior fit out work at the premises in question. Comments were made with respect to each of the 18 alleged violations and necessary compliances were already existent when the inspection was made. True copy of the letter dated 09.10.2019 submitted by IDI Designs Pvt., Ltd. was appended as **Annexure P-7**.

(xii) The petitioner and M/s IDP Education India Pvt. Ltd., are said to have been informed by CBRE South Asia Private Limited that neither CBRE South Asia Private Limited nor IDI Designs Pvt. Ltd. had received any response from the statutory authorities to the aforementioned letter sent by IDI Designs Pvt. Ltd.

(xiii) Meanwhile the application for registration made by CBRE South Asia Private Limited was processed by the respondents and eventually the certificate of registration came to be issued by the Registering Officer on 18.10.2019. As per the petitioner, this Certificate which is issued by the respondent authorities themselves, does not mention the petitioner to be either the “employer” or the “contractor” and even the

name of the “establishment” is mentioned as CBRE South Asia Private Limited. The Registration Certificate clearly mentioned the name of “Mr. Gurjot Singh Bhatia”, the then Managing Director, Project Management, India, Middle East and North Africa-CBRE, under the head of “Name and address of employer”. True copy of the certificate of registration dated 18.10.2019 was appended to the petition as **Annexure P-8**.

(xiv) As per the agreement, CBRE South Asia Private Limited is said to have completed the interior and fitout work in November 2019, and all construction work came to an end. CBRE South Asia Private Limited deposited an amount of Rs 8,50,000/- as one percent cess payable under the Haryana Building and Other Construction Workers Welfare Cess Act, 1996 and a cess paid certificate was issued by the Labour Department of the government of Haryana. A copy of the letter dated 25.11.2019 issued by CBRE South Asia Private Limited was appended to the petition and marked as Annexure P-9. A copy of the certificate issued by the Labour Department, Government of Haryana dated 04.02.2020 was appended as Annexure P-10 after which M/S IDP Education India Pvt Ltd. is said to have shifted to the said premises.

(xv) Thereafter the Assistant Director (Industrial Safety & Health) filed a complaint before the learned Chief Judicial Magistrate, Gurugram on 04.12.2019, arraying the petitioner as the sole accused. It was alleged in the complaint that the petitioner was the “employer/contractor” of "M/s IDP Education Ltd.", which is covered under the Act. It was further alleged that inspection of the establishment was carried out on 06.09.2019 and it was found that the “employer” was carrying out construction and interior work but there were 18 violations of the Act and the Rules. It was alleged that

such violations by the accused was punishable under Sections 47/48/50 of the Act. True copy of the complaint dated 04.12.2019 filed by the Assistant Director (Industrial Safety & Health) before the learned Chief Judicial Magistrate, Gurugram was appended to the petition as **Annexure P-11**.

The 18 violations mentioned in the complaint were the same violations which were mentioned in the inspection report dated 06.09.2019. Further, the name of the company was mentioned as M/S IDP Education Ltd. whereas the company, where the petitioner works, and which runs from the premises in question, is said to be M/S IDP Education India Pvt Ltd.

(xvi) The Chief Judicial Magistrate took up the complaint on the same day it was filed; dispensed with the recording of preliminary evidence; took cognizance of offences under Sections 47/48/50 of the Act and issued summons against the petitioner. A copy of the order dated 04.12.2019 passed by the learned Chief Judicial Magistrate, Gurugram in Summ-273-2019 is appended to the petition and marked as **Annexure P-12**.

(xvii) The complaint dated 4.12.2019 (**Annexure P-11**) and the summoning order dated 04.12.2019 (**Annexure P-12**) and all subsequent proceedings are under challenge in this petition.

3. The petitioner in this case has raised a number of grounds for quashing the complaint and the summoning order. Firstly, it is stated that certificate of registration dated 18.10.2019 with respect to the premises in question did not name the petitioner either as an “employer” or a “contractor”. The “establishment” was not named to be M/s IDP Education India Pvt. Ltd., but specifically names its to be CBRE South Asia Pvt. Ltd. Therefore, when the respondent going by their own certificate did not name the petitioner as “employer” or “contractor” then the petitioner could not be

named as an accused merely by describing him as an “employer/contractor”. Since the petitioner has been named as an accused only on the allegations that he is employer/contractor which in fact is not as is apparent from the documents attached, the criminal prosecution against the petitioner could not be sustained in the eyes of law.

Secondly, it is stated that Section 53(1) of the Act provides that in case of offences by companies the persons who were incharge of and responsible to the company for the conduct of the business of the company along with the company shall be proceeded against. However, in the present case there is no allegation that the petitioner was incharge of or responsible to the company for the conduct of its business. In the absence of any such averments or specific allegation in the complaint, the petitioner could not be proceeded against as an accused in the present case. Merely, because the person is a “director” of the company was not sufficient to attract the provisions of the Act.

Thirdly, it is stated that in terms of Explanation B to Section 53 of the Act a director includes a partner in the firm. The petitioner did become a director on the board of directors of M/s IDP Education India Pvt. Ltd. w.e.f. 24.09.2019 but he is not a partner.

Fourthly, it is stated that in terms of Section 53 of the Act, the prosecution may be initiated against any Director, Manager, Secretary or other officer of the company if there is a proof available to show that the offense was committed with the consent or connivance or is attributable to any neglect on the part of the such Director, Manager, Secretary or other officer of the company. There was no such accusation against the petitioner in the present complaint and therefore, the criminal prosecution was liable

to be quashed.

Fifthly, it was stated that by virtue of Section 54-A of the Act no court could take cognizance of the offence except on a complaint made by or with the previous sanction in writing of the Director General or Chief Inspector. In the present case the same has not been done and therefore, the summoning order was liable to be quashed.

Sixthly, it was stated that from the definitions in the Act the “contractor” in relation to a building or other construction work may be a person other than the owner of the subject property at whose instance such work is undertaken. The responsibility for compliance with the Act and the Rules is of the person who falls within the description of “employer” with respect to the building worker. It is the “employer” who constitutes the “establishment” which is duty bound under the Act and the Rules to put in position the requisite compliance. It was not even alleged that the petitioner was the employer with respect to the building workers found during investigation. And therefore no liability could be fastened on the petitioner.

Some other grounds have been raised as well which need not be adverted to because they were not controverted and in any case would not be germane to the controversy in view of what follows.

4. However, the primary ground raised by the petitioner was that in the present case though the petitioner had been arrayed as an accused, the company i.e. M/s IDP Education India Pvt Ltd. had not been so arrayed and, therefore, in terms of Section 53 of the Act the proceedings against the petitioner alone were not maintainable. Reliance was placed on the judgment in **S.N. Subrahmanyam Vs. State 2019(1) Crimes 94** and the relevant paragraph is reproduced herein below:-

“ (t) Because it has been held by the Hon'ble Delhi High Court in the case of S.N. Subrahmanyam Vs. State in a judgment reported in 2019(1) Crimes 94, inter alia, that 52. Having regard to the statutory scheme and also the stipulations of the contract dated 29.03.2012, there is no escape from the prima facie conclusion that the construction contractor company is not only the principal employer of the workers engaged in the construction project where the fatal accident took place but was also responsible for arranging all the prescribed safety measures under the Rules. Section 47 read with Section 53 of the Building and Construction Workers Act thus creates a corporate criminal liability against the said company and by virtue of the principles of vicarious criminal liability, every person who, at the time when the said offence was committed, was in-charge of, and was responsible to, the said company for the conduct of its business, as well as the company, are deemed to be liable to be proceeded against. Just as in the case of Section 141 of Negotiable Instruments Act, by virtue of the office they hold, such persons as work in the capacity of a managing director or the joint managing director or, for that matter, persons employed as in-charge of the construction work at site, be it in a managerial position or in any supervisory position, are deemed to be in-charge of and responsible for the conduct of the business, to the company. They can, therefore, be proceeded against in terms of Section 53. At the same time, however, merely because a person is a "director" of the company is not sufficient to attract Section 53, there being no deeming that by holding such position he is rendered to be one who is “in-charge of” or “responsible to the company” for the conduct of its business. As is also well settled in the context of

prosecutions under the Negotiable Instruments Act, though it is necessary to specifically aver in the complaint that the person sought to be prosecuted was in-charge of or responsible to the company for the conduct of its business “at the time the offence was committed”, there is no requirement in law for “further particulars to be given” in the complaint about his role, this being subject matter of proof to be adduced at the trial.”

5. This petition came up for hearing before this Court on 4.10.2021 when the following order was passed:-

“ Case heard via video conference.

By this petition, the petitioner seeks quashing of complaint bearing no. Summ-273-2019, dated 04.12.2019, alleging therein the commission of offences punishable under the provisions of Sections 47/48/50 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, pending in the court of the learned Chief Judicial Magistrate, Gurugram, as also all other subsequent proceedings arising therefrom.

Learned senior counsel appearing for the petitioner inter alia submits twofold as follows:-

Firstly, that the petitioner is not the contractor who has violated any of the provisions of the aforesaid Act of 1996, he being the Regional Director of the Company (M/s IDP Education Pvt. Ltd.), as had issued a contract to M/s CBRE South Asia Pvt. Ltd., for the purpose of construction and refurbishing the office of the petitioners' company; and consequently even in terms of Rule 292 (3) of the Haryana Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rule, 2005, the petitioner cannot be held liable for violation of the terms of the said Act, the petitioners' company not being the 'pay master' of the employees whose conditions of service were allegedly

violated by the contractor.

Second, he relies upon an order dated 21.09.2007, of the Supreme Court, in CP Jain and others vs. Inspector, Building and another,

(SLP CrI. 853 of 2007), the relevant part of which reads as follows:-

“ Appellants herein who are the Directors and Officers of the National Thermal Power Corporation, which is a company within the meaning of the provisions of Section 53 of the said Act, are sought to be prosecuted without the company being impleaded as a party. The statute provides for vicarious liability on the part part of the officers concerned, although in law they may not be otherwise liable, only in the event of statutory requirements are fulfilled. In such a situation, it was obligatory on the part of the complainant-respondents to comply with the statutory requirement by impleading the company as a party as an accused.

In this view of the matter, the impugned judgment cannot be sustained. It is set aside accordingly. The order taking cognizance against the appellants is quashed.”

He submits that thus, even the company of the petitioner not having been arraigned as an accused in the complaint filed (copy Annexure P-1), the complaint itself is not sustainable.

Notice of motion.

Mr. Munish Sharma, learned AAG, Haryana, accepts notice on behalf of the respondent State, on the asking of the court.

A copy of the petition be e-mailed to him today itself by learned counsel for the petitioner.

Adjourned to 03.11.2021, with the next date of hearing before the trial court being 16.11.2021.

To be listed in the urgent motion list.

A gazetted officer is directed to file a reply to the petition.

If a reply is not filed at least one week before the next date of hearing, answering the aforesaid two contentions made by learned senior counsel, the head of the department

concerned shall be summoned to court.”

6. A reply dated 2.12.2021 was submitted by Mr. Shailesh Ahlawat, Assistant Director, Industrial Safety & Health Circle-I, Gurugram. The reply dealt with two aspects mentioned in the order dated 4.10.2021. Regarding issue/query no.1 the State reply was that reading the definition of “employer” under Section 2(i) the definition of “establishment” under Section 2(1)(J) and Section 44 which deals with the responsibility of an employer, it was apparent that the owner of the establishment for whom or for whose benefit the construction activity was carried out was also liable under the Act even though a contractor had been engaged. Reference was made to the judgment in **Adani Agri Logistics Limited & Anr. Vs. State of Haryana & Ors. CWP No.6102 of 2008** Decided on **21.05.2010**. A copy of this judgment dated 21.05.2010 was attached as **Annexure R-1**.

Regarding the second issue/query as to whether an employee of a company could be arrayed as an accused in the absence of the company i.e. Employer of the petitioner being made an accused, it was fairly conceded that in the light of the judgment in **C.P. Jain & Ors. Vs. Inspector Building & Anr. SLP (Crl.) No.853/2007** Decided on **21.09.2007** and the letter dated 02.11.2020 (Annexure R-2) sent by Chief Inspector of Inspection of Building and Construction-cum-Labour Commissioner Haryana, Chandigarh it was obligatory on the part of the complainant to implead the company as a party accused in the complaint. Since the same had not been done the State undertook to withdraw the complaint to file a fresh one. However, directions were sought from this Court to condone the delay in filing the fresh complaint. Para 6 of the State reply is as under:-

“ That in view of the above circumstances, the answering respondent is left with no other option except to withdraw the impugned criminal complaint (Annexure P-11) from the Court of learned CJM after obtaining permission to file a fresh one after impleading the company i.e. M/s IDP Education India Limited, Gurugram as necessary accused party. But in that eventuality the limitation under Section 55 of the Act of 1996 does not permit to file the complaint because as per Section 55 of the Act of 1996 such complaints can be filed only within a period of three months from the date on which the commission of the offence comes to the knowledge of the Chief Inspector (competent authority).

In view of the above said provisions contained in Section 55 of the Act of 1996 fresh complaint regarding the offence committed in the present case is not maintainable at this stage unless specific direction is passed by this Hon'ble Court permitting the answering respondent to file such complaint afresh after impleading the company as an accused also.”.

7. Thereafter, this matter came up for hearing on 4.4.2022 on which date the following order was passed:-

“ **CRM-10873-2022**

The prayer in the present application under Section 482 Cr.PC is for preponement of the date of hearing of the main case from 19.05.2022 to some early date.

*For the reason stated in the application duly supported by affidavit of Piyush Kumar, the application is allowed and date of hearing in the main petition is preponed from 19.05.2022 to **18.04.2022**.*

The Counsel for the parties would assist this Court as to whether the second complaint would be maintainable at the instance of the complainant and whether this Court can condone the delay for filing of a second complaint while allowing the complainant to withdraw the present complaint

before the trial Court.”

On 2.5.2022 the following order was passed:-

“ The Counsel for the State submits that he wishes to seek instructions as to whether he wants to file para-wise reply to the petition as the current reply is only with respect to the interim order dated 04.10.2021.

List on 30.05.2022.

Interim order to continue.”

Again on 30.05.2022 the following order was passed:-

“ The learned State Counsel seeks some more time to comply with the order dated 02.05.2022.

One last opportunity is granted to the counsel for the State to comply with the said order.

Interim order to continue.

Adjourned to 04.07.2022.”

8. Apparently, the State does not wish to file a detailed parawise reply to this petition in view of the submissions regarding withdrawal of the complaint and seeking condonation of delay in filling a fresh complaint in terms of the reply dated 2.12.2021.

Therefore, the only issue which remains to be addressed is whether this Court in exercise of its inherent powers under Section 482 Cr.PC can permit the State to file a fresh complaint by condoning the delay because if condonation of delay is not permitted then the complaint and summoning order have to be quashed in view of the law laid down in **C.P Jain's case (Supra)** as admitted by the State itself.

9. Before addressing the issue in hand it would be apposite to refer to Section 53 of the Act and the same is reproduced hereinbelow:-

“ 53. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the

time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

The judgment in **C.P. Jain** is reproduced herein below:-

"Leave Granted.

Appellants herein are the Chief Managing Director, Executive Director (Project), General Manager and Assistant General Manager (Project) of National Thermal Power Corporation. A complaint petition was filed against them amongst others in the court of the Chief Judicial Magistrate, Sidhi, for alleged commission of an offence under Section 54 of the Buildings and Other Construction Workers (Regulation of Employment and Conditions Services) Act, 1966. Appellants herein having been summoned by the learned Chief Judicial Magistrate, Sidhi, filed an application

before the High Court for quashing the Order dated 5.12.2005 taking cognizance against them, which by reason of the impugned judgment, has been rejected. Appellants herein who are the Directors and Officers of the National Thermal Power Corporation, which is a Company within the meaning of the provisions of Section 53 of the said Act, are sought to be prosecuted without the Company being impleaded as a party. The statute provides for vicarious liability on the part of the officers concerned, although in law they may not be otherwise liable, only in the event the statutory requirements are fulfilled. In such a situation, it was obligatory on the part of the complainant-respondents to comply with the statutory requirement by impleading the Company as a party as an accused. In this view of the matter , the impugned judgment cannot be sustained. It is set aside accordingly.

The order taking cognizance against the appellants is quashed.

Ms. Makhija, the learned Counsel appearing for the respondents, however, states that the respondent shall take steps to file another complaint.

We do not want to make any observations in respect thereof.

The appeals are all allowed.

(S.B. Sinha)

New Delhi

(H.S. Bedi)

September 21, 2007

Therefore, clearly, in the absence of the Company being arrayed as an accused the prosecution of the Director/Employee of the company cannot be permitted.

10. Now the issue that remains to be examined is as to whether this Court could condone the delay in filing of a second complaint in terms of the prayer made by the State in its reply dated 2.12.2021.

11. The leaned Senior Counsel has addressed detailed arguments with regard to the fact that this Court in exercise of its inherent jurisdiction under Section 482 Cr.PC could not condone the delay in filing a fresh

complaint as sought by the State as the Act itself did not permit such condonation.

It is contended that in terms of Section 55 of the Act, no court could take cognizance unless the complaint is made within three months from the alleged commission of the offence and a plain reading of the language does not permit any court to proceed under the Act beyond the period of limitation since the Act does not provide for condonation of delay in the initiation of prosecution/taking of cognizance.

He contends that when the statute has conferred a power to do any act and laid down the manner in which the power is to be exercised, it necessarily prohibits the doing of that act in any other manner other than in the manner prescribed. In the present case since the cognizance could be taken only within three months from the date of commission of the alleged offence and that period having elapsed, no court could take cognizance of the offence punishable under the Act. Reliance is placed on the judgments in **State of Uttar Pradesh Vs. Singhara Singh & Ors. (1964)4 SCR 485**, **State of Rajasthan Vs. Mohinuddin Jamal Aliv & Anr. 2016(12) SCC 608** and **Fairgrowth Investments Ltd. Vs. Custodian (2004)11 SCC 472**.

He contends that Section 9 of the Act which provides for an appeal against an order revoking registration granted under the Act provides for a limitation period of 30 days from the date of communication of the order. However, the proviso to Section 9 (1) empowers the Appellate Authority to entertain an appeal beyond the period of limitation for sufficient cause shown. This power to condone delay under Section 9 of the Act shows that the parliament has consciously excluded the power to condone the delay only in case of Section 55 of the Act.

He further contends that in terms of Chapter XXXVI of the Cr.PC the complainant cannot take recourse to Section 473 Cr.PC seeking extension of period of limitation. Section 468 Cr.PC provides the period of limitation for different categories of offences, categorised on the basis of maximum sentence, which can be imposed. Section 473 of the Code empowers courts to condone this delay, notwithstanding anything contained in Section 468 or Sections 469 to 472, if it is satisfied that the delay had been properly explained or, in the interest of justice. On the other hand, Section 55 of the Act indicates that notwithstanding the offence alleged and the maximum sentence which can be imposed, the period of limitation is three months for any offence under the 1996 Act. He submits that reading the Criminal Procedure Code into the Act would cause an anomalous situation. By way of an illustration, for an alleged offence under Section 47 of the Act, the maximum sentence, which can be imposed is six months imprisonment and therefore going by Section 468 of the Code, the period of limitation would be one year. However, going by Section 55 of the 1996 Act, the period of limitation is only three months. It is therefore evident that for the offences under the Act, the provisions of Chapter XXXVI of the Code, particularly Section 473 would not apply. There is no provision akin to Section 473 of the Code in the Act and in the absence thereof, no court can take cognizance of an offence under the Act beyond three months from the date the commission of the alleged offence came to the knowledge of the respondent.

The learned Senior Counsel makes a reference to Section 4 & 5 of the Cr.PC to contend that the offences under Acts other than the IPC shall be investigated/tried in terms of the Cr.PC but subject to the provisions

contained in the Special Act. In fact it is settled law that a special law always prevails over a general law. The 1996 Act, being a special law, has to prevail over the Code, which is a general law, in case of inconsistencies between the two. A plain reading of Section 4(2) and 5 shows that for dealing with offences under the Act, the Code has to be followed subject to what the Act provides. If the Act does not provide for condonation of delay, the same cannot be imported from the Code, in a prosecution for offences under the Act. Reliance is placed on the judgments in **M. S. Srinivasan Vs. The Deputy Director (BOCW), Kanchipuram, Industrial Safety and Health (2019) SCC Online Mad 8997** and **N. Harihara Krishnan Vs. J. Thomas (2018) 13 Supreme Court Cases 663** and **P.P. Unnikrishnan & Anr. Vs Puttiyottil Alikutty & Anr. (2000) 8 Supreme Court Cases 131**.

The learned Senior Counsel further argues that even under Section 142 of the Negotiable Instruments Act, the proviso providing for extension of limitation in taking cognizance was only added by way of an amendment in the year 2002 and prior thereto there was no such provision. It was thus contended that in the Act no such provision for condonation of delay in taking cognizance of a complaint was available and, therefore, no power to extend the period of limitation can be assumed.

While placing reliance on **National Spot Exchange Limited Vs. Anil Kohli, Resolution Professional for Dunar Foods Limited 2021 SCC Online SC 716** he contends that it is settled law that the period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from merely on equitable considerations. There may be a statutory provision, which causes great hardship or inconvenience to

either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor.

On the issue as to whether this Court in exercise of its inherent powers under Section 482 Cr.PC could extend the period of limitation enabling the respondent to file a fresh complaint, the learned Senior Counsel argues that where there is an express bar under an Act, Section 482 Cr.PC could not be resorted to in order to circumvent the bar contained in the Special Act. Reliance is placed on **State Vs. Navjot Sandhu (2003)6 SCC 641**.

With respect to certain other grounds raised in the petition the learned Senior Counsel reiterates that the prosecution ought to be quashed only on the ground that the Company had not been arraigned as an accused and there were no specific averments in the complaint to make the petitioner vicariously liable. The application for registration had been made much prior to the inspection and the respondent had issued a certificate of Registration as well in which the name of the petitioner or the company does not figure as an employer and, therefore, proceeding ought to be quashed. Even otherwise, there was no sanction by the Appropriate Authority prior to initiation of the prosecution and neither the petitioner nor his employer were the paymasters of the employees and, therefore, going by Rule 292(3) of the Haryana Building and Other Construction Workers (Regulation of Employment and Conditions of Service Rule, 2005) the petitioner could not be made an accused.

12. The learned Counsel for the State on the other hand contends that while it is apparent that the present complaint and summoning order are not maintainable in view of the judgment in **C.P. Jain's case (supra)** which

places reliance on Section 53 of the Act, however, this Court in the exercise of its inherent powers under Section 482 Cr.PC could condone the delay and permit the complainant/respondent to file a second complaint making the Company a party respondent/accused. There is no denial to the other issues raised in the petition.

13. I have heard learned Counsel for both the parties at length.

14. Before proceeding further it would be apposite to refer to the relevant provisions of the various Acts which shall be discussed herein below:-

(a) The relevant provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 are as under:-

“ 9. Appeal.—(1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

54. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act except on a complaint—

(a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or

(b) made by an office-bearer of a voluntary organisation

registered under the Societies Registration Act, 1860 (21 of 1860); or

(c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926 (16 of 1926).

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

55. Limitation of prosecutions.—No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

(b) Section 142 of the Negotiable Instruments Act, 1881 is reproduced as under:-

“142 Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

[(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.-For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account]

(c) Sections 4 and 5 of the Code of Criminal Procedure are reproduced as under:-

“ 4. Trial of offences under the Indian Penal Code and other laws.-(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

Section 468 and 473 of the Code of Criminal Procedure Cr.PC are reproduced as under:-

“ 468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

- (a) six months, if the offence is punishable with fine only*
- (b) **one year, if the offence is punishable with imprisonment for a term not exceeding one year;***
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

1[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

473. Extension of period of limitation in certain cases.-
Notwithstanding anything contained in the foregoing provisions of this Chapter, any court may make cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

15. The Learned Senior Counsel has relied upon the following judgments to contend that when the law provides for the doing of an act in a particular manner, it necessarily prohibits the doing of that act in any other manner. The relevant extracts of the judgments are as under:-

In State of Rajasthan Vs. Mohinuddin Jamal Alvi & Ors.

(2016) 12 Supreme Court Cases 608, the Hon'ble Supreme Court held as under:-

*commission of offense under TADA is to be recorded by the police without the prior approval of District Superintendent of Police. The specific authority which is named under sub-Section (1) of Section 20A is **District Superintendent of Police**. In the present case, it is on record that the approval that was taken was of Additional Director General of Police Mr. Shyam Partap Singh Rathore. The TADA Court has treated the said approval as valid because of the reason that approval is given by an authority which is higher than the District Superintendent of Police. The question, therefore, is as to whether it is only District Superintendent of Police whose approval will meet the requirements of law or it can be given by an Officer higher in rank. This question is no more res integra and is settled by a series of judgments of this Court. It is not necessary to give account of all those judgments as in the latest judgment rendered by this Court in **Hussein Ghadially v. State of Gujarat**, all the previous precedents are taken note of and on that basis, this Court has reiterated the position in law that even an authority higher in rank would not be competent to give the approval as required under sub-section(1) of Section 21A of the TADA Act. The same has been interpreted in the said judgment in the following manner:*

"21. A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the Police without the prior approval of the District Superintendent of Police. The question is whether the power of approval vested in the District Superintendent of Police could be exercised by either the Government or the Additional Police Commissioner, Surat in the instant case. Our answer to that question is in the negative. The reasons are not far to seek:

21.1 We say so firstly because the statute vests the grant approval in an authority specifically designated for the purpose. That being so, no one except the authority so designated, can exercise that power. Permitting exercise of the power by any other authority whether superior or inferior to the authority designated by the Statute will have the effect of re- writing the provision and defeating the legislative purpose behind the same - a course that is legally impermissible. In Joint Action Committee of Air Line Pilots' Association of India v. Director General of Civil Aviation, 2011(5) RCR (Civil) 558 : (2011) 5 SCC 435, this Court declared that even senior officials cannot provide any guidelines or direction to the authority under the statute to act in a particular manner.

21.2. Secondly, because exercise of the power vested in the District Superintendent of Police under Section 20-A (1) would involve application of mind by the officer concerned to the material placed before him on the basis whereof, alone a decision whether or not information regarding commission of an offence under TADA should be recorded can be taken. Exercise of the power granting or refusing approval under Section 20-A (1) in its very nature casts a duty upon the officer concerned to evaluate the information and determine having regard to all attendant

circumstances whether or not a case for invoking the provisions of TADA is made out. Exercise of that power by anyone other than the designated authority viz. the District Superintendent of Police would amount to such other authority clutching at the jurisdiction of the designated officer, no matter such officer or authority purporting to exercise that power is superior in rank and position to the officer authorised by law to take the decision.

*21.3. Thirdly, because if the Statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. All other modes or methods of doing that thing must be deemed to have been prohibited. That proposition of law first was stated in **Taylor v. Taylor (1875) LR 1 ChD 426** and adopted later by the Judicial Committee in **Nazir Ahmed v. King Emperor AIR 1936 Privy Council 253** and by this Court in a series of judgments including those in **Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh AIR 1954 Supreme Court 322**, **State of Uttar Pradesh v. Singhara Singh AIR 1964 Supreme Court 358**, **Chandra Kishore Jha v. Mahavir Prasad 1999 (8) SCC 266**, **Dhananjaya Reddy v. State of Karnataka, 2001(2) RCR (Criminal) 196 : 2001 (4) SCC 9** and **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. 2008 (4) SCC 755**. The principle stated in the above decisions applies to the cases at hand not because there is any specific procedure that is prescribed by the Statute for grant of approval but because if the approval could be granted by anyone in the police hierarchy the provision specifying the authority for grant of such approval might as well not have been enacted."*

In State of U.P. Vs. Singhara Singh & Ors. AIR 1964 SC 358

the Hon'ble Supreme Court held as under:-

“ 8. The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrate the power to record statements or confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him.

With respect to the provisions of Sections 468 and 473 of

Criminal Procedure Code not applying to the Special Acts in the context of

allowing/disallowing condonation of delay in taking cognizance of a complaint, the learned Senior Counsel has placed reliance on **P.P. Unnikrishnan & Anr. Vs Puttiyottil Alikutty & Anr. (2000) 8 Supreme Court Cases 131** and the relevant extracts of the same are reproduced herein below:-

“ 9. It is clear from a reading of the said opening provision that the entire Chapter concerns only with the period of limitation prescribed in the succeeding provisions. Of course the usual play at the joints is provided therein by using the words "unless the context otherwise requires". But on reading Section 473 it would become crystal clear that it is intended to be applied only with reference to the period fixed in Section 468 of the Code. Now we extract below Section 473 of the Code :

"473. Extension of period of limitation in certain cases.- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may make cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

10. The extension of period contemplated in the said Section is only by way of an exception to the period fixed as per the provisions of Chapter XXXVI of the Code. Section 473 of the Code therefore cannot operate in respect of any period of limitation prescribed under any other enactment. Hence we are unable to uphold the view adopted by the learned Single Judge of the High Court that Section 473 of the Code can appropriately be invoked by the complainant for circumventing the bar contained in Section 64(3) of the K.P. Act.

In the context of drawing a parallel between Section 142 of the Negotiable Instruments Act, 1881 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, so far as vicarious liability and limitation is concerned, the learned Senior Counsel refers to **M.S. Srinivasan Vs. Deputy Director (2019) SCC Online Mad 8997** wherein it was held that where the company was not made an accused and the name of one of the directors had been added as an accused much after the filing of the complaint, the proceedings were

quashed. The relevant extracts of the judgment are reproduced as under:-

6. *The learned Senior Counsel for the petitioner would further submit that the impugned private complaint was originally filed as against one, Mr. Milagirpattu Sundaravaradan S/o. Mr. Narayana Rao on 20.10.2014. On direction of the learned Chief Judicial Magistrate, Cuddalore the name of the accused was corrected and the petitioner name has been inserted as an accused on 09.07.2015. It is also seen that originally the show cause notice was issued to the said Mr. Milagirpattu Sundaravaradan S/o. Mr. Narayana Rao on 06.08.2014. Subsequently amended show cause notice was issued on the same person including certain other violations and provisions under BOCW Act and the BOCW rules. Therefore, the second show cause notice was also issued to the wrong person who is not at all the Proprietor of the Company M/s. IL & FS Tamil Nadu Power Company Limited. Admittedly, without any show cause notice the complainant was permitted to insert the name of the petitioner in the complaint. That apart, the limitation to file a complaint is three months from the date of commissions of offence. It is relevant to extract the provision under [Section 55](#) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 Act, which reads as follows:*

“55. Limitation of Prosecution:- No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commissions of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.”

As per those provisions, the complaint ought to have been filed within a period of three months from the date of commission of offence. In the case on hand, the alleged occurrence took place on 26.07.2014 and though the complaint was filed on 20.10.2014, the name of the petitioner was inserted only on 09.07.2015. As such the complaint is barred by limitation.

7. *Per contra, Mr. M. Mohamed Riyaz, Additional Public Prosecutor appearing for the respondent contended that M/s. IL & FS Tamil Nadu Power Company Limited is a registered company and the petitioner is the proprietor of the said company and he is the employer who allotted the works to the employees on 26.07.2014, and he violated the various provisions of BOCW Act and the BOCW rules. The accident occurred at the project site in which three contract labourers sustained grievous injuries and died, and other three persons seriously injured and treated in the hospital. Therefore, the respondent complainant issued show cause notice on 18.08.2014 to the petitioner. The petitioner's explanation is not satisfied and as such he lodged*

complaint under the BOCW Act and the BOCW rules only because of the safety measures are violated by the petitioner regarding the rules and provisions under the BOCW Act and the BOCW rules. Therefore he vehemently opposed the petition to quash the private complaint.

8. *Heard Mr.C.Manishankhar, Senior Counsel appearing on behalf of Mr.K.Krishnamoorthy, the learned counsel for the petitioner, and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the respondent.*

9. *It is seen that the complaint has been filed against the petitioner in the capacity of employer. Admittedly the company M/s.IL & FS Tamil Nadu Power Company Limited entered into an agreement with M/s. Shandong Tiejun Electric Power Engineering Limited for the purpose of putting up construction at the project site in turn the said M/s.Shandong Tiejun Electric Power Engineering Limited entered into an agreement in its capacity as employer with M/s.Larsen & Toubro Ltd as its contractor to execute and render such services as employer by agreement dated 06.02.2012. Therefore, the petitioner though he is a chairman of M/s.IL & FS Tamil Nadu Power Company Limited, he is not the employer to the workers engaged in the construction site by the contractor namely M/s.Larsen & Toubro Ltd. It is relevant to extract the provisions under Section (2)(1)(i)(iii) of the Act, which reads follows:*

*“2.Definitions: (1) in this Act, unless the context otherwise requires,
(i) “employer” in relation to an establishment, means the owner thereof, and includes,-(i)
(ii)....
(iii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;”*

As such as per the agreement and the show cause notice issued by the respondent / complainant the complaint itself is not maintainable as against the petitioner under BOCW Act and the BOCW rules. Therefore, the learned Chief Judicial Magistrate, Cuddalore ought not to have taken cognizance of the matter as against the petitioner.

10. *As per [Section 53](#) of the said Act, which provides where an offence committed by a company, the company shall be deemed to be guilty of the offence. Even assuming that the offence committed by the petitioner's company M/s.IL &FS Tamil Nadu Power Company Limited, the complaint was not filed as against the company, and it has been filed only as against the Chairman of the said Company. In this regard, it is relevant to extract the*

provision under [Section 53](#) (1) of the Building and Other Constructions Workers (Regulation of Employment and Conditions of Service) Act, 1996, which reads as follows:

“ Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded and punished accordingly.”

11. *The Judgment rendered by the Hon'ble Supreme Court of India in the case of **Aneeta Hada Vs. Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661** is squarely applicable to this case, the relevant portion of which is as follows:*

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V.Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

The Hon'ble Supreme Court of India has held that while dealing with the case prosecuted under the NI Act, the offence committed by the company has to be filed under Section 141 of NI Act. The same principle is applied to the present

case, where the company committed offence and the company shall be shown as accused. Further it is also seen that in similar matters, the Madurai Bench of this Court in *Crl.O.P.(MD).No.2938 of 2017 reported in (2018) 4 MLJ (Crl) 225* has held as follows:

“9. Admittedly in this case, the complaint has been filed against the petitioner directly by showing him as the Principal Employer. An inspection was carried out by the respondent in the construction site, where the construction was carried out by engaging the contractor. Under such circumstances, the Principal Employer insofar as the workers engaged in the construction site by the contractor, will be only the contractor namely M/s.GK.Shetty Builders Private Limited and not the petitioner. The same is clear from a reading of Section 2(1)(i)(iii) of BOCW Act, which is extracted herein under:

“2.Definitions:(1) in this Act, unless the context otherwise requires, (i)”employer” in relation to an establishment, means the owner thereof, and includes,-

(i)

(ii)

(iii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

Therefore, the very complaint filed by the respondent against the petitioner under the BOCW Act is not maintainable.

10. Even if M/s HCL Technologies Private Limited is considered to be the employer, the respondent cannot prosecute the complaint without adding M/s.HCL Technologies Private Limited as an accused. For this purpose, it is relevant to extract the judgment of the Hon'ble Supreme Court in ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited reported in AIR 2012 SC 2795***, which is as follows:

"42. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words 'as well as the company' appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its

reputation. There can be situations when the corporate reputation is affected when a director is indicted.?

11. In the above said judgment, the Supreme Court was dealing with Section 141 of The Negotiable Instruments Act, which in pari materia with Section 53 of the BOCW Act. Therefore, the same principal will apply for the offence committed by the companies in this case also.

12. The Karnataka High Court had an occasion to deal with the very same issue with regard to the scope of Section 53 of the BOCW Act and the Karnataka High Court in **Sri Jitendra Virwani Vs. The State of Karnataka reported in 2013 SCC Online 6547** has held as follows: 5. Thus, from reading of the aforesaid Section, it is clear that if the offence alleged is committed by the Company, then the Company as well as all other persons, who at the time of commission of offence were incharge and responsible to the Company for the conduct of the business of the company, are deemed to be guilty of such offence and they are liable to be proceeded and punished accordingly.

6. Similar provision contained in Section 141 of the Negotiable Instruments Act (in short 'the NI Act') came up for consideration before the larger Bench of Apex Court in the case of **Aneeta Hada Vs. Godfather Travels & Tours Private Limited reported in 2012(5) SCC 661**. The Apex Court has held that to prosecute the functionaries of the Company for the offence committed by the Company, there should be specific averments in the complaint to the effect that such person/s was/is incharge of and being responsible for conduct of business of the Company and in the absence of such specific averment, the functionaries of the Company cannot be prosecuted. It is further held in the said decision that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. It is further held that the words "as well as the company" appearing in Section make it clear that when the Company can be prosecuted, then only persons mentioned in the other categories could be vicariously liable for offence subject to the averments in the petition and proof thereof.

7. Section 141 of the N.I. Act, is in analogous to Section 53 of the Act. Therefore, the principles of law laid down in Aneeta Hada's case squarely applies to the facts of the case. Admittedly, in the case on hand the Company which is the principal offender has not been prosecuted. The petitioner in the present case is an Executive Director of the company and he is being prosecuted in that capacity.

8. Therefore, in the light of the law laid down in the aforesaid decision, the prosecution launched against these petitioners as functionaries of the company, is not maintainable since the company is not being prosecuted. In this view of the matter, the prosecution launched against these petitioners are liable to be quashed.

9. Accordingly, the petition is allowed. The prosecution launched against these petitioners in C.C. No. 191/2013 on the file of the Metropolitan Magistrate Traffic Court - I, Mayo Hall, Bangalore City, is hereby quashed.”

13. The judgment of the Karnataka High Court cited supra will squarely apply to the facts of this case. In this case admittedly M/s.HCL Technologies limited has not been made as an accused and the petitioner has been directly prosecuted by showing him as the Principal Employer. The complaint filed by the respondent is not maintainable even on this ground.”

12. The above said judgments are squarely applicable to the present case. Admittedly, in the case on hand, the company M/s.IL & FS Tamil Nadu Power Company Limited has not been included as an accused. That apart, the show cause notice was also not issued to the petitioner / accused and without any cause of action, the present complaint has been instituted as against the petitioner that too in the capacity of employer of M/s.IL & FS Tamil Nadu Power Company Limited.

13. Therefore, in view of the above discussions, the complaint is barred by limitation and it is not maintainable as against the petitioner as such this Criminal Original Petition is allowed consequently the case in C.C.No.19 of 2015 on the file of the Chief Judicial Magistrate, Cuddalore is quashed. The connected miscellaneous petitions are closed.

In **N. Harihara Krishnan Vs. J. Thomas (2018)13 Supreme Court Cases 663** the Hon'ble Supreme Court held that a company should not be summoned under Section 319 Cr.PC as an additional accused after the period of limitation had expired when originally only the signatory of the cheque was an accused. The relevant extracts of the judgments are as under:-

“ 10. Assuming for the sake of argument that an amount of Rs.39 lakhs was due towards the balance of the sale consideration of the above-mentioned three sales from the FIRM of which the appellant is said to be the Managing Partner.

The cheque in question was drawn by a private company (DAKSHIN) (a third party to the sale transactions and such a payment is permissible under the Indian Contract Act) and allegedly signed by the appellant in his capacity as the Director of DAKSHIN.

11. *The learned Counsel for the appellant argued;*

*11.1. Since the cheque in question was drawn on the account of DAKSHIN, the person primarily liable for punishment under Section 138 of THE ACT would be DAKSHIN. The appellant herein being the alleged signatory in his capacity as the Director of DAKSHIN would only be vicariously liable (if at all) for the offence committed by DAKSHIN. In view of the law declared by this Court in **Aneeta Hada v. Godfather Travels & Tours Private Limited, 2012(2) RCR (Criminal) 854 : 2012(2) Recent Apex Judgments (R.A.J.) 562 : (2012) 5 SCC 661** the prosecution against the appellant could not be successfully maintained without prosecuting DAKSHIN. Since the complaint was originally lodged only against the appellant, the respondent resorted to the device of filing an application on 19.8.2015 under Section 319 Cr.P.C. to 'implead' (in substance summon) DAKSHIN as an accused/respondent to the complaint.*

11.2 Section 142(1)(a) of the act inter alia stipulates that a complaint regarding the commission of the offence under Section 138 must be "made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138". The application under Section 319 of Cr.P.C. by which DAKSHIN is sought to be impleaded (summoned) is in substance a complaint against DAKSHIN which is filed some three years after the expiry of the period of 15 days stipulated under clause (c) of the proviso to Section 138. Therefore barred by the stipulation contained in Section 141(1)(b) of THE ACT. No valid explanation for condoning such a long delay is offered by the respondent. Both the courts below erred in coming to the conclusion that once the offence is taken cognizance of, the question of delay does not arise.

11.3 Section 138 stipulates inter alia that (i) the payee of the cheque must give a notice in writing to the drawer of the cheque within 30 days from the "receipt of the information by him from the bank regarding the return of the cheque as unpaid"; (ii) the notice must contain a demand for the payment of the amount due on the cheque; and (iii) upon the receipt of the notice, if the drawer of the cheque fails to make payment within 15 days of the receipt of the notice, prosecution could be launched within one month thereafter. The timelines stipulated under clauses (a) to (c) of the proviso to Section 138 are mandatory.

11.4. The (instant) application under Section 319 Cr.P.C. came to be filed (on 19.08.2015) some three years after the dishonour of the cheque by the bank (on 30.8.2012). If the respondent were to file complaint under Section 138 against DAKSHIN on 19.8.2015, such a complaint would be clearly not

maintainable as it would have been far beyond the permissible time within which a complaint could have been filed under Section 138 of the act. Therefore, both the courts below erred in allowing the application.

17. We are of the opinion that it is difficult to understand the conclusions recorded by both the courts below. They are wholly illogical, to use a very mild expression.

18. Section 142 of THE ACT inter alia stipulates that no court shall take cognizance of any offence punishable under Section 138 unless a complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. The relevant portion of Section 142 reads as follows:-

"142 Cognizance of offences. -Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period."

19. The preliminary facts constituting an offence under Section 138 of the Act are; (i) that a cheque is drawn, and (ii) that cheque is dishonored by the Bank when presented by the payee. Under the scheme of Section 138 both the drawer of the cheque and the bank upon which the cheque is drawn are parties against whom the payee of the cheque can have various legal rights, which may have either civil or criminal consequences or perhaps both depending upon the facts of a given case. Section 138 prescribes only one of the consequences, i.e. the prosecution and punishment of only the drawer of the cheque. It is possible in a given case that a bank may without any valid justification decline to honor a cheque drawn on it. For which act of the bank, the drawer of the cheque may in no way be responsible either in fact or in law. In such a fact situation, the payee of the cheque may have legal rights and remedies for the redressal of the injury (if any) caused by the Bank in addition to his rights against the drawer of the cheque.

20. The offence under Section 138 of the act is capable of being committed only by the drawer of the cheque. The logic of the High Court that since the offence is already taken cognizance of, there is no need to take cognizance of the offence against Dakshin is flawed. Section 141 stipulates the liability for the offence punishable under Section 138 of the Act when the person committing

such an offence happens to be a company - in other words when the drawer of the cheque happens to be a company. Relevant portion of Section 141 reads as follows:-

" Section 141. Offences by companies.- (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

21. This Court in Aneeta Hada, had an occasion to examine the question "whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act") without the company being arraigned as an accused" and held as follows:-

"59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. ..."

Yet the High Court reached a conclusion that the revision filed by the petitioner is not maintainable because Dakshin did not choose to challenge the trial court's order.

22. The High Court failed to appreciate that the liability of the appellant (if any in the context of the facts of the present case) is only statutory because of his legal status as the Direction of Dakshin. Every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque. If Dakshin/drawer of the cheque is sought to be summoned for being tried for an offence under Section 138 of the Act beyond the period of limitation prescribed under the Act, the appellant cannot be told in view of the law declared by this Court in Aneeta Hada that he can make no grievance of that fact on the ground that Dakshin did not make any grievance of such summoning. It is always open to Dakshin to raise the defense that the initiation of prosecution against it is barred by limitation. Dakshin need not necessarily challenge the summoning order. It can raise such a defense in the course of trial.

*23. Coming to the view of the High Court that only the offence is taken cognizance of and there is no need to take cognizance of an offence accused-wise is an erroneous view in the context of a prosecution under the Act. Most probably the High Court recorded such conclusion (though not expressly stated) on the basis of the judgment of this Court in **Raghubans Dubey v. State***

of Bihar, AIR 1967 Supreme Court 1167, where it was stated:

"9. ...In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. ..."

Such a statement of law was made by this Court in the background of the scheme of the CrPC.

24. *The CrPC is an enactment which is designed to regulate the procedures governing the investigation of crimes in order to get the perpetrators of the crime punished. A crime is an act or omission prohibited by law attracting certain legal consequences like imprisonment, fine etc. Obviously, acts or omissions constituting offences/crimes are capable of being committed only by persons either natural or juridical. The CrPC imposes a duty on the investigating agencies to gather evidence necessary to establish the occurrence of a crime and to trace out the perpetrators of the crime in order to get them punished. Punishment can be inflicted only by a competent Court but not by the investigating agency. Courts are authorised to inflict punishment if only they are satisfied that the evidence gathered by the investigating agency is sufficient to establish that (1) a crime had been committed; and (2) the persons charged with the offence (accused) and brought before the Court by the investigating agency for trial are the perpetrators of the crime.*

25. *Under the Scheme of the CrPC, any investigating agency (normally the police) is bound to investigate by following the procedure prescribed therein once it receives either information regarding the commission of a cognizable offence or an order from a Magistrate to investigate into the allegation of the occurrence of a non-cognizable offence and submit a report under Section 173. Section 173(2)(i)(d) inter alia stipulates that the report should contain a statement:*

"173.(2)(i)(d) Whether any offence appears to have been committed and if so by whom?"

The conclusions reached by the police after investigation into the above two questions are required to be scrutinized by a competent Court. It is only after the Court is satisfied that the evidence collected by the investigating agency is sufficient in law to punish the accused, such accused can be punished. Taking cognizance of an offence by the Court is one of the initial steps in the process. Thereafter, the investigating agency is required to collect evidence (investigate) and place the same before the Court under Section 173 Cr.P.C.

26. *The scheme of the prosecution in punishing under Section 138 of the Act is different from the scheme of the CrPC. Section 138 creates an offence and*

prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients flows from a document which evidences the existence of such an ingredient. The only other ingredient which is required to be proved to establish the commission of an offence under Section 138 is that inspite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand.

27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the Act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a Court can

proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, the Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non-obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

28. *The question whether the respondent had sufficient cause for not filing the complaint against Dakshin within the period prescribed under the Act is not examined by either of the courts below. As rightly pointed out, the application, which is the subject matter of the instant appeal purportedly filed invoking Section 319 Cr.P.C., is only a device by which the respondent seeks to initiate prosecution against Dakshin beyond the period of limitation stipulated under the Act.*

29. *No doubt Section 142 authorises the Court to condone the delay in appropriate cases. We find no reason to condone the delay. The justification advanced by the respondent that it is during the course of the trial, the respondent realized that the cheque in question was drawn on the account of Dakshin is a manifestly false statement. On the face of the cheque, it is clear that it was drawn on account of Dakshin. Admittedly the respondent issued a notice contemplated under clause (b) of the proviso to Section 138 to Dakshin. The fact is recorded by the High Court. The relevant portion is already extracted in para 15.*

30. *The judgment under appeal is contrary to the language of the Act as expounded by this Court in Aneeta Hada (supra) and, therefore, cannot be sustained. The judgment is, accordingly, set aside. The appeal is allowed. In the circumstances, the costs is quantified at Rs.1,00,000/- (Rupees One Lakh Only).*

In the context of hardship suffered by a party if the delay was not condoned and that fact being irrelevant, reliance is placed on the judgment in **National Spot Exchange Limited Vs. Anil Kohli, Resolution Professional for Dunar Foods Limited 2021 SCC Online SC 716** where the Hon'ble Supreme Court held as under:-

“ 24. *It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to*

genuineness, viz., illness, accident etc. However, under the statute, the Parliament has not carved out any exception of such a situation. Therefore, in a given case, it may cause hardship, however, unless the Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with the Parliament and the legislature. The courts have no jurisdiction and/or authority to carve out any exception. If the courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.

25. *In the case of Rohitash Kumar (supra), this court observed and held as under:-*

“ 23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor. It is a well settled 15 principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. (Vide: Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal, AIR 1950 SC 265; and D. D. Joshi & Ors. v. Union of India & Ors., (1983) 2 SCC 235).

24. In Bengal Immunity Co. Ltd. v. State of Bihar & Ors., AIR 1955 SC 661 it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, ‘dura lex sed lex’ which mean “the law is hard but it is the law.” may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

25. In Mysore State Electricity Board v. Bangalore Woolen, Cotton & Silk Mills Ltd. & Ors., AIR 1963 SC 1128, a Constitution Bench of this Court held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. In Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529, this Court, while dealing with the same issue observed as under:-

“ A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.” (See also: The Commissioner of Income Tax, West Bengal I, Calcutta v. M/s Vegetables Products Ltd., (1973) 1 SCC 442; and Tata Power Company Ltd. v. Reliance Energy Limited & Ors., (2009) 16 SCC 659). 26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.”

26. In the case of *Mishri Lal & Others (supra)*, it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.

27. In the case of *Raghunath Rai Bareja (supra)*, in paras 30 to 37, this Court observed and held as under :-

30. Thus, in *Madamanchi Ramappa & Anr. vs. Muthaluru Bojjappa*, AIR 1963 SC 1633 (vide para 12) this Court observed:

“[W] what is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law”

31. In *Council for Indian School Certificate Examination vs. Isha Mittal & Anr.*, 2000 (7) SCC 521 (vide para 4) this Court observed:

“Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.”

32. Similarly in *P.M. Latha & Anr. vs. State of Kerala & Ors.* 2003(3) SCC 541 (vide para 13) this Court observed:

“13. Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law.”
(Emphasis supplied)

33. In *Laxminarayan R. Bhattad & Ors. vs. State of Maharashtra & Anr.* 2003(5) SCC 413 (vide para 73) this Court observed:

“73. It is now well settled that when there is a conflict between law and equity the former shall prevail.”

34. Similarly in *Nasiruddin & Ors. vs. Sita Ram Agarwal*, 2003(2) SCC 577 (vide para 35) this Court observed:

“35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.”

35. Similarly in *E. Palanisamy vs. Palanisamy (Dead) by Lrs. & Ors.*, 2003(1) SCC 123 (vide para 5) this Court observed: “Equitable considerations have no place where the statute contained express provisions”.

36. In *India House vs. Kishan N. Lalwani*, 2003(9) SCC 393 (vide para 7) this Court held that:

“The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations.”

(Emphasis supplied)

37. In the present case, while equity is in favour of the respondent-Bank, the law is in favour of the appellant, since we are of the opinion that the 17 impugned order of the High Court is clearly in violation of Section 31 of the RDB Act, and moreover the claim is time-barred in view of Article 136 of the Limitation Act read with Section 24 of the RDB Act. We cannot but comment that it is the Bank itself which is to blame because after its first Execution Petition was dismissed on 23.8.1990 it should have immediately thereafter filed

a second Execution Petition, but instead it filed the second Execution Petition only in 1994 which was dismissed on 18.8.1994. Thereafter, again, the Bank waited for 5 years and it was only on 1.4.1999 that it filed its third Execution Petition. We fail to understand why the Bank waited from 1990 to 1994 and again from 1994 to 1999 in filing its Execution Petitions. Hence, it is the Bank which is responsible for not getting the decree executed well in time."

In the case before this Court, the claim made by the Bank was found to be time barred and to that this Court observed that while the equity is in favour of the Bank, the law is not in favour of the borrower, however, since the claim is time barred, as the execution petition was barred by the limitation, this court set-aside as such the execution petition.

28. In the case of Popat Bahiru Govardhane & Others (supra), this Court has observed and held that it is a settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the Statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. It is further observed that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same.

As to whether the inherent powers of the Court under Section 482 Cr.PC could be invoked to condone the delay, the learned Senior Counsel refers to the judgment in **State through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru & Ors. (2003)6 Supreme Court Cases 641** where the Hon'ble Supreme Court held as under:-

" 29. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayanan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of the justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category.

It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment. ”

16. From a perusal of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Negotiable Instruments Act, 1881, Criminal Procedure Code along with the various judgments (supra) it is apparent that when the law provides for doing of an act in a particular manner, it by necessary implication prohibits the doing of that act in any other manner. In the present case, Section 55 of the Act provides for taking of cognizance and the same is three months from the date of knowledge of the commission of the alleged offence. No condonation of delay, in taking cognizance of a complaint is provided for under the Act whereas to file an appeal in terms of Section 9, delay can be condoned. This fact alone clearly establishes that the legislature has consciously not provided for condonation of delay in taking cognizance of a complaint but permitted condonation of delay in certain circumstances under the Act. Therefore, what has not been provided for under the Special Act cannot be brought in by using the inherent powers of this Court under Section 482 Cr.PC as per *State through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru's case (supra)*.

Furthermore, the provisions of the Code of Criminal Procedure regarding the condonation of delay as per Section 473 Cr.PC can also not be resorted to for the purposes of condoning the delay in filing a subsequent complaint under another Act/Special Act. Section 473 Cr.PC would apply only with respect to the time period fixed in Section 468 Cr.PC. As has

rightly been pointed out by the learned Senior Counsel, under Section 47 of the Act the maximum sentence is 06 months and going by Section 468 Cr.PC the limitation would be one year in filing of a complaint. However, under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Section 55 provides for limitation of three months. Thus it is apparent that the provisions of the Cr.PC cannot be invoked, in order to condone the delay in taking cognizance of a complaint under the Special Act and the condonation of delay under the Special Act shall only be permitted as per the provisions of that Act alone.

17. In view of the aforesaid discussion, the Complaint No.Summ-273-2019 dated 04.12.2019 under Sections 47/48/50 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Annexure P-11), Summoning Order dated 04.12.2019 (Annexure P-12) passed by the learned Chief Judicial Magistrate, Gurugram and all subsequent proceedings arising therefrom are quashed. Further no permission can be granted by this Court to permit the filing of a second complaint after condoning the delay.

(JASJIT SINGH BEDI)
JUDGE

July 28, 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No