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NEUTRAL CITATION NO: 2022/DHC/004015

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CRL.M.C. No. 4037 of 2022 & CRL.MA 16678/2022**

Between:-

ALOK MALANI
S/O LATE MOHAN LAL MALANI
R/O 110/3, BANARSI DAS ESTATE,
TIMARPUR, DELHI 110054. .....PETITIONER

(Through: Mr. Ashesh Lal and Mr. Raghav Parwaliyas, Advocates.)

AND

STATE
THROUGH SHO
P.S. LAHORI GATE
NORTH DISTRICT, DELHI ..... RESPONDENT NO. 1

ANAND MALANI
S/O LATE TARACHAND MALANI
R/O 110/3, BANARSI DAS ESTATE,
TIMARPUR, DELHI-110054 .....RESPONDENT NO. 2

(Through Mr. Utkarsh, APP for State with SI Praveen Kumar, PS Lahori Gate Mr. Dinhar Takiar, Advocate for R-2)

% Pronounced on : 27.09.2022

J U D G M E N T

1. This petition under Section 482 of the Cr.P.C. is directed against the order dated 25.08.2018 passed by learned Additional Sessions Judge-05, Central, Tis Hazari Courts, Delhi, whereby, the Revisional Court has found that charge for offence punishable under Sections 406 IPC and 420 of the IPC cannot go together, and, therefore quashed the charge under Section 406 of the IPC and has found that petitioner and other accused persons are liable to be prosecuted for offences punishable under Sections 420/468/471/34 IPC.

2. Learned counsel appearing on behalf of the petitioner, at the outset, submits that there has been delay in filing the instant petition and has given various reasons, in the petition. According to him, against the impugned order, his father Mohan Malani filed the revision petition; however, on account of his death, the said revision petition was to be withdrawn and the petitioner has filed the instant revision petition.

3. Learned counsel appearing on behalf of the petitioner further submits that no charge for offence punishable under Section 420/468/471/34 IPC is made out against the petitioner. He has referred to various documents to indicate that there were various litigations pending between the parties; and the allegations made in the FIR are in contravention to the pleadings made therein. He has referred to various paragraphs of the petition filed before the Company Law Board, Principal Bench, Delhi, by the complainant.

4. This court has considered the submissions made by learned counsel for the petitioner and has perused the record.

5. It is well settled that at the stage of framing of charge, the court is required to see whether there is *prima facie* material against the accused to proceed with the trial. The court is not required to marshal the evidence and record findings that the material collected by the

prosecuting agency is sufficient or not for convicting the accused. learned Metropolitan Magistrate while passing the order on framing of charge had considered the material available before him. He has noted that the complainant company, was not doing any business; and the shareholding and the directorship in the company was stagnant. However, the company holds a valuable asset being land and building bearing No. 8528, Ganesh Towers, Building, Roshanara Road, Delhi, estimated in crores of rupees. In the concluding paragraph, following observations have been recorded:

> *"On the basis of certified documents & available documents, testimony witnesses Mohan Lal Malani in conspiracy with his son found to have increased his shareholding from around 33% to 84% by issuing shares to himself by himself only & thereby illegally reducing the shareholding of the complainant and Late Sh. R.D. Malani nearly from 32.64% to 8.68% in the company dishonestly and fraudulently by not following company act rules & regulations with intention to cheat/deceive the complainant and other shareholders/directors of the company keeping in mind a dishonest intention to illegally usurp the valuable immovable property of the company. By such increasing the shares of himself Mohan Lal Malani caused wrongful gain to himself and caused wrongful loss to complainant & to other shareholders in the said company. In that process Mohal Lal Malani and Alok Malani prepared forged documents with intention to commit fraud to have a claim over major shares in the said company.*
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> *It is alleged that Mohan Lal Malani and Alok Malani had succeeding usurping the share of others in said company holdings. Mohan Lal Malani instead of paying back the loan amount of Rs. 3,05,000/- of late Sh. R.D. Malani to the legal heirs of late Sh. R.D. Malani transferred this loan to company's share application money and issued extra share certificates to himself thus misappropriated that whole loan amount to himself which further proved dishonest intentions and illegal*

designs/planning to cause harm and loss to other stakeholders in said company.

6. Therefore, in view of aforesaid facts and circumstances, on the basis of record, prima facie offence is made out against the accused persons namely Mohan Lal Malani and Alok Malani for the offence u/s 406/420/468/471/34 IPC as they committed criminal breach of trust, cheating and forgery with the assets and records of company, Charge be framed accordingly."

6. The Revisional Court vide impugned order, has held as under:

"15. In the present case, it thus prima facie appears the Revisionists acting in conspiracy with each other, increased the shareholding of the Company by issuing shares only in the name of Mohan Malani, and thereby illegally reducing the shareholding of the Complainant and late Sh. R.D. Malani from 32.64% to 8.68% in the Company dishonestly and fraudulently by not following provisions of Company Act with intention to cheat/ deceive the Complainant and other shareholders/ Directors of the Company with a view to illegally usurp the valuable immovable property of the Company by increasing the shares of himself. Revisionist Mohan Lal thus caused wrongful gain to himself and thereby also caused wrongful loss to the Complainant and other shareholders in the Company. In that process, Revisionists forged the documents with intention to take over major shares in the said Company.

16. Further Revisionist instead of paying back the loan amount of Rs.3,05,000/- of Late Sh. R.D. Malani to his legal heirs, transferred this loan amount to Company's share application money and issued extra Share Certificate to himself and thus caused wrongful loss to other shareholders.

17. In view of the aforesaid material available on record, it prima facie appears that Revisionists committed offence punishable under Section 420/468/471/34 IPC."

7. However, in paragraph No. 18, the Revisional Court has fo that the charge under Section 406/420 IPC cannot go together, therefore, the accused has been discharged from charge under Section 406 IPC.

8. The arguments made by learned counsel appearing on behalf of the petitioner have been considered by two courts and it has been found that the present is not a case of 'no evidence'. This court in exercise of its power under Section 482 Cr.P.C. is not inclined to examine each and every argument of the petitioner at this stage to consider whether he at all can be convicted or not but the facts on bare perusal would clearly indicate that there is sufficient material available on record against the present petitioner to prosecute him for the offence alleged against him.

9. In view of the aforesaid, this court does not find any merit in the petition and the same is, accordingly, dismissed. However, it is clarified that the observation made in this order is only for the purpose of deciding this petition. The trial court shall consider the matter on its own merits based on evidence recorded during trial uninfluenced by any observation made in this order.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 27, 2022/*hk*