

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No: CRAN/1/2022

In

C.R.R 592 of 2022

Jairam Sridharan & Anr.

Vs.

Ashok Kumar Lakhotia & Anr.

For the Petitioners: Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Soumen Mohanty, Adv.,
Ms. Chitra Rentala, Adv.,
Mr. Piyush Kumar Ray, Adv.

For the Respondents: Mr. Sabir Ahmed, Adv.,
Mr. Brijesh Giri, Adv.,
Mr. Amit Sureka, Adv.,
Ms. Jyoti Sureka, Adv.

Heard on: 04 January, 2023.

Judgment on: 18 January, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioners have prayed for quashing of a complaint bearing No.CS 81045/2021 filed by the opposite parties alleging, inter alia, that the opposite parties filed the above mentioned complaint against the petitioners and six others alleging commission of offence under Section 420/406/468/477/477A/120B of the IPC. The learned Chief Metropolitan Magistrate took cognizance of offence against the persons including the petitioners and transferred the case to the 19th Court of the Metropolitan Magistrate for disposal. The learned Magistrate issued

process against the petitioners and other accused persons under Section 204 of the Code of Criminal Procedure. It is alleged on behalf of the petitioners that they were erroneously arrayed as accused persons. They were neither impleaded with the company nor the directors of the company during the relevant period of time when the offences were alleged to have been committed. The petitioners were implicated as two of the accused persons by the complainant pleading a case of vicarious liability though the provisions of the IPC did not provide for imposition of vicarious liability and therefore process might not have been issued against the petitioners. The petitioners were appointed directors of Pinamal Capital and Housing Finance Limited (PCHFL) with effect from 7th October, 2021 and 30th September, 2021 respectively.

2. The case of the complainants, in brief, is that they availed a non housing home loan vide Loan Account No.CAL/032661 which was initially sanctioned vide letter dated 29th February, 2012 by First Blue Home Finance Limited which subsequently came to be known as Dewan Housing Finance Corporation Limited (DHFL). As collateral security for the said loan, the complainants mortgaged an immovable property situated at Liluah in the District of Howrah. It is further alleged by the complainant that they repaid loan regularly up to 2019 to 2020. Thereafter, due to Covid-19 and financial constraints, payment of loan become irregular. In October 2020, the complainants approached DHFL for One Times Settlement (OTS). After negotiation one time settlement was arrived at allowing the complainants to pay Rs.33,72,378 towards OTS in

3 equal tranches up to 30th December, 2020. The complainants accepted the OTS and made payment of entire money towards OTS within stipulated period of time. Thereafter, the authorised signatory of DHFL vide letter dated 4th January, 2021 acknowledged closure of loan account on payment of OTS by the complainants. DHFL also issued no due certificate and undertook to return the original property documents within 51 working days to the complainants. In June 2021, the complainant attended the office of PCHFL and requested for return of property documents however the accused No.4 took some time to return the said documents. Subsequently, the accused No.4 visited the office of the complainants and informed them that the loan account had not been settled. Rather 4 EMIs were due and payable by the complainants. He also stated that the loan account may be classified as a non performing asset in case of failure on the part of the complainants to repay the said EMIs. On 22nd June, 2021 the representatives of the complainants went to the office of PCHFL and met accused No.4 and handed over all copies of communications during the period between 28th October, 2020 and 4th January, 2021 stating, inter alia, that the loan account was already settled on payment of OTS. Accused No.2, however denied the authenticity of the communications contending that OTS had not been issued under the appropriate authority of DHFL. Subsequently, vide letter dated 11th June, 2021 PCHFL through its authorised Advocate demanded overdue amounts of the EMIs with a threat to initiate a proceeding under

the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

3. That on 1st December, 2021 the complainants lodged a complaint against the accused persons including the petitioners alleging commission of offence under Sections 420/406/468/477/477A/120B of the IPC. The learned Chief Metropolitan Magistrate took cognizance of offence vide order dated 1st December, 2021 and transferred the case to the 19th Court of the learned Metropolitan Magistrate. The learned Magistrate examined two witnesses including one of the complainants and issued process against the accused persons including the petitioners.

4. It is contended on behalf of the petitioners that during the period for which the complainants claimed one time settlement of the dispute by DHFL it was admitted into Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). Sometimes in 20th November, 2019, the Reserve Bank of India superseded the board of directors of DHFL in exercise of powers conferred under the RBI Act, 1934 and appointed one Mr. R. Subramaniakumar as the Administrator of DHFL. Subsequently, in the month of November, 2019 itself, the RBI filed a Company Petition before the NCLT for initiation of CIRP of DHFL under the provisions of IBC. Vide order dated 3rd December, 2019, the tribunal admitted the Company Petition and confirmed appointment of Mr. R. Subramaniakumar as the Administrator of DHFL to perform all the functions of the resolution professional and complete the CIRP. On 24th December 2019, the committee of creditors of DHFL was formed. On 22nd

December, 2020 PCHFL submitted a resolution plan which was approved by the Committee of Creditors (CoC). Subsequently, upon an application filed by the administrator, the resolution plan was approved by the NCLT vide order dated 7th June, 2021. Vide plan approval, NCLT granted prima facie approval for the reverse merger of Erstwhile Piramal into DHFL. Pursuant to the approval of the resolution plan and in the interregnum, DHFL came to be vested with the monitoring committee which comprised of the Administrator, three representatives of CoC, two representatives nominated by Erstwhile Piramal. The NCLT also appointed one Mr. Ashok Kakkar, Chief Commissioner of Income Tax (retired) in the capacity of an observer cum permanent invitee. The Monitoring Committee was appointed largely to supervise the implementation of the resolution plan. On 30th September, 2021, the Erstwhile Piramal merged into a DHFL resulting in the birth of new entity i.e, PCHFL. After the said reverse merger, on 30th September, 2021 the petitioner No.2 was appointed as a Director of PCHFL and subsequently on 7th October, 2021 the petitioner No.1 became the Director of the said concern. Therefore, the petitioners were in no way connected with the affairs of First Blue Home Finance Limited (FBHFL) or Dewan Housing Finance Corporation Limited. They were also not connected in any way with the loan transaction between the complainants and DHFL. The loan was sanctioned in the month of February, 2012. It is also contended by the learned Senior Counsel on behalf of the petitioners that DHFL had no authority in the month of October, 2020 to settle the loan account of the complainants by one time

settlement because of the fact that the Corporate Insolvency Resolution Process was initiated against DHFL in the year 2019 and the board of directors of DHFL was superseded by an independent administrator by the Reserve Bank of India vide press release dated 20th November, 2019. Learned Senior Counsel on behalf of the petitioners also submits that neither the board of directors nor the authorised officer of DHFL had any authority to settle the loan account on the basis of complainants' prayer for one time settlement in October, 2020.

5. Under the backdrop of aforesaid events, Mr. Ganguly, learned Senior Counsel on behalf of the petitioners relies on a decision of the Hon'ble Supreme Court in **Keki Hormusji Gharda & Ors. vs. Mehervan Rustom Irani & Anr.** reported in **(2009) 6 SCC 475** submits that the principle of vicarious liability is not generally applicable in respect of the offences under the Indian Penal Code. He refers to paragraph 17 of the above mentioned report which runs thus:-

“Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.”

It is further submitted by the learned Senior Counsel that the present petitioners were not the holders of any office at the time of sanction,

disbursement and so-called settlement of loan account of the complainant.

6. On the same issue Mr. Ganguly also refers to another decision of the Hon'ble Supreme Court in **Sunil Bharti Mittal vs. Central Bureau of Investigation** reported in **(2015) 4 SCC 609**. The above report delineates circumstances when director/person-in-charge of the affairs of the company can also be prosecuted, when the company is an accused person. It is held by the Supreme Court that a company is a juristic person which acts through its officers, directors, managing directors, chairman etc. if such a company commits such offence the individual officer who has purported the commission of the offence on behalf of a company can be made an accused along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision. Such vicarious liability of the directors cannot be imputed automatically in the absence of statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In **Aneeta Hada vs. Godfather Travels & Tours (P) Ltd, (2012) 5 SCC 661**, the Supreme Court noted that if a group of persons that guide the business of the companies have the criminal intent that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it

deeming fiction. Here also, the principal of “alter ego”, was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

7. Mr. Ganguly also refers to the decision of the **Pepsi Foods Ltd. vs. Special Judicial Magistrate** reported in **(1998) 5 SCC 749**, where the Hon’ble Supreme Court held as hereunder:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

8. Thus, it is submitted by Mr. Ganguly that the criminal proceeding against the present petitioners is liable to be quashed exercising the

guideline contained in paragraph 102.1, 102.3 and 102.7 of the **Bhajan Lal's case, 1992 Supp (1) SCC 335.**

9. Mr. Sabir Ahmed, learned Advocate for the opposite parties, on the other hand, submits that the business of DHFL was either merged or taken over by PCHFL through insolvency process initiated by the Reserve Bank of India against DHFL and corresponding orders passed by the NCLT. In view of such merger PCHFL acquired the business of DHFL with all its assets and liabilities. DHFL regularized the loan account of the complainants by one time settlement. The complainant deposited entire settled amount in three tranches. Subsequently, PCHFL cannot deny the said one time settlement of the loan account of the complainants and consequent return of their property documents. It is submitted by Mr. Ahmed that the subsequent directors cannot deny the liability of the previous directors. They cannot deny one time settlement. In this regard he specifically relies on a document annexed at page 77 of the revisional application wherein DHFL unequivocally stated that no outstanding amount was due to the complainants. It is submitted on behalf of the complainants that deception by DHFL continued even when petitioner No.1 and 2 took over the charge as directors of PCHFL. In view of such circumstances the learned Magistrate found that prima facie case against the petitioners was established and the criminal proceeding cannot be quashed at this stage without trial.

10. In the instant revision we are concerned with the involvement of the petitioners in the alleged offence.

11. It is not in dispute that the petitioners were not connected in any way with First Blue Home Finance Limited who sanctioned loan in favour of the complainants. They were also not connected with DHFL. The petitioner No.1 became the director of PCHFL with effect from 7th October, 2021 and the petitioner No.2 with effect from 30th September, 2021. It is stated in detail that before the petitioners being the directors the DHFL went through corporate insolvency resolution process. PCHFL submitted a resolution plan on 22nd December, 2020 which was approved by the CoC and the said company was merged into and with DHFL. After merger the petitioners became the directors. They cannot be held to be liable for any act done by or on behalf of DHFL.

12. Thus, on perusal of the written complaint on the basis of which case No. CS 81045/2021 was registered, even if the allegations are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Practically there is no allegation made in the written complaint specifically against the petitioners. No case under Section 406/420/468/477/477A/120B of the IPC was made out against them. As against the petitioners the above mentioned complaint case is manifestly attended with malafide and the said proceeding was instituted maliciously with an ulterior motive for wrecking vengeance on the accused/petitioners compelling them to give effect to the so-called one time settlement which was arrived at by DHFL

at a time when the said DHFL had no authority to settle any account on the ground of pendency of insolvency proceeding.

13. In view of the above discussion the complaint case No.CS/81045/2021 be quashed as against the present petitioners.

14. The instant revision is accordingly disposed of on contest.

(Bibek Chaudhuri, J.)