

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 416 of 2012

LAV JHINGAN

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Deboprati Guha, Adv.

For the State : Mr. Narayan Prasad Agarwal, Adv.
Mr. Pratik Bose, Adv.

Hearing concluded on : 22nd September, 2023

Judgement on : 13th October, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure is filed for quashment of the proceeding in G.R. Case no. 4526 of 2011 pending before the learned Chief Metropolitan Magistrate, Calcutta, corresponding to Hare Street Police Station Case No. 960 of 2011 dated 26th December, 2011 under Sections 406/420/467/468/471/120B of the Indian Penal Code.
2. Briefly stated, Jitendra Nath Roy, an ex-employee of M/s Caritt Moran and Company Private Limited filed a petition of complaint before the learned Chief Metropolitan Magistrate, Calcutta against four persons stating, *inter alia*, that at the relevant point of time all the four persons were the directors of M/s TSAI Enterprises Private Limited a subsidiary of M/s Caritt Moran and Company Private

Limited. At the time of retirement of the petitioner and other co-employees from M/s Caritt Moran and Company Private Limited, the accused persons enticed them to deposit their terminal benefit which the employees received after retirement on superannuation, with M/s TSAI Enterprises Private Limited. They were given to understand that the said amount would fetch 18% interest per annum which would be much higher than any other deposit and the petitioner and other co-employees would be at liberty to withdraw the money so deposited, whenever they wished to withdraw the deposit.

3. The petitioner and his colleagues agreed to deposit the money as told by the accused persons. The accused persons paid interest on the deposited sum up to the month of April, 2009 which was paid in the month of August, 2009. The payment subsequently became irregular and often delayed by month.
4. The petitioner and his colleagues requested the accused persons to refund the money but they turned deaf ear to such request and thus misappropriated a sum of Rs. 21,90,000/-.
5. The petition of complaint since disclosed offence cognizable in nature learned Chief Metropolitan Magistrate, Calcutta was pleased to forward the same to the Officer-in-charge, Hare Street Police Station under Section 156 (3) of the Code of Criminal Procedure and thus Hare Street P.S. Case No. 960 of 2011 dated 26th December, 2011 was registered. Police took up investigation which culminated into submission of charge sheet.

6. Mr. Sandipan Ganguly, learned Senior Counsel for the petitioner challenging the proceeding submits that the petitioner was one of the directors of the company who retired as director with effect from 13th March, 2009. Attention of the Court is drawn to the letter of resignation dated 12th March, 2009. Drawing further attention of the Court to the contention made in the petition of complaint Mr. Ganguly submits that so long the petitioner was the director there was regular payment of interest by the company. The petitioner cannot be held responsible for any development that had happened subsequent to his demitting office. It is further contended that the money was invested in the company M/s TSAI Enterprises Private Limited, a subsidiary of Caritt Moran and Company Private Limited. But the police submitted charge sheet against the directors and not against the company. Therefore, the case as registered is not maintainable, inasmuch as vicarious liability cannot be fastened on the director of the company. In absence of specific provision, vicarious liability is alien to the penal laws.

7. To buttress his point Mr. Ganguly relies upon the judgement of Hon'ble Apex Court in **S.K. Alagh vs. State of U.P. & Ors.** reported in **(2008) 5 SCC 662** wherein it is held :-

“16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.”

8. It is further contended that while invoking jurisdiction under Section 156(3) of the Code of Criminal Procedure learned Chief

Metropolitan Magistrate failed to appreciate the fact that the provision of Section 154(1) and 154(2) were not complied with. According to Mr. Ganguly, the proceeding is manifestation of abuse of process of law.

9. It is further submitted by Mr. Ganguly further that admittedly the petitioner was paid the interest till April, 2009. Therefore, it cannot be said that the accused persons had the intention to dupe the petitioner since inception. Thus, there cannot be any ingredient of cheating within the meaning of Section 415 of the Indian Penal Code, punishable under Section 420.
10. Mr. Pratick Bose, learned Counsel representing the State submits that the employees of Caritt Moran and Company Private Limited invested their savings and other terminal benefits in the company they served as they were given to understand that such deposit would fetch monthly income, more than what any other scheme would fetch. The poor employees were enticed and thus made to deposit the money in the company. The company though paid interest for certain period ultimately duped the ex-employees. Therefore, the proceeding should be allowed to reach its logical conclusion and should not be quashed in the interest of social justice.
11. From the attending facts of the case it is admitted that in the FIR the company has not been arrayed as one of the accused persons. From the supplementary affidavit filed by the petitioner I find that charge sheet no. 187 of 2012 has been filed against the petitioner by the investigating agency and in the charge sheet also company has not been arrayed as accused. It is no more res-integra that the Penal

Code, save and except same provision specifically providing therefor, does not contemplate any vicarious liability. If company commits any offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company and it would be more so, when the allegation is of a criminal conspiracy. But when the company is an offender vicarious liability of the directors cannot be imputed automatically in the absence of any statutory provision to this effect. In this regard we can rely upon the judgement of Hon'ble Apex Court in Sunil **BHARTI MITTAL VS. CENTRAL BUREAU OF INVESTIGATION** reported in **(2015) 4 SCC 609** wherein it is held :-

“42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

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44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is [Section 141](#) of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company 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 a deeming fiction. Here also, the principle 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."

12. Moreover, it is rightly pointed out by Mr. Ganguly that so long the petitioner was there in the company as its director there was no grievance from the end of the depositors who happened to be the ex-employees of the company.
13. Under such circumstances, I am of the view that proceeding in G.R. Case No. 4526 of 2011 pending before the learned Chief Metropolitan Magistrate, Calcutta subsequently, transferred to learned 5th Court, Metropolitan Magistrate, Calcutta is manifestation of abuse of process of law and I am inclined to quash the proceeding qua the petitioner Lav Jhingan.
14. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.
15. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)