IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 712 of 2020

N. Lakshminarayan

Vs.

Enforcement Officer, Enforcement Directorate

For the Petitioner	:	Mr. Milon Mukherjee, Sr. Adv., Mr. Kaushik Gupta, Mr. Anirban Tarafder, Mr. Dipendra Nath Chaunder.
For the Enforcement Directorate	:	Mr. Vipul Kundalia, Mr. Anurag Roy, Ms. U. Ali, Ms. Aditi Singhania.
Heard on	:	15.05.2023
Judgment on	:	14.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in Case No.C-2481/2002 pending before the learned Metropolitan Magistrate, 11th Court, Calcutta under Sections 56 and 68 of the Foreign Exchange Regulation Act, 1973.

2. The petitioner's case is that the complaint was filed by the opposite party on 31st May, 2002.

3. That in the complaint, ITC Limited (hereinafter referred to as “the Company”), a company within the meaning of the Companies Act, 2013 having its registered office at 37, J.L. Nehru Road, Kolkata 700 071(hereinafter referred to as “the Company”) was arraigned as Accused no.1 and the petitioner herein was arraigned as accused no.7.

4. The complaint was filed for alleged contravention of Section 8(1) and 9(1)(a) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as the “Act”) by the Company under Section 56 of the Act.

5. The petitioner and other individuals working for the Company were made vicariously liable for the alleged contravention of the Act by the Company by virtue of Section 68 of the Act.

6. That prior to the filing of the Complaint against the Company and the other individuals including the petitioner, the Enforcement Directorate had issued show cause memorandum No.T-4/18-C/97-SCN XVIII dated 31st March 1998 (hereinafter referred to as “the SCM”) against them. The allegations in the SCM and the complaint are identical. The SCM proposed to hold adjudication proceedings (civil proceeding) and impose penalty under Section 50 of the Act. In the SCM, the petitioner was noticee no.15.

7. That in both the civil and criminal proceedings initiated by the Enforcement Directorate, Section 68 of the Act was invoked, seeking to make individuals such as the petitioner vicariously liable for such alleged contravention by the Company.

8. The company filed a revisional application being CRR No.1891/2004 before this Hon'ble Court, seeking to quash the complaint.

9. **That during the pendency of the said revisional application, the SCM was adjudicated by the Special Director, Enforcement Directorate. After consideration of the material evidence, the Special Director dropped the SCM against the Company and all the individual noticees, including the Petitioner, by a detailed order dated 30th April, 2008.**

10. **Relevant extracts of the said order are reproduced below:-**

> *"74. …. Since the individual noticees who were either Directors or Officials of the Company were charged for the violations allegedly committed by the company in terms of Section 68 of the FERA, 1973, the said charges can be stated to have been proved only in such a situation where the charge against the main noticee have been proved and hence, no proceedings are warranted against the said noticees.* ***Since, the charges against ITC Ltd. had been not proved, the charges against the individual notices also failed automatically."***
>
> ***"75. Having regard to the findings and discussions hereinbefore, I hereby drop the proceedings against M/s. ITC Ltd., Noticee No.1 in SCN No.T-4/18-C/97(SCN-XVIII) dated 31.3.1998 as the charges against the company in the SCN under consideration have not been proved on the basis of material evidences. Consequent upon the above, the charges against the individual noticees i.e. Noticee Nos.2 to 15 are also dropped."***

11. This Hon'ble Court, in light of the aforementioned subsequent development of the Enforcement Directorate exonerating the Company and all the individual noticee on merit in the SCM (civil proceeding), quashed the criminal Complaint in respect of the company alone who was the sole petitioner in CRR 1891 of 2004, which was initiated on the same allegations as those in the SCM. By a Judgment dated 28th February, 2011, this Hon'ble Court held :-

> *"From the result of such departmental proceeding it is crystal clear that company was not involved in any transaction which allegedly culminated in the violation of Sections 8(1) and 9(1) of the Foreign Exchange Regulation Act, 1973 and as such further continuation of the proceeding against the present petitioner will be merely an abuse of the process of law as there is no chance of success of the prosecution in this case to prove the charges under Section 56 read with Section 68 of the Foreign Exchange Regulation Act, 1973. Therefore, I hold that there is sufficient merit in this revision application which is allowed to prevent the abuse the process of law and as such the instant proceeding is quashed and the petitioner is discharged."*

12. That in light of this Hon'ble Court's Judgment allowing the revisional application of the company and quashing the complaint, it is submitted that the complaint ought to abate against all the accuseds, including the petitioner.

13. It is submitted that criminal proceedings cannot continue against the individual, in light of the fact that, in the civil proceedings, the enforcement directorate found the allegations of contravention of the Act by the company and the individual noticees to be without merit.

14. However, **the learned Metropolitan Magistrate, 11th Court, Calcutta,** took notice of the aforesaid judgment of this Hon'ble Court and by an order dated 27th August, 2012, **discharged only the Company**, but not the remaining accuseds, including the petitioner. The said complaint case is still continuing and is coming up for hearing from time to time.

15. That the Complaint has now been pending for 17 years against the Petitioner, although it has been 8 years since this Hon'ble High Court has quashed the complaint in respect of the company and 11 years since the Enforcement Directorate had dropped the proceedings following adjudication

of the SCM. The finding of the Special Director that there was no contravention by the Company, as well as the said Judgment of this Hon'ble Court, absolve such vicarious liability of the individual noticees/accused persons/petitioner under Section 68 of the Act.

16. It is submitted, in terms of this Hon'ble Court's judgment dated 28th February, 2011, all individual accuseds, including the Petitioner, ought to have been discharged inasmuch as they had been arrayed in the complaint only under Section 68 of the Act. It is submitted that Section 68 can only be invoked against individual persons to punish them for contravention of the Act by a company. It is submitted that a mere perusal of Section 68 would reveal that the condition precedent for proceeding against an individual under Section 68 is a contravention of the Act by the Company and not otherwise. Further, in the present case, the Enforcement Directorate has itself found that there has been no contravention by the Company. Therefore, not only has the condition precedent for invoking/proceeding under Section 68 against the individual accuseds ceased to exist, since the exoneration of the Company, against all other individual accused/noticees of all charges of contravention and the same attained finality as far back as 11 years ago. As such, any continuation of the complaint under section 68 of the Act would amount to abuse of the process of law.

17. That it may be apposite to state that under similar circumstances, this Hon'ble Court quashed case No.C-2479/2002 initiated by the Enforcement Directorate against the Company and the petitioner by its Judgment dated 10th November, 2010 in CRR No.1174/2004. In that criminal complaint, the Company, along with individuals working for the

Company such as the Petitioner, were prosecuted under Section 56 read with Section 68 of the Act for alleged contravention of Section 8(1) and 9(1)(a) of the Act. On the basis of the said alleged contravention, a civil proceeding was also initiated by the Enforcement Directorate. In the said civil proceeding, the company and the others were exonerated. The Hon'ble Court took notice of the fact that the Enforcement Directorate had exonerated the Company and its officers (including the Petitioner) of the charges that led to the aforesaid case No.C-2479/2002. This Hon'ble Court thereafter quashed case No.C-2479/2002 by its judgment dated 10th November, 2010. It is submitted that this judgment applies squarely to the present petition.

18. During the pendency of the complaint, the Petitioner had retired from the company on 31st January, 2007. Currently 69 years old, the continuation of the frivolous complaint is having debilitating effect on him.

19. **Mr. Milon Mukherjee, learned senior counsel, appearing for the petitioner** has submitted that the continuance of the complaint against the petitioner, in light of the aforesaid order of the Enforcement Directorate exonerating the Company and the individual noticees of any contravention of the Act, and the judgment of this Hon'ble Court dated 28th February, 2011 in CRR 1891/2004 quashing the complaint, is vexatious, oppressive, and amounts to an abuse of process of law.

20. The quashing of the Complaint by this Hon'ble Court should have resulted in discharge of all the individual accuseds, including the petitioner herein, inasmuch as the individuals were arrayed as accuseds only under Section 68 of the Act.

21. This Hon'ble Court, under similar circumstances, had quashed case No. C-2479/2002 initiated by the Enforcement Directorate against the Company and the individuals accused, including the Petitioner, by its order dated 10^{th} November, 2010 in CRR 1174 of 2004. Even in that case, both civil and criminal proceedings were initiated by the Enforcement.

22. The petitioner has been exonerated based on evidence from all charges of contravention by the Enforcement Directorate, and continuance of the complaint against him is oppressive and is an abuse of the process of law.

23. The continuation of the said complaint is clearly harassing in nature and is liable to be quashed in the interest of justice.

24. The impugned proceeding before the Learned Metropolitan Magistrate, 11^{th} Court, Calcutta, is patently an abuse of the process of the Court and is thus liable to be quashed.

25. **Mr. Vipul Kundalia, learned counsel for the opposite party/Enforcement Directorate is present.**

26. **From the materials on record, it is evident that:-**

I) Vide it's order dated 30.04.2008, the Special Director, Enforcement Directorate while disposing of the SCN No.T-4/18-C/97 (SCN-XVIII) dated 31.03.1998 held:

> *"……….All considered, I find that the charges in the SCN against ITC Ltd. have not been proved. Since the individual noticees who were either Directors of officials of the company were charged for the violations allegedly committed by the company in terms of Section 68 of the FERA, 1973, the said charges can be stated to have been proved only in such a situation where the charge against the main noticee have been proved and hence no proceedings are warranted against the said*

noticees. Since the charges against ITC Ltd. had been not proved, the charges against the individual notices also fail automatically.

ORDER

Having regard to the findings and discussions hereinbefore, I hereby drop the proceedings against M/s. ITC Ltd., Noticee No. 1 in SCN No. T-4/18-C/97(SCN-XVIII) dated 31.3.1998 as the charges against the company in the SCN under consideration have not been proved on the basis of material evidences. Consequent upon the above, the charges against the individual noticees i.e. Noticee Nos. 2 to 15 are also dropped."

Sd/-
(S.K. PANDA)
SPECIAL DIRECTOR

27. The company/accused no.1 ITC Limited preferred a revision being CRR no.1891 of 2004 before this court and in view of order dated 30.04.2008 of the Special Director, ED, the court quashed the proceedings in respect of the company alone, (the sole petitioner before it).

28. The Metropolitan Magistrate, 9th Court, in view of the order of the Hon'ble Court in CRR 1891 of 2004, discharged the accused/company alone, who was the sole petitioner therein, but directed that the case would proceed against the other accused persons.

29. It is seen that the order in revision CRR 1891 of 2004 only states about the company (petitioner before it) and not the other accused persons (notices) (not before the Court).

30. Whereas the order of the Special Officer, Enforcement Directorate dated 30.04.2008 is in respect of the accused company and the other accused persons including the petitioner (a noticee) herein.

31. Thus, considering the said status of the present case, which has been dropped by the complainant in respect of all the accused persons, the proceedings in Case No.C-2481/2002 pending before the Learned Metropolitan Magistrate, 11^{th} Court, Calcutta under Sections 56 and 68 of the Foreign Exchange Regulation Act, 1973 is liable to be also quashed in respect of all the petitioners therein including the petitioner in this revision.

32. **The revisional application being CRR 712 of 2020 is allowed.**

33. The proceedings in Case No.C-2481/2002 pending before the Learned Metropolitan Magistrate, 11^{th} Court, Calcutta under Sections 56 and 68 of the Foreign Exchange Regulation Act, 1973, is hereby quashed in respect of all the accused persons therein including the petitioner in this revision.

34. No order as to costs.

35. All connected applications stand disposed of.

36. Interim order, if any, stands vacated.

37. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

38. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)