

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1238 of 2011
CRAN 1 of 2011

LAV JHINGAN
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Sourav Chatterjee, Adv. Mr. Saumya Nag, Adv. Ms. Namrata Chatterjee, Adv. Ms. A. Mukherjee, Adv.
For the State	: Mr. Narayan Prasad Agarwal, Adv. Mr. Pratick Bose, Adv.
Hearing concluded on	: 6 th October, 2023
Judgement on	: 13 th 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. 554 of 2009 pending before the learned Chief Metropolitan Magistrate, Calcutta, corresponding to Park Street Police Station Case No. 41 of 2009 dated 24th February, 2009 under Sections 120B/420 of the Indian Penal Code.
2. Briefly stated, the petitioner was one of the directors of M/s Caritt Moran and Company private Limited who retired from the post of Director on 12th March, 2009 and his resignation was duly accepted by Board of Directors. It is contended further that the petitioner was

falsely implicated in the four criminal cases under Section 138/141 of the Negotiable Instrument Act, 1881, at the behest of the opposite party no. 2 who filed four separate petition of complaints.

3. It is contended further that the petitioner took out four separate proceedings challenging legality and maintainability of the aforesaid four petition of complaints under Section 138/141 of the Negotiable Instrument Act and all the four proceedings were subsequently quashed under Section 482 of the Code of Criminal Procedure. It is adverted that notwithstanding initiation of the proceedings in terms of the Negotiable Instrument Act, the opposite party no. 2 filed a petition of complaint before the learned Chief Metropolitan Magistrate, Calcutta alleging, *inter alia*, that the petitioner company was approached by the accused persons to provide and/or accommodate inter-corporate deposits to the said company and the petitioner agreed to extend inter-corporate deposits to the tune of Rs. 3,00,00,000/- by four cheques no. 441888, 441889, 441890 and 441891 dated 10th April, 2007 for a sum of Rs. 75,00,000/- each drawn on State Bank of Hyderabad, Park Street Branch.
4. The accused company in a gesture on their part made over to the petitioner company a cheque for Rs. 3,00,00,000/- being no. 089735 payable on 10th July, 2007. Subsequently, by a letter the accused company pursued the petitioner company to extend the inter-corporate deposit till 9th October, 2007 and made refund of Rs. 1,00,00,000/-. By letter dated 5th October, 2008 the said term deposit for the sum of Rs. 2,00,00,000/- was extended for further 91 days

and, thereafter, in discharge of its existing liability the accused company issued four cheques of RS. 50,00,000/- each drawn on Axis Bank Limited. Subsequently, those cheques were replaced by another set of four cheques drawn on Axis Bank Limited, Shakespeare Sarani for a sum of Rs. 50,00,000/- each.

5. The said cheques were deposited in the account of State Bank of Hyderabad and were returned unpaid with the remark "Account Closed". The petitioner issued notice calling upon the accused company and their directors to pay a sum of Rs. 2,36,00,000/- within 21 days from the date of receipt of notice but it was not adhered to.
6. It is contended further that had there been a slightest doubt that the accused company would not return its money, the complainant company would not have paid the money to the accused company.
7. Learned Chief Metropolitan Magistrate invoking the provision of Section 156(3) of the Code of Criminal Procedure forwarded the petition of complaint to the Officer-in-charge of the Park Street Police Station and Park Street Police Station Case No. 41 dated 24th February, 2009 was registered against the petitioner and five other directors as accused persons.
8. Mr. Sourav Chatterjee, learned Counsel representing the petitioner submits that admittedly the transaction was between the two corporate bodies, the complainant company made inter-corporate deposits in Caritt Moran and Company Private Limited as alleged and the company has not been arrayed as accused.

9. Therefore, it cannot be said that the accused persons had the intention to dupe the petitioner since inception. It is contended further admittedly a sum of Rs. 1,00,00,000/- was paid back by the company. Thus, there cannot be any ingredient of cheating within the meaning of Section 415 of the Indian Penal Code punishable under Section 420.
10. That apart in this case four separate proceedings were taken out by accused company against the directors and all the four petition of complaint were quashed as against this petitioner on the ground that the petitioner cannot be fastened with vicarious liability.
11. Mr. Pratick Bose, learned Counsel representing the State submits that the proceeding should be allowed to reach its logical conclusion and should not be quashed in the interest of justice.
12. 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. 130 of 2010 has been filed against the petitioner by the investigating agency and in the charge sheet also company has not been arrayed as accuse. It is no more res-integra that the Penal Court save and except same provision specifically providing therefor, does not contemplate any vicarious liability on the part of the party who is not charged directly for the commission of an offence.
13. Here the money was admittedly deposited with the company. Undoubtedly, the company being a corporate entity and an artificial person acts through its officers, directors, Managing directors etc. If

such 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 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.”

14. The FIR was silent about the company even after investigation the investigating agency did not implicate the company as an accused despite the fact that it was inter-corporate transaction.
15. Under such circumstances, I am of the view that proceeding in G.R. Case No. 554 of 2009 pending before the learned Chief Metropolitan Magistrate, Calcutta is manifestation of abuse of process of law and I am inclined to quash the proceeding qua the petitioner Lav Jhingan. Pending application, if any, stands disposed of.
16. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.
17. 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.)