IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1155 of 2010
CRAN 2 of 2012

SANDIP KUMAR DAS
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Sourav Chatterjee, Adv. Ms. Namrata Chatterjee, Adv.
For the State	: Mr. T.D. Nandu, Adv. Mr. A. Basu, Adv.
Hearing concluded on	: 10th February, 2023
Judgement on	: 10th February, 2023

Siddhartha Roy Chowdhury, J.:

1. An endorsement made on the envelope by the postal authorities indicates that opposite party, Mr. Samarjit Basu has passed away.
2. Under such circumstances, his name be expunged from the cause title. Department is directed to cause necessary amendment in the cause title.
3. This application under Section 482 of Code of Criminal Procedure challenges the order dated 11.02.2010 passed by the learned Judicial Magistrate, 1st Court, Raiganj, Uttar Dinajpur as well as legality of the proceeding itself, being G.R. No. 814 of 2006 which arose out of Raiganj Police Station Case No. 390/06.

4. Briefly stated, Samarjit Basu, informed the Inspector-in-Charge, of Raiganj Police Station in writing that at the initiative of Sandip Kumar Das, he along with his wife Sipra Basu, opened DEMAT accounts with India Bulls sometime in the month of July, 2003. Till 3rd of July, 2006, Sandip Kumar Das used to send them holding buy / sales statement bi-monthly basis and last such statement was given on 3rd July, 2006. Subsequently, he was promoted as Manager of India Bulls Office at Siliguri. His brother used to operate from Raiganj office. On first week of August, 2006, he received two holding statements from India Bulls office and found Rs.9 lakhs worth of shares from his holding and Rs.5 lakhs worth of shares from the holding of his wife were missing. Incidentally, Sandip Kumar Das resigned / was sacked from India Bulls on 8th August, 2006. The Inspector-in-Charge, of Raiganj Police Station upon receipt of such information registered the case being Raiganj P.S. Case No. 319/06 on 7th October, 2006 and police took up investigation which culminated into submission of charge sheet against the accused person Sandip Kumar Das vide Charge Sheet No. 175/07. The accused person surrendered to the jurisdiction of learned Trial Court and took out an application seeking an order of discharge from the case. Learned Judicial Magistrate, Raigunj, Uttar Dinajpur, after considering the application was pleased to reject the same *vide* order dated 11th February, 2010.

5. Assailing the said order Mr. Chatterjee, learned Counsel appearing on behalf of the petitioner submits that learned Trial Court while

considering the prayer of the petitioner seeking discharge observed the following:

"*This is prima facie dominion, if not entrustment*".

6. This observation of the learned Trial Court in a case under Section 406 of the IPC is sufficient to hold that the petitioner being the accused did not commit any offence within the meaning of Section 405 of the IPC.

7. Drawing my attention to the written information submitted by Mr. Samarjit Basu, Mr. Chatterjee learned counsel for the petitioner submits that admittedly DEMAT accounts were opened with India Bulls, the petitioner was an employee of the said company, this criminal proceeding was initiated without implicating the company, India Bulls which is impermissible particularly when the petitioner was neither the Managing Director, nor one of the Directors of the company.

8. To buttress his point Mr. Chatterjee relied upon the judgment of the Hon'ble Apex Court pronounced in the case of ***Sushil Sethi & Anr. – Vs. – State of Arunachal Pradesh & Ors.***, reported in **(2020) 3 SCC 240** wherein the Hon'ble Apex Court held :-

> *"It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In the case of Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668, it is observed and held by this Court that the penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company*

> *when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.*"

9. It is further submitted by Mr. Chatterjee that efficacious relief is available to the complainant under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "said Act") who is the Regulatory Authority when equally efficacious relief is available to the petitioner under the said Act under Sections 15-F, 15-HA and 15-HB of the said Act; Section 23-C of the Securities Contract (Regulation) Act, 1956 and under the Depositors Act, 1996. Relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana – Vs – Bhajan Lal*** *reported in* **AIR 1992 SC 604**, wherein Hon'ble Apex Court held:-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an*

exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings <u>and/or where there is a specific provision in the Code or the Act, concerned providing efficacious redress for the grievance of the aggrieved party</u>.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. Mr. Chatterjee submits because of the availability of the efficacious relief with the aforesaid provisions, the criminal proceeding deserves an order of quashment.

11. *Per contra*, Mr. Basu, learned Counsel appearing on behalf of the State submits that because Sandip Kr. Das is very much conscious about the offence committed by him, he had given the written undertaking to transfer all shares which he gave to Mr. Samarjit Basu, on 23rd of August, 2006.

12. To buttress his point Mr. Basu relied upon two decisions of Hon'ble Supreme Court pronounced in the case of ***Kantilal Chandulal Mehta vs State Of Maharashtra and Another*** reported in **1969(3) SCC 166**; ***Hasanbhai Valibhai Qureshi vs State Of Gujarat and Others*** reported in **(2004) 5 SCC 347**. In *Kantilal Chandulal Mehta (supra)* trial court was directed138 to amend the change and to hold retrial. In *Hasanbhai Valibhai Quershi (supra)* power of the court to alter the change under Section 246 Cr.P.C. was acknowledged. Those two judgements as relied upon by Mr. Basu is of no consequence because of the differences in factual matrix of the case.

13. Drawing my attention to the relevant pages of case diary Mr. Basu further submits vehemently that witnesses in their statements before the I.O. under Section 161 of the Cr.P.C. implicated the accused person and there is no reason to quash the proceeding *qua* the petitioner which would otherwise encourage the wrong-doers keeping in mind the quantum of money lost by the private opposite parties

that they had invested in the share market through the accused person. According to Mr. Basu, the accused person only is in the know as to how the money was utilized whether it is misappropriated by him or he actually invested the money. This is something within his special knowledge. It is further contended that charge can be altered at any point of time simply because learned Trial Court did not find any ingredient of offence within the meaning of Section 406 I.P.C. The element of inducement on the part of the accused petitioner to misappropriate the sum invested by the opposite party no.2 cannot be ruled out.Keeping in mind the conduct of the accused petitioner, who did not join the investigation, the proceeding may not be quashed.

14. From the attending facts of the case, it is admitted that the DEMAT account was opened with India Bulls. It is admitted that India Bulls the company has not been arrayed as an accused person. It is rightly argued by Mr. Chatterjee that petitioner not being a Manager of the company cannot be saddled with criminal liability. The criminal proceeding cannot be maintained against the petitioner, keeping the company India Bulls beyond the arena of this litigation. I am in agreement with Mr. Chatterjee that this criminal proceeding cannot be allowed to remain in force without India Bulls being arrayed as an accused. As I have already indicated, learned Trial Court while considering the prayer of the accused / petitioner observed that it was a case of the dominion then if not entrustment.

15. This observation indicates possibility of two views in the proceeding pending before the learned Trial Court. By several judicial pronouncements it has become settled principle of law that at the stage of Sections 227 and 228 of Cr.P.C, the Court is required to evaluate the materials and documents on record with a view to find out if the facts emerging there from, taken at their face value, disclosed the existence of ingredients constituting the alleged offence.

16. Here in this case admittedly, the money was deposited in the DEMAT accounts of India Bulls. So by no stretch of imagination it can be said that the petitioner Sandip Kr. Das was entrusted with the money. He was a mere employee of the company.

17. In the case of ***Sajjan Kumar vs. CBI*** reported in **AIR 2011 SCW 3730** Hon'ble Supreme Court held if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the learned Trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

18. While considering the order dated 11th February, 2010, passed by the learned Judicial Magistrate, taking lumen from the aforesaid observation of the Hon'ble Apex Court it appears that the learned Trial Court, ought to have discharged the accused persons when he did not find from materials made available before him, any ingredient of offence within the meaning of Section 405 of the IPC punishable under Section 406 of the IPC.

19. Therefore, I am of the view that the aforesaid order of the learned Magistrate as well as the proceeding being G.R. Case no. G.R. No. 814 of 2006 which arose out of Raiganj Police Station Case No. 390/06 should be quashed to avert the abuse of process of law which I accordingly do.

20. This order will not preclude the legal representative of the opposite party no. 2 to approach the Regulatory Authorities (Securities and Exchange Board of India) and/or National Stock Exchange, as the case may be, for redressal of his or her grievances over the issue. Question of limitation shall not come in the way.

21. With this observation, the revisional application is disposed of along with application.

22. Let a copy of the judgement be sent down to the learned Trial Court for information and necessary action.

23. Urgent certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)