

02.05.2023
Court No.35
Item no.1
I.T (p.a)

CRR 1175 of 2015
With
CRAN 2 of 2015 (Old No: CRAN 3833 of 2015)
With
CRAN 14 of 2019 (Old No: CRAN 1984 of 2019)
With
CRAN 15 of 2019 (Old No: CRAN 3672 of 2019)
With
CRAN 18 of 2021
With
CRAN 20 of 2022

Indian Infoline Ltd.
Vs.
Arunava Patra

Mr. Apalak Basu,
Mr. Cedric Fernandiz.

.... For the petitioner

Ms. Priyanka Mukherjee,
Ms. Samira Grewal.

....For the Respondent

Petitioner is the juridical person, a company namely, Indian Infoline Limited, incorporated under the Companies Act, 1956. In this case the petitioner has challenged the proceedings in CR Case No.926 of 2012, now pending in the Court of the Chief Judicial Magistrate, Purba Midnapore (though initially was lodged in the Court of Ld. Judicial Magistrate, 4th court at Midnapore). The said case is under Sections 163(4)/196(3)/301(5)/372A (6) of the Companies Act and Sections 467/120B of the Indian Penal Code. In this case the petitioner/company has prayed for quashing of the entire proceeding now pending in the trial Court.

Mr. Basu being led by Mr. Bhattacharya has challenged the criminal proceeding against his client, i.e, the present petitioner, on the grounds inter alia that the complaint lodged against his client would not reveal any cognizable offence against the said alleged accused, that the contentions and allegations in the complaint would not make out a case at all against the petitioner/company, that the facts of the case would reveal about lodging of a criminal case against the petitioner/company to be due to malice and wrecking vengeance only, for which reason such a proceeding would not be maintainable in the eye of law.

Mr. Basu has taken this Court to the photocopy of the complaint annexed with the present case to submit firstly that the complaint was specifically directed against the 'subsidiary' of the present petitioner, namely India Infoline Finance Limited. He would further submit that being the 'holding company', the present petitioner has no manner of business and control as to the accused no.1, i.e, India Infoline Finance Limited. According to him, by no stretch of imagination the petitioner would have been arrayed as an accused in the said case or considered to be involved in any way.

Mr. Basu would submit that accused no.9, i.e, "The President, Indian Infoline Limited" is an imaginary post/designation and that there is no post as "The President" under the law to have any authority to represent the petitioner/company. That is to say, there exist no such post with the petitioner/company namely "The President". He indicates to the relevant provision of the statute, to

show as to who would have been actually the responsible officers eligible to represent the company. Mr. Basu has thereafter travelled through the contentions and allegations made in the said complaint dated 03.10.2012. He has particularly denied and disputed the facts stated in the same regarding purchase of share (two in number) by the complainant, from the petitioner/company, at any point of time. He has reminded that equity shares of the company is to be dealt in a particular manner and process, through the intermediary. He firstly submits that there is no scope and also no allegation regarding purchase of any share from the petitioner/company by the complainant herself. So far as the accused no.10 is concerned, i.e, the Managing Director, CEO of Guinness Security Limited, Mr. Basu says that his client does not have any connection or control regarding the business of the said accused, neither the petitioner is connected with the same in any manner whatsoever. The complainant might have, at any point of time, had taken up business of purchase of shares through accused no.10 as intermediary, but the petitioner/company is neither aware of the same nor connected with any of the business of accused no.10. Mr. Basu has pointed out to the relevant documents from supplementary affidavit filed by the petitioner and submitted that not the shares of the petitioner but two debentures, which are inherently in the nature of loans, were purchased by the complainant, that too, not from the petitioner but the accused no.1 namely India Infoline Finance Limited. He has shown requisite documents annexed with the supplementary affidavit,

that on the two debentures the complainant at one point of time has also been granted interests, which the complainant accepted and enjoyed.

A letter dated 29.05.2012 was sent by e-mail by the complainant to both the accused no.1, i.e, India Infoline Finance Limited and the petitioner, i.e, Indian Infoline Limited, that is the petitioner, a holding company of the above stated accused no.1. There the complainant had stated himself to be the share holder of “India Infoline Investment Services Limited”. He demanded the copy of (i) register of index of members, (ii) copies of all annual returns prepared under Section 159 and 160 of the Companies Act, (iii) copies of certificates and documents as under Sections 160 and 161 of the Companies Act, from a particular date, (iv) all minutes of the meeting and provided under Section 196(1) of the Companies Act, (v) all registers referred to Section 301(2) of the Companies Act and that under Section 372A (5) (a) of the same. That letter was responded by the petitioner vide letter dated 14.06.2012, which according to Mr. Basu, the petitioner though was not duty bound to do under any provision of law, but sent the reply as a mark of good gesture. In the said reply the petitioner informed the complainant that the same and the India Infoline Investment Service Limited (name of which has been subsequent changed to India Infoline Finance Limited) are two different companies. The petitioner also sought for the proof of the complainant regarding his being the share holder, as claimed, like client ID etc.

All these facts and circumstances, as discussed above, took place, before filing of the complaint in the Court, on 03.10.2012. In the complaint dated 03.10.2012, it has been alleged that the accused persons have entered into a criminal conspiracy and pursuant to such conspiracy they have manipulated the records maintained with the accused no.1, i.e, India Infoline Finance Limited with a fraudulent intention to deny the legally enforceable right of the complainant and also to deprive him from his pecuniary benefit to be bourne out of the profit. On the allegation inter alia as above the complaint, under the provisions of law as stated above, was lodged.

Mr. Basu has further pointed out that the trial Court may not be considered to have appropriate jurisdiction to entertain the complaint in view of the specific statutory provision. Mr. Basu has further contended that in terms of the settled law, the complainant would also not be a person having authority under law, to file such a complaint against the present petitioner, in a Court of law. According to Mr. Basu complainant's endeavour in lodging a case against his client, i.e, petitioner is only an outcome of malice, being unsuccessful in interfering with the affairs of the company and thus by referring to the judgment in ***State of Haryana vs. Bhajan Lal (AIR 1992 SC 604)***, he submits that the case of the petitioner is covered under at least three criterion fixed by the Court, in the said case, as to when a criminal proceeding is not to be maintainable. He says, thus according to the settled law, the petitioner company is entitled to be freed from the proceedings, hatched up against it.

Excepting ***Bhajan Lal (supra)*** Mr. Basu has relied on the following three judgments of the Hon'ble Supreme court :-

(i) ***M.N. Ojha & Ors vs. Alok Kumar Srivastav & Anr.*** reported in **(2009) 9 SCC 682** - this is to emphasize the point that Magistrate while taking cognizance of the matter could not have acted in closed mind or as a mere spectator but should have explicitly apply its mind to the facts and circumstances of the case, which according to Mr. Basu the Magistrate has not done in this case.

(ii) ***Sharad Kumar Sanghi vs. Sangita Rane*** reported in **(2015) 12 SCC 781**,

(iii) ***Dayle De'souza vs. Government of India Through Deputy Chief Labour Commissioner & Anr.*** reported in **2021 SCC Online SC 1012**.

Both these judgments are referred to elaborate the point that to fasten a responsible officer of a company for the alleged offence by the company, specific averment and role of the person concerned in the day to day affairs of the company is to be narrated unambiguously and categorically in the complaint. Excepting that, as it is suggested by Mr. Basu, any allegation against the person alleged to have acted on behalf of the company would not be maintainable in the eye of law.

On the basis of the arguments as above, Mr. Basu has urged, that the petitioner's prayer may be granted by quashing the criminal proceeding being C.R Case No.926/2012, now pending in

the trial Court.

Ms. Mukherjee has represented the opposite party/complainant. At the outset, Ms. Mukherjee has accepted on behalf of her client that in the complaint, the opposite party has mentioned the “debentures” she possessed, to be the “shares” of “India Infoline Finance Limited”. However, according to Ms. Mukherjee that will not jeopardise prosecution’s case or prejudice complainant’s rights in any way in view of the provision of Section 163(4) and 163(5) of the Companies Act, 1956. Let the said provision be extracted as herein below:-

“163. *Place of keeping, and inspection of, registers and returns.*

163(4) - *The company shall cause any copy required by any person under clause (b) of sub- section (3) to be sent to that person within a period of ten days, exclusive of non- working days, commencing on the day next after the day on which the requirement is received by the company.*

163(5) - *If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub- section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to fifty rupees for every day during which the refusal of default continues.”*

For better understanding, let Section 163(3)(b) also be extracted:-

“(3) *Any such member, debenture holder or other person may-*

(a) *****

(b) *require a copy of any such register, index or copy or of any part thereof, on payment of [such sum as may be prescribed] for every one hundred words or fractional part thereof required to be copied.”*

Ms. Mukherjee has further pointed out to the annexed documents of the supplementary affidavit of the petitioner, to indicate that the points taken in argument by Mr. Basu regarding not providing the DP ID etc, by the complainant in support of his holding rights over debentures, is only unfounded. She has referred to the letter written by his client dated 29.05.2012, disclosing DP ID of the intermediary who processed the debentures in favour of her client. She has further made out her point for the complainant that, the present petitioner being a “holding company” of the “subsidiary company” namely India Infoline Finance Limited, is responsible for the offences and liabilities of the “subsidiary company”. She has also admitted that the debentures were purchased not from the petitioner but from the accused no.1, i.e, India Infoline Finance Limited. To substantiate her submission that the business and affairs of the holding and the subsidiary companies as above relate closely and they share profits as well as liabilities, Ms. Mukherjee has pointed out to the letter of the company Secretary Mr. Sunil Lotke of Indian Infoline Limited, dated 14.06.2012. This letter was written in reply to the complainant’s letter dated 29.05.2012. According to Ms. Mukherjee the said letter shall show that the company Secretary of the “holding company” that is, the petitioner, is writing for the petitioner ‘holding company’, but in the letter head of the ‘subsidiary company’ that is the accused no.1/India Infoline Finance Limited. It is argued that the corporate office of the

petitioner company is situated within the jurisdiction of the Court of the Magistrate, where the complaint has been lodged.

Ms. Mukherjee has submitted particularly by referring to the penal provision under Section 163(5) of the Companies Act, 1956, that due to violation as alleged in the complaint, the petitioner company, being the holding company of the subsidiary, from which the complainant obtained the debentures and being liable for its actions, cannot escape the strong prima facie material against it as propounded in the complaint itself. She has urged that the instant case be dismissed and necessary order may be passed to ensure speedy and expeditious trial in the case.

The fact of the complainant obtaining two debentures of the accused no.1 company namely, India Infoline Finance Limited, is not disputed in this case. The date of purchase has been stated to be 09.03.2012. According to the police report the complainant subsequently has also been paid interest over those debentures. Petitioner's contention and the point raised that the entire complaint would be vitiated in view of the falseness of the allegation made therein as the complainant has stated to have owned two shares of the said company is, however, found to be hyper technical, particularly in view of the provisions under Section 163 (3) of Companies Act, 1956. On perusal of the said provision, it appears, that the rights to making extracts from any register of company, index or copy thereof, have been extended to the member of the company as well as the debenture holder or any

other person. Therefore it prima facie appears to be within the rights of the complainant, as the debenture holder of the company, to have the copies as he demanded, in terms of the statutory provisions.

The question has been raised as to which would be the appropriate juridical person or a proper representative thereof, for the complainant to make such a demand to. Petitioner has challenged any of its liability as regards such demand of the complainant before it, in view of the fact that the debentures were of its subsidiary company namely, accused no.1/India Infoline Finance Limited. The “holding company” and the “subsidiary company” share the assets, profits, benefits as well as the debts and liabilities. This is the settled position of law and by no stretch of imagination can the petitioner validly put forth in this case, its contention of not to be involved in the business of the subsidiary company in any way. The extent of share of the profits or liabilities of the ‘subsidiary company’ and the ‘holding company’, would however depend on the terms entered into between them, in other words, would be a question of fact and a subject matter of evidence and trial. It is pertinent to note that though the petitioner has denied existence of any post or nomenclature as the accused no.9, i.e, “The President” of the said company, it has not denied its relationship with the accused no.1 company, as a holding company thereof. The document referred to on behalf of the complainant, i.e, letter dated 14.06.2012 shall prima facie fortify the finding of

this Court, as above.

Therefore, when the relationship between the petitioner and the accused no.1 company as a holding company/and its subsidiary, are not denied and it has been found that the extent of liability is a question of fact to be tested in trial, the present case by the complainant in a jurisdictional Court where the corporate office of the holding company is situated, cannot be said to be barred by operation of the provision under Section 10 of the Companies Act, 1956, as emphasized in this case, on behalf of the petitioner.

The discussion as above would lead this Court to the finding that the complaint has disclosed sufficient prima facie material against the accused persons including the present petitioner, so far as the offences as mentioned above are concerned. The cognizable offence having been alleged against the accused persons and the disputed questions of fact having been espoused in this case, the ratio of the decision of **Bhajan Lal's** case, as was relied on by the petitioner, would not come to the rescue of the petitioner company, right now.

Accordingly, on the discussions as above, it is found that there is no ground in this case for which this Court's power under Section 482 Cr.P.C, to prevent any abuse of the process of Court or otherwise to secure the ends of justice, should be exercised. Instead the prima facie material found in the complaint dated 03.10.2012, lodged by the opposite party/complainant prompt this

Court to dismissed the present case and direct the trial Court to commence the proceedings in accordance with law and as expeditiously as possible.

Hence, this revision is dismissed. Let the trial Court proceed for adjudicating C.R. Case No. 926 of 2012 under Sections 163(4)/196(3)/301(5)/372A (6) of the Companies Act and Sections 467/120B of the Indian Penal Code, as expeditiously as possible keeping particularly in consideration the time span already elapsed form the date of filing of the complaint.

Connected applications being CRAN 2 of 2015 (Old No: CRAN 3833 of 2015), CRAN 14 of 2019 (Old No: CRAN 1984 of 2019), CRAN 15 of 2019 (Old No: CRAN 3672 of 2019), CRAN 18 of 2021, CRAN 20 of 2022 are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)