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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4150 OF 2019

CMA Ashwin Solanki … Petitioner

V/s.

The State of Maharashtra & Anr. … Respondents

Mr. Ranjit Bhosale i/by Mr. Rakesh K. Agrawal for the petitioner.

Mr. M.G. Patil, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 15, 2023

P.C.:

1. The challenge in this writ petition is to the order dated 17th October 2018 passed by the Sessions Judge, Mumbai in Company Petition No.15 of 2018. The offence alleged against the petitioner is contravention of section 447 read with section 448 of the Companies Act, 2013.

2. The substance of the writ petition is that the petitioner on 19th May 2015 issued a certificate under section 148(1) of the Companies Act, 2013 certifying that the company has maintained cost records as required under section 148 of the Act. The averments in the complaint alleged that such certificate contains a false statement as regards maintenance of Court records as prescribed under section 148(1) of the Act. According to the averments in the complaint, petitioner has made a false statement in his certificate and, therefore, has committed offence under sections 448 and 447 of the Companies Act, 2013. Sections 447 and 448 read thus:

> "447. **Punishment for fraud**.— Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:
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> Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
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> *Explanation.*—For the purposes of this section—
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> (i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
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> (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
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> (iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

> 448. **Punishment for false statement.**— Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—
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> (a) which is false in any material particulars, knowing it to be false; or
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> (b) which omits any material fact, knowing it to be material,
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> he shall be liable under section 447."

3. On perusal of section 448, it appears that the said section is widely worded to include "any certificate" and to include "any person". If prima facie there are averments to show that the certificate as contemplated under section 448 is false in any material particulars, knowing it to be false, the ingredients of offence under section 448 of the Companies Act, 2013 are attracted.

4. According to the petitioner, there are neither material nor averments to show that the petitioner was knowing the certificate to be false. He also submitted that though audit being conducted under section 148(2), there cannot be a false statement as contemplated under section 48 of the Companies Act, 2013.

5. On consideration of proviso to section 448 in the light of averments in the complaint, prima facie it appears that the certificate as contemplated under section 448 is not certificate issued by a person having authority to issue such certificate under the provisions of the Companies Act, 2013 and if such statement is alleged to be false, the knowledge of such statement being false needs to be proved at the time of trial. On perusal of the averments in the complaint, the complaint contains an averment that the petitioner issued such certificate knowing it to be false. Therefore, prima facie the ingredients of the offence alleged against the petitioner are made out. Therefore, at this stage no interference is called for in the impugned order.

6. The writ petition is, therefore, dismissed. No costs.

7. Since there was ad-interim relief granted in favour of the petitioner which was in force from 12th March 2019, the same is continued for a period of six weeks from today.

(AMIT BORKAR, J.)