IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1224 OF 2021

Pratibha Sadanand Shetty }
Age about 61 years, Hindu Indian }
Inhabitant, at present residing at A- }
306, Blue Pearl CHS Chincholi Bunder }
Road, Malad (West), Mumbai-400 064 } ...Applicant

V/s.

The State of Maharashtra } ...Respondent

Mr. B.B. Tiwari i/by BBT Legal for Applicant.

Ms. S.D. Shinde-APP for the State.

CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, J.J.

DATED : MARCH 29, 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The petitioner has been made an accused in Crime No. 2 of 2020, Malad Police Station, Mumbai, in which offences punishable under sections 406, 409 and 420 read with 120 (B) of the Indian Penal code and Section 3 of the Maharashtra Protection of Interest of

Depositors (In Financial Establishments) Act, 1999 have been registered against the petitioner and other accused persons.

4. The gist of the allegations made against the petitioner is that at the relevant time she was Director of Shri Ramanjaneya Leasing and Finance Pvt. Ltd. (in short 'SRLF') and being Director of the Company she was responsible for commission of the afore-stated offences. It is alleged that the Company was engaged in the business of providing finance to various persons against the security of mortgage of immovable properties and also accepting deposits from the investors, which were to be returned to the depositors with interest at different rates ranging from 1% to 1.25 % per month but the Company, failed to return the deposits.

5. Learned counsel for the petitioner submits that the petitioner was merely the Director of SRLF and had no requisite *mens-rea* for constituting these offences. He submits that petitioner was never involved in managing affairs of SRLF or doing any act for and on behalf of the SRLF. He also submits that there is no allegation against the petitioner that at any point of time she had induced any of the depositors for depositing certain sum of money with SRLF nor is there any allegation that she had actually accepted these deposits. He

submits that the petitioner has been arraigned in the present crime by wrongly assuming her to be an "*alter ego*" of SRLF although, she was not the Director who had represented the "directing mind" and "will" of the company, which can be seen from her not doing any single act for and on behalf of the Company.

6. Learned counsel for the petitioner further submits that there is one allegation made against the petitioner and it is about depositing of amount of Rs.1.27 Crores in her personal account and then diverting that amount to the account of the Company. He submits that this allegation is not enough to *prima-facie* implicate the petitioner in the present crime as petitioner was not involved in depositing this sum of money in her personal account and all she did was to merely sign some papers on the directions of the other Directors who were involved in running the affairs of SRLF and therefore, according to learned counsel, this is a fit case for quashing of the F.I.R.

7. Learned APP opposes this application. Disagreeing with the submissions of learned counsel for the petitioner, she submits that there is indeed some material available on record, which *prima-facie* shows the involvement of the petitioner in this crime. According to her, the petitioner was Director of SRLF along with other persons who were

also the Directors of SRLF and all these Directors, including the petitioner were part and parcel on the same family and therefore, it cannot be accepted that the petitioner had no knowledge about what the other Directors were doing and as to how they were running the affairs of SLRF. She further submits that, although it is true that, there is no allegation made against the petitioner that she had taken part in giving inducement to the prospective investors or in accepting the deposits from the investors, the petitioner had played some role in assisting the commission of the offences and that is why she has signed some papers authorising diversion of funds lodged in her personal account to the account of the Company.

8. Now let us examine the material available on record, in the light of the rival arguments, in order to find out what role the petitioner has played in commission of the alleged offences or otherwise, in a *prima-facie* manner.

9. It is not in dispute that there is no material available on record which shows that the petitioner was involved in giving some inducement to any of the investors of SRLF. It is not in dispute that the petitioner was not actually involved in directly accepting the deposits from any of the investors of the SRLF. The Investigating Officer has also

not been able to collect any direct evidence throwing light upon the active involvement of the petitioner in running the affairs of the Company though some indirect evidence is available. These facts, undisputed as they are, would at the first blush make us believe that the petitioner was only a Director for name sake and so could not have been held responsible for the alleged criminal acts attributable to the other Directors who had played active role in committing them. But, this is only what *prima-facie* appears on the surface of the whole affair. Beneath the surface, we find that there is material available on record which *prima-facie* points an accusatory finger at the petitioner.

10. This material pertains to the manner in which the petitioner has allowed operation of her personal account and has herself operated her personal account. In her personal account, it has been found that an amount of Rs. 1.27 Crores was deposited. Of course, this amount was not deposited in her personal account by the petitioner herself. So, to that extent petitioner cannot be viewed with any suspicion. But the suspicion begins and turns into prima-faice evidence against her when we consider the fact of withdrawal of amount of Rs. 1.27 Crores from account of petitioner. When it came to withdrawal or transfer of this amount to the account of the Company

(SRLF), the role of the petitioner indeed began. It was only after her authorising the transfer of this amount from petitioner's account to the account of SRLF, that the amount was transferred. If it was the contention of the petitioner that she was not playing any active role in managing affairs of the Company and was not aware about what the other Directors were doing, she ought not to have agreed, atleast in a *prima-facie* way, to transfer the huge sum of money to the account of the Company, especially when, it was her contention that this amount was not deposited in her personal account by her. If somebody else had deposited such huge sum of money in her personal account, *prima-facie*, it was her duty to return the said amount to the same source from where it came to her account or atleast the petitioner should have informed the Bank Manager about depositing of such huge amount in her personal account by somebody else to which she was not entitled. So, silence of the petitioner to some extent, which is her being a mute Spectator to the receipt of huge sum of money in her account and action of the petitioner to another extent, which is her agreeing to authorise transfer of such huge amount to the account of SLRF, both, *prima-facie,* go against the petitioner and it is clear that there is a *prima-facie* case made out against the petitioner for the offences registered against her in the present crime.

11. Learned counsel for the petitioner has invited our attention to the observations of the Apex Court in the case of '***Sunil Bharti Mittal Vs. Central Bureau of Investigation***[1] contending that the petitioner was falsely termed to be "alter ego" of SLRF although she had played no role in managing affairs of the company.

12. According to learned APP, these observations will not help the petitioner as they were made after the charge-sheet was filed. In Sunil Bharti Mittal (supra), the Apex Court has found that whenever there is a material available on record which indicates that one of the Directors of the company is indeed a representative of the "directing mind" and "will" of the Company, such person could be treated as "alter ego" of the Company. In other words, whenever there is sufficient material showing that the accused is an "alter ego" of the Company, there would be scope for fastening of criminal liability upon such person as if such person himself or herself had involved himself or herself in commission of a cognizable offence.

13. In the present case, we are of the view that due to silence to some extent and action to other extent, on the part of the petitioner as discussed above, it can be said in a *prima-facie* manner that the

1 (2015) 4 SCC page 609

petitioner had the knowledge about what other Directors were doing which resulted into commission of present offences by them and therefore, ratio of case of Sunil Bharati Mittal applies to her which would enable us to see her *prima-faci*e involvement in the present crime, on the principle of "alter ego" of the SLRF.

14. In this view of the matter, we find that this is not a fit case for making any interference with the investigation that is going on and for quashing of the F.I.R.

15. The application stands dismissed.

16. We make it clear here that the observations made in this judgment are only confined to the issue involved in this petition which is about quashing of the F.I.R. and therefore, we direct that the trial Court shall not be influenced by these observations in any manner while holding the trial on merits.

(M.M. SATHAYE, J) **(SUNIL B. SHUKRE , J)**