IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1898 OF 2004

Ramesh Pahlajrai Makhija,
Residing at 61, Ashoka Apartments,
6th floor, Napeansea Road,
Mumbai-6. … Petitioner.

V/s.

1. The Senior Inspector of Police,
DCB, CID, Unit IX, Bandra, Mumbai.

2. The Senior Inspector of Police,
Worli Police Station, Mumbai.

3. The State of Maharashtra. … Respondents.

Mr. Shirish Gupte, Senior Advocate i/by Mr.Subodh Desai for Petitioner.
Mr. Ajay Patil, APP for Respondents-State.

CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.
Reserved on : 12th October, 2023.
Pronounced on : 2nd November, 2023.

JUDGMENT : (Per SHARMILA U. DESHMUKH, J.)

1. By this Petition, the Petitioner seeks quashing of L.A.C. 12 of 2004 registered with D.C.B., C.I.D., Unit IX, Bandra and C.R. No.37 of 2004 registered with Worli Police Station. The alleged offences are under Sections 420, 487 and 120-B of the Indian Penal Code, 1860, read with Sections 4, 20(1), 25(k), 20(a) of the Indian Telegraph Act.

2. CR No.37 of 2004 came to be registered at the instance of the Senior Vigilance Officer of VSNL - Shri Dhirendrakumar Sinha. On 11th

February, 2004, on the basis of information received, the police from Crime Branch Unit IX Bandra alongwith the Vigilance Officers of VSNL raided the premises of Net4 (India) Pvt. Ltd situated at Gala No.210, Shah & Nahar Industrial Estate, Worli Naka, Worli, Mumbai. The raid unearthed an illegal telephone exchange being operated in the premises. A panchanama was drawn and the equipments utilised for operating the illegal telephone exchange were seized. Upon inquiry with the person present at the premises, it was revealed that the telephone exchange was operated by Echovox (I) Pvt.Ltd in the premises of Net-4 (India) Pvt. Ltd. under the orders of Shri Jasjit Sohoni- the owner of Net-4 India.

3. Heard Mr.Gupte, learned Senior Advocate for the Petitioner and Mr.Patil, learned APP for Respondents-State.

4. Mr. Gupte, learned Senior Advocate appearing for the Petitioner submits that, the Petitioner is a Solicitor specialized in various fields of law including Company Law and is associated with a leading firm of Advocates viz. M/s.Ramesh Makhija & Company. He submits that, in the course of his professional obligations, the Petitioner had incorporated a Company by name Echovox (India) Pvt. Ltd., which was a 100% subsidiary of Echovox SA, Geneva, Switzerland. He would contend that for the purpose of smooth incorporation of the Company, the Petitioner was requested to become a Director of Echovox (India) Pvt. Ltd. and his office premises were used for a temporary period as the registered office

of Company, the understanding being that upon incorporation, the Petitioner would resign and the registered office would be shifted to another premises. To substantiate the understanding, Mr. Gupte draws the attention of this Court to the communication annexed at page Nos.17 and 18 of the Petition, the Resolution passed at the first Board meeting of the Company held on 4th December, 2001 annexed at Page 19 of the Petition and the Resolution of the Company dated 18th January, 2022, annexed at page No.27 of the Petition. He would submit that, after the crime was registered the Petitioner was interrogated and has co-operated with the investigating agency. He submits that, the Petitioner was associated with Echovox (I) Pvt. Ltd. in the professional capacity as a lawyer only and has no connection with the affairs of the Company after its incorporation.

5. We have considered the submissions of Mr.Gupte and perused the record. Perusal of the record indicates that the professional services of the Petitioner were engaged for the purpose of incorporation of the Company. To ensure the smooth process of incorporation, the Petitioner had permitted his office address to be used for temporary period as registered office of the Company and had acceded to the request of the Company to occupy the post of Director. The communication indicates that, the understanding was that upon the process of incorporation being completed, the Petitioner would resign and the office of the

Company would be shifted to another premises. The resolutions passed by the Company reveals that, the Petitioner resigned as Director in the first Board meeting and the office premises were shifted to different premises. There is no reason to disbelieve the contention that the association was a purely professional obligation which was discharged by the Petitioner and thereafter the Petitioner resigned from the Directorship of the Company. The raid has admittedly being conducted at a different premises and there is no material to demonstrate any connection between the Petitioner and the business operations of the Company. The FIR does not allege any nexus between the Petitioner and the affairs of Echovox (India) Pvt. Ltd. It cannot be fathomed that while incorporating the Company in his professional capacity, the Petitioner was involved in the business affairs of the Company. The immediate resignation of the Petitioner from the post of Director and the shifting of the premises to a different address lends credence to the position that the appointment of the Petitioner as Director and use of his office premises was for limited purpose and period.

6. Considering the allegation in the FIR and the material on record, taking the case as it is, in our opinion, the allegations in the FIR does not reveal the complicity of the Petitioner in the alleged offences. Learned APP has not disputed the position that the Petitioner has resigned from the post of Director at the very first Board meeting. There

is no material to demonstrate that even during the limited period of being associated with the Company, the Petitioner was in any way involved in the day to day affairs of the Company or was in the know of the illegal activities being conducted by the Company.

7. It is settled that the inherent powers under Section 482 of the Code of Criminal Procedure, 1973, can be exercised if this Court comes to a conclusion that continuation of the proceedings would amount to abuse of process of law. In the instant case, in our opinion, interference is justified for securing the ends of justice and to prevent abuse of process of law. Having regard to the discussion above, we are inclined to allow the Petition.

Accordingly, Petition is allowed in terms of prayer clause (b) of the Petition, which reads thus:

> *"(b) This Hon'ble Court be pleased to invoke the inherent powers of this Hon'ble Court u/s 482 of the Criminal Procedure Code so as to quash and set aside L.A.C. 12/2004 registered with the D.C.B., C.I.D., Unit IX, Bandra and C.R. No.37/2004 registered with Worli Police Station qua the Petitioner."*

8. Rule is made absolute in the above terms.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**