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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th July, 2023

+ CRL.M.C. 2459/2011 & CRL.M.A. 8860/2011 (Stay)

MOHD IQBAL

..... Petitioner

Through: Mr. Ananta Prasad Mishra, Advocate

versus

SEBI & ANR

..... Respondents

Through: Mr. Sanjay Mann, Mr. Shashank Bajpai, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure 1973 ('CrPC') seeks quashing of Criminal Complaint No. 343/2002 (renumbered as CC No. 66/5) pending before the Court of Additional Chief Metropolitan Magistrate (Special Acts), Tis Hazari Courts, Delhi and all proceedings emanating therefrom, including the order dated 23.04.2002 whereby the present petitioner was summoned for the offences under Sections 24(1) and 27 of the Securities Exchange Board of India Act, 1992 ('SEBI Act') and the order dated 07.10.2005 whereby non-bailable warrants were issued qua the petitioner and other accused persons.



2. A complaint bearing number 343/2002 (renumbered as CC No. 66/5) under Section 200 of CrPC read with Section 24(1) and Section 27 of SEBI Act, was filed against the company, Aim Plantation Ltd along with its directors, including the petitioner herein. As per the said complaint, it had been alleged by SEBI (the complainant therein) that the aforesaid company was running a Collective Investment Scheme (C.I.S.) and had raised an aggregate amount of Rs. 0.532 crores from the general public, but had not applied to the former for registration of the collective investment schemes allegedly being operated by it. It is further alleged that the aforesaid company never initiated any steps for winding up of the schemes and for repayment to the investors despite notices. In view of the above allegations, SEBI, by way of the aforesaid mentioned complaint alleged that the company along with its directors violated Sections 11B, 12(1B) of the Securities and Exchange Board of India Act, 1992 read with Regulations 5(1), 68(1), 68 (2), 73 and 74 of C.I.S. Regulations 1999.

3. Learned counsel for the petitioner restricted his submissions only to the extent that the alleged complaint made no specific averments qua the present petitioner. In support of the aforesaid submission, the learned counsel for the petitioner drew the attention of the court to the decision in **Rashima Verma v. SEBI, (2009) 157 DLT 417**, and stated that in the said case, a similar complaint, in almost identical circumstances had been quashed by a Learned Single Judge of this High Court. Learned counsel for the petitioner referred to para 24, 26 & 27 of the aforesaid judgment which stated as below:-

“24. It is the paramount responsibility of a Magistrate to carefully examine the complaint and the pre- summoning evidence before issuing summons. Summoning of an accused in a criminal case is a serious matter and not a mere formality. The Court issuing process under Section 204 Cr.P.C. has to



be satisfied on the basis of the averments of the complaint, documents, evidence and other material available on record that there are sufficient grounds for proceeding against the accused. In a criminal complaint, it is the duty of the complainant to allege and make out all the ingredients of the offence before calling upon the court to proceed against the accused. Only legally permissible presumptions can be raised against the accused whereas the factual aspect of the allegations in the complaint are to be established by the complainant before seeking summoning of the accused, before a Magistrate sets into motion the criminal law as a matter of course.”

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26. In the present case, only Mr. G.S. Verma was the Chairman-cum-Managing Director of the Company at the time of commission of the alleged offence and therefore, was the person responsible for the business of the company. However the summons have been issued against all the accused persons who are impleaded as Directors despite prime accused being the company in the absence of a specific averments against the petitioner. Even without taking care of requirements of law whether prima facie case was made out against the petitioner, the Magistrate acted mechanically in passing the impugned order against the petitioner.

27. In view of my detailed discussion as above, the complaint as against the petitioner (accused No. 6 in the complaint) is not maintainable. Hence, the complaint and the impugned summoning order qua the petitioner is accordingly quashed. Attested copy of the order be sent to the trial court.”

He further urged that by virtue of merely being a director of a company, the petitioner cannot be held vicariously liable under Section 27 of the SEBI Act, 1992.

4. It was the submission of the learned counsel for the petitioner that the Learned Magistrate erred while taking cognizance of the alleged offences and thereby issuing summons to the present petitioner in the absence of any cogent material placed on record.

5. The learned counsel for the respondent submitted that the offence committed by the present petitioner is an act of omission and commission whereby the accused had failed to comply with statutory provisions. In



support of the aforesaid submission, he urged that the petitioner along with the other co-accused persons sponsored and caused to be sponsored C.I.S., without getting the mandatory registration from SEBI, thereby violated the provision of Section 12(1B) of the SEBI Act. It was also the contention of the learned counsel for the respondent that the petitioner being the director and promoter of the accused company and person in charge of the affairs of the accused company, was required to wind up the existing C.I.S., and duly file audited reports after make necessary payments to the investors, with the regional office of SEBI, as per procedure under the statutory regulations, which he failed to do.

6. Learned counsel for the respondent further submitted that it is an admitted case that the present petitioner is a director and promoter of the accused company, which has been reflected from the perusal of the documents, which include records of the accused company from the Ministry of Corporate Affairs ('MCA') portal appended by the present petitioner in the present petition itself.

7. In support of his submissions, the learned counsel for the respondent placed his reliance on judgment dated 06.02.2008 of a Learned Single Judge of this Court in **G.S. Gosal v. SEBI in CR M.C. No. 3282/2005**, wherein in paragraphs 7, 14 & 15 it was held a sunder:

“7. Ultimately, when the non-compliance by the plantation companies continued SEBI decided to file these complaints. In all these complaints, the first accused is the company and the remaining accused are described “directors and/or persons in charge of and responsible to the accused No. 1 for the conduct of its business.” A sample is para 18 of Criminal Complaint No. 1311 of 2002 which reads as under:

“18. In view of the above, it is charged that the Accused no. 1 has committed the violation of Sec. 11B, 12 (1B) of Securities and Exchange Board of India Act, 1992 read with Reg. 5 (1) read with



Reg. 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punishable under Sec.24 (1) of Securities and Exchange Board of India Act, 1992. The Accused No. 2 to 8 are the directors and/or persons in charge of and responsible to the accused no. 1 for the conduct of its business and are liable for the violations of the accused no. 1 in terms of Sec. 27 of Securities and Exchange Board of India Act, 1992.”

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14. Relying on N. Rangachari, this Court in Sushila Devi declined to quash the complaint holding that the complaint contained sufficient averments to attract the offence under the SEBI Act. The precise averments in the complaint read as under:

“7. The accused No. 1 is a company registered under the provisions of the Companies Act and the accused No. 2 to 9 are the directors of the accused No. 1 company. The accused No. 2 to 9 are the persons incharge and responsible for the day to day affairs of the company and all of them were actively connived with each other for the commission of the offences.”

15. In view of the decision in Sushila Devi which is on identical facts concerning a complaint by SEBI against a plantation company, and which follows the judgment of the Supreme Court in N.Rangachari, the inevitable conclusion is that the complaint in question do not make out a prima facie case against the petitioners for the offences complained of under the SEBI Act”

8. Learned counsel for the respondent further drew the attention of this Court to paragraphs 14 & 15 of **Ankur Forest and Project Development India Ltd. and others v. SEBI, 2011 SCC OnLine Del 690** wherein it was held as under:

“14. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its memorandum or articles of association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. therefore, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are in charge of the affairs of the company. It is not reasonable to



expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position.

15. Thus, testing of the facts of the present case in the light of the ratio laid down, it would be relevant to reproduce the relevant portion of the complaint filed by the respondent which is duly exhibited and proved by the statement of CW1 Versha Aggarwal:

“In view of the above, it is charged that the Accused No. 1 has committed the violation of Sec. 11B, 12(1B) of Securities and Exchange Board of India Act, 1992 read with Reg. 5(1) read with Reg. 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punishable under Sec. 24(1) of Securities and Exchange Board of India Act, 1992. The Accused No. 2 to 6 are the directors and/or persons in charge of the responsible to the Accused No. 1 for the conduct of its business and are liable for the violations of the Accused No. 1, in terms of Sec. 27 of Securities and Exchange Board of India Act, 1992.”

Besides CW2 in her testimony has stated: “The non-compliance of the SEBI directions and the violations of Sec. 12(1B) of the Act and the Regulations is attributable to accused Nos. 2 to 6, who are the directors of accused No. 1 company. Accused No. 1 company did not get the schemes registered with SEBI prior to mobilization of funds thereunder. Till date accused no. 1 company has not applied for registration nor any provisional registration was granted to it. The accused No. 1 company or its directors accused Nos. 2 to 6 have not filed any winding up and repayment report till now. The accused No. 1 company and its directors accused Nos. 2 to 6 were intimated regarding obligations under SEBI regulations and directions passed by Chairman SEBI through public notices dated 10.12.1999 and 07.12.2000, which was published on 14.1.2001 which are Ex. CW-2/2 and Ex. CW-2/3 respectively.” No cross examination of this witness had been conducted on this aspect. Thus the testimony of this witness on this aspect has gone unchallenged. In response to the question No. 2 that the Appellant No. 1 that is the company had filed the details including the list of Directors, funds mobilized and memorandums and articles exhibited as Ex. CW1/1, the Appellant Nos. 2 to 5 in their statements under Sec. 313 CrPC have stated that we did not file this information. They have shown ignorance



even about the audited balance-sheets etc. However, the defence witness DW1 Tarsem Saini has stated in his testimony that the company was run by the Appellant Nos. 2 to 5 and Hemant Sharma as directors. The relevant part of the testimony of DW1 reads as under:

“....Accused No. 1 company had mobilized only Rs. 1 to 1.5 lac rupees and the same stand repaid. It is wrong to suggest that the accused no. 1 company has received Rs. 34,79,151/- as investment. I was the director of the accused company apart from me Sh. Hemant Sharma, Sh. Rajbir Singh, Sh. Jagjit Singh, Sh. Mohan Lal Saini were also directors of accused no. 1 company. I had stated that our company started few months before the filing of the petition for winding up. It is correct to suggest that the accused no. 1 company was incorporated on 22.09.1995 as per the certificate of incorporation however the commencement of business was from 22.08.1996. We started business in the year 1998 Ex. CW1/1 was not sent by the accused company. Ex. CW1/2 was also not sent by the accused company. I have taken oath therefore I am not lying and I am not deposing falsely. It is wrong to suggest that the accused company was would wound up on account of non-payment to all the investors. The accused company had not filed winding up and repayment report with the same.”

9. Learned counsel for the respondent further referred to the observations made in **SRG Infotech Ltd and Ors v. SEBI, 2014 SCC OnLine Del 1684**, wherein it was held as follows:

“24. The second submission of the learned counsel for the petitioner that there is no specific role attributed to the present petitioners is also negated. Petitioner no.1 is the company of whom admittedly petitioner nos.3 and 4 are directors. Para 5 specifically states that accused no.1 is a company incorporated under the Indian Companies Act of whom the three petitioners before this Court are the persons in-charge and responsible for the conduct of its affairs. They, admittedly, are the working directors of the company. It is also not the case of the petitioners that they were not the directors of the company during the period when the alleged offence was committed.”

10. Learned counsel for the respondent further submitted that the reliance of the petitioner on the judgment of **Rashima Verma (Supra)** is misplaced



in as much as the petitioner therein i.e., Ms. Rashima Verma was not a director/promoter of the company but was only subscriber to the memorandum. Reliance was placed on para 5 and 6 of the aforesaid judgment which records as under:

“5. Learned Senior Counsel for the petitioner, Mr. Sidharth Luthra, submitted that the summoning order dated 15.12.2003 deserves to be quashed as the same was passed without perusing the material available on the record and also that there are no substantive allegations in the complaint that petitioner was in charge of or responsible for the conduct of business or the day to-day affairs of the company. It is further argued that petitioner was never a director of the company and was neither in charge of nor responsible for the conduct of the business of the company because as per Memorandum of Association of the company, petitioner was merely one of the initial subscribers of the shares of the company and was not the director.

6. Learned Senior Counsel for the petitioner has further argued that allegations against the petitioner are contained in paragraph 20 of the complaint only and correspondence as regards SEBI regulations were addressed to and replied by the company and no such correspondence was made by the petitioner on behalf of the company.”

11. Heard the parties and perused the record.

12. Section 24 and Section 27 of the SEBI Act provide as under:

“24. Offences -

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].

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27. Offences by companies -

(1) Where an offence under this Act has been committed by a company,



every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,—

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

[emphasis supplied]

The aforesaid provisions of Section 27 of the SEBI Act are more or less similar to Section 141 of the Negotiable Instruments Act 1981 which stipulates that where the offence under Section 138 has been committed by a company, every person who, “at the time the offence was committed”, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

13. A perusal of the complaint dated 23.04.2002 filed by SEBI against the accused company reflects the following averments with respect to the directors:-

“18. In view of the above, it is charged that the Accused No.1 has



committed the violation of Sec.11B, 12 (IB) of Securities and Exchange Board of India Act, 1992 read with Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punishable under Sec.24 (1) of Securities and Exchange Board of India Act, 1992. The Accused No.2 to 8 are the directors and / or persons in charge of and responsible to the Accused No.1 for the conduct of its business and are liable for the violations of the Accused No.1, in terms of Sec.27 of Securities and Exchange Board of India Act, 1992.”

[emphasis supplied]

In the present case, it is an admitted fact that the present petitioner (Accused no. 3 in the complaint) along with other co-accused persons were the directors of the accused company at the relevant time when the offences have been alleged to have been committed.

14. Recently, the Hon’ble Supreme Court, in **S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 SCC OnLine SC 1238**, with regard to the issue of specific averments in a complaint, held as under:

“Specific Averments in the complaint:

41. In *Gunmala Sales Private Limited (supra)*, this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarized its conclusion as under:—

“a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director;

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is



beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.”

42. The principles of law and the dictum as laid in *Gunmala Sales Private Limited (supra)*, in our opinion, still holds the field and reflects the correct position of law.”

15. In the facts of the present case, the only submission made by the learned counsel appearing on behalf of the petitioner was to the effect that no specific averments have been made qua the present petitioner, as noted hereinabove. The complaint filed by respondent, SEBI makes a specific averment that the present petitioner was the director and was in-charge of and



responsible to the company for the conduct of its business for the relevant period of time in terms of Section 27 SEBI Act, 1992. It is further noted that no documents have been produced on record to rebut the aforesaid averment made by the respondent to demonstrate that making the petitioner stand trial would be an abuse of process of the Court.

16. In view of the aforesaid position, it is pertinent to state that the question as to whether the present petitioner shall be liable as the director of the accused company with regard to the violations committed by the said entity in question is a matter of trial and shall be adjudicated before the Learned Trial Court of competent jurisdiction. This Court need not examine disputed factual issues involved in the present case while exercising the jurisdiction under Section 482 of Code of Criminal Procedure.

17. Thus, the present petition is dismissed and disposed of accordingly.

18. Pending applications, if any also stands disposed of.

19. Needless to state, nothing stated herein above is an opinion of the merits of the case.

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**AMIT SHARMA
JUDGE**

JULY 13, 2023/sn