

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 2709 OF 2023

(ASSIGNED MATTER)

RADHA BAGREE

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Amarta Ghose,
Mr. Sauryadeep Ghose.

For the State : Mr. Debasis Roy, Ld. PP
Mr. Saryati Datta,
Ms. Puspita Saha.

Hearing concluded on : 18.11.2024

Judgment on : 27.11.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceedings in connection with G.R. case no.1335 of 2018 corresponding to Burrabazar PS case no.293 of 2018 dated 18.09.2018 under Sections 120B and 436 of the Indian Penal Code, 1860 (for short, “IPC”) and Sections 11J, 11L and 11C of the West Bengal Fire Service Act, 1950 (for short, “the said Act”) presently pending before the learned Metropolitan Magistrate, 16th Court, Calcutta and all orders passed therein, including order dated 12.06.2023, thereby rejecting the prayer of the petitioner for discharge.
2. The petitioner’s case is that she has been a housewife for many years until the death of her husband **on 15.11.2009** whereafter **the petitioner was inducted as a director** and became the possessor of 8.25% shares of Bagree Estates Pvt. Ltd. (for short, “the Company”) which is in existence since 1940 and **is the owner of Bagree Market** situated at 71, Canning Street, PS – Burrabazar, Kolkata – 700 001 (hereinafter referred to as “the said market”).
3. After induction of the petitioner as a director of the Company, a criminal case was started against the Company being GR case no.466 of 2011 arising out of Burrabazar PS case no.76 dated 26.02.2011 under Sections 285 and 120B of the IPC and Sections 11L and 11J of the said Act against the petitioner and one Mohan Lal Bagree. During such time, the petitioner was not a part of the day to day affairs of the

Company, however, having to bear the brunt, the petitioner tendered her resignation since she was not happy with the course of events.

4. It is further stated by the petitioner that it was only upon the requests and insistence of the said Mohan Lal Bagree, that the petitioner decided to **remain an ornamental director** of the company and the said Mohan Lal Bagree agreed to take all responsibilities. She was never in charge of the day to day affairs of the company or the committee of the said market and the business was managed and/or being controlled wholly by her in-laws.
5. It has been further stated that since the business of the said company had always been under the control of the in-laws of the petitioner, after being made a director of the said company, the petitioner being apprehensive of being trapped in inexplicable decision making of the actual control of the said company, pending litigation between and among themselves, one Krishna Kumar Kothari who was one of the executors of the Will of Late Gopal Das Bagree and since aware of the affairs of the company was appointed as the Chief Executive Officer of the company to manage all affairs of the company and look after its business.
6. She further contended that being a widow and a lady brought up in conservative surroundings in an orthodox family where all responsibilities were entrusted to the male members of the family, did not take any active interest in the functioning and business of the said company despite being a Director.

7. The petitioner further states that whenever she was informed about any requirement of repair work at the said market, the petitioner wrote to the public works department and undertook repair works through efficient masons. Further in the year 2012, she along with the management of the market committee, appointed fire fighting agency, namely, Maxon Fire Engineering and entered into an annual maintenance contract with them whereby proper supervision of fire management services and fire fighting mechanisms would be kept by such specialized agency. Maxon Fire Engineering was under the obligation of keeping proper vigil of the market and undertake routine checkups which they billed the said company and were paid hefty sums every month.
8. It is further submitted that despite best efforts on her part, as ill luck would have it **on 16.09.2018 a devastating fire broke out** and caused huge losses to the said market premises. The fire could not be doused until 20.09.2018 since the shop owners / occupiers had stored huge quantities of inflammable items like perfumes, sprays, cosmetics, plastic items, toiletries, soft toys, paper, etc. in their shops which allowed the fire to spread rapidly, since it broke out at the end of the night.
9. The petitioner states that a complaint was lodged and the petitioner along with two others were arraigned as accused persons, being the owners of the premises, in Burrabazar PS Case No.293 dated

18.09.2018 under Sections 120B and 436 of the IPC and Sections 11J, 11L and 11C of the said Act.

10. The case of the prosecution in brief is that:-

“.....The petitioner being one of the owners of the said market on 16.09.2018 at about 02:45 hours entered into criminal conspiracy with others and in pursuance to that conspiracy willfully damaged the fire installations and suppression system of the said building so that in case of any fire it cannot be controlled immediately and towards creating a devastating effect by causing a huge loss of properties / wires and also damaged shops of tenants as well as endangering human life and safety. On completion of investigation, the investigating authorities submitted charge sheet being Charge sheet No.13 dated 28.01.2019 under Sections 120B and 436 of the IPC and Sections 11J, 11L and 11C of the said Act.....”

- 11.** It is further case of the petitioner that after completion of investigation and receipt of FSL report, it transpired that the source of devastating fire was one electrical feeder box situated in front of the A Block of ‘Bagree’ Market, beside the pavement, where several makeshift stalls (Dalas) were installed and the fire which initiated from there spread out all over ‘Bagree’ Market. Therefore, Section 436 of the IPC has not been established against the accused persons.

12. The petitioner has relied upon Section 33 sub-Section (1) of West Bengal Fire Services Act, 1950 which envisages that :-

“33. 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, 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.”

And as such, the petitioner prayed for quashing of the proceedings.

- 13.** The petitioner has further relied upon Section 11C sub-section (1) of the said Act, which is reproduced here being relevant :

“11C. Owner or occupier of high-risk building to provide fire prevention and fire safety measures. – (1) The owner or, where the owner is not traceable, the occupier of a high-risk building or part thereof shall provide fire prevention and fire safety measures in such building or part thereof and the occupier shall maintain the fire prevention and fire safety measures in good repair and in efficient condition at all times in accordance with the provisions of this Chapter or the rules made thereunder:

Provided that in the case of such building or part thereof, the construction

of which has been completed on any date before the date on which this Chapter comes into force, the occupier and, in the case of such building or part thereof which is under construction on the date immediately before the date on which this Chapter comes into force, the owner shall undertake and carry out such additional fire prevention and fire safety measures as are specified in the notice served on him under section 35.”

14. It is thus the case of the petitioner that from a plain reading of the above provision it is clear that, since in the present case the said building was constructed and handed over to occupants before the commencement of the said provision, it is the occupier who shall undertake and carry out **additional** fire prevention and fire safety measures as specified in the notice under Section 35 of the said Act.
15. It is stated by the petitioner that the **liability must be shared by the occupants and the fire fighting agency appointed by the petitioner and the other directors of the company jointly with the occupiers of the building because of whose negligence and lack of daily supervision**, the water tank at the building remained empty and thus the fire could not be doused despite the presence of 30 fire engines and has further stated that as such the proceedings in respect of petitioner is liable to be quashed.

- 16. The learned Public Prosecutor** has placed the case diary along with a Memo of Evidence. Considering the materials on record, it is seen that **admittedly the petitioner was inducted as a Director in the Company on 15.11.2009. The incident in the present case occurred on 18.09.2018.** It is the case of the petitioner that she tendered her resignation on 30.06.2015. Though a copy of the said resignation letter has been filed, **there is no document to show that the petitioner had stopped being the director on and from 30.06.2015.**
- 17.** The next document issued by one Mohan Lal Bagree is a letter dated 04.08.2015 stating **that the petitioner's resignation could not be accepted,** as the Board of Directors had been dissolved and the petitioner was asked to join for the smooth working and goodwill of the company.
- 18.** It is stated that subsequently the petitioner had again informed Mohan Lal Bagree about the negligence of the estate and for taking necessary legal action against it.
- 19.** The Officer-in-Charge, Burrabazar Police Station registered the FIR in the present case on 16.09.2018. It was stated therein that as per Section 11C of the said Act, the owner of any high-risk building is responsible to provide and maintain required fire detection and suppression system to ensure fire safety of the building and failure of the said Company has rendered the owners being the Directors of the present Company as liable.

- 20.** The learned Magistrate while considering the application for discharge of the petitioner in respect of applicability of Section 11C of the said Act held as follows :

“.....It could be stated that one of the reasons of the devastating fire is non-availability of water and the pipe lines were not proper. The accused person no.1 has tried to shred off her responsibility that she has taken adequate measures for maintaining the fire fighting system of the building but she has not furnished any explanation as to the fact that what measures has been adopted by her to look into the day to day activities of the alleged building. Only by assigning the job to a fire engineering services, she cannot state the fact that the fire broke out from the place which were under the maintenance of CESC and there was no negligence on her part. As per West Bengal Fire Services Act, the owner should provide fire safety measure but this Court does not find any act of accused person no.1 from which it could arrive at a decision that she has taken necessary measures for keeping the fire fighting system in a good condition or to make it sufficiently enough to combat fire. The devastated fire that broke out could not be wiped out for four days in spite of Fire Fighting Engine were there and due to the negligence of the owner who failed to take adequate measure for the filling of the water tanks which remained empty.

By entrusting the work upon Mason, she cannot say that they would be responsible as she should

have monitored their act when she has stated that she taken necessary measures and no negligence on her part was there. It also could be find that the occupiers and the persons who used to carry on their business from the said market would never want that fire broke out in the said building as the make shift stalls are the only source of earning of theirs.....”

21. The learned Magistrate, thus, finding a prima facie case against the petitioner for the offence alleged in the present proceeding dismissed the prayer for discharge of the petitioner.
22. **Proviso to Section 11C of the said Act has been specifically relied upon by the counsel appearing for the petitioner.**
23. **The learned Public Prosecutor** has brought the notice of this Court to Section 33 of the said Act, where in it appears from the material on record that the petitioner being a full time director on the date of offence was in charge of the day to day affairs of the company and the maintenance of the building was the responsibility of the company thus its directors.
24. Section 11 C of the West Bengal Fire Service Act has been relied upon by the petitioner, on the sole contention that the building was constructed prior to the enactment of this case and as such relying upon the proviso to the said section, it is submitted that it was the sole responsibility of the occupiers to oversee the whole arrangement regarding its fire safety and other matters.

25. No doubt that the occupiers in all cases and in this case too are also responsible for the safety of a building which includes fire safety, but the owner (herein the company of the petitioner and one of its director) cannot shirk its responsibility entirely considering that being its owner, **they are responsible for its overall maintenance** and also to oversee/supervise the same by ensuring that the occupiers to do the same diligently.
26. Regarding the applicability of the proviso to section 11C of the West Bengal Fire Service Act, it appears that it lays down the requirement of such **additional** fire prevention and fire safety measures as specified in the notice served on him under section 35 of the, act of 1950.
27. It is thus clear that **Section 11 C (1) of the Act of 1950** lays down the responsibility of the owner and where the owner is not traceable, the occupiers' responsibility.
28. In this case, the owner is the petitioner's company and thus very much present as owner of a *high-risk building or part thereof who **shall provide** fire prevention and fire safety measures in such building or part thereof and the occupier shall **maintain** the fire prevention and fire safety measures in good repair and in efficient condition at all times in accordance with the provisions of this Chapter or the rules made thereunder.*
29. Here, it is the **owner** who shall **"provide"** and the **occupier** who shall **"maintain"**, thus the owner here is clearly responsible for providing the fire prevention and fire safety in such building.

30. Regarding the proviso in respect of the building in this case having been constructed earlier to this chapter coming in force, it is for the occupier to provide **additional** fire prevention and fire safety measures as required and not the initial arrangement for fire prevention and fire safety measure which is to be provided by the owner.
31. Thus, the owner in this case, which is the company of which the petitioner is a full time director being in charge of its day to day affairs cannot take shelter of the proviso to Section 11C as it clearly relates to **“additional” fire prevention and fire safety measures.**
32. **The initial provision for fire prevention and fire safety measures** was the responsibility of the owner, the company of which the petitioner is a director, which in this case was prima facie not done by them.
33. That there has been sheer negligence on the part of the petitioner’s company and the petitioner being its director, has been prima facie made out.
34. There is thus a **prima facie case** against the petitioner and her company among other (occupiers) **for the offences under Sections 11B, 11C, 11D, 11J, 12, 13 and other applicable relevant provisions of law**, which the learned trial court shall consider at the time of consideration of charge during trial.
35. **Interfering in such a proceeding would amount to sheer abuse of process of law and thus against the interest of justice.**
36. **CRR 2709 of 2023 is thus dismissed.**

- 37.** The order dated 12.06.2023 in G.R. case no.1335 of 2018 corresponding to Burrabazar PS case no.293 of 2018 dated 18.09.2018 under Sections 120B and 436 of the Indian Penal Code, 1860 (for short, “IPC”) and Sections 11J, 11L and 11C of the West Bengal Fire Service Act, 1950 (for short, “the said Act”) pending before the learned Metropolitan Magistrate, 16th Court, Calcutta, **is affirmed.**
- 38. The trial court to proceed expeditiously in this case considering that it relates to a case of 2018.**
- 39.** All connected application, if any, stands disposed of.
- 40.** Interim order, if any, stands vacated.
- 41.** Let a copy of the judgment be sent to the learned trial Court for compliance.
- 42.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]