IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 2997 of 2015

Rohit Bihani

Vs.

The State of West Bengal & Anr.

For the Petitioner	:Mr. Ayan Bhattacharya, Adv. Mr. Karan Dudhwewala, Adv.
For the State	:Mr. Swapan Banerjee, Adv. Mr. Suman De, Adv.
Heard on	: 05.10.2023, 30.11.2023, 22.01.2024, 30.01.2024, 07.02.2024
Judgment on	**: 09th February, 2024**

Bibhas Ranjan De, J.

1. The instant revision application has been preferred with a prayer for quashment of proceedings in connection with Bishnupur Police Station Case no. 70 of 2014 dated

22.01.2014 under Sections 4(c) & 4 (d)of the West Bengal Land Reforms Act, 1955 (for short W.B.L.R act) and under Section 21 of the Mines and Minerals (Development and Regulations) Act, 1957 and under Section 278 of the Indian Penal Code (For short IPC) corresponding to BGR case no. 333/14 pending before the Ld. Additional Chief Judicial Magistrate, Alipore.

Brief facts:-

2. On 21.01.2014 opposite party no.2 herein/the Block Land and Land Reforms Officer (for short B.L.L.R.O),Bishnupur, South 24 Parganas filed a written complaint to the Inspector in-charge, Bishnupur, Police Station, South 24 Parganas against Sri Narayan Bihani, Mr. Rohit Bihani/petitioner herein, Mr. Raghav Bihani, the Directors of Balaji Abasan Private Limited alleging inter alia that the above noted persons illegally transported a huge quantum of earth and filled up and changed the existing classification which resulted in change of the character of the scheduled land attracting the offence under Sections 4(c) & 4 (d)of the W.B.L.R act and under Section 21 of the Mines and Minerals (Development and Regulations) Act, 1957 and under Section 278 of the IPC. It has also been mentioned that, a notice dated 27.12.2013 was issued upon the accused to stop illegal construction and restore the land to its original character but the accused persons did not comply with the order. Hence, the instant written complaint was lodged.

3. On receipt of the complaint Bishnupur Police Station Case no. 70 of 2014 dated 22.01.2014 was registered and after investigation charge sheet was submitted against all the FIR named accused persons including the petitioner under Section 4(c) & 4 (d)of the W.B.L.R act and under Section 21 of the Mines and Minerals (Development and Regulations) Act, 1957 and under Section 278 of the IPC.

Argument advanced:-

4. LD. Counsel Mr. Ayan Bhattacharjee appearing on behalf of the petitioner has advanced two fold arguments as follows:-

- Balaji Abasan Private Limited being a company shall have to be arrayed as an accused
- There is no specific allegation against the role of the petitioner in the complaint lodged by B.L.L.R.O.

5. In support of his contention Mr. Bhattacherjee relied on the following cases:-

- ***Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd.*** reported in ***2021 SCC OnLine SC 806***

- ***Sharad Kumar Sanghi v. Sangita Rane*** reported in ***(2015) 12 SCC 781***
- ***Shiv Kumar Jatia v. State of NCT of Delhi*** reported in ***(2019) 17 SCC 193***

6. In reply Mr. Suman De appearing on behalf of the State has contended that the company can be impleaded even during trial invoking Section 319 of the Code of Criminal Procedure. In support of his contention, Mr. De relied on a case of ***C.P. Jogeswara v. Serious Fraud Investigation Office & others*** reported in ***2020 SCC OnLine Kar 2208.***

7. Mr. De has drawn my attention to the written complaint and submitted that there is specific allegation against all the Directors including the petitioner.

Analysis:-

8. In ***Ravindranatha Bajpe*** (supra) Hon'ble Apex Court relied on different cases in paragraph 24, as follows:-

> " ***24.*** *In the case of Sunil Bharti Mittal (supra), it is observed by this Court in paragraphs 42 to 44 as under:*
>
> ***"(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person***
>
> *42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence*

involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person *was responsible for the acts committed by or on behalf of the company.*"

9. In ***Sharad Kumar Sanghi*** (supra) Hon'ble Apex Court observed as follows:-

"***11.*** *In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. [Aneeta Hada v. Godfather Travels and Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881.*

12. *At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22-10-2001, had opined, thus:*

"It appears prima facie from the complaint filed by the complainant, documents, evidence and arguments that the accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima facie sufficient grounds exist for registration of a complaint against the accused under Section 420 IPC and is accordingly registered."

13. *When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate* *analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.*"

10. ***Shiv Kumar Jatia*** (supra) handed down the following principle:-

"***19.*** *The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] . In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.*

20. *Though there are allegations of negligence on the part of the hotel and its officers who are incharge of day-to-day affairs of the hotel, so far as appellant-Accused 2 Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 IPC. Taking contents of the final report as it is we are of the view that, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Ltd., which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent, so far as appellant-Accused 2. Applying the judgment in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] we are of the view that the said view expressed by this Court, supports the case of appellant-Accused 2.*

21. *By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the*

Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

22. *In the judgment of this Court in Sharad Kumar Sanghi v. Sangita Rane [Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781 : (2016) 1 SCC (Cri) 159] while examining the allegations made against the Managing Director of a Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 CrPC. In the case on hand principally the allegations are made against the first accused company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is Accused 2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day-to-day affairs of the company. In the absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned."*

11. In ***C.P. Jogeswara (supra)*** Hon'ble Karnataka High Court in interpreting the Provision of Section 319 of the Code of Criminal Procedure relied on several judgments of the Hon'ble Apex Court. The Hon'ble Apex Court observed that power bestowed on the Court is to the effect that in the course of any inquiry into, or trial of an offence, based on evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

12. Therefore, the issue dealt with by ***C.P. Jogeswara (supra)*** cannot be said to be an identical issue with that of ours. Here in this case no such application under Section 319 of CrPC was ever filed at the instance of opposite party no.2/complainant. Rather, issue of the case is the consequence of not impleading the company in respect of an offence alleged to have been committed by its Directors.

13. From the decisions quoted above it has become a trite law that the Director/ Managing Director/Chairman of the Company can be made an accused, **along with the**

company, only if there is sufficient material to prove his active role coupled with the criminal intent which must have direct nexus with the accused.

14. In the case at hand, opposite party no.2/complainant made an allegation of illegal transportation of huge quantum of earth in order to fill up so as to change the existing classification and character of the **land.** It is not disputed that Balaji Abasan Private Ltd. owned the land involved in this case and there is no specific allegation in the written complaint regarding the active role played by the petitioner coupled with criminal intent. Tone and tenor of the written complaint shows a vague allegation against the petitioner and has put him on docket only on the ground of his designation as Director of the Company that too without impleading the company itself which is detrimental to the cardinal principle of criminal jurisprudence enunciated by the Hon'ble Apex Court in ***Ravindranatha Bajpe*** (supra), ***Sharad Kumar Sanghi*** (supra) & ***Shiv Kumar Jatia*** (supra).

15. Aforesaid discussion boils down to the only option left to this Court to quash the proceedings in exercise of its jurisdiction under Section 482 of the CrPC.

16. As a sequel, proceedings in connection with BGR Case no. 333/14 arising out of Bishnupur Police Station case no. 70 of 2014 dated 22.01.2014 stands quashed against the petitioner **only**.

17. CRR No. 2997 of 2015 is hereby allowed.

18. Case diary be returned.

19. Interim order, if there be any, stands vacated.

20. Connected applications, if there be any, stand disposed of accordingly.

21. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

22. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]