**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-M-18261-2023
Date of decision: 15.07.2024**

Joginder Singh .....Petitioner

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. B.S. Rana, Sr. Advocate with
Ms. Bhanu Sharma, Advocate and
Mr. Ayush Ahuja, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, AAG, Haryana.

Mr. Jagannath Bhandari, Advocate
for respondent No.2.

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MANJARI NEHRU KAUL, J.

1. The petitioner-complainant is seeking setting aside of order dated 03.03.2023 (Annexure P-3) passed by learned Sessions Judge, Rewari vide which respondent No.2-accused was discharged.

SUBMISSIONS OF THE PETITIONER-COMPLAINANT

2. Learned senior counsel for the petitioner while challenging the impugned order dated 03.03.2023 (Annexure P-3), has submitted that respondent No.2-accused, representing himself as a director of the M/s Indsur Global Limited placed two orders on 17.10.2019 worth Rs.68,44,000/- and Rs.34,22,000/- respectively, however, all respondent No.2-accused by entering into a criminal conspiracy with each other, failed to make the payment for these orders. Additionally,

the post dated cheques issued by respondent No.2-accused to cover the payment were also dishonoured.

2(a). Learned senior counsel has further submitted that respondent No.2-accused concealed the initiation of NCLT proceedings against the Company and the appointment of an Interim Resolution Professional (IRP) from the petitioner-complainant. Despite this, respondent No.2-accused continued to represent himself as a director of the Company. It has been further submitted that according to the Form DIR and the Ministry of Corporate Affairs Master Data, respondent No.2-accused had been the director of the Company since 01.04.2019 and attended its meetings until the year 2022, making it evident that he was not only actively involved but also responsible for the affairs of the Company at the time of commission of the offence.

2(b). Learned senior counsel has further argued that a bare perusal of the impugned order leaves no manner of doubt that it is patently illegal as the Revisional Court exceeded its jurisdiction by relying on material produced by respondent No.2-accused, which is impermissible at the stage of framing charges, as has also been held by Hon'ble the Supreme Court in ***State of Orissa Vs. Debendra Nath Padhi : 2005(1) SCC 568***. Still further the Revisional Court erroneously placed reliance upon ***Satish Mehra Vs. Delhi Administration and another : 1996(3) RCR (Criminal) 410***, by holding that at the stage of charges in some reliable material is produced by respondent No.2-accused it can be relied upon for the purpose of framing charges. In addition, it has also been argued that the learned Trial Court committed a patent error by blindly relying upon the DIR Forms presented by respondent No.2-accused. It has been asserted by the learned counsel that the DIR Forms submitted by respondent No.2-accused were a blatant attempt to mislead the Court. A perusal of the DIR Form annexed as Annexure P-4 reveals that while respondent No.2-accused's resignation date is recorded as 22.08.2019, the digital signatures were appended on 22.10.2019, after the order was placed with the petitioner-complainant on 17.10.2019. Furthermore, a letter from the IRP (Annexure P-4/A) dated 24.08.2021 indicates that respondent No.2-accused, despite his suspended powers, continued to be the director of the Company and it is also a matter of record that he participated and attended the Annual General Meeting held on 31.12.2020. In support, attention of this Court has been drawn to Annexure P-5.

2(c). Moreover, learned senior counsel has argued that there is substantial material on record against respondent No.2-accused, demonstrating his complicity in the commission of the alleged offences. The grounds raised by respondent No.2-accused before the learned Revisional Court are disputed questions of law and facts which should have been decided during trial. A prayer has, therefore, been made for setting aside the impugned order.

<u>SUBMISSIONS OF RESPONDENT NO.2-ACCUSED</u>

3. Per contra, learned counsel for respondent No.2-accused has submitted that he was appointed as a director of the Company on 01.04.2019; he tendered his resignation to the Board of Directors,

which was duly accepted. This resignation was official updated with the Registrar of Companies with effect from 22.08.2019 as is evidenced by the DIR Form. Furthermore, learned counsel for respondent No.2-accused has highlighted that the Company was subject to NCLT proceedings, with an IRP appointed to manage the affairs of the Company with effect from 24.09.2019.

3(a). Learned counsel has thus asserted that given these facts, it is evident that he ceased to be a director well before the alleged offences took place and, therefore, had no further involvement in the affairs of the Company. It has been vehemently argued that the impugned order is justified and well reasoned under the circumstances, and subjecting him to a protracted trial would constitute a gross abuse of the legal process. Consequently, he contends that the Revisional Court rightly discharged him from the case.

3(b). Additionally, learned counsel for respondent No.2-accused has contended that he had been attending meetings of another Company named 'Castings Dynamics Ltd.', which is in no way connected to the Company M/s Indsur Global Limited, the Company where he previously was a director. It has been emphasized by the learned counsel that the allegations brought forth by the petitioner-complainant pertained solely to the Company, M/s Indsur Global Limited. He has thus, argued that once respondent No.2-accused had submitted his resignation to the Registrar of Companies, he had no further role to play in the Company M/s Indsur Global Limited, and thus, he could not have been played any role or would have been in any manner connected with the Company after he ceased to be its director.

REBUTTAL BY THE PETITIONER-COMPLAINANT

4. Learned senior counsel for the petitioner has, however, strongly rebutted the submissions made by the learned senior counsel and invited the attention of this Court to Annexure P-4. He has submitted that it is evident that from the IRP that Castings Dynamics Ltd. and M/s Indsur Global Limited are in fact the same entity. Castings Dynamics Ltd. was formerly known as M/s Indsur Global Limited against which the FIR was registered. It has been vehemently argued that the learned counsel for respondent No.2-accused is blatantly attempted to mislead this Court by presented fraudulent and deceptive claims. Learned senior counsel has maintained that the assertions made by the learned counsel for respondent No.2-accused are an attempt to avoid liability for his actions and to obscure the true nature of his involvement with the Company.

FINDINGS OF THE COURT

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Before proceeding further, it would be apposite to reproduce the FIR which reads as under:-

> *"To. Director General of Police, Police Head Quarter, Panchkula, Haryana Sub: Complaint against (1) Ms Indu Lodha, Director of M/s Indsur Global Limited, (2) Mr. Amit Suresh Lodha, Director of M/s Indsur Global Limited, (3) Mr. Suresh Mal Lodha, Director of M/s Indsur Global Limited, (4) M/s Indsur Global Limited, all at 502, 5th Floor, B Wing, Pinnacle Corporate Park, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra-400051 and also at Halol, Baroda Road, Baska. / Sir, I, Joginder Singh, am one of the directors of Yashu Iron Pvt*

Ltd, having office at Khashra no 4/23/2 NH-8 Rajpura Road Kharkahra, Dharuhera, Rewari 123106, Haryana, ("the complainant company") and have been duly authorized to make this complaint against M/s Indsur Global Limited and its aforesaid three directors ("miscreants"). Certified copy of the board resolution dated 05.11.2019 is annexed hereto as Annexure-1. I have given a complaint dated 06.11.2019 to the SSP Rewari, no action has not been taken and the complaint is still pending in the Dharuhera Police Station. 1) Ms. Indu Lodha, Director of Ms Indsur Global Limited, (2) Mr. Amit Suresh Lodha, Director of M/s Indsur Global Limited, (3) Mr. Suresh Mal Ladha, Director of M/s Indsur Global Limited, (4) M/s Indsur Global Limited through its Director Mr. Amit Suresh Lodha admitted himself in the letter dated 20.11.2019 that he is suspended from the Board of Directors as per NCLT Order dated 24.09.2019 by virtue of commencement of Order of NCLT, therefore he has no role in the company and he is not the authorized signatory and his has also been withdrawn on dated 24.09.2019. But on dated 17.10.2019 he placed two signatures purchase orders no. 20192093 20192094 for Rs.68,44,000/- Rs 34,22,000/- respectively. He himself signed two PDC cheques in regards to this, Copies are annexed hereto. The necessary facts are briefly stated that the complainant company is inter alia engaged in the business of waste scrap (for short "the said material"). The aforesaid person (miscreants) placed 5 different purchase orders on the complainant company, viz. (1) purchase order dated 01.07.2019 for Rs. 1,08,67,800.00 for 300 MT Waste Scrap: (2) purchase order for 200 MT Waste Scrap dated 03.08.2019 for Rs. 69,03.000.00 (3) purchase order dated 09.09.2019 for Rs, 32.15.500.00 for 100 MT Waste Scrap (4) purchase order dated 17.10,2019 for Rs.68.44,000.00 for 200 MT Waste Scrap and (5) purchase order dated 17.10.2019 for Rs.34,22,000.00 for 100 MT Waste Scrap. Each of the said purchase orders had a credit period of 45-50 days. The said material has been supplied by the complainant to the miscreants to their entire satisfaction against the respective invoices raised from time to time under different consignment dotes. Copies of the documents evidencing dispatch of goods from the complainant company to the miscreants along with transport bills are annexed herewith as Annexure-2. However, the miscreants did not make payment, as promised, and even the 1st cheque issued by the miscreants and handed over for part payment of our dues was also dishonored on presentation. The miscreants on behalf of miscreant company fraudulently and dishonestly in actively connivance with each other placed upon us the *last 2 purchase orders (i.e. purchase order dated 17.10.2019 for Rs. 68,44,000.00 for 200 MT Waste Scrap and purchase order dated 17.10.2019 for Rs. 34,22,000.00 for 100 MT Waste Scrap) much after appointment of the Interim Resolution Professional on 24.09.2019 by Hon'ble NCLT, Mumbai qua miscreant company. Over and above, the miscreants issued two cheques in the name of the complainant company with future dates of the month of November, 2019 and that too much after appointment of IRP, We, however, became aware of the appointment of the IRP in respect of the miscreant company on 31.10.2019. Now we have come to know that the matter was pending before the Hon'ble NCLT Mumbai and they never informed us regarding the pendency of the case. Apparently, this was deliberately and intentionally hided from the complainant and purchase orders were placed with the intention of cheating. The miscreants have thus dishonestly misappropriated our goods running into crores for their personal use and have committed the offence of Ledger criminal breach of trust and cheating, criminal conspiracy and misappropriation of our goods for their illegitimate personal monetary gains. It is pointed out that the section 14 of IBC, 2016 clearly puts a complete bar on miscreant company or its directors to enter into and/or do any transaction (s) for and on behalf of miscreant company. Copy of our ledger account is annexed hereto as Annexure-3. By issuing the postdated cheques, the miscreants induced and enticed us to supply the said material by placing the 4" and 5" purchase orders on our company and by adopting such modus operandi, they succeeded in getting supply of the said material for their personal gains, thereby causing wrongful gain to themselves and corresponding wrongful loss to us. In view of the above facts and circumstances, it is not only apparent, but evident that right from the beginning, the miscreants had dishonest intentions, in pursuance of the same they have committed the offences of cheating, criminal breach of trust, criminal conspiracy, criminal misappropriation etc. It is therefore requested to initiate appropriate legal action against all the aforesaid miscreants and an FIR u/s 34, 120B, 420, 406 etc. IPC may be registered. Thanking you Sincerely yours For Yashu Iron PVT. LTD. Sd/- Joginder singh, Joginder singh Director. Today, at Police Station, Complaint No. 440/FO dated 07.12.2019 was received through post in the Police Station for registration of the case from the Office of SP after enquiry. From the contents of the complaint, the Offence u/s 420, 406, 120-B, 34 IPC was found to have been committed on which the case FIR No. 63 dated 17.02.2020 u/s 420, 406, 120-B, 34 IPC was registered at*

> *PS Dharuhera and copies of the FIR were prepared as per Rules which may be sent through post to the Officers and Ilaqa Magistrate. The original copy of the complaint was kept in the copy of Police File which will be used in the Investigation."*

7. At this stage, it would be most pertinent to refer to the following observations made by Hon'ble the Supreme Court in ***Onkar Nath Mishra and others Vs. State (NCT of Delhi) and another : (2008) 2SCC 561***:-

> *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."*

8. Furthermore, while over ruling its earlier decision in ***Satish Mehra's case (supra)***, Hon'ble the Supreme Court in ***Debendra Nath Padhi's case (supra)*** categorically observed that at the time of framing of charges, the accused has no right to produce any material.

9. What emerges from the above discussion is that when a Court is tasked with determining whether to formally charge an accused with a crime or to discharge him, it operates under assumption that the evidence provided by the prosecution is accurate and reliable. At this initial stage, the role of the Court is to merely assess whether the

evidence provided by the prosecution, if taken at its face value, satisfies the basic elements required to substantiate the charges provided against the accused. This assumption focuses only on whether there is a prima facie case i.e., whether there is sufficient primary evidence to justify proceeding with formal charges.

10. It needs to be categorically emphasized that at this juncture, the Court is not expected to evaluate the credibility of truthfulness of the evidence in depth. Instead, it merely checks if the evidence presented outlines a plausible case that warrants a trial. The determination of the validity of the evidence and the truthfulness of the allegations levelled is reserved for the stage of trial, where both sides will present their case and it is only thereafter the evidence shall be thoroughly scrutinized by the learned Trial Court. Quashing charges or discharging an accused under Section 245 of the Cr.P.C. is an exception rather than a standard practice. Unless it apparently clear that no evidence is made out, the Court should generally allow the prosecution to proceed. The Court is not expected to conduct a detailed analysis of the admissibility or reliability of the evidence. Even if some elements of the accusations might appear to be missing, the learned Trial Court should be reluctant to discharge an accused outright, if there is prima facie substantial evidence to support the charges. No doubt right to seek discharge at an early stage of a trial is a significant safeguard for an accused, but definitely does not extend to a detailed evaluation of the evidence collected during investigation.

11. In the present case, the Revisional Court discharged

respondent No.2-accused based on the reliance placed by him on the DIR-II Form which he produced before the Court concerned. It is crucial to highlight that, according to settled law, the accused cannot introduce any document much less in his defence at the stage of framing of charges. Therefore, the Revisional Court ought to have exercised restraint in considering the aforesaid document which was produced by respondent No.2-accused at this stage.

12. Moreover, the petitioner-complainant has raised significant questions regarding the DIR-II Form, relied upon by respondent No.2-accused, particularly concerning the date of its upload and his digital signatures. These contentious factual issues can only be delved and resolved during the trial when both parties will get ample opportunity to present their respective evidence and in turn the same would then be tested at the touchstone of cross examination. Needless to add, this would serve as the litmus test for evaluating the veracity and reliability of the documents in question.

13. In the light of the evidence collected by the investigating agency and after hearing the submissions made by learned counsel for the parties as well as on a perusal of the material on record, this Court finds whether the Revisional Court erred in discharging respondent No.2-accused at the stage of framing charges. Reliance placed by the Revisional Court on material produced by respondent No.2-accused at the stage of framing of charges is impermissible as has also been laid down by Hon'ble the Supreme Court in ***Debendra Nath Padhi's case (supra)***. The arguments raised by respondent No.2-accused involve

disputed questions of fact and law that would be put to test only during trial.

14. Consequently, the impugned order dated 03.03.2023 vide which respondent No.2-accused was discharged is set aside and the instant petition is allowed. Respondent No.2-accused is ordered to stand trial for the alleged offences and thereafter the learned Trial Court would proceed with the framing of charges based on the prima facie evidence presented by the prosecution.

15.07.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No