



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 01.05.2024
Pronounced on: 15.05.2024

+ **CRL.M.C. 2372/2022 & CRL.M.A. 10023/2022**

VAKAMULLA CHANDRASHEKHAR & ORS.

..... Petitioners

Through: Mr.Kirti Uppal, Sr. Adv. with
Mr.L.M. Asthana, Mr.Siddhant
Asthana and Mr.Bhaskar Naidu,
Advs.

versus

**REGISTRAR OF COMPANIES -THROUGH ITS DEPUTY
REGISTRAR NCT OF DELHI AND HARYANA**

..... Respondent

Through: Ms.Shiva Lakshmi, CGSC with
Mr.Rajdeep Sarag, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the quashing of the order dated 13.08.2019 passed by the learned Additional Sessions Judge-03 & Special Judge (Companies Act), Dwarka Courts, South-West, New Delhi (hereinafter referred to as 'Special Judge') in Complaint Case No. 438/2019, titled ***ROC v. Vakamulla Chandra Shekhar & Ors.***, restoring the said case that had been dismissed due to non-appearance of the respondent, vide order dated 24.04.2019 passed by the learned Special Judge.



2. The petitioner also challenges the order dated 16.04.2022 passed by the learned Special Judge issuing summons to the petitioners on the above Complaint for offence under Sections 447/448 of the Companies Act, 2013 (in short, 'Companies Act'), and all consequentially proceedings emanating therefrom.

Facts in brief

3. The respondent has filed the above mentioned complaint under Sections 447/448 of the Companies Act alleging therein that the accused company had not utilised the IPO proceeds of 1540.56 Lakhs for the purposes stated in the prospectus, and had diverted the proceeds to various entities through group companies and other entities.

4. The Complaint was listed before the Special Judge on 06.03.2019, 25.03.2019, and again on 18.04.2019, however, none appeared for the respondent/complainant. None appeared for the Complainant even on 24.04.2019. Therefore, by the order dated 24.04.2019 passed by the learned Special Judge, noting that the respondent/complainant does not seem interested in perusing the Complaint, the Complaint was dismissed.

5. The respondent filed an application seeking restoration of the Complaint. The same was allowed by the learned Special Judge vide its Impugned Order dated 13.08.2019.

6. Thereafter, *vide* Impugned Order dated 16.04.2022, the learned Special Judge took cognizance of offence under Sections 447/448 of the Companies Act, and summoned the petitioners for such offence.



7. Aggrieved of the same, the petitioners have filed the present petition.

Submissions by the learned senior counsel for the petitioners

8. The learned senior counsel for the petitioners submits that the learned Special Judge, on dismissal of the Complaint, had become *functus officio*, and, therefore could not have proceeded with the hearing of the application for restoration or pass an order for summoning the accused. He submits that the learned Special Judge does not have the power to restore a Complaint once it was dismissed for non-prosecution/non-appearance of the Complainant/Respondent.

9. He submits that the Impugned Order dated 13.08.2019, in essence, amounts to a restoration/review/recall of the order dated 24.09.2019, which is impermissible in law as no provision of the Cr.P.C. allows for such process. He places reliance on the judgment of the Supreme Court in *Maj. Gen. A.S Gauraya & Anr. v. S.N. Thakur & Anr.*, (1986) 2 SCC 709.

10. Placing reliance on the judgement of the Supreme Court in *Xxx v. State of Kerela & Ors.*, 2021 SCC OnLine SC 1323, he submits that the power under Section 362 of the Cr.P.C. is limited and extends only to correcting a clerical or arithmetic error in an order. He also places reliance on *Pramod Kumar Jain & Ors. v. State of NCT of Delhi*, 2017 SCC OnLine Del 8726.

Submissions by the learned counsel for the respondent

11. The learned counsel for the respondent submits that on 24.09.2019, when the Complaint was dismissed for non-prosecution,



none had appeared for the respondent as the Ministry of Law and Justice had not appointed a counsel for the complainant. A counsel was subsequently appointed on 07.06.2019 by the Ministry of Law and Justice.

12. She submits that the complaint was rightly restored by the learned Special Judge *vide* order dated 13.08.2019, and therefore, no infirmity can be found in the order dated 16.04.2022 passed by the learned Special Judge taking cognizance and summoning of the accused.

13. She submits that as the order dismissing the Complaint was not passed on merit, Section 362 of the Cr.P.C. cannot come in the way of the learned Special Judge recalling the said order. In support, she places reliance on the judgement of the Karnataka High Court in ***Ibrahimsab v. Faridabi***, 1986 SCC OnLine Kar 152; and of the Allahabad High Court in ***Jawahar Lal v. State of U.P.***, 2015 SCC OnLine All 8899.

Analysis and Findings

14. I have considered the submissions made by the learned counsels for the parties.

15. The issue raised in the present petition is no longer *re integra* and, in fact, stands settled by the judgment of the Supreme Court in ***A.S. Gauraya*** (supra). In the said judgment, the Supreme Court, in answering the question as to “Whether a Subordinate Criminal Court has any inherent jurisdiction outside the provisions of the Criminal Procedure Code?”, and in similar fact situation where the Complaint



dismissed due to the absence of the Complainant therein has been restored by the learned Magistrate, held that:-

“9. Section 249 of the Criminal Procedure Code enables a Magistrate to discharge the accused when the complainant is absent and when the conditions laid down in the said section are satisfied. Section 256 (1) of the Criminal Procedure Code enables a Magistrate to acquit the accused if the complainant does not appear. Thus, the order of dismissal of a complaint by a criminal court due to the absence of a complainant is a proper order. But the question remains whether a Magistrate can restore a complaint to his file by revoking his earlier order dismissing it for the non-appearance of the complainant and proceed with it when an application is made by the complainant to revive it. A second complaint is permissible in law if it could be brought within the limitations imposed by this Court in Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar [AIR 1962 SC 876] . Filing of a second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal Procedure Code does not contain any provision enabling the criminal court to exercise such an inherent power.

10. *In B.D. Sethi v. V.P. Dewan [1971 DLT 162] a Division Bench of the Delhi High Court held that a Magistrate could revive a dismissed complaint since the order dismissing the complaint was not a judgment or a final order. In para 9, the court observes as follows:*

“9. As long as the order of the Magistrate does not amount to a judgment or a final order there is nothing in the Code of Criminal Procedure prohibiting the Magistrate from entertaining a fresh application asking for the same relief on the same facts or



from reconsidering that order. During the course of the proceedings, a Magistrate has to pass various interlocutory orders and it will not be correct to say that he has no jurisdiction to reconsider them....”

We would like to point out that this approach is wrong. What the court has to see is not whether the Code of Criminal Procedure contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have. It was relying upon this decision that the Delhi High Court in this case directed the Magistrate to recall the order of dismissal of the complaint. The Delhi High Court referred to various decisions dealing with Section 367 (old Code) of the Criminal Procedure Code as to what should be the contents of a judgment. In our view, the entire discussion is misplaced. So far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction.

II. *For our purpose, this matter is now concluded by a judgment of this Court in the case of Bindeshwari Prasad Singh v. Kali Singh (1977) 1 SCC 57. We may usefully quote the following passage at p. 126 of the Reports: (SCC pp. 59-60, para 4)*

“Even if the Magistrate had any jurisdiction to recall this order, it could have been done by another judicial order after giving reasons that he was



satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the Code of Criminal Procedure of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of the Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact, after having passed the order dated November 23, 1968, the Sub-divisional Magistrate became functus officio and had no power to review or recall that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, recalling order dismissing the complaint, was entirely without jurisdiction. This being the position, all subsequent proceedings following upon recalling the said order, would fall to the



ground including order dated May 3, 1972, summoning the accused which must also be treated to be a nullity and destitute of any legal effect. The High Court has not at all considered this important aspect of the matter which alone was sufficient to put an end to these proceedings. It was suggested by Mr D. Goburdhan that the application given by him for recalling the order of dismissal of the complaint would amount to a fresh complaint. We are, however, unable to agree with this contention because there was no fresh complaint and it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. This has been held by this Court in Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar [AIR 1962 SC 876] . For these reasons, therefore, the appeal is allowed. The order of the High Court maintaining the order of the Magistrate dated May 3, 1972 is set aside and the order of the Magistrate dated May 3, 1972 summoning the appellant is hereby quashed.”

16. In view of the above settled position in law, the order dated 13.08.2019 passed by the learned Special Judge was without jurisdiction and cannot be sustained.



17. The judgment in *Ibrahimsab* (supra), relied upon by the learned counsel for the respondent, cannot come to the aid of the respondent as it would no longer be good law in view of the judgment of the Supreme Court in *A.S. Gauraya* (supra).

18. The judgment of the Allahabad High Court, in fact, was considering the inherent power of the High Court under Section 482 of the Cr.P.C. and it specifically held that while the High Court has the power to restore the revision petition in exercise of its power under Section 482 of the C.P.C., such power is not available to the Courts subordinate to the High Court since those Courts have no inherent powers envisaged under Section 482 of the Cr.P.C.

Conclusion

19. In view of the above, the Order dated 13.08.2019 is set aside as having been passed by the learned Special Judge without jurisdiction. Consequently, the order dated 16.04.2022 passed by learned Special Judge and all consequential proceedings emanating therefrom, are set aside.

20. It is however, clarified that this judgment shall not have any effect on the respondent adopting proper remedy for seeking restoration of the Complaint in accordance with law, if so advised.

NAVIN CHAWLA, J

MAY 15, 2024/RP

Click here to check corrigendum, if any