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

Reserved on: 21st May, 2024
Pronounced on: 09th August, 2024

\+ CRL.M.C. 557/2011 & CRL.M.A. 12098/2018 (Vacating Stay)

SATPAL SINGH PALLI & ANR ..... Petitioners

Through: Mr. Ajayinder Sangwan, Mr. Raj Kumar Sharma, Mr. Arun Raina, Mr. Siddharth Gill, Mr. Summinder Paswan, Mr. V.P. Singh, Mr. Tarunesh Kumar, Mr. Pradeep Kr. Sharma, Mr. Ambuj Johar, Mr. Kunal Chopra and Mr. Dushyant Sharma, Advocates.

versus

STATE & ANR ..... Respondents

Through: Mr. Hemant Mehla, APP for the State with Ms. Ananya Luthra, Advocate.
Mr. Sanjay Mann, Advocate for R-2 (through VC).

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 (hereinafter referred to as 'Cr.P.C.'), seeks the following prayers:

> "a) quash the Criminal Complaint No. 39 of 2009, presently pending in the Court of Mrs. R K GAUBA, Addl. Sessions Judge, Tis Hazari Courts, Delhi qua the petitioners in the interest of justice.
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> b) pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the light of the facts and circumstances of the case in order to meet the ends of justice."

2. The facts relevant for the purpose of adjudication of the present petition are as follows:

i. The petitioners were directors in the company namely, Soubhagya India Vegetation and Plantation Limited (hereinafter referred to as 'SIVPL'). The said company was incorporated on 07.01.1997 and petitioner nos. 1 and 2 were appointed as directors of this company since its inception.

ii. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), i.e., Respondent no. 2, in exercise of powers conferred to it by Section 30 read with Sections 11 and 19 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) (hereinafter referred to as 'SEBI Act'), framed Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations'), which came into force on 15.10.1999.

iii. On 15.12.1999, SEBI passed a direction to the SIVPL company to send information regarding details of all investors and amounts to be repaid to them.

iv. Subsequently, on 14.01.2004, the respondent no. 2/SEBI through its Authorised Representative filed a complaint under Section 200 of the Cr.P.C. read with Sections 24(1)/27 of the SEBI Act against the aforesaid company and its directors including the present petitioners, thereby arraying the company as accused no. 1 and its directors as accused nos. 2 to 7 respectively, for violating Sections 11B, 12(1B) of the SEBI Act read with Regulations 5(1) read with Regulations 68(1), 68(2), 73 and 74 of CIS Regulations; contravention of which are punishable under Section

24(1) of the SEBI Act. Petitioner nos. 1 and 2 were arrayed as accused nos. 6 and 4 respectively in the said complaint.

v. Thereafter, the learned Additional Chief Metropolitan Magistrate (ACMM) took cognizance of the offences alleged in the said compliant against the accused persons therein, including the present petitioners. Subsequently, the matter was transferred to the Court of learned Additional Sessions Judge (ASJ) on 14.12.2004, in pursuance of an order passed by the learned District and Sessions Judge, whereby all the cases pertaining to the complaints pending before learned ACMM were directed to be transferred to the Court of learned ASJ.

vi. Thereafter, on 11.02.2005, the petitioners appeared before the learned Trial Court and were granted bail. The present petitioners then, appeared before the Court of learned ASJ and filed an application under Section 227 of the Cr.P.C. seeking their discharge in the aforesaid complaint case, which was dismissed by the learned ASJ *vide* order dated 17.09.2009.

vii. Hence, the present petition was filed for quashing the complaint case filed by respondent No. 2 *qua* the present petitioners.

3. The case of the petitioners is that the present complaint was barred by limitation as the direction issued by SEBI for refund of money was on 07.12.2000 and the complaint was filed on 14.01.2004. It is submitted that since the maximum punishment for the alleged offence is one year, the complaint should have been filed by 07.12.2001 and therefore, the aforesaid complaint was barred by limitation as per the provision of Section 468 of the Cr.P.C.

4. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Securities and Exchange Board of India vs. Gaurav Varshney and Another, (2016) 14 SCC 430**, which held as under:

> "**100.**We have, during the course of recording our consideration hereinabove, upheld the contention advanced on behalf of the appellant - Sunita Bhagat, that Section 468 of the Cr.P.C. could be relied upon, in criminal proceedings initiated under the provisions of the SEBI Act. Having so concluded we are of the view, that since the punishment contemplated under Section 24 of the SEBI Act at the relevant juncture, did not exceed one year, the period of limitation for taking cognizance under Section 468 of the Cr.P.C. would be one year………."

5. It was also submitted that no cause of action has taken place in Delhi and therefore, learned ACMM, Delhi had no jurisdiction to try the impugned complaint. It was further submitted that no specific role had been attributed to petitioner nos. 1 and 2 except that it is mentioned in para 18 of the said complaint that they were directors of the accused company and as such were in charge and responsible for the conduct of its business. It is further submitted that the petitioners had resigned on 23.02.1998 from the directorship of the company and since the CIS Regulations by SEBI came into force on 15.10.1999, the complainant (SEBI) could not have proceeded against the present petitioners as they were not even vicariously liable under Section 27 of the SEBI Act.

6. Reliance is placed on the following judgments:

(i) **Virender Kumar Singh and Another vs. Securities and Exchange Board of India, 2008 SCC OnLine Del 129;**

(ii) **Shri Raj Chawla vs. Securities and Exchange Board of India (SEBI) and Another, 2010 SCC OnLine Del 90; and**

(iii) Securities and Exchange Board of India vs. Gaurav Varshney and Another, (2016) 14 SCC 430.

7. It is submitted that Form-32, which shows the resignation of the present petitioners on 23.02.1998, has been placed on record by SEBI/Respondent no.2 itself before the learned Trial Court. Certified copy of the same, obtained from the records of the learned Trial Court has been placed before this Court.

8. *Per contra*, learned counsel for respondent no. 2 submits that the trial in the present complaint was already over and the matter was fixed for final arguments before the Court of learned ASJ and at that stage, petitioners had filed the present petition in 2011. It is submitted that the contention of the petitioner that they had resigned from the directorship of the company with effect from 23.02.1998, is a disputed question of fact inasmuch as the accused company, namely, SIVPL *vide* its letter dated 27.04.1998 had filed the names, addresses and occupations of all the directors of the company, wherein the petitioners were shown to be its directors. It is pointed out that the aforesaid letter dated 27.04.1998 is subsequent to the alleged resignation of the petitioners and therefore, the said issue needs to be determined during the course of the trial. It was further submitted that the limitation is not an issue in the present case as violation of the provisions of SEBI Act and CIS Regulations is continuing in nature and even otherwise, the complainant (SEBI) can move an application for condonation of delay, if any, before the learned Trial Court before the pronouncement of the judgment.

9. Heard learned counsel for the parties and perused the record.

10. Perusal of the record reflects that the present petition was filed in 2011 and *vide* order dated 25.11.2011, the learned predecessor Bench of this Court had stayed the passing of the final order by the learned ASJ.

11. Without going into the other contentions raised in the present petition, this Court is of the considered opinion that the fact that since the petitioners had resigned from the directorship of SIVPL on 23.02.1998, which was before when the cause of action accrued as alleged in the present complaint; the proceedings cannot be continued *qua* them. Section 27 of the SEBI Act reads as under:

> "**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:
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> 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.
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> (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."

Thus, it was incumbent upon the complainant (SEBI), i.e. respondent no. 2 to show that the petitioners were directors "at the time of commission of offence."

12. The contentions on behalf of the learned counsel for the respondent no. 2/SEBI that the aforesaid is a disputed question of fact is not tenable as the petitioners has placed on record the certified copy of Form-32, which had been placed before the learned Trial Court by SEBI itself. The Form-32, as placed on record, clearly reflects that the petitioners had resigned on 23.02.1998, which was much before the cause of action alleged to have arisen in the present complaint. There is no other record. Respondent no. 2 does not dispute the authenticity of the said document as the same has been filed by them. The contention of the learned counsel for respondent no. 2 is that the letter dated 27.04.1998 reflecting the names of the petitioners as directors was issued much after the alleged date of resignation, again, is not tenable as the document- Form 32, has been recognised in law to be a public document to be regarded as evidence regarding whether a person is a director of a company or not. The said letter dated 27.04.1998 cannot override Form-32.

13. In **Virender Kumar Singh** ***(supra)***, the Learned Single Judge of this Court, in similar circumstances observed and held as under:

> "9. As regards the petitioners the only allegation in the complaint is in paragraph 18 to the effect that they were in charge of and was responsible to the company for the conduct of its business. However, the fact that the petitioners had already resigned much before end December 2000, as evidenced by Form No. 32 filed with the Registrar of Companies has not been controverted. The only explanation is that this fact can be established only at the trial. The existence of a Form No. 32 in the office of the Registrar of Companies in respect of any company is really not a complicated question of fact. Even an inspection of the records in the office of the Registrar of Companies can confirm whether in fact such Form No. 32 has been filed or not. It is not possible to accept the submission that this question can be

> examined only by the trial court when it can easily be verified by a mere inspection of the record of the Registrar of Companies.
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> 10. It would indeed be unfair to require the petitioners to go through the ordeal of a trial only for proving a statutory document available for inspection by the SEBI in the office of the Registrar of Companies. Although in *Sunaina R. Mathani*, [2002] 1 AD 78, this court had opined that the question whether there was a Form No. 32 should also be examined by the trial court, this court does not find it necessary to do so here because certified copies of Form No. 32 have been placed on record and despite sufficient time available to it the SEBI has not brought anything on record to doubt their genuineness. In neither of the other decisions cited, was a similar question concerning Form No. 32 involved."

In the present case, Form-32, has been placed by respondent no. 2 itself before the learned Trial Court.

14. In view of the above, the present petition is allowed.

15. The Criminal Complaint no. 39/2009, pending *qua* the petitioners is hereby quashed.

16. The present petition is disposed of accordingly.

17. Pending application(s), if any, also stand disposed of.

18. Copy of the Judgment be communicated to the learned Trial Court for necessary information and compliance.

19. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

AUGUST 09, 2024/*sn*