IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 612 of 2023
(Assigned)

Smt. Minu Chakraborty
-Vs-
The State of West Bengal and Anr.

For the Petitioner : Mr. Nani Gopal Chakraborty

For the Opposite Party No.2 : Mr. Rajib Ray
Ms. Uishanee Ghosh

Heard on : 24.11.2023, 29.02.2024, 15.03.2024, 20.06.2024

Judgment on : 15.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the impugned judgment and order no.32 dated 11.01.2023 passed by the Learned Judge, 5th Special Court, Kolkata in S.E.B.I. Case No. 41 of 2008, under Section 26(1) read with Sections 24(1) and Section 27 of the Securities and Exchange Board of India Act, 1994 ("as amended upto date") read with regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices in Securities Market) Regulations, 2003 read with Sections 55A, 56, 60, 67, 68, 70, 2(36), 73 of Companies Act, 1956 read with Section 40 of Companies Act, 2013 along with Section 621 of Companies Act, 1956 read with Sections 436 and 439 of the Companies Act, 2013 read with Section 6 of the

General Clauses Act, 1897 read with Section 193 of the Code of Criminal Procedure.

2. One Assistant General Manager working at Eastern Regional Office of Securities and Exchange Board of India filed a written complaint before the Learned 5th Special Court at Calcutta against the Golden Heaven Agro Project India Limited and others, under Section 26(1) read with Sections 24(1) and Section 27 of the Securities and Exchange Board of India Act, 1994 ("as amended upto date") read with regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices in Securities Market) Regulations, 2003 read with Section 55A, 56, 60, 67, 68, 70, 2(36), 73 of Companies Act, 1956 read with Section 40 of Companies Act, 2013 along with Section 621 of Companies Act, 1956 read with Sections 436 and 439 of the Companies Act, 2013 read with Section 6 of the General Clauses Act, 1897 read with Section 193 of the Code of Criminal Procedure, *inter alia,* alleging that inter alia as follows:-

    i. Under Section 11 (1) of the SEBI Act, SEBI was duty bound to protect the interests of the investors in securities market, to promote the development of and to regulate the securities market by such measures purposively. As per section 11C(1) of the SEBI Act, the complainant had been empowered to investigate the transactions in which the complainant believed the securities being dealt with in a contrary manner prejudicial to the interest of investors or the Securities Market.

    ii. The complainant conducted an examination concerning illegal fund mobilization by the Accused No. 1. On a perusal of "Form 2" (Form for Return of Allotment filed by the Accused No.1 with the

Registrar of Companies in accordance with the provisions of the Companies Act, 1956), the copy of the brochure-cum-application form forwarded by the Economic Offence Investigation Cell, Government of West Bengal, vide their letter September 18, 2014, and the information/document obtained from the “MCA-21” portal revealed that it had issued “Redeemable Preference Shares”. (“RPS”) during the financial year 2011-12 and 2012-13 to at least 53 investors and had raised an amount of at least 41.25 Lakhs without complying the regulatory-provisions applicable to a public issue.

iii. The complainant passed an Order being no. WTM/PS/164/ERO/FEB/2016 dated 23.02.2016 considering the accused persons to be liable for violation of various provisions of Companies act as well as SEBI Act. The accused persons were directed to refund the money which they collected from the general public illegally but in vain.

iv. The Accused No.1 had been a company incorporated under the Companies Act 1956, Accused Nos. 2 to 7 were the directors of the said company at the relevant period when the company had illegally raised funds from the public by unauthorized issuance of securities. The accused persons did not comply with the provisions of Sections - 56, 60 read with sections 2(36), 55A, 67, 68, 70, 73 of Companies Act, 1956, read with section 40 of the Companies Act, 2013 and regulation 3 of PFUTP regulations 2003. Such violations of the provisions as aforesaid by the accused persons were punishable under Sections 24 and 27 of SEBI Act, 1992 and the aforementioned Sections of the Companies Act, 1956.

v. The accused persons deceived the general public who invested their hard-earned money in the schemes and caused hughe pecuniary loss and damage to them.

vi. The Accused No.1 was a company incorporated under the Companies Act. 1956. Accused' Nos. 2 to 7 were the directors of the said company at the relevant period when the company had illegally raised funds from the public by unauthorized issuance of securities and were therefore such persons in charge of the business of accused No.1 were liable to be prosecuted under Section 27 of Securities and Exchange Board of India Act, 1992 for the violations committed by the accused no.1.

3. The complaint culminated into a case before the Learned 5th Special Court Calcutta being a SEBI Case No, 41 of 2018 under Section 26(1) read with Sections 24(1) and Section 27 of the Securities and Exchange Board of India Act, 1994 ("as amended, upto date") read with regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices in Securities Market) Regulations, 2003 Read with Sections 55A, 56, 60, 67, 68, 70, 2(36), 73 of Companies Act, 1956 read with Section 40 of Companies Act, 2013 along with Section 621 of companies Act, 1956 read with Sections 436 and 439 of the Companies Act, 2013 read with Section 6 of the General Clauses Act, 1897 read with Section 193 of the code of Criminal Procedure, which was taken cognizance of.

4. Petitioner stated being a housewife, discharging household duties was unaware of any such alleged offence and/or complaint, and no prior intimation of interim order and/or final order was informed by the complainant, prior to file the complaint. She came to learn from her well-wishers that the police personnel enquired of her residence, since one complaint case had been lodged by the complainant, i.e. opposite party no.2 compelling her to surrender before the said Court and she had been released on bail as granted by the Learned Special Court on the same day.
5. Petitioner contended being a housewife, she had no knowledge about any offence being committed since her Directorship in the Golden Heaven Project India Limited enlisted for a short period, on and from February 27, 2012 to April 10, 2013 and as such petitioner filed an application under section 482 of the code of criminal procedure for quashing of the complaint case No. 41 of 2018 before the Hon'ble High Court at Calcutta vide C.R.R. No., 2931 of 2019.
6. The above Revisional application came up for hearing on 04.02.202 before the Hon'ble Justice Jay Sengupta when upon hearing His Lordship has been pleased to pass an order inter alia as follows:

> *"……… Learned Counsel appearing on behalf of the petitioner, submits that the petitioner would not like to press this application and would instead take up all the points raised in this application before the learned trial court, accordingly the revisional application is dismissed as not pressed."*

7. Petitioner further stated after passing order from this Hon'ble Court, she filed an application under Section 245 (2) of the Code of Criminal Procedure, before the court of the Learned Judge, 5th special court,

Kolkata in SEBI Case No. 41 of 2018 for discharging her from the said complaint case, inter alia, on the following facts and grounds:-

i. The accused no.1 was a Company incorporated under the Companies Act, 1956. Accused No.2 to 7 were the Directors of the said Company as mentioned in the petition of complaint at that relevant period had illegally raised fund for public by unauthorized issue of securities and the complainant alleged that the accused persons did not comply with the provision of Sections 56, 60 read with Section 2 (36), 55A, 67, 68, 70, 73 of the Companies act, 1956 read with Section 40 of the Companies Act 2013 and Regulation 3 of PFUTP Regulation 2003 and accordingly charge sheet had been filed against the accused/petitioner and others where the Ld. Court took cognizance and on the basis of the aforesaid complaint the instant case had been registered.

ii. The accused/ petitioner was falsely implicated by the SEBI knowing fully well that the accused/petitioner was a housewife, without knowledge of such offence and/or complaint in absence of prior intimation by complainant.

iii. Accused/petitioner further submitted that her Directorship in the Golden Heaven Project India Ltd extended for a short period from 27th February 2012 to 10th April 2013 and as such allegation by the opposite party was totally frivolous and maintainable against her as such she was liable to be discharged from the case.

8. Petitioner stated the discharge petition came up for hearing on 31.3.2022 before the Learned Special Court and on hearing the Learned Court allowed the opposite party no.2 to file a report of postal acknowledgement.

The opposite party no.2 neither filed any objection in connection with the said petitioner nor at the time raised any objection, in the discharge petition but after being given an opportunity by the then Learned Judge, an objection was filed in connection with the discharge petition through affidavit.

9. The Learned Special Court passed a final order dated 11.01.2023 and without considering the materials on records, rejected the discharge petition of petitioner.

10. Learned Advocate for the petitioner submitted as follows:-

    i. The Learned Trial Judge, ought to have allowed the application under section 245 (2) of the code of Criminal Procedure, by considering that the petitioner being a housewife she had no knowledge about the offence as alleged by the complainant.

    ii. Moreover, when one of the directors of the company had already refunded to the depositor as such the discharge petition ought to have been allowed in favour of the petitioner.

    iii. The Learned Trial Judge, erred in holding that *"the said order were sent to the address available from the portal. Record would reveal that the petitioner in the name of Minu Chakraborty dated 21.06.20116 was received by Avijit Chakraborty where he had endorsed that the petitioner is not residing there, since long, though the petitioner was the eldest daughter in law of the family"*. Despite the above observation it was concluded that the petitioner received interim and final order of the SEBI before lodging the complaint and as such the impugned judgment and order was liable to be set aside.

11. Petitioner submitted that no such intimation was given by the complainant, neither interim order dated March 12, 2015 nor any date of final hearing and as such she had no knowledge about the same.

12. Petitioner claimed after her resignation she came to learn from reasonable source, the aforesaid company issued 46 Redeemable Preference Share (RPS) and as such the allegation as made by the complainant was baseless, without her active role in it.

13. Learned Advocate for the petitioner further submitted as follows:-

    i. The petitioner filed an application under Section 245 (2) of the Code of Criminal Procedure before the Learned Judge 5th Special Court Kolkata in SEBI case no. 41 of 2018 for discharging her from the said complaint case on the following facts and grounds which had been mentioned in the present revisional application.

    ii. The said Discharge Application came up for hearing on 11.01.2023, when upon hearing, the Learned Magistrate has been pleased to reject the said application. Challenging the same the petitioner filed present revisional application before this Hon'ble Court.

    iii. Prashant Saran who was a whole time member of Security & Exchange Board of India passed interim order on 12.03.2015 against the accused company and final hearing was concluded on 09.03.2015 in presence of the SEBI representatives and others. No such order had been communicated to the petitioner and as such petitioner had no knowledge about any offence as alleged by the opposite party no.2 and as such the complaint made by the complainant i.e. SEBI was pre-matured application, therefore the petitioner be discharged from the said case.

iv. The order dated 09.03.2015 as passed by Mr. Prashant Saran, whole time member of SEBI Board, *inter alia* stated: *“the interim order was forwarded to the company and its director vide letters dated March 13, 2015. The interim order was delivered only to Mr. Kalidas Dutta and to Mr. Mrinal Kanti Paul. All others letter had returned undelivered, the Mr. Kalidas Dutta and Mr. Mrinal Kanti Paul vide letters dated April 07, 2015 and April 09, 2015, respectively replied to the interim order. Subsequently, SEBI granted an opportunity of personal hearing to the company and its directors on September 03, 2015. The scheduled date was communicated vide the public notice in the newspaper namely “Ananda Bazar Patrika” and “Times of India” both dated September 03, 2015”.*

v. The Learned Advocate for the petitioner submitted that the Learned Member of SEBI Board, fixed hearing on September 03, 2015 as published in the daily newspaper and on the same date fixed for final hearing, the petitioner did not follow any newspaper and no such information was communicated from elsewhere or any letter had been received from the SEBI.

vi. The SEBI authority objected to the discharge petition stating: *“that in the regard of delivery of interim order and final order dated 23.02.2016 to Minu Chakraborty, it is submitted that interim order and the final order was passed on the basis of information and documents obtain from the company and its directors, Economic offences Investigation Cell, West Bengal and Information and*

Documents obtained from MCA-21 portal. The interim order and the final order sent to the accused at the available addresses. That the letter through which the interim order and final order was sent and "unsigned acknowledgement card" were attached. It may be noted from the letter dated June 21, 2016 the Abhijit Chakraborty (one of the directors of the company) has received the final order, however he has mentioned that Minu Chakraborty is not residing there since very long time. However, it is strange that he does not know her where about though he along with accused no. 4 (husband of the accused no. 7) and accused no. 7 from the same family and directors in the same company".

It was further submitted the Learned Special Court failed to appreciate that the acknowledgment card had been unsigned even then the Learned special Judge with a view took a decision that the interim order along with final order of the SEBI was communicated to Abhijit Chakraborty, who had been the brother-in-law of the petitioner, though the petitioner did not reside with him and the Learned Special Court opined that the petitioner stayed with her husband and they jointly filed application for bail, etc. took with a view that the petitioner stay with her husband and they jointly filed application for bail, etc. Therefore the petitioner was aware of the same but here also the Learned Special Judge failed to appreciate that the interim order along with final order had been not communicated to her husband and no such documents had been produced by the SEBI authority even then how the Learned Special Judge came to conclusion that the petitioner was well aware of the said interim and final order and as such above observation of the Learned Special Court was perverse and as such prayer made herein after be granted and discharge the petitioner from the said complaint case vide SEBI Case No.41 of 2018. The SEBI never tried to communicate the interim and final order as passed by the member of SEBI Board, where the member of SEBI Board directed to the company to repay the amount within a certain period of time, even after the SEBI authority filed complaint case against the company including the petitioner and as such the entire complaint case was pre-matured and for the same your petitioner was liable to be discharged from the said complaint case.

vii. The Learned Special Judge failed to appreciate by not considering that one of the founder/director of the company Golden Heaven Agro Company Limited namely Pradip Bera filed a petition on 21.12.2021 pleading guilty and the Learned Special Judge on 22.04.2022 released him in the said complaint case by imposing cost of Rs.50,000/-. Vide order dated 22.04.2022, the Learned Special Judge observed: *"That at the stage Pradip Kumar Bera (accused no. 2) files a petition praying for permission to pleaded guilty to the offense alleged by the SEBI authorities. This day SEBI has filed a report along with branch of Xerox documents against the prayer of the accused no.2 intention to pleaded guilty. Another written objection dated 07.04.2022 filed by the SEBI authorities which SEBI authorities have pleaded to be consider while considering the plea of guilty of the petitioner no. 2 (accused no. 2* *herein). The petitioner petition and prayer is taken up for hearing and orders. Accused no.2 Pradip Kumar Bera submits before the court that he has already an amount of Rs.11,87,600/- only to the 33 investors/complainants out of a total of 53 complainants during the year 2014 to 2018 and 2019 prior and after filing of the instant proceedings by selling his father land and also by taking loan. It is his further submission that the SEBI authorities have already freezed the bank account of the accuse no. 1 company as well as personal accounts of the accused no. 2 not only that the pan card of the accused no. 2 blocked by the SEBI authorities. Under such circumstances it was not possible for the petitioner to make payments through banking channels. Presently, he is in great mental agony and it is not being possible for him to continue with the proceedings which have not yet commenced. His livelihood is being hampered and hence he intended to pleaded guilty of the offence as alleged by the SEBI authorities. The SEBI authorities have filed two written objections to the prayer of the accused no.2. Taking both the objections together and upon perusal and consideration thereof, I find that these petitions contain a gist of the contents of the original petition of complaint. In addition, there is a brunch of Xerox copies of documents annexed to the written objection filed today. Upon perusal thereof and on consideration of the Ld. P.P. for SEBI, I find that these are Xerox copies of the original certificates of Redeemable Preference share certificate of the investors from whom money was collected. It is admitted by the prosecution that the names of 33 investors (as being claimed by* *accused no.2 and list given to that effect) are mentioned therein. Record reveals that list of the persons who have received defendant amounts have already been sent to SEBI. Names and addresses of the investors are clearly mentioned in the said list. This is also supported by the documents furnished by SEBI this day before the court. It is surprising as to why SEBI could not verify this list to come to a conclusive decision as to whether at all, any payments, as stated by accused no. 2 has been made or not. SEBI has submitted in court that no infrastructure is there with them to undergo such verification. This explanation appears to be a ridiculous one considering that SEBI is an organisation to protect the interests of investors. As such, the objection of the SEBI authorities cannot be entertained herein, So far, as the matter of pleading guilty by an accused is concerned, neither the court nor the prosecution can stand in the way of the intention of the petitioner. The accused no. 2 has stated that he has already paid an amount of Rs.11,87,600/- to 33 investors- list of such investors have been furnished before this court..."*

In that regard it was further submitted that the Learned Special Judge ought to have considered the petitioner to be a pardasin lady, devoted to her household duties, although she was director for a limited period in the company and she had no knowledge about the commission of offence as alleged by the complainant and the petitioner also further submitted that Pradip Bera paid the entire amount to the investors but the petitioner neither made any offence nor committed any wrong. Pradip Bera paid almost entire amount to the investors/complainant. Therefore the petitioner should be discharged from the case, otherwise she would suffer irreparable loss and injury.

14. Learned Advocate for the Opposite Party submitted as follows:-

i. A bare perusal of the petition of complaint and order dated 11.01.2023 passed by the Learned Trial Court made it palpably clear that all charges had been *prima facie* made out against the accused person for violations under the Companies Act, 1956 and the Security and Exchange Board of India Act, 1992 including its allied Regulations framed thereunder, which were punishable under the penal provisions of the said Acts.

ii. From a plain reading of discharge petition under section 245(2) of the Code of Criminal procedure, 1973 filed by the petitioner, it became distinctly clear that the petitioner admitted of being the director of the Company from 27.02.2012 to 10.04.2013 and person in charge of the business of the company's schemes and was responsible for the day to day affairs of the company at the relevant period when the company had illegally raised funds from the public by unauthorized issue of Redeemable Preference Shares, which was the core content of the allegation of the SEBI before the Learned 5th Special Court, punishable under section 24(1) of the SEBI Act, 1992.

iii. It was clearly averred in the petition of complaint that the accused company and its directors from 2011-12 to 2012-13 raised Rs.41.25 Lakhs by issuing Redeemable Preference Shares (RPS) of the accused company from at least 53 investors, without complying with the regulatory provisions applicable to a public issue, such non-compliance by the accused company attracted the violations under Section 56/60/67/68/70/73 of the Companies Acts, 1956 and all the directors of the accused company during the relevant period (including the petitioner) were liable to be punished under Sections 56(3)/60(5)/68/70(4)/73(1A)/629A of the Companies Act, 1956.

iv. It had been specifically stated in the petition of complaint that due to fraudulent raising of funds from the general public, there had been a violation of Regulation 3 of the SEBI (PFUTP) Regulations, 2003 which was punishable under Section 24(1) of the SEBI Act, 1992.

v. It had been specifically stated that since the petitioner was the director as well as the persons in charge of and responsible for the day to day management of the accused company during the relevant period, she was liable to be punished under Section 27 read with Section 24(1) of the SEBI Act, 1992.

vi. It had also been categorically stated that by not refunding the money of innocent investors as directed by SEBI by order dated 23.02.2016, the directors of the accused company were punishable under Section 27 read with Section 24(2) of the SEBI Act, 1992.

vii. A brief perusal of the discharge petition would reveal that the application for discharge filed by the petitioner was not only an admission of illegal fund mobilization by the accused company through illegal issue of "Redeemable Preference Shares" without compliance of regulatory provisions, but it also spoke of palpable, multifarious contraventions of provisions of SEBI Act and Regulations by the petition/accused person. Further, the contents of the said application was also an admission of non-compliance of directions issued by SEBI and from such deliberate, conscious, evasive steps adopted by the petitioner being the active director, it left no doubt that the petitioner had knowingly and intentionally participated in scamming the public at large with the sole intention of incurring private gain at the cost of the public. The said discharge application, which was devoid of any merit, was a desperate attempt to concealed the misdeeds by making assiduous assertions in the application, though the real intention was to escape from the dragnet of law with the colossal public funds in their pocket intact, without any remorse.

viii. It was trite law that at the stage of hearing of discharge application the submission of the petitioner/accused person had to be confined to the material produced by the complainant and the petitioner/accused person had no right to produce any material. At the stage of hearing of discharge application, the Learned Court had to find out whether the material offered by the prosecution to be adduced as evidence, was sufficient to proceed against the accused and there was no requirement for the Learned Trial Court to make a roving inquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial.

ix. It was the contention of the petitioner that the Learned Trial Court rejected the discharge petition made under Section 245(2) of the Code of Criminal Procedure, 1973 in the instant case without going through the material on records. However, it was submitted herein that the order dated 11.01.2023 passed by the Learned Trial Court, reflected that a detailed hearing was conducted on the discharge petition and upon hearing all the parties, the Learned Trial Court was of the considered opinion that that, the grounds for discharge as taken in the petition under consideration were all false and baseless and contrary to what was submitted before the Learned Court as would be evident from records.

x. It was also reiterated that at the time of rejecting the discharge petition, the Learned Trial Court had taken into consideration that the petitioner was the Director of the company from 27.02.2012 to 10.04.2013 when the company mobilized money by offering and issuing RPS to the public without complying with the laws related to issue of securities to the public and when the accused petitioner was the Director of the Company, she was in charge of and responsible for the conduct of the business of the company and therefore liable to be prosecuted under Section 27 read with Section 24 of the SEBI Act. Such statements in the order dated 11.01.2023 clearly revealed the Learned Trial Court had applied its judicial mind and upon being *prima facie* convinced that the petitioner had committed violations under the Companies Act, 1956 and the SEBI Act, 1992 including its allied Regulations. Thus, from entire circumstances, it was absolutely clear that the discharge petition had been rejected by the Learned Trial Court after going through the material on records.

xi. It was the contention of the petitioner that the company had issued 46 RPS. However, it was the case of the complainant that that the number of investors was at least 53 and this had been substantiated corroborated as names and other details of most of the investors were matching with the details, of investors mentioned in the RPS Certificates furnished on behalf of the aforesaid accused. Further, a bare perusal of the order no. 27 dated 22.04.2022 passed by the Learned Trial Court annexed with the supplementary affidavit of the instant revisional application made it palpably clear that one of the director namely Pradip Bera being accused no.2 having admitted about the actual number of investors from whom money was mobilized was at least 53.

xii. In fact Redeemable Preference Shares were issued to at least 53 or more investors during the Financial Year 2011-2012 and 2012-2013 and the said deviant method was adopted by the petitioner for evading compliances as required under section 67(3) of the SEBI Act, associated with public issue of securities. Moreover, it had also emerged that the Company through its Directors had issued share certificates to its investors without having necessary endorsement regarding transfer. Thus it became crystal clear that the manner in which securities had been allotted and transferred to numerous individuals was a façade and sham in order to circumvent the provisions of sections 67 (3) of SEBI Act and to avoid compliance with the public issue norms mandated for a public issue under the Companies Act, 1956 and the SEBI Act and Regulations framed there under.

xiii. It was the contention of the petitioner that Pradip Bera being accused no. 2 paid the entire amount to the investors and therefore the Learned Trial Court ought to have allowed the discharge petition of the petitioner. The complaint against the accused person/petitioner had been filed for violation of Sections 56/60/67/68/70/73 of the Companies Act, 1956, i.e., for illegal public issue of securities. As already stated in the preceding paragraphs, that allegation had already been admitted by the accused person/petitioner in the proceedings before the Learned 5th Special Court, more specifically in the averments contained in the discharge application. Additionally, the accused person/petitioner had also been charged of not making repayment to the investors, thereby not complying with the directions of SEBI. Therefore, the primary charge of non-compliance of Sections 56/60/67/68/70/73 of the Companies Act, 1956, having been already admitted, there remained no case at all for seeking discharge from the proceedings under Sections 24 and 27 of the SEBI Act, 1992. Further, a bare perusal of the order being dated 23.02.2016 clearly mentioned in paragraph 17 (b), (c), (d) and (e) about the procedure of making refund to the investors but in the discharge application there was no specific averment pertaining to the certificates obtained from two independent Peer chartered accountants, evidencing the payment of the dues to the investors of the "Golden Heaven Agro Project India Limited", nor such certificates from two independent Peer chartered accountants, were ever provided to the SEBI as a part of the documents supplied along with the said discharge application and therefore the Learned Court rightly rejected the said application.

xiv. It was also the contention of the petitioner that the petitioner had not given any intimation either the interim and final order of WTM. It was also submitted herein that the interim and final order of WTM were passed on the basis of information and documents obtained from the company and its Directors, Economic Offences, Investigation Cell, West Bengal and information and documents obtained from MCA 21 Portal. The said orders were sent to the address available from the said portal and the letter in the name of Minu Chakraborty dated 21.06.2016 was received by Abhijit Chakraborty being accused no. 5, both these accused persons belong from same family. Thus, the submission that the petitioner had no knowledge about the said orders was completely erroneous and incorrect.

xv. It was also apposite to submit herein that at the stage of hearing of charge/discharge application, a detailed explanation of the charges was not required and only a *prima facie* case was required to be proved against an accused. If a charge was ultimately not proved, then the accused would be acquitted of such charges. What would happen at the end of the trial were issues of facts, which could not be a subject matter of contention at the stage of hearing of charge/discharge application. In the instant case, the Learned Trial Court had rejected the discharge application against the accused in a detailed manner by precisely explaining all the contraventions committed by the petitioner and provisions under which she was liable to be punished. Therefore, the order dated 11.01.2023 rejecting the discharge application filed by the petitioner was in accordance with law and did not require any interference from this Hon'ble Court.

xvi. Sections 26A to 26E of the SEBI Act' through 'the 2014 Amendment Act' are replicated as follows:-

"26A. Establishment of Special Courts.- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Offences triable by Special Courts.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

26C. Appeal and revision.- The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

26D. Application of Code to proceedings before Special Court.- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven

years or should have held a post, for a period of not less than severn years, under the Union or a State, requiring special knowledge of law.

26E. Transitional provisions.- Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court 8 is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything. contained in the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under that Section."

xvii. Consequent upon 'the 2014 Amendment Act', whereby, Section 26(2) of the SEBI Act' was omitted, and Section 26B and 26D of 'the SEBI Act' was inserted (into 'the SEBI Act'), jurisdiction was vested with Special Courts, whereby the Special Court should be deemed to be a Court of Session to deal with all offences under the SEBI Act', which came into force with effect from 18.07.2013, all courts other than Special Courts created under 'the SEBI Act', were divested of the power to adjudicate matters arising thereunder, including pending matters, which had arisen prior to the amendment. The intent of the legislature was clear and emphatic, namely, offences committed before or after the coming into operation of the 2014 Amendment Act would be triable only by a Special Court, and by no other court.

15. Evidently and admittedly, the petitioner had been one of the directors of Golden Heaven Agro Project India Ltd. The petitioner denied of her knowledge with regard to the operations and functions of the company by virtue of being a housewife being dedicated to domesticity. Such plea of ignorance of alleged offence to have been committed beyond her knowledge and involvement could not be assessed at this nascent stage without recording of evidence.
16. The petitioner surrendered before the Learned Magistrate being aware of the institution of the criminal case against her from certain unidentifiable persons however the intimation was served upon one of her relatives as aforesaid weird enough to have failed to communicate the same to her.
17. The petitioner has taken the plea of one Pradip Bera to have been discharged and sought for parity to that extent since Pradip Bera disbursed the money of the investors. The allegation of commission of economic offences to the prejudice of the public at large denying their claim as a wide ramifications and negative impact on the society at large. The general public invest their hard earned money in anticipation to not only secure the same but also to derive certain incentive as a result of increase in the bulk of the invested money through accumulation and generation of interest.
18. To deprive the investors of their money as aforesaid through deception and false promises utilizing the same by certain interested persons consequently affects the financial stability and/or expectation of the investors to suffer financial loss and damages to an irrecoverable and irreconcilable extent. Mere assertion on the part of the petitioner being ignorant of the commission of the alleged offence being vague in absence

of unimpeachable documents, this Court, considering the seriousness and the gravity of the alleged economic offence, precludes itself from interfering with the order of refusal to discharge the petitioner.

19. In view of the above discussions, the instant criminal revisional application being CRR 612 of 2023 is dismissed.

20. Case Diary, if any, to be returned.

21. There is no order as to costs.

22. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

23. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)