

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2406 of 2022
With
CRAN 1 of 2022
Ajit Kumar Mahato
VS.
The State of West Bengal & Anr.

For the Petitioner : Mr. Aritra Bhattacharya,
Mr. Dibyo Mukherjee.

For the State : Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

Hearing concluded on : 16.01.2025

Judgment on : 16.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred against an order 23.06.2022 passed by the learned Judicial Magistrate, 2nd Court, Purulia in G.R. Case No. 72/2014, which arose out of Purulia (Sadar) Police Station Case No. 15/2014 dated 18.01.2014 under Sections 468/420/34 of the Indian Penal Code, rejecting thereby the petition dated 14.01.2020.

2. By the said order the prayer for discharge of the petitioner Ajit Kr. Mahato (deed writer) praying for discharge has been rejected.
3. In spite of due service there is no representation on behalf of the de facto complainant.
4. Learned counsel for the State has placed the case diary.
5. It appears from the petition of complaint filed before the Trial Court under Section 156(C) Cr. PC that the allegations against the accused persons are as follows.

“That another deed being No. 4377/2007 has been registered wherein the name of the mother of the complainant Balika Mahato has been written and the same has been identified by Sahadeb Mahato s/o Lal Mahato of Village-Podlara but the photo which has been pasted that is not the photo of the mother of the complainant and there is no such woman in the village of Podlara and Bidyut Mahato Son of Yudhistir Mahato also is one of the witness in the deed.

The facts stated above it is clearly established that the accused No. (1) Dipak Mahato S/o Ajani Mahato (2) Sahadeb Mahato S/o Lal Mahato (3) Bidyut Mahato S/o Yudhistir Mahato (4) Badal Mahato Son of Sarat Mahato inconnivence to each other after pasting photo in place of this complainant who is the owner of the land, another photo has been pasted of a woman who is not of village-podlara and Dipak Mahato son of Ajani Mahato also a vendor in the deed No. 4376/2007 where there is an endorsement about the receipt of the consideration money and in another deed No.4377/2007 he has been sighted a witness in the said deed.”

6. **This Court relies upon the judgment of the Supreme Court:-**

(i) In **Sunil Todi & Ors. V. State of Gujarat & Anr.**

reported in 2021(14) SCALE, wherein the Court held:-

*“42. Section 141 of the NI Act stipulates that if a company is alleged to have committed an offence under Section 138, then every person who ‘was in charge of, and responsible to, the company for the conduct of the business of the company’ shall also be deemed guilty of the offence. The proviso provides an exception if she proves that the offence was committed without her knowledge or that she had exercised due diligence. In **Sunil Bharati Mittal v. CBI, (2015) 4 SCC 609**, a three judge Bench of this Court observed that the general rule is that criminal intent of a group of people who undertake business can be imputed to the Company but not the other way around. Only two exceptions were provided to this general rule: (i) when the individual has perpetuated the commission of offence and there is sufficient evidence on the active role of the individual; and (ii) the statute expressly incorporates the principle of vicarious liability. Justice Sikri writing for a three-judge Bench observed:*

*“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 [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241]**, 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.***

7. There is no allegation against the petitioner herein, as he has only been referred to **as the deed writer**. No other acts showing any criminal intent on his part has either been stated or shown, even prima facie.
8. From the petition of complaint and other materials on record including the case diary, it is clear that the ingredients required to constitute the offences alleged against the petitioner herein are totally absent in this case and allowing the proceeding to continue in respect of the petitioner in such circumstances, would clearly amount to abuse of the process of law.
9. **The revisional application being CRR 2406 of 2022 is allowed.**
10. The order dated 23.06.2022 passed by the learned Judicial Magistrate, 2nd Court, Purulia in G.R. Case No. 72/2014, which

arose out of Purulia (Sadar) Police Station Case No. 15/2014 dated 18.01.2014 under Sections 468/420/34 of the Indian Penal Code, rejecting thereby the petition dated 14.01.2020, **is hereby quashed against the petitioner namely, Ajit Kumar Mahato.**

- 11.** The trial in respect of the other accused persons shall proceed in accordance with law, expeditiously.
- 12.** The learned Magistrate shall be at liberty to invoke the provision of Section 319 of Cr.P.C. in accordance with law among others, during trial if deemed necessary in respect of the petitioner.
- 13.** All connected applications, if any, stands disposed of.
- 14.** Interim order, if any, stands vacated.
- 15.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 16.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]