

10.03.2025
SL. 61
Court No. 551
Suvayan/
SB

**C.R.A. 506 of 2019
(Assigned)**

In the matter of: **Sri Piyush Kumar Chhaparia & Anr.**

....appellants.

Mr. Arun Kumar Upadhyay
Mr. Ashok Das

...for the appellants.

Mr. Rajib Ray
Ms. Oishanee Ghosh

...for the S.E.B.I.

1. In this appeal the judgment of conviction and order of sentence both dated July 30, 2019 as passed by the learned Judge-in-Charge, 5th Special Court, Calcutta in Special SEBI Case No. SEBI/60/2017 is impugned. By the said judgment learned trial court found accused Piyush Kumar Chhaparia and Amit Dutta guilty under Section 24(2) read with Section 27 SEBI Act and thus sentenced them to suffer SI for one year each and to pay fine of Rs. 10 lakhs each ID to suffer SI for another three months each. The said convicts felt aggrieved and thus preferred the instant appeal.
2. In course of hearing of the instant appeal learned advocate appearing on behalf of the appellants at the very outset draws attention of this Court to Sections 24 and 27 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'said Act of 1992'). It is submitted on behalf of the appellant that before the learned trial court the complainant has miserably failed to prove beyond reasonable doubt that the present appellants at the time of alleged contravention of the provisions of the said Act of 1992 were either in-charge or were

responsible to the company or for the conduct of the business of the company. It is further submitted that from the Trial Court Record it would reveal that even no oral evidence was adduced by P.W. 1 with regard to the alleged involvement of the present two appellants in the alleged crime at the material time. Drawing attention of this Court to the examination of the two accused persons under Section 313 Cr.P.C. it is submitted that the learned trial court has failed to put any incriminating material which might be used against the accused persons in course of such examination and thus a serious miscarriage of justice occurred. It is thus submitted on behalf of the appellants that the instant appeal may be allowed by setting aside the impugned judgment.

3. Per contra, learned Counsel appearing on behalf of the respondent/complainant submits before this Court that from the evidence of P.W. 1 as well as from the exhibited documents it would reveal that the present two appellants are the person responsible of the accused company and on account of their failure to comply with the order of the adjudicating authority learned trial court rightly held that the present two appellants committed the said offence under Section 24 read with Section 27 of the said Act of 1992. It is further argued on behalf of the respondent that the learned trial court examined the accused persons under Section 313 Cr.P.C. in appropriate manner and, therefore, by no stretch of imagination it can be argued that the settled principle of law for examination of the accused under Section 313 Cr.P.C. has been violated. It is thus submitted that

it is a fit case for dismissal of the instant appeal.

4. This Court has meticulously gone through the entire materials as placed before this Court. This Court has also given its anxious consideration over the submissions of the learned advocates for the contending parties.
5. For effective adjudication of the instant appeal the facts leading to the initiation of the trial before learned trial court is required to be dealt with in a nutshell.
6. The respondent before this court filed a complaint case under Section 190 of the Cr.P.C. read with Sections 24 and 27 of the said Act of 1992 stating *inter alia* that the Assistant Legal Advisor of the complainant that is SEBI being duly authorized filed the said complaint against the accused persons namely; the company and its directors who are in-charge and responsible for the day to day affairs of the accused company. It has been stated the said complaint that after coming to learn some illegality and/or irregularity at the instance of the accused nos. 2 and 3 adjudicating officer was appointed for conducting an investigation who on conclusion of the same imposed a penalty of Rs. 25 lakhs upon the accused persons vide its order dated May 8, 2009 which remained unpaid and thus the said accused persons committed offence under Section 24(2) of the said Act of 1992.
7. After initial examination learned trial court issued process. The accused persons entered their appearance before the learned trial court and thereafter learned trial court being a Special Court to hear out the cases under the said Act of 1992 on

careful consideration of the entire materials framed charges under Section 24 (2) read with Section 27 of the said Act of 1992 against the said three accused persons viz.; Poorva Trexim Private Limited, Piyush Kumar Chhaparia and Amit Dutta. Since before the learned trial court the accused persons pleaded their innocence and claimed to be tried the trial before the learned Special Court proceeded.

8. In order to bring home the charge as against the accused persons the complainant examined only one witness and five documents have been exhibited on behalf of the complainant.
9. Learned trial court after considering the said evidence both oral and documentary convicted the accused persons in the manner indicated hereinabove.
10. For effective adjudication of the instant appeal, I propose to look to the provision of Sections 24 and 27 of the said Act of 1992 and those are quoted hereinbelow in verbatim:

“24. Offences.- (1) *Without prejudice to any award of penalty by the Adjudicating Officer or the Board under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.*

(2) If any person fails to pay the penalty imposed by the Adjudicating Officer or the Board or fails to comply with any directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or

with fine, which may extend to twenty-five crore rupees, or with both.

27. Contravention by companies- (1) *Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly:*

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 contravention was committed without his knowledge or that he had exercised all due diligence to prevent of commission of such contravention.

(2) *Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved 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 contravention and shall be liable to be proceeded against and punished accordingly.*

Explanation.-For the purposes of this section,-

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner of the firm.”

11. Keeping in mind the aforementioned legislative provisions if I look to the factual aspects of this case it reveals from the

evidence of P.W. 1 as recorded by the learned trial court that P.W. 1 testified to the effect that he was the complainant of the said case and he had filed the written complaint against the accused company along with his directors, Piyush Kumar Chhaparia and Amit Dutta. Apart from the said averments the said P.W. 1 stated nothing with regard to the alleged role of the present two appellants in the accused company for which the adjudicating officer under its order dated May 8, 2009 imposed a penalty of Rs. 25 lakhs.

12. It has also been noticed by this Court that in his deposition PW1 did not utter a single word with regard to the alleged role of the present two appellants in the said company during the relevant period and the said P.W. 1 had not tendered any document to substantiate that at the time of alleged illegality and/or irregularity for which a penalty of Rs.25 lakhs was imposed by the adjudicating officer, the present two appellants were either directors of the company or were in charge of the said company or were responsible for the conduct of the business of the said company.
13. For the sake of argument even if this Court accepts that there are sufficient incriminating materials in the evidence of P.W1 as against the present two appellants, if I look to the examination of the accused persons under Section 313 of the Cr.P.C. it appears to this Court that the learned Trial Court examined the said two accused persons in a mechanical and casual manner without drawing their attention to the material piece of evidence which the prosecution proposed to use against them. In

considered view of this Court failure on the part of the learned Trial Court to put such material question has caused serious miscarriage of justice.

14. In the reported decision of **Ashok Kumar Vs. the State of Haryana** reported in **(2010) 12 SCC 350** the Hon'ble Supreme Court while dealing with the subject of examination of accused persons under Section 313 Cr.P.C. expressed the following view:

“It is a settled principles of Law that dual purpose is sought to achieve when the Courts comply with the mandatory requirement of recording the statement of an accused under this provision.

Firstly:- Every material piece of evidence which the prosecution proposes to use against the accused should be put to him in clear terms.

Secondly:- the accused should have a fair chance to give his explanation in relation to that evidences as well as his own versions with regard to the alleged involvement in that crime.

This dual purpose has to be achieved in the interest of the proper administration of criminal justice and in accordance with the provisions of Cr.P.C. Further more, the statement u/s 313 Cr. P.C. can be used by the Court in so far it corroborates the case of the prosecution, of course, conviction per se cannot be based upon the statement u/s 313 Cr. P.C.

.....

The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidences against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.”

15. In view of the settled proposition of law as decided by the Hon'ble Supreme Court it appears to this Court that before the learned Trial Court the complainant has led no evidence at all with regard to the alleged role of the present two appellants in the accused no.1 company at the relevant time. No documentary evidence has also been produced before the learned Trial Court to substantiate that the present two appellants were the directors and/or in-charge of the company. From Exhibit 4, being the certified copy of the order of the adjudicating officer dated 8th May, 2009 the alleged role of the present two appellants is found to be not much prominent.
16. Considering the entire circumstances this Court is of the considered view that the judgment of conviction and order of sentence as passed by the learned Trial Court cannot be sustained. The instant appeal is, thus, allowed.
17. Consequently, the judgment of conviction and order of sentence dated 30th July, 2019 as passed by the learned Judge-in-Charge, Fifth Special Court, Calcutta, in Special SEBI Case No. SEBI/60/2017 is set aside.
18. Consequently, the present two appellants namely; Piyush Kumar Chhaparia and Amit Dutta are found not guilty of the

offence under Section 24(2) read with Section 27 of the SEBI Act 1992 in connection with the Special SEBI Case No. SEBI/60/2017 as disposed of by the learned Trial Judge.

19. The present two appellants are discharged from their respective bail bonds and be set at liberty at once if not wanted in connection with any other case.
20. The Trial Court Records be sent down forthwith along with a copy of this judgment.
21. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the requisite formalities.

(Partha Sarathi Sen, J.)