

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR/4526/2024

ARUP MOOKERJEE

VS

THE REGISTRAR OF COMPANIES, WEST BENGAL

WITH

CRR/1805/2020

ARCHANA CHAKRABORTY

VS

THE REGISTRAR OF COMPANIES, WEST BENGAL

CRAN 1 OF 2021

For the petitioner: Mr. Ratul Das, Adv.

Mr. Prasanta Naskar. Adv.

Last heard on : 17.03.2025

Judgement on : 28.03.2025

1. These applications u/s 482 of the Code of Criminal Procedure, 1973 have been filed by the petitioners for quashing of proceeding in complaint case no. 43 of 2019 now pending before the Learned Judge Second Special Court at Calcutta u/s 129/448 of the Companies Act, 2013 and to set aside all orders passed therein including orders passed on November 22, 2019, December 23rd, 2019, February 14, 2020, June 29, 2019 and October 9, 2020.

2. The fact of the case in brief is that the complaint case has been registered on the basis of a complaint received from one Prakash Kumar Roy, dated October 4, 2018 alleging non-disclosure of transaction in the Specified Bank Notes during the period 8th November 2016 to 30th December 2016 and hence contravention of section 129 along with section 448 of the Companies Act 2013 at the behest of the Opposite Party. The Learned Judge Second Special Court at Calcutta was pleased to take cognizance and issued outright process against the petitioner vide his order dated November 22, 2019, on the basis of the said petition of complaint. The petitioners are the directors of the company namely Balai Lal Mukherjee Private Limited Company duly incorporated under the companies Act 1956 having its registered office at 25 Swallow Lane Calcutta 1, West Bengal and the petitioners have been falsely arraigned and implicated in the instant case where the company has not been arrayed as an accused.

3. The argument advanced by the Learned Advocate appearing on behalf of the petitioner primarily rests on the point of maintainability on the following grounds :-

a) The Complaint Case No. 43 of 2019 filed by the Deputy Registrar of Companies, West Bengal is without jurisdiction as it violates provisions of Section 439 (2) of the Companies Act, 2013 which requires cognizance to be taken only in case of complaint by the Registrar of Companies.

b.) Company is not made an accused which is mandatorily required in light of the judicial precedents of the Supreme Court followed by this Hon'ble Court in judgment of **Santosh Kumar Lahoti vs. Registrar of Companies, West Bengal** reported in

2024 SCC online Cal 3220 (paragraph nos. 52, 53 and 54) and Raj Sahai vs, The State Of West Bengal & Anr., in CRR 100 of 2020 dated 2nd February, 2024 . No vicarious liability can be imposed on the Directors unless the Company is an accused.

c.) Charges have been levelled under Section 129 of the Companies Act, 2013 against the Petitioners (Directors) only and not the statutory auditor, but from paragraph 3.1 and 3.2 of the complaint there is no allegation of mens rea or guilty mind against the accused Nos. 1 and 2/Petitioners/Directors. In support of this contention reliance is placed on a judgment of this Hon'ble High Court in ***Usha Martin Telematics Limited & Ors. Vs. Registrar of Companies, West Bengal*** reported in **2022 SCC Online Cal 1792**

d.) Notification of MCA dated 30.03.2017 as mentioned in paragraph 3.1 is of retrospective effect for which the Auditor has mentioned that the Company is unable to provide details, neither there has been a case of concealment or any contrary fact to the financial statements of the Company. The said Notification was for recording permitted payments and amounts deposited in Bank without any civil or criminal consequence.

e.) Regarding ,related party transactions and violation of Accounting Standard-18 as alleged in paragraph 3.2 is not maintainable as ex facie from accounting Standards requirement for Related Party Disclosures, is not invoked in case of transactions of Rs.

80,50,450/- as would appear from Accounting Modification in AS 18, Related party Disclosure] Secondly, as borne out of balance sheets and notes of financial statement for Financial Year 2015-16 and 2016-17, it would be evident that the amounts have been carried forward and was not a new transaction and it has been pending since financial year ending 31.03.2015.

f.) In Paragraph 3.6 of the Complaint the alleged discrepancy in Profit and Loss and Trade Receivables are not proportionate and would not reflect any concealment of records.

g.) Locus standi of the Complainant i.e., Prakash Kumar Roy is also suspicious as no such person exist as the address mentioned is incorrect. Therefore, the complaint has been entertained without any verification or application of mind. This issue has been raised in the reply to summon dated 26.11.2018 and Reply to show Cause Notice dated 04.11.2019 and the same has not been dealt with by the Deputy Registrar.

h.) Charges against the petitioners under Section 448 of the Companies Act, 2013 is not made out without first establishing fraud as explained under Section 447 of the said Act. Since essential ingredients of fraud as explained in the aforementioned Sections are not made out, a complaint case could not have been taken cognizance of by the Learned Special Court.

Accordingly prayed that the entire proceeding as mentioned above and be quashed all the orders passed by the Learned Court should be set aside.

Heard the submission of the Learned Advocate of the petitioner.

4. None appears on behalf of the Registrar of Companies. The Learned Advocate of the petitioners was directed to serve a letter upon the Opposite Party and in compliance thereof on 3rd March, 2025 the communication was made to the Registrar of Companies, the Opposite Party herein. It further appears that since the inception of the proceeding the opposite party did not turn up.

5. The Learned advocate of the petitioner would submit that on account of demonitization declared on 8th November 2016, there was almost no transaction and whatever left as cash reserve was deposited in the account of the company. Furthermore both the companies in question are closely held companies and in "Marco Polo" the petitioner and his wife are the only Directors. No outsider visitor exists and no question of any outside investor and or any investor grievances. The Learned Judge failed to consider that the company was not made an accused when the specific allegations levelled against the company and took cognizance of the complaint without being satisfied as to whether any justifiable case has been made out or not. The petition of complaint was filed on 22.11.2019 that is more than 1 and ½ years from the date of cause of action. The penal consequence of section 129 of the companies Act is not attracted because the maximum punishment provides for a period of 1 year and therefore the period of limitation as envisaged under section 468 of the code of criminal procedure will be applicable. The learned

court also failed to apply his judicial mind while taking cognizance and outrightly summoned the petitioner and fixed a date for framing of charge. The prayer of the petitioner seeking exception has also been turned down. The continuation of the proceeding would be abuse of process of law. Hence prays for quashing of the entire proceeding or to set aside the orders by the Learned Court on 23.12.2019.

6. Hence prays for quashing of the entire proceeding or to set aside the orders passed by the Learned Court on 23.12.2019.

7. The proceeding under challenge, were initiated on the basis of a complaint filed by One Vineet Rai being the Deputy Registrar of the Company West Bengal Calcutta against the present petitioners and the Auditor of the company for the financial year 2016-2017. The specific allegation levelled against them are reproduced as follows:-

CONTRAVENTION OF SECTION 129 OF THE COMPANIES ACT, 2013

3.1 Mr. Vishal Sharma, Chartered Accountant, the auditor of the company, reported on the Balance Sheet as on 31.03.2017 that “ The Company has not provided requisite disclosure of specified bank notes during the period 8th November 2016 to 30th December 2016 as they were unable to provide details”. The Company did not make the disclosure required to be made according to schedule III to the Companies Act 2013 as notified by MCA on 30.03.2017 thereby leading to the violation of Section 129 read with Part I of Schedule III of the Companies Act, 2013.

3.2 In its Balance Sheet as on 31.03.2017, the company has shown short term loans and advances given Rs. 91.69 lakhs out of which Advances given was Rs. 80, 50,450 without disclosing the specifications thereof as required by schedule III to the Companies Act, 2013. It is the same amount that Marco Polo Restaurants P Ltd, which is a related party, has shown as “Borrowings” (unsecured borrowings being loans repayable on demand from related parties) in its balance sheet as at 31.03.2017. Therefore, the company did not disclose (i) the loans given as “ Loan” violating the said Schedule III (ii) did not disclose as loan given to related party violating the said Schedule III (iii) did not disclose any related party transactions violating accounting standard-1

Hence, the accused nos. 1 and 2 herein have violated the provisions of Section 129 of the Companies Act, 2013 as stated in para 3.1 and 3.2 herein.

CONTRAVENTION OF SECTION 448 OF THE COMPANIES ACT, 2013

3.3 The company’s refrainment from disclosing the details of specified bank notes prove the serious illegal involvement of the company in regard to handling of the SBNs which have been suppressed in the financial statement in spite of the Law requiring such disclosure. The company’s malpractices should be punished to the core.

Hence, the accused nos. 1 and 2 herein are liable for the suppression of material fact relating to SBNs knowing it to be material and thus are liable U/s 448 of the Companies Act, 2013.

3.4 In spite of such serious misdeed of the company which was adversely commented by the Auditor, in form AOC-4 filed for the year 2016-17 it was stated “NO” for “Whether auditors’ report has been qualified or has any reservations or contains adverse remarks”. The form contained a declaration from Mr. Arup Mookherjee, Director of the company that “Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company”. Mr. Vishal Sharma, Chartered accountant (FCA-57598) certified the form with a declaration that “declare that he has been duly engaged for the purpose of certification of this form. He certified that he went through the provisions of the Companies Act, 2013 and Rules there under for the subject matter of this form and matters incidental thereto and he verified the above particulars (including attachment(s) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed “. Mr. Vishal Sharma was himself the Auditor who had made the adverse comment but made the false declaration in the form AOC-4 to enable the company from the data capturing by MCA from the electronic form about adverse comment from the data capturing by MCA from the electronic form about adverse comment of Auditor. This is a glaring case of connivance for criminal intention between the management and auditor of the company.

Hence, the accused nos. 1 and 2 herein are liable U/s 448 of the Companies Act, 2013.

3.5 The company did not disclose any related party transactions violating Accounting Standard-18. But the auditor reported that “In our opinion the aforesaid financial statements comply with the Accounting Standards specified under section 133 of the Act read with Rule 7 of the Companies (Accounts) Rules 2014.” The auditor has violated the provisions of Section 448 of the companies Act, 2013.

Hence the accused nos.3 herein is liable U/s 448 of the companies Act, 2013.

3.6 According to the profit and loss account for 2016-17 total income for the year was Rs.22.11 lakhs. But trade receivable lying due for within six months was stated as Rs.47.83 lakhs. If total income was only around of Rs. 22.00 lakhs how Rs. 47.00 is trade receivable having ageless than 6 months. i.e. arising within the year 2016-17 itself ? The accounts are fudged and fiddled. The Auditor being in connivance with management. Did not report anything .The Auditor being in connivance with management, did not report anything. The Auditor and the Directors violated section 448 of the Companies Act, 2013.

Hence, the accused nos.1, 2 and 3 are liable U/s 448 of the Companies Act, 2013 for suppression of material fact knowing it to be material.

8. The instant Revisional applications being CRR no 4526/2024 along with CRR No. 1805/2020 were assigned before this Bench by the Hon'ble Chief

Justice and both the matters are heard analogously. Both the petitioners are the Director of the Accused company namely Balailal Mookherjee & Company Act, 1956 and made accused in the petition of complaint. The complaint case no. 42/2019 and 43/2019 were filed against them and challenging the respective proceeding and orders passed by the Learned trial Court the revisional applications were filed.

9. It is apparent on the face of the complaint that the contravention of section 129 of the Companies Act 2013 at 3.1 of the complaint as asserted are mostly directed against the company who alleges not to have been furnished the requisite disclosure of specific bank notes during the period 8th March, 2016 to 31st December, 2016 and though the entire allegations are found to be against the company the said company has not been arraigned as an accused, in the said complaint and prima facie no reason can be found for such non-inclusion of the Company. In a decision as relied upon by the Learned Advocate reported in **2024 SCC Online Cal 3220 Santosh Kumar Lahoti vs Registrar of Companies West Bengal** the Learned Judge put relied upon on the decision of the Hon'ble Supreme Court in **Sunil Bharti Mittal v Central Bureau of Investigation (2015) 2 SCC (cri) 687** where it was observed “ *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 attract the doctrine of vicarious liability, by specifically incorporating such a*

provision. When the Company is the offender, vicarious liability of the directors cannot be imputed automatically”.

10. It was decided by Learned Judge in view of the above observation that in the said case the petition of complaint contending the allegations in respect of the offences alleged were in respect of the company, an acts done on behalf of the company. But the company and the persons responsible for the affairs of the company were not been made parties. Accordingly the Learned Judge was pleased to quash the proceeding filed u/s 448 of the Companies Act pending before the Learned Second Special Court Calcutta, West Bengal.

11. In another decision relied upon by the Learned advocate of the petitioner the Hon’ble Justice Sampa Dutta Paul in **CRR 100 of 2020 (Mr. Raj Sahai vs State of West Bengal and another)**, quashed the proceeding filed under section 10/12/16/18(1) of The Bengal Excise (Foreign Liquor) Rules 1998 considering the various judgement of the Hon’ble Supreme Court including **Daily De’ Souza V Government of India** through Deputy Chief Labour Commissioner © and another the Hon’ble Supreme Court reported in **(2021)20 SCC 135** ,where it was held:

12. *“Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other*

categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.”

- 13.** Section 129 of the Companies Act 2013 deals with , obligation of the company for laying down the Financial Statement to be furnished by the company which shall give a true and fair view of the State of affairs of the company or companies as per section 133 and as the necessary forms to be filled up per schedule III . In case of contravention by the company as per section 129(7) the Managing Director, the whole time director in charge of the finance, The Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirement of this section and in the absence of any officers mentioned above ,all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not less than Rs/-50 thousand.

- 14.** In the reply to the show cause served upon the petitioner on November 14, 2019, it was specifically stated that the cognizance was taken by the Registrar of Company on receiving a letter from one Prakash kumar Rai. The petitioner quoted provision of section 202 of CrPc wherein procedure for taking cognizance has been dealt with. It was also assailed that the requisition of information under section 206(4) of the Companies Act was served on 4th October ,2018, Summons under

section 207(3) of the Act was served on November 2018 and show cause notice u/s 448 of the Act was served on October 2019 where it was alleged “That the Company did not disclose any related party transactions violating AS 18 “Further more in the Board’s Report dated 30.8.2017 it was stated “ In the preparation of the Annual Accounts ,the applicable accounting standards have been followed along with proper explanation relating to material departures’ .The petitioner /company was directed to give reply within 7 days which was highly deprecated by the petitioner as that was the largest festive season in Bengal . It further transpires that the petitioner gave reply through their lawyer on November 2018 and only after that the Memo requisitioning the response of the company was called for under provisions of (206) 4 of the Companies Act. So it can be said that the cognizance was taken in the year 2018 on the basis of the complaint of Prakash Kumar Roy only and how the Registrar of companies while taking cognizance was satisfied about the veracity of the complaint and thereafter issued the show cause notice on 30th October 2019 impleading actions against the company under section 448 of the said Act is nowhere expressly by found. However, despite repeated challenges been made by the petitioner about the very existence of the complainant /informant no considered response was received on behalf of the Registrar of Companies.

15. Section 206 (4) of the said Act reads as ;

If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed , the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section.

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in Section 447.

16. So the above provision clearly cast upon the Registrar of companies a crucial role to test the veracity of the allegations launched against the Company. In the instant case after several communication made between the Registrar of Companies and the petitioners and also through their lawyer and the number of reply given to the various show cause notices issued against the petitioner, lastly issued the summons under section 207(3) on 5.11.2018 of

the Companies Act and after that the charge under section 448 of the Companies Act 2013 was made up. The Learned Special Court also took cognizance of the matter on the prayer of the Deputy Registrar of the Company without enquiring about the existence of prima facie case.

17. It is pertinent to note that pursuant to the provision as enumerated in section 439 of the Companies Acts the specific bar has been imposed upon the court in taking cognizance of any offence under the companies act unless the complaint is filed by the Registrar of the company ,any shareholder (or a member)n of the company or of a person authorised by the central government in that behalf .In this case the Deputy Registrar has filed the complaint and no such reason has been assigned by the court regarding such deviation when taking cognizance of the offence.

18. The judgement relied on by the learned advocate of the petitioner reported in **2022 SCC Online Cal 1792** in ***Usha Martin Telematics Limited and others vs- Registrar of companies*** ,West Bengal where Justice Ajoy Kumar Mukherjee questioned the role of the trial court regarding the satisfaction of the court about prima facie case against the accused person and about the grounds for proceeding against the accused person .The Hon'ble court was pleased to rely upon a decision of Hon'ble Court Apex Court reported in (1998)5 SCC 749 (Pepsi Foods limited v Special Judicial Magistrate)where it was held ;

“28. Summoning of an accused in a criminal case is a serious matter.

Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his

allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

19. On perusal of the judgement of **Santosh Kumar Lahoti vs Registrar of companies (supra)** where the various decision of Hon’ble Supreme Court has been discussed which includes **Subramoniam Swamy v Manmohan Singh , (2012)3 SCC** , the meaning of the word Cognizance was explained at para 34 which is as follows:

34.....In legal parlance cognizance is ‘taking judicial notice by the court of law ,possessing jurisdiction ,on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially ‘

Section 200 of the code of criminal procedure also reads as: A Magistrate taking cognizance of an offence and record the on complaint

shall examine upon oath the complainant and the witnesses present, if any and record the substance of their examination in writing.

When section 202 of the Code deals with Postponement of issue of Process and reads as- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit,[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,]postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

20. In the light of the legal parlance as above in view of the defence taken by the petitioner being one of the Director of the Company, regarding the maintainability of 448 of companies Act coupled with the facts and circumstances of the case, let the said provision be looked into.

Section 448 of the company's Act is as follows : Save as otherwise provided in this Act ,if in any return ,report ,certificate ,financial statement ,prospectus ,statement or other document required by, or for ,the purpose of any of the provisions of this Act or the Rules made thereunder ,any person makes a statement ,-

- a) which is false in any material particulars ,knowing it to be false ;or
- b) which omits any material fact ,knowing it to be material ,

he shall be liable under section 447 of the Act .

The above provision is clear to that extent that in case of any contravention to this provision he shall be liable under section 447 of the Act and section 447 of the Act deals with punishment for fraud and reads as:

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force ,any person who is found to be guilty of fraud [involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower]

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud ,but which may extend to three times the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years:

[Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to [fifty lakh rupees] or with both.]

Explanation.- For the purpose of this Section-

- (i) “ fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intend to deceive, to gain undue advantage from, or to injure the interests of , the company or its shareholders or

its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “Wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

21. Therefore in order to attract section 448 of the Company’s Act the necessary ingredient must be false statement what would constitute Fraud as defined under section 447 of the Act. On bare reading of the petition of complaint, the report of the Auditor for the period November 8, 2016 to December 30, 2017 the reason that the company did not provide the requisite disclosure of specified banknotes shows as “as they were unable to provide details”. However the complainant alleges against the present petitioner and his wife the petitioner of second revisional application for non-disclosure of the statement and arrayed them as accused in the petition of complaint. The petitioner gave a reply to the said letter of Complaint to the said complainant challenging the identity of the complainant .The stand taken by the petitioner was that the cash dealings of the companies were reflected in the cash book maintained by the companies for the relevant period and majority of the cash receipts were also deposited in the companies’ bank account .The reply of the Auditor, who has also arrayed as an accused submitted duly filled up the declaration forms pursuant to the requirement and admitted in his reply to the show cause that there may be some minor discrepancies on account of

inadvertent mistake .It was further pointed out that the directors of both the companies are closely held families and the recipients of the advance amount as alleged is equally close family. Mere divisions of one common family business with no third party being ever prejudiced by any stretch of imagination consequent to the option of any such non –disclosure ,if at all . The petitioner also prayed for withdrawal of the show cause notice issued but without any response.

22. In course of argument the Learned Advocate also pointed out that during such period there was no transaction on account of demonitization declared by the government of India and further declared that the declaration in form AoC-4 by the company was a clerical error and did not amount to false declaration.

23. Upon conspectus off all the following facts are found;

- a. Complaint lodged by a person whose existence is under challenge and despite receiving a number of communications the Registrar of companies gave no response to controvert such apprehension.
- b. The dispute pertains to non-disclosure of Financial Statement according to the schedule III when the auditor specifically declared the statement as per requirement of law .However there may be some minor mistakes which can never be termed as intentional or having *means rea* for commission of offence like Fraud .
- c. The director and his wife are the directors of the other disputed company and both are closely held companies having same set of directors.

- d. The company has not been impleaded as a party when the allegations are mostly directed against the company.
- e. The learned court took the cognizance of the complaint filed by the Deputy Registrar of the company without adhering to the relevant provisions as enumerated in section 439 of the Companies Act 2013 and also failed to assign any reason for the satisfaction of court for taking such cognizance.
- f. The Learned court also took the cognizance without disclosing his prima facie satisfaction of taking cognizance of the complaint before issuing outright summons to the petitioner.

Conclusion

24. Thus in view of the above discussions, the proceedings being Complaint Case no.43/2019 pending before the Learned 2nd Special Court, Calcutta at West Bengal under section 129 /448 of the Companies Act appears to be bad in law and is liable to be set aside being not in accordance with law and is an abuse of the process of the process of law.

The CRR NO.1805 /2020 and 4526 /2024 stands allowed by this common Judgement.

25. The complaint and the proceeding being Complaint Case no.43/2019 pending before the Learned 2nd Special Court, Calcutta, West Bengal under section 129/448 of the companies Act is hereby quashed in respect of the petitioners.

(CHAITALI CHATTERJEE DAS,J.)