

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1806 of 2020

With

CRAN 1/2021

Apurba Mookerjee

Versus

The Registrar of Companies, West Bengal

For the Petitioner : Mr. Ratul Das, Adv.
Mr. Prasanta Naskar, Adv.
Mr. Abhrajit Roy Chowdhury, Adv.

For the Registrar of Companies : Mr. Debapriya Gupta, Adv.
Ms. Sucharita Biswas, Adv.
Mr. Goutam Malik, Adv.

Heard on : 22.12.2025

Judgment on : 04.02.2026

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') seeking quashing of proceeding being Complaint Case No. 44/2019 now pending before the Learned Judge, 2nd Special Court at Kolkata under Sections 129/448 of the Companies Act, 2013 and all orders passed therein including the orders dated 22.11.2019, 23.12.2019, 14.02.2020 and 09.10.2020.

FACTS OF THE CASE:-

2. The specific case of the petitioner herein is that she is the wife of Arup Mookherjee, who is one of the Directors of M/s Marco Polo Restaurant Pvt. Ltd., a company duly incorporated under the Companies Act, 1956. The petitioner's name was inducted as a director of the aforesaid company on and from 14th June, 2001. However, she had no role to play in the day-to-day business affairs of the said company. Her name was incorporated as a director only for statutory compliance.
3. One Prakash Kumar Ray had lodged a complaint against the Marco Polo Restaurant. Based on such complaint, a notice was issued against the said company on 4th October, 2018 and on the basis of the reply given by the company dated 26th November, 2018, contravention of Section 129 of the Companies Act, 2013 along with

Section 448 of the said Act was found to the effect that the company did not make disclosures in accordance with Schedule-III of the Companies Act, 2013 notified on 30th March, 2017 regarding Specified Bank Notes (SBN) which was transacted upon during 8th November, 2016 to 30th December, 2016.

4. Moreover, in respect of the balance sheet relevant to the period ending on 31st March, 2017, “borrowings” are shown to the extent of Rs. 80,50,450/-. However, the company did not disclose any related party transactions as prescribed in Accounting Standard 18, violating Section 129 of the Companies Act, 2013.
5. In addition to that, the company allegedly refrained from disclosing details of Specified Bank Notes, which amounts to an offence under Section 448 of the Companies Act, 2013, as the company illegally transacted in Specified Bank Notes.
6. The company did not disclose any related party transactions, violating the Accounting Standard – 18, thereby also allegedly violating Section 448 of the Companies Act, 2013. The petitioner’s case is that she is totally innocent, and has been falsely implicated into this case, including her husband, Arup Mookerjee and the statutory Auditor of Marco Polo, namely, Vishal Sharma, in the present case. Accordingly, the Learned Judge had taken cognizance and issued process against the petitioner and others vide order dated

22.11.2019 as such the instant Revisional application preferred by the petitioner herein.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

7. Learned counsel appearing on behalf of the petitioner vehemently argued and submitted that the present Criminal Revisional application arises out against the Complaint Case No. 44 of 2019 pending before the Court of the Learned 2nd Special Judge at Kolkata is baseless and liable to be quashed since the case is bereft of the following reasons:-
8. Firstly, it is not maintainable since it has been filed in contravention of Section 439 (2) of the Companies Act, 2013. Neither the registrar, a shareholder or a member of the company, nor a person authorised by the Central Government on that behalf filed it. As the instant complaint has been filed by Deputy Registrar of Companies (Vineet Rai) which is not a complaint in writing by the Registrar or not a person authorized by the Central Government, the complaint is filed without any authorization. In support of this contention, the Petitioner has relied on the decision of this Hon'ble Court in ***Usha Martin Telematics Limited & Ors. Vs. Registrar of Companies***¹

¹ 2022 SCC Online Cal 1792

which places reliance on the decision of the Hon'ble Supreme Court in ***Pepsi Foods Limited vs. Special Judicial Magistrate***².

9. Neither from the complaint, or documents in support thereof nor the order passed by Learned Judge reflects submission of any authorization. The said order dated 22nd November, 2019 in detailed specifies that the case is filed by Deputy Registrar of Companies and he is the complainant who sought for dispensation of personal attendance which was exempted and application was allowed. No record of any authorization on behalf of Registrar of Companies is recorded in the said order. The exemption granted under Section 256 of CrPC read with Section 439(3) of Companies Act, 2013 is different from authorization necessary under the other provision.
10. It was further submitted that before arraigning the petitioner as an accused, the company must be entangled in the present case otherwise whole complaint is not maintainable in law. It is settled law declared by the Hon'ble Supreme Court in the decision of ***Santosh Kumar Lahoti vs. Registrar of Companies, West Bengal***³ and decision of this Hon'ble Court in ***Raj Sahai vs. The State of West Bengal & Anr.***⁴, which held that no vicarious liability can be attributed on the Directors in any criminal proceedings unless the

² (1998) 5 SCC 749 at para 28

³ 2024 SCC Online Cal 3220 (para 52, 53 and 54)

⁴ CRR No. 100 of 2020 dated 2nd February, 2024

Company is made an accused. Further reliance is also placed on the judgment of ***Sunil Bharti Mittal vs. Central Bureau of Investigation***⁵ and ***Daily De'Souza vs. Government of India***⁶.

11. The Complaint is bad in law as it suffers from non-joinder and misjoinder of the Company being the primary accused being arrayed as a party in the present case.
12. The Deputy Registrar has initiated a complaint on the basis of information received by one interloper/third party on a purported tip and alleged contravention of Section 129 (Financial Statement) and Section 448 (Punishment for false statement) of Companies Act, 2013 which is complained of after more than six months which is the period within which any discrepancy ought to have been noticed and complaint filed, but the purported concealment of transactions all arose prior to 30th December, 2016 and the information was received by letter dated 4th October, 2018 and complaint was filed on 22nd November, 2019.
13. Further, the complaint is based on inability to provide information and not on act of concealment of records or false statement. At best, the Petitioner has mistaken to provide all records or informed of their inability to produce all records, but have not made a false statement or concealed any record from the Respondent authorities.

⁵ (2015) 2 SCC (Cri) 687

⁶ (2021) 20 SCC 135

- 14.** The notification dated 30th March, 2017 under the Gazette of India, proposed disclosure of details of Specified Bank Notes by amendment to General instructions in preparation of Balance Sheets under Schedule III by insertion of Clause K, was effected retrospectively, therefore, the Central Government being aware of such implementation had also introduced. The Specified Bank Notes (Cessation of Liabilities) Act, 2017 notified on 27th February, 2017 which imposed restriction on penalty against contravention and offences.
- 15.** Proviso to Section 8 of the said Act emphasizes that any person who commits a default without knowledge and exercises all due diligence to prevent contravention or default cannot be made liable. This provision is also to be considered along with section 9 of the said Act, which restricts punishment to a fine for contravention of the provisions of the said Act.
- 16.** Once such punishment is expressly restricted by the said Act, there cannot be any proceedings against the Petitioner for charges in excess of these provisions, such as Section 448 of the Companies Act.
- 17.** It is an admitted position that the complaint is made beyond the prescribed period with regards to the application under Section 447 of the Companies Act. For such provision to apply the Complaint has to be supported by any finding of fraud, guilty mind or mens rea, but

in the present case, no such case is made out, as the complaint proceeds on the basis of inability to disclose specified bank notes, for which offenses, related to fraud, cannot be *ex facie* made applicable on account of the provisions of The Specified Bank Notes (Cessation of Liabilities) Act, 2017 notified on 27th February, 2017.

- 18.** In the aforesaid contentions raised by the Petitioner, the said complaint is not maintainable on multiple grounds. In any event, the purported grounds in the complaint, as alleged by the Opposite Party, are also not maintainable on the respective submissions.
- 19.** The case of the opposite party in respect of contravention of the financial statement is two-folds: -
- 20.** Firstly, at paragraph 3.1, it relates to the action of the Auditor for not making disclosure of specified bank notes but holds the Petitioner/Directors liable as accused without any finding of guilt or mens rea. Preparation of the balance sheet as per statutory norms is a responsibility of the Auditors; therefore, unless there is proof of guilt on the part of the Directors, they could not have been named as accused in the present case. As per Section 129 of Companies Act, financial statements are required to be in accordance with accounting standards.
- 21.** Further, the discussion in relation to applicability of provisions of The Specified Bank Notes (Cessation of Liabilities) Act, 2017 notified on

27th February, 2017 has been discussed hereinabove. Therefore, in the light of restriction to punishment provisions under Section 129 of Companies Act, 2013 cannot be attracted in such case.

- 22.** Secondly, at paragraph 3.2 it alleges contravention of procedure laid down under Accounting Standard 18 in recording transaction by related parties. The particular accounting standard is not applicable for a company within meaning of Small and Medium Sized Enterprise level II enterprise under Accounting Standard 18.
- 23.** From definition of Level-II enterprise at Page 31D it would appear that the Company (having turnover of over Rs. 5 crores) would fit this category of enterprise having turnover in excess of Rs. 40 lakhs and under Rs. 5 Crores.
- 24.** When read with exemptions/relaxations for SMEs Related Party Disclosure is not applicable for such an enterprise. Therefore, the charge has been incorrectly levelled against the Company.
- 25.** In addition to the fact that this provision is not applicable, from the balance sheets on record, it would appear that such disclosure of related party transaction has been carried forward in the Books of the Company for several years and is not a fresh statement which was required to be disclosed. Unsecured Borrowings from corporate Rs. 80,50,450/- is the related party transaction complained which was reflected as on 31st March, 2017 and 31st March, 2016. Unsecured

Borrowings from corporate Rs. 80,50,450/- was reflected as on 31st March, 2016 and 31st March, 2015, and from corporate Rs. 80,50,450/- was reflected as on 31st March, 2018 and 31st March, 2017. This is not a new transaction that requires disclosure.

- 26.** If there is no transaction, the question of disclosure of transaction under Accounting Standard 18 does not and cannot arise.
- 27.** Although there are two grounds raised by the Respondent authorities regarding contravention of the said provision, the Petitioner restricted submissions to paragraph 3.3 of the Complaint as the Petitioner is not implicated as per paragraph 3.4.
- 28.** No case of suppression of Specified Bank Notes is made out as the Balance Sheet suffers from mere non-disclosure, and it cannot be construed as suppression of Specified Bank Notes in respect of a notification which was affected retrospectively. In reply, the Petitioner relied upon a certificate from its Bankers regarding the disclosure of Specified Bank Notes to the Registrar of Companies, which neither violates the accounting standards nor The Specified Bank Notes (Cessation of Liabilities) Act, 2017, notified on 27th February, 2017.
- 29.** Since the ambit of its offence is restricted by a Special law, provisions of section 448 of Companies Act cannot be attracted in such case.
- 30.** It was further submitted that due to demonetization declared on 8th November, 2016 and the world pandemic in the year 2020, there was

almost no cash transaction whatsoever left as the cash reserve was deposited in the account of the company. The petitioner and her husband were the only directors of the company. The learned court below wrongly failed to consider that without making company as an accused, issued process against the present petitioner when all the specific allegations are against the company. Without arraigning the company as an accused, how the petitioner is liable for any vicarious liability or liable for any offence as alleged at all.

- 31.** The Trial Court further failed to consider that the complaint, lodged after expiry of more than one and half years from the date of actual cause of action, is barred by limitation as stipulated under section 468 of the CrPC.
- 32.** Finally, it was submitted that a Co-ordinate Bench of this High Court in CRR No. 4526 of 2024 [Arup Mookerjee vs. Registrar of Companies] with CRR 1805 of 2020 [Archana Chakraborty vs. The Registrar of Companies, West Bengal] dated 28th March, 2025 on identical allegations, facts and circumstances, in relation to the same transactions against the Directors, of another concern which has held the complaint to be bad in law and liable to be set aside being not in accordance with law and abuse of the process of law. One of the Directors of the present company is a common director of the said company named, Balailal Mookerjee & Co. Pvt. Ltd. No appeal has

been preferred and the said decision has attained finality. In the aforesaid facts and circumstances, the Complaint Case No. 44 of 2019 pending before the Learned 2nd Special Judge at Kolkata is also liable to be quashed on same prepositions otherwise it would be highly prejudicial and/or an abuse of process of law.

ARGUMENTS ON BEHALF OF THE REGISTRAR OF COMPANIES:-

- 33.** Per contra, the learned counsel appearing on behalf of the Registrar of Companies submitted that the instant Criminal Revisional application stems out of a complaint case being Complaint Case No. 44 of 2019 pending before the Learned Second Special Judge at Kolkata whereby, necessary processes were issued in respect of the accused persons so as to prosecute them for violation of Section 129 read with Section 448 of the Companies Act, 2013.
- 34.** A notice was issued under section 206(4) of the Companies Act, 2013 upon the petitioner on 04.10.2018 on the basis of a complaint received from Shri Prakash Kumar Roy, and in furtherance thereto, the respondent issued summons under 207(3) of the Companies Act, 2013 on 05.11.2018 to which the petitioner furnished his reply vide letter dated 26.11.2018 and based on the allegations made in the complaint, reply of the company and record and materials available on Ministry of Corporate Affairs portal, the violations of sections 129

and 448 of the Companies Act, 2013 have been observed by the Opposite Party.

35. The Learned counsel representing the opposite party submitted the following points as are appended herein below: -

- a) In the present case, the opposite party had received information about the company that the company is carrying on business for a fraudulent or unlawful purpose or not in compliance with the provisions of the Act, which entitled him to serve a notice under section 206(4) of the Companies Act, 2013 upon the petitioner. The petitioner was given a reasonable opportunity of being heard and in pursuance thereto, a summon was issued upon the petitioner under Section 207(3) of the Companies Act.
- b) Upon enquiry, it was found that the financial statements furnished by the company do not give a true and fair view of the state of affairs of the company. Furthermore, it has been revealed that the petitioner, while filing the financial statement, omitted material facts knowing it to be material for the purposes of this Act. Thus, the petitioner has committed fraud which tantamount to omission and/or concealment of any fact as defined under Section 447 of the Companies Act, 2013.
- c) The Complaint Case being No. 44 of 2019 has been filed before the Court of the Learned Second Special Judge at Kolkata by the

Deputy Registrar of companies, Kolkata. It has been alleged by the petitioner that, the Deputy Registrar of companies is not empowered to file a complaint before the Learned Court by virtue of section 439 (2) of the Companies Act, 2013 which is an utterly misconceived nuance of Law. As per section 2 (75) of the Companies Act, 2013, the term "Registrar" means a registrar, an additional registrar, a joint registrar a deputy registrar or an assistant registrar having the duty of registering companies and discharging various functions under the Act. Therefore, since the terminology and definition of the term "Registrar" includes a Deputy Registrar as well, it can be conclusively said that he is accordingly duly empowered to file the instant complaint case before the Court of the Learned Second Special Court at Kolkata.

- d) As per the Ministry of Corporate Affairs notification dated 30.03.2017, it has been envisaged in clause 3 (K) that every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period 08.11.2016 to 30.12.2016 in the form as furnished therein. From the text and tenor of the financial statements and the director's report, it transpires that the company/petitioner has not followed this statutory guideline which thereby amounts to committing fraud under Section 129 read with 448 of the Companies Act, 2013. The petitioner has utterly and

miserably failed to satisfy this Hon'ble Court as to the existence of any of their bona fides for their deliberate concealment of material facts. The entire financial statement of the petitioner for the disputed period has been annexed to the pleadings of the Revisional application wherefrom, nowhere it surfaces that the petitioner has complied with clause 3 (K) of the notification dated 30.03.2017.

- e) It has also been alleged by the petitioner that the aforesaid notification attempted to enforce a retrospective effect, which is not the true and proper essence of the said notification. The effect of retrospectivity should be reckoned considering each financial year as a block in itself, and being such, had this notification been issued after 31.03.2017, i.e. after conclusion of the relevant financial year, only in that instance the said notification can be said to be retrospective in operation. Since the aforesaid notification has been published on 30.03.2017, it applies to the relevant financial year in its entirety, which is permissible in law.
- f) It has also been alleged by the petitioner that the instant complaint case is bad in law since the company itself has not been arraigned as an accused. In this context, the Opposite Party intends to rely on a Judgment in the case of **Sunil Bharti Mittal (Supra)** at paragraph 39, wherein it has been held that, the directors can be

implicated in those cases where the statutory regime itself attract the doctrine of Vicarious Liability by specifically incorporating such a provision and when the company is the offender, the Vicarious Liability of the directors cannot be imputed automatically. From the perusal of the section 129 (7) of the Companies Act, 2013, it culls down that the Companies Act being a special statute specifically enumerates that when the company contravenes any of the provisions of this section the Vicarious Liability under this Act is cast upon the directors of the company concerned and, for which, the company itself need not be arraigned as an accused.

- g) The doctrine of Vicarious Liability in criminal law is an unknown concept for the offences committed under the Indian Penal Code, but is not so unknown in relation to offences committed under sections 129 and 448 of the Companies Act, 2013. The Companies Act is in the nature of a special statute in itself which is apparent from the preamble of the said Act and it will consequently override the principles enunciated under the Indian Penal code. The quintessential fact in the instant case before this Hon'ble Court is where by enactment, the statutory regime imposes Vicarious Liability upon the directors for offences committed by the company concerned which is satisfied by the dictum of the Act itself.

- h) As regards to some other ancillary issues raised by the petitioner herein, those are not maintainable, as being primarily triable issues, which can only be decided upon extended full fledged trial and after testimonial of witnesses. It has been held by series of pronouncements by the Hon'ble Apex Court that, issues which are triable in nature cannot be decided at the threshold and being such, the Criminal Revisional Application should not be allowed where issues relating to the fact are raised and germane in nature.
- i) The instant purported Revisional application is also bad for non-joinder of necessary parties, as: The State of West Bengal has not been made a contesting party herein. The allegations forwarded in ground numbers I, II, III, IV, V, XII, XIV, XV, XVIII, XIX, XX, XXI and XXII of the said Revisional application can be effectively controverted only if the State of West Bengal had been impleaded as a party herein.
- j) It has also been alleged by the petitioner that the instant Complaint Case is barred by limitation which is also a misconceived one. The provision of Section 448 of the Companies Act is not subject to Section 468 of the CrPC as it is punishable by imprisonment up to 10 years. Additionally, an offence committed under section 447 of the Act which is in the nature of the fraud committed is a continuing one and, therefore, Section 468 of the

CrPC has no manner of applicability whatsoever. Accordingly, the instant Criminal Revisional application is not maintainable in its tenor and form and as such, the same should be dismissed in limine.

FINDINGS AND ANALYSIS OF THIS COURT:-

- 36.** This Court has carefully heard the arguments and submissions made by the learned counsels appearing on behalf of the respective parties and upon perusal of the complaint, the principal questions which arise for consideration are as follows: -
- i. Whether the complaint filed by the Deputy Registrar of Companies is maintainable in view of section 439(2) of the Companies Act, 2013?
 - ii. Whether the complaint is barred by limitation?
 - iii. Whether the alleged contraventions of Section 129 read with Section 448 of the Companies Act, 2013 are prima facie made out?
 - iv. Whether the prosecution against the petitioner/Director is sustainable in the absence of the company being arraigned as an accused?
- 37.** This Court finds that the present petitioner is one of the directors of the company, namely, M/S Marco Polo Restaurant Pvt. Ltd. She

became a director and was inducted with the aforesaid company on and from 14th June, 2001.

- 38.** The allegation of the Deputy Registrar in the written complaint before the Trial Court with regards to offence committed by the directors for contravention of Section 129 along with section 448 of the Companies Act, 2013. The company has not provided requisite disclosure of specified bank notes during the period 8th November, 2016 to 30th December, 2016 as per Mr. Vishal Sharma, Chartered Accountant, the auditor of the company as such same was violation of Section 129 read with Part I of the Schedule III of the Companies Act, 2013 because the same should have disclosed as per notification issued by MCA on 30.03.2017.
- 39.** In the balance sheet as on 31.03.2017 “Borrowings” (unsecured borrowings being loans repayable on demand from related parties) are shown as Rs. 80,50,450/- in the manner laid down in Accounting Standard-18, which is leading to the violation of section 129 of the Companies Act, 2013 read with Accounting Standard-18 as such petitioner herein is liable for clear violation of the provision of Section 129 of the Companies Act, 2013.
- 40.** Similarly, 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. Being in restaurant business, having mostly cash transactions, the company has taken advantage of the situation to transact in SBNs illegitimately which is leading to the violation of Section 448 of the Companies Act, 2013. Hence, the accused nos. 1 and 2 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.

- 41.** The complaint was made on 22nd November, 2019, by the Deputy Registrar of Companies, West Bengal, Kolkata, before the Court of the Learned Second Special Judge at Kolkata.
- 42.** First issue raised by the petitioner herein is that the Deputy Registrar is not the competent authorised person to lodge a complaint as aforesaid. To decide the same, this court would like to examine the provision stipulated in Section 439 (2) of the Companies Act, 2013.

"S. 439. Offences to be non-cognizable. -

(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorized by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers."

- 43.** In the instant case, it is not disputed that the complaint has been filed by Deputy Registrar of Companies (Vineet Rai), which is not a complaint in writing filed by the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government. However, as per section 2 (75) of the Companies Act 2013, the term "registrar" means a registrar, an additional registrar, a joint registrar, a deputy registrar or an assistant registrar having the duty of registering companies and discharging various functions under the Act. Therefore, since the terminology and definition of the term 'registrar' means and includes a Deputy Registrar as well, it can be conclusively said that he is accordingly duly empowered to file the instant complaint case before the Court of the Learned Second Special Judge at Kolkata. Therefore, complaint made by the Deputy Registrar of the company is well maintainable in law.
- 44.** So far as the issue relating to the barred by limitation for initiation of proceeding is concerned, this court finds the complaint is not barred by limitation because the alleged offence committed by the company and its director between the period 8th November, 2016 to 30th December, 2016 for non-disclosure of specified bank notes. The complaint was made in the month of November, 2019. The offence

under section 129 of the Companies Act shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Fifty Thousand Rupees but which may extend to Five Lakh Rupees, or with both and insofar as Section 448 of the Companies Act, 2013, 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 Companies Act, 2013, which provides for maximum imprisonment up to 10 years, Hence, the period of limitation for instituting the case is not at all barred under Section 468 of the CrPC.

- 45.** Another point raised by the petitioner herein with regard to the information given by an interloper/third party is based on lack of particulars. The complaint itself is bereft of particulars. No specific allegation was made in the complaint against the petitioner. A vague and general allegation attributed against the petitioner, is not a sufficient basis to proceed with the criminal offence. There should be specific allegations with better particulars, but in the present case, the same is missing.
- 46.** Regardless of the interpretational dispute, it is evident that the allegation is of non-disclosure in the balance sheet and not of fabrication of accounts or falsification of records. Section 448 of the

Companies Act contemplates punishment for “false statement”, which necessarily imports an element of deliberate falsity and mens rea.

- 47.** From the complaint and materials placed, this Court does not find any specific allegation that the petitioner made any statement knowing it to be false. At best, the allegation is of omission to disclose particulars in a particular format.
- 48.** It is not a disputed fact that the company has not been named as an accused in the present case. Only the directors and the statutory Auditor have been made out as the accused in the instant case.
- 49.** The petitioner is one of the directors of the company, namely, M/s Marco Polo Restaurant Pvt. Ltd. Whatsoever, alleged offence has committed by the company and its director. Without making the company as an accused, how its director will be liable for punishment. The allegation of commission of offence under section 129 or 448 of the Companies Act, 2013 is not an offence committed by an individual. The alleged offence is related with the disclosure of true account is concerned with the company affairs rather than individual. Without making the company as an accused, how its directors will be liable for commission of offence and/or punishment. No vicarious liability can be imposed on the directors in any criminal proceedings unless the company is an accused. In the present proceedings, company has not made an accused. The complaint is

bad in law as it suffers from non-joinder and misjoinder of the company being the primary accused being arraigned as a party in the present proceedings.

50. It is a settled principle of criminal jurisprudence that vicarious liability can be fastened upon directors only when the statute specifically provides so and when the primary offender i.e., the Company is before the Court.

51. Section 129 of the Companies Act, 2013 reads as follows: -

“129. Financial statement. —

(1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949);

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003);

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation. —For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).

(5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the 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 be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.-For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.”

52. It appears from the provision cited above that the liability lies primarily on the company and then its directors and others.
53. The Hon’ble Supreme Court in the case of **Sunil Bharti Mittal (Supra)** and **Santosh Kumar Lahoti (Supra)** and subsequent decisions has consistently held that the company is the principal offender and directors are roped in on the principle of vicarious liability only when the company is prosecuted.
54. In the present complaint, the allegations primarily relate to defects in the financial statements of the company and alleged non-disclosures in the balance sheet. The acts complained of are primarily attributed to the company. The petitioner is sought to be prosecuted only in her capacity as a director.
55. Section 129(7) of the Companies Act, 2013 provides for punishment where a company contravenes the provisions of the section and casts

responsibility upon the managing director, whole-time director in charge of finance, Chief Financial Officer or any other person charged with the duty of compliance. However, such a provision presupposes contravention by the company. In the absence of the company being arraigned, fastening criminal liability solely upon the directors runs contrary to the settled position of law.

56. This Court finds substance in the submission of the petitioner that the complaint suffers from a fundamental defect of non-joinder of the principal offender.
57. It is settled law by the Hon'ble Supreme Court in judgment in the case of **Santosh Kumar Lahoti vs. Registrar of Companies, West Bengal**⁷ and decision of this Hon'ble Court in **Raj Sahai vs. The State of West Bengal & Anr.**⁸ which holds that no vicarious liability can be imposed on the Directors in any criminal proceedings unless the Company is an accused. Further reliance is also placed on the judgment of **Sunil Bharti Mittal vs. Central Bureau of Investigation**⁹ and **Daily De'Souza vs. Government of India**¹⁰.
58. In addition, no specific allegation with regards to non-disclosure of any statement knowing it to be false or suppression are not mentioned in the complaint lodged by the complainant. The whole allegations

⁷ 2024 SCC OnLine Cal 3220 (paragraphs 52, 53 and 54)

⁸ CRR No. 100 of 2020 dated 2nd February, 2024

⁹ (2015) 2 SCC (Cri) 687

¹⁰ (2021) 20 SCC 135

contend in the complaint are not sufficient to allow to continue the proceedings against the present petitioner because it would be only abuse of process of law since allegations are vague and general in nature. Even for the sake of argument, if it continued, it would be merely useless because possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to her by not quashing the criminal case.

59. Upon consideration of the above factors, this Court is of the view that continuation of the proceeding against the petitioner would amount to abuse of process of law and for securing ends of justice; proceeding against the petitioner is required to be quashed.
60. Consequently, **CRR No. 1806 of 2020** is **allowed**. **CRAN 1/2021** and all connected applications, if any, are, also thus, disposed of.
61. The proceeding being Complaint Case No. 44/2019 now pending before the Learned Judge, 2nd Special Court at Kolkata under Sections 129/448 of the Companies Act, 2013 is quashed insofar as the petitioner herein is concerned and all orders passed therein including the orders dated 22.11.2019, 23.12.2019, 14.02.2020 and 09.10.2020 are hereby set aside.
62. Let a copy of this Judgment be sent to the Learned Trial Court for information.

- 63.** Interim order, if any, stands vacated.
- 64.** Case diary, if any, be returned to the learned counsel for the State.
- 65.** All parties shall act on the basis of server copy of this judgment duly downloaded from the official website of this Court.
- 66.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)