

Reserved on 28.10.2015
Delivered on 23.12.2015

Court No. - 21

Case :- MISC. SINGLE No. - 2409 of 2014

Petitioner :- Km.Seema Ambekar Now Seema Chandorkar

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Aklank Jain

Counsel for Respondent :- G.A.

Hon'ble Pratyush Kumar,J.

The instant writ petition has been filed seeking the issue of writ of certiorari to quash the judgment and order dated 6th August, 2013 passed in Criminal Case No. 9518 of 2007 (State Vs. Pratibha Sharma and others) and the judgment and order dated 24.1.2014 passed by Sessions Judge, Lucknow in Criminal Revision No. 674 of 2013 (Seema Ambekar Vs. State of U.P.) and all further proceedings of Criminal Case No. 9518 of 2007 (State Vs. Pratibha Sharma and others) pending in the court of Additional Chief Judicial Magistrate, Court No.27, Lucknow to the extent it relates to the petitioner and further with the prayer to issue a writ of mandamus staying the operation of the orders impugned in the writ petition.

Heard Sri Aklank Jain learned counsel for the petitioner and the learned A.G.A. For the State and perused the record.

The facts relevant for the present purpose may be summarized as under:

On 27th May, 1998 on a report lodged by Radhey Shyam Kol, Case Crime No. 190 of 1998 under sections 406, 420, 467, 468, 471, 120B and 109 IPC was registered at police station Mahanagar, District Lucknow.

According to the FIR, Sachchidanand Mishra and others including the present petitioner had formed and registered a company with the name of Kargil Agro tech. Pvt. Ltd and the said company had committed fraud with the poor citizens and misappropriated the funds invested by the citizens. During investigation the investigating officer collected evidence to the effect that Sachchidanand Mishra and four others including the present petitioner got the said company incorporated on 2nd April, 1996 and Sachchidanand Mishra became its Managing Director and four others became its directors. The investigation took about 8 years to conclude. In the police report dated 26th June, 2006 filed under section 173 (2) Cr.P.C. the complicity of the petitioner in the crime was found.

The grievance of the petitioner is that at the time of the incorporation of the company petitioner was aged about 22 years. She was unmarried having degree of B.Lib. At that time she was doing course of Diploma in Computer Science of 'O' level. Father of Sachchidanand Mishra and father of the petitioner were colleagues and very close to each other, due to these family relations Sachchidanand Mishra, respondent no.5 obtained the signature of the petitioner on the requisite form on the pretext of completing legal formalities. She had not contributed any capital, business was transacted by Sachchidanand Mishra. The petitioner had resigned from the post of director on 1st October, 1997, her resignation was accepted on 8th October, 1997. The investigating officer had found that Sachchidanand Mishra with the help of his brother-in-law Narendra Sharma had opened a branch of the company at Obra in the district Sonbhadra and procured deposit of Rs. 92,63,843/- from small investors on the promise to pay them interest at the rate of 22% for the period of three years. The case

of the petitioner is that even the investigating officer had opined that business was run by Sachchidanand Mishra with the help of his brother-in-law and they had misappropriated the funds. According to the petitioner she had not received any pecuniary benefits. Sachchidanand Mishra is still absconding. Petitioner has married in the year 2002 and residing in Maharashtra. Due to her unnecessary prosecution she is put to inconvenience and hardship. Her application moved under section 239 Cr.P.C. for her discharge was rejected by the trial court vide order dated 6th August, 2013 illegally and her revision was also erroneously dismissed by order dated 24.1.2014. The courts below committed the error that in the present case an offence is said to be committed by a company, which is legal juristic person, the responsibility for business of the company can be fixed only on the person who is running the business. No allegation has been made showing active participation on the part of the petitioner in running the business. There is no allegation that the petitioner conspired with respondent no.5 to commit the offence and received pecuniary benefits for the same.

On behalf of the State Respondent Nos. 1 to 3 counter affidavit has been filed whereby the averments made in the writ petition have been denied and it has been stated that the petitioner was charge sheeted after collecting cogent and credible evidence against the petitioner and other co-accused. Though correctness of the facts concluded by the investigating officer has not been disputed, however, grounds raised in the writ petition have been vehemently denied and it has been candidly stated that the petitioner was one of the active member of the board of directors and she was involved in criminal breach of trust. Her resignation is sham and fictitious. She took part in every meeting

of the board of directors where decisions were taken, which when implemented resulted in the commission of the present crime. It has been further stated that she has 600 shares in the company. On behalf of the petitioner rejoinder affidavit has been filed wherein averments in the counter affidavit have been denied and it has been stated that most of the shares were held by Sachchidanand Mishra and his family members which shows that the said company was a proprietorship firm. Further facts stated in the supporting affidavit to the writ petition have been reiterated. This is an admitted fact that with other co-accused the petitioner has also been charge sheeted and criminal case is pending in the court of learned ACJM, Court No.27, Lucknow.

Prayer for issue of writ of certiorari inheres challenge to the correctness of the impugned orders to be examined decided by the Court. The yardstick to be applied therefor is that such writ may be issued provided there is an error on the face of the record. It is impermissible for the Court to adjudicate the correctness of the orders impugned before it on the basis of long drawn arguments to be substantiated from the records which were extraneous to the records when the impugned orders were passed.

Keeping in view this legal position, it is proposed that first grounds raised, in support for discharge of the petitioner, in the application moved under section 239 Cr.P.C. before the trial court be glanced at.

Copy of this application has been annexed with the writ petition as Annexure 7. The main grounds for seeking discharge are that the petitioner had nothing to do with any activities of the financial nature conducted by the said Company act, Obra (Sonbhadra). To be specific the petitioner has stated that the petitioner neither operated any bank account nor she was

entrusted the dominion of the property of the said Company collected from the public at Obra. She had never cheated anyone and thereby solicited any deposit from the public nor forged any document. Thus, she has not committed any offence.

From the perusal of the impugned order, it reveals that the discharge application was opposed by the prosecution on the ground that the petitioner had actively participated in the fund collecting activities. On 26th July, 1996, she participated in the meeting of the Board of Directors wherein decision was taken to open bank account in Allahabad Bank at Obra and Sachidanand Misra and Pratibha Sharma were authorized to operate the account and account opening form also bore signature of the present petitioner alongwith the other directors. It has been further stated that Registrar of Companies vide letter dated 29th April, 2009 had intimated that resignation of the present petitioner from the directorship of the said company had never been intimated to his office and the alleged resignation had no value. It has been further stated that the said Company accepted deposits and carried out banking activities without permission of the Reserve Bank of India. At that time, the present petitioner was acting as director. She was in conspiracy, with other directors and Managing Director, to embezzled large public funds collected by the company and by virtue of Section 10 of the Evidence Act, she is responsible for all the acts done by the other accused in pursuance of that conspiracy.

Learned ACJM while referring the statements recorded under section 161 Cr.P.C. and going through the documentary evidence has opined that there is evidence indicating complicity of the present petitioner in the crime and no ground for discharge was made out. Her application was thus rejected.

The learned Sessions Judge also rejected the criminal revision filed against that order holding that the revision was bereft of merit and referred the case of **R.K.Dalmia and others Vs. The Delhi Administration, A.I.R. 1962, Supreme Court, 1821** in support of the rejection order.

On behalf of the petitioner, after challenging the correctness of the factual findings, has been argued that the offender is the company and the criminal liability can be fixed on its directors only if there is sufficient incriminating evidence against them coupled with criminal intent or statutory regime attracts the doctrine of vicarious liability. In support of this submission, case of **Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC, 609** and **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another (2007) 4 SCC, 70** have been referred.

In reference to the resignation, learned counsel for the petitioner has submitted that in accordance with the provisions contained in section 303 of the Companies Act, 1956 it was the duty of the secretary of the company to communicate her resignation to the Registrar of Companies and the petitioner could not be saddled with the criminal liability on account of lapse committed by the secretary. In support of this argument, he has referred the case of **Saumil Dilip Mehta Vs. State of Maharashtra (2002) 39 SCL, 102 (BOM)**. In para-7 of the report, the Division Bench of the Bombay High court has held that when a director has tendered his resignation and the Board of Directors has accepted it and has acted on it, such director cannot be held liable for the liability incurred by the said Company after the date of acceptance of his resignation except the liability which has been incurred by him for purchase of share of the said Company and nothing more.

On behalf of the respondent nos. 1 to 3, these arguments have been repelled and it has been submitted that the petitioner is unnecessarily delaying the criminal trial as she had obtained bail from the trial court. According to the learned AGA, bank accounts no.CA 1368 & 1199 were opened in the name of said company at Lucknow in two banks. In pursuance of the resolution dated 26th July, 1996, bank account in the name of Company was opened in the branch of Allahabad Bank at Obra, District Sonbhadra and two above-mentioned persons were authorized to operate the same. According to learned AGA, all these accounts were opened on the collective decision of the Board of Directors and the present petitioner, was signatory to the resolution as well as account opening forms. These accounts made it possible to embezzle the public funds. He has further submitted that between 19th September, 1996 upto 20th November, 1997, Rs.92,83,843/- were deposited by the citizens and withdrawn by the company from the Obra branch of Allahabad Bank and deposited in the Nainital Bank, Hazratganj Branch, Lucknow. Learned AGA has also argued that the alleged resignation dated 1st October, 1997 was fake and fictitious. It was never acted upon, therefore, the case decided by the Bombay High Court is of no help to the present petitioner.

When in this factual background and legal position the grounds of challenge to the validity of the impugned orders are examined, I am of the opinion that it is even admitted to the present petitioner that she remained as director of the said Company upto 1st October, 1997. The crime which has been committed has been facilitated before she tendered her resignation. On behalf of the petitioner, it has not been disputed that on 26th July, 1996, she did not participate in the meeting of Board of Directors. It has been specific case of the petitioner that

he had nothing to do with the financial activities conducted by the said company at Obra. Now the evidence collected by the investigating officer indicates that she had not only participated in the decision to open a bank account at Obra but also she signed the account opening form. Thus, complicity of the petitioner in the crime is prima-facie established. In the impugned order, the learned ACJM has taken all the facts into account and held that there is enough evidence to frame charges against the present petitioner. Thus, the impugned orders contained neither any factual infirmity nor any legal error.

The law referred on behalf of the petitioner is in reference to the vicarious liability of the directors in an offence committed by a company punishable under sections 138 and 141 of the Negotiable Instruments Act, 1881. In these cases, criteria for determining the liability of the director has been held issuance of cheque. Non-drawers were held not vicariously liable. In the present case, factual situation is different. Active participation by the present petitioner in the commission of crime is reflected from the documentary evidence. The law referred here-in-above does not support her ground for discharge.

So far as the accrual of financial benefit is concerned, though the investigating officer has mentioned that the petitioner was benefited but no specific transaction has been shown which resulted in pecuniary benefit to her. However, letter dated 8th October, 1997 written by respondent no.5 to the present petitioner indicates that she was promised that whatever payment was due to her, would be paid to her with interest whenever profits were received by the company. This letter indicates that there were pecuniary benefits accrued to the present petitioner to be paid by the said company. Now during the trial onus would be on the

present petitioner to show that she did not receive any pecuniary benefit thereafter. This ground for discharge is also not substantiated at this stage.

Running business of a company in undertaking banking activities without prior permission of the Reserve Bank of India amounts of violation of direction of law. In the light of law laid down in R.K. Dalmia's case (supra), the acts assigned to the present petitioner are prima-facie sufficient to indicate that charge under section 409 I.P.C. could be framed against her.

In view of above, no ground for discharge survives. The impugned orders are legal and passed after due application of judicial mind. They suffer no infirmity.

Writ petition is without substance and deserves to be dismissed.

The writ petition is, accordingly, dismissed.

Order Date :- December 23, 2015
SKD/MT