

Dinesh Hariram Valecha vs State Of U.P. And Another on 13 February, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:25108

AFR

Reserved on : 24.01.2024

Delivered

Court No. - 92

Case :- APPLICATION U/S 482 No. - 13290 of 2023

Applicant :- Dinesh Hariram Valecha

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Aarushi Khare, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Prashant Kumar, J.

1. Heard Shri Vinay Khare, learned Senior Advocate assisted by Ms. Aarushi Khare, learned counsel for the applicant, Shri Shashidhar Pandey, learned AGA for the State and perused the record.

2. The instant application under Section 482 CrPC has been filed by the applicant praying to quash the summoning order dated 23.10.2019 and the entire proceeding of the Complaint Case No. 06 of 2018 (M/s Joshi Construction v. Valecha Engineering Limited & others), under Section 138 of Negotiable Instruments Act, 1881, Police Station- Kotwali, District- Etawah pending before the

Court of Additional Chief Judicial Magistrate, Court No.1, Etawah.

Facts of the Case

3. The opposite party no. 2 had a business relation with the applicant, it was in between December, 2014 to July, 2015, where several work orders were placed by Valecha Engineerings Limited (for short "VEL") for KERB laying and PCC laying. During the course of the business, VEL paid certain amount to opposite party no. 2, however, there was a balance of Rs. 7,18,65,987/- which was to be paid by VEL to opposite party no. 2. In pursuance of this payment, VEL issued a cheque bearing No. 063388 dated 11.10.2017 drawn on SBI, Shashtri Chauraha, Etawah for an amount of Rs.6,50,00,000/- (six crores and fifty lakhs) crores in favour of opposite party no. 2. When the said cheque was presented it was dishonoured on 22.11.2017 with a remark "insufficient funds" and was sent to the opposite party no. 2 vide return memo dated 23.11.2017. After bouncing of the cheque, opposite party no.2 requested VEL to pay the bounced cheque amount when, VEL did not make the said payment, the opposite party no. 2 was constrained to issue a legal notice on 16.12.2017 through its lawyer which was delivered to VEL on 18.12.2017. Even after getting the notice, VEL did not make the payment and hence, the opposite party no.2 was left with no other option but to file a complaint on 08.01.2018 under Section 138 of the Negotiable Instruments Act in the Court of Second Judicial Magistrate, Etawah. The Court after being satisfied that the court had jurisdiction and the complaint was within time, fixed 10.04.2018 for statement under Section 200 CrPC. After 20 hearings and after a gap of one and a half years, notices were issued on 23.10.2019 against Valecha Engineerings Limited, and other directors, and also against Mr. Shyam M. Bulbule who was the authorised signatory of the cheque (the applicant herein is one of the whole-time Director of the Company). The matter was next listed on 30.11.2019, thereafter, the accused did not appear in the court and the bailable warrant were issued.

4. Since, the accused were not appearing, so the trial was not proceeding. The opposite party no. 2 was left with no other option but to approach this Court by filing an application u/s 482 CrPC bearing No. 13490 of 2020 for expeditious disposal, in which, this Court on 09.09.2020 was pleased to pass the following order :-

"Heard learned counsel for the applicants, learned AGA and perused the record.

This application under Section 482 Cr.P.C. filed by the applicants with a prayer to direct the court below 1st Additional Chief Judicial Magistrate, Etawah to expeditiously decide the complaint case No. 6 of 2018, under Section 138 Negotiable Instruments Act, Joshi construction Vs. Valecha Engineering Ltd and others, P.S. Kotwali, District Etawah.

Learned counsel for the applicants submitted that the complaint was filed on 8.1.2018 and applicant was summoned on 23.10.2019, considerable time has already lapsed but the case is still pending for trial.

The only prayer made by learned counsel for the applicants to expeditious disposal of this case pending in the trial court as per provision of sub section 3 of Section 143 of the Negotiable Instruments Act, 1881 which is quoted below:-

"(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

Considering the facts of the case, perused the material available on record and without expressing any opinion on the merits of the case, this application is finally disposed of with a direction to the court below to decide the aforesaid case in accordance with law, without granting any unnecessary or long adjournments to either of the parties, as expeditiously as possible, preferably within a period of six months from the date of production of a certified copy of this order, if there is no other legal impediment.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad. The computer generated copy of such order shall be self attested by the counsel of the party concerned. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

5. On 13.10.2020, since the accused were not appearing before the court, hence, the court issued a non-bailable warrant. On 20.10.2020, the matter was again listed and the accused did not appear. Again on 10.11.2020, the accused did not appear before the court.

6. It was on 27.11.2020, the accused Vijay Kumar, Anil S. Korpe, Tarun Dutt had appeared and granted bail. When the matter was next listed on 30.11.2020, the three accused who earlier appeared, did not appear nor sought for exemption from appearance, hence, NBW was issued against them. On 14.12.2020, again, these three accused did not appear and NBW was issued against them and summons were issued against rest of the accused.

7. On 10.03.2021, few of the accused appeared through counsel. The court held that the three accused who were on bail had not appeared in the court neither they filed exemption application. A notice was issued to the surety. Since the applicant was not appearing, so an application was filed against the accused under Sections 82 & 83 of CrPC. On 20.03.2021, the accused again did not appear neither sent any exemption, so the court directed to proceed against them under Section 82 & 83 of CrPC. In spite of that, again, on 01.04.2021, the accused did not appear and NBW continued. It was only on 26.02.2021, where application for exemption from appearance on behalf of Vijay Kumar Himmatlal Modi, Anil S. Korpe and Tarun Dutt was filed. On 05.03.2021, their exemption was allowed the next date fixed on 10.03.2021 and on 20.03.2021, the exemption application of the three accused was rejected and fresh NBW was issued and police commissioner was directed to serve the same, and on 01.04.2021, the accused did not appear.

8. On 07.01.2022, for the first time after four years of filing the complaint, the present applicant -Mr. Dinesh H. Valecha appeared in the court and sought his bail and the same was granted.

9. On 10.01.2022 & on 16.04.2022, the applicant herein Mr. Dinesh H. Valecha filed an application for exemption from appearance which was entertained. Again on 13.05.2022, the accused were not present in the court, similarly, the applicant on 31.05.2022, sent an application for exemption from appearance. The same procedure of filing exemption from appearance was repeated on 10.06.2022, 24.06.2022, 08.07.2022, 16.08.2022, 17.09.2022, 17.10.2022, 09.11.2022, 02.12.2022, 02.01.2023 and 08.02.2023.

10. The applicant herein, Mr. Dinesh H. Valecha who was a whole-time Director of Valecha Engineerings Limited, thereafter filed the instant application under Section 482 of CrPC seeking quashing of summoning order and the entire proceedings initiated under Section 138 of Negotiable Instruments Act.

11. Mr. Vinay Khare, learned Senior Counsel appearing for the applicant submitted that the summoning order issued is incorrect and illegal as Section 141(2) of N.I. Act clearly lays down that only those directors with whose connivance and consent, the offence has been committed can only be liable to be punished under the N.I. Act. He further submits that, in the statement recorded under Section 200 CrPC, no specific role against the applicant has been assigned. In the complaint, the complainant submits that Valecha Engineerings Limited is the listed company whereas in the statement, he submits that the applicant is a proprietor of the company. Nobody can be a proprietor in the private limited company. He further submits that in this case, it is not clear as to who is the holder of the cheque as per Section 138 of N.I. Act. He further submits that the date of service of notice has not been recorded and no evidence of service of notice, which is mandatory as per Section 138 of the N.I. Act has been recorded. The instant complaint filed by the complainant does not fulfil the conditions as laid down under Section 138 of N.I. Act.

12. Learned counsel for the applicant further submits that the accused - Dinesh Hariram Valecha was a full-time director, though he was a director of the Company but had no knowledge of the issuance of the cheque, and cheque has wrongly issued by the employee of the Company Mr. Shyam M. Bulbule. He further submits that a Power of Attorney (PoA) was executed by the other director Mr. Umesh H. Valecha in favour of Mr. Shyam M. Bulbule to sign the cheque and was also an authorised signatory in the bank. He submits that PoA was valid up to 15.10.2016 and the employee has acted beyond the PoA and had issued the cheque. The argument of the learned counsel for the applicant is that the evidence of the complainant under Section 200 CrPC has certain contradiction and the date of service of notice which is paramount for initiating a proceeding under Section 138 N.I. Act has not been mentioned.

13. The record reveals that the accused entered into an MoU to settle the dispute and a part of the payment had also been made. Subsequently, the accused chose not to honour the MoU and refused to pay the balance amount.

14. At this point, a query was put to the learned counsel for the applicant whether the accused or the company, in which, he was a director, is still ready to pay the agreed amount, which had been agreed in the MoU, as has been seen vide order dated 16.08.2021 of the court below. Then counsel for the applicant showed its inability to pay or to honour the MoU.

15. To buttress the argument that no role has been assigned to the applicant in the complaint, the counsel for the applicant has cited a judgement of the Hon'ble Supreme Court in the matter of Suresh Thipmappa Shetty v. State of Maharashtra, Criminal Appeal No. 1541 of 2010 (citation : 2023 SCC OnLine SC 1038) (Para 18, 19 & 20) wherein, it was held that if no averment were made in the complaint neither any role has been assigned then, no proceeding can be initiated against such directors.

16. The counsel for the applicant further informed that Valecha Engineerings Limited has gone into insolvency as some creditors have filed the case against them in National Company Law Tribunal (for short "NCLT"). The insolvency proceedings have been admitted, and Insolvency Resolution Profession (IRP) has also been appointed. Now it is open for the opposite party no. 2 to apply with the IRP for the dues which was outstanding against the company.

17. Per contra, learned AGA appearing for the State submits that after bouncing of the cheque, the opposite party no. 2 has filed a complaint under Section 138 of N.I. Act which has been pending since January, 2018. In this petition, the accused purposely were not appearing in order to delay the trial. When NBW were issued against the other directors, surprisingly, no NBW was issued against the applicant in spite of the fact that he was not appearing in the court. This Court vide order dated 09.09.2020 has directed the trial court to finish the trial preferably within a period of six months, however, more than three and a half years have passed, and trial has still not started. The trial court in spite of the order of this Court, has been very lenient with the accused and did not proceed to decide the case. He further submits that the records reveal that the parties have entered into a compromise and on the basis of compromise, Rs.2.5/- crores (as part payment for this due) crores was paid to the opposite party no. 2. With this, it is clear that the accused acknowledges the due/debt and paid a portion of the same, however, they did not fulfil the terms of the compromise and neither the compromise-deed has been filed by the applicant, with the instant application. The applicant has not come to this Court with the clean hand. The sole intention of preferring this application is to further delay the trial.

Analysis

18. Present petitions have been filed under Section 482 Cr.P.C. Section 482 of Cr.P.C. reads as under:

"482. Saving of inherent power of High Court " Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

19. This provision of law envisages three circumstances under which the inherent jurisdiction may be exercised, namely -

i) to give effect to an order under the code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

Further to seek interference under this Section, three conditions are to be fulfilled, namely -

i) the injustice which comes to light should be of a grave and not of a trivial character; (ii) it should be palpable and clear and not doubtful; and (iii) there exists no other provision of law by which the party aggrieved could have sought relief.

20. Keeping in view these principles in mind, it is to be seen as to whether the present petition under Section 482 CrPC is maintainable or not.

21. Chapter-XVII was inserted in the Negotiable Instruments Act, 1881 by which, Sections 138 to 142 were introduced. The relevant provisions of Section 138 of the Act is as follows :

"138. Dishonour of cheque for insufficiency, etc., of funds in the accounts - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another persons from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both."

22. As per Section 141 of the Act, only such person is held liable if at the time when the offence was committed, he was in charge and responsible to the company for conduct of the business of the company.

"Section 141. Offence by companies " (1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence 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 offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence."

23. In order to bring an application under Section 138 the complaint must show:

(1) That cheque was issued; (2) The same was presented; (3) It was dishonoured on presentation; (4) A notice in terms of the provisions was served on the person sought to be made liable; (5) Despite service of notice, neither any payment was made nor other obligations, if any, were complied with within fifteen days from the date of receipt of the notice.

Section 141 of the Act in terms postulates constructive liability of the Directors of the company, or other persons responsible for its conduct or the business of the company.

24. Section 143 was inserted in the Act in the year 2003. Section 143(3) reads as follows :-

"Section 143(3)- Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

25. That the averment made against the applicant by the complainant in his complaint filed under Section 138 of N.I. Act was that 'applicant along with the other directors are fully responsible for the conduct of business of Accused No.1-Company.' Hence, it is apparent that specific allegation in the complaint was made against the applicant that at the time of commission of offence, he was a Director and responsible for the conduct of the business of the Company, therefore, was liable for the offence committed by the Company under the Act.

26. The argument of the learned counsel for the applicant is that the evidence of the complainant under Section 200 CrPC has certain contradiction and the date of service of notice which is paramount for initiating a proceeding under Section 138 N.I. Act has not been elaborated upon. These are all disputed questions of facts which cannot be ascertained by this Court in the present proceedings.

27. In *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866), this Court summarized some categories of cases where inherent power can and should be exercised to quash proceedings.

(i) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;

(ii) Where the allegations in the First Information Report or complaint taken as its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

28. The Hon'ble Supreme Court in the matter of *State of Haryana Vs. Bhajan Lal* 1992 Supp (1) SCC 335 has laid down the guidelines under which circumstances the Court should, in its inherent

power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

"(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

29. Since, the learned counsel for the applicant argued that the company has gone into insolvency and hence, no proceedings can be initiated against the company or its directors as Insolvency and Bankruptcy Code (for short "I.B. Code") provides for moratorium is not correct. Section 32-A of I.B. Code provides as follows :-

"As per Section 32A, the liability of a corporate debtor for an offence committed under any law prior to the commencement of the Corporate Insolvency Resolution Process ("CIRP") shall cease and the corporate debtor will not be prosecuted for such an offence from the date, the resolution plan is approved by the adjudicating

authority, i.e. National Company Law Tribunal ("NCLT")."

30. The Hon'ble supreme court in the matter of Manish Kumar v. Union of India and Another, reported in (2021) 5 SCC 1 has held :-

"Section 32A of the IBC has been upheld by this Court in Manish Kumar v. Union of India reported in (2021) 5 SCC 1. This Court has held that the said section does not permit the wrong-doer to get away. Thus, if the argument of allowing the signatory/director to go scot-free after the approval of the resolution plan is accepted the same would run contrary to the legislative intent of Section 32A which has been upheld by this Court as under:

"326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32-A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the Code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the interim resolution professional and thereafter into the hands of the resolution professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision."

31. The Hon'ble Supreme Court in the matter of Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd. (supra) (Criminal Appeal No.170 of 2023) has held as follows :-

"66. Thus, the heart of the matter is the second proviso appended to Section 32A(1) (b) of the IBC which provides statutory recognition of the criminal liability of the persons who are otherwise vicariously liable under Section 141 of NI Act, in the context of Section 138 offence.

67. Thus, Section 32A broadly leads to :

a. Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.

b. The prosecution in relation to "every person who was a "designated partner" as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of Section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.

c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution under Section 138 or any other offences.

68. Thus, I am of the view that by operation of the provisions of the IBC, the criminal prosecution initiated against the natural persons under Section 138 read with 141 of the NI Act read with Section 200 of the CrPC would not stand terminated."

32. A plain reading of this judgement shows that Section 32-A has been introduced by an amendment into the Insolvency & Bankruptcy Code which focuses on the liability of offences committed by the directors of the corporate debtor prior to commencement of the corporate insolvency resolution process. The Court further held that every person who was in any manner in charge of, or responsible of the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence shall be proceeded with, in accordance with law. It is only the corporate debtor company (with the new management) will be safeguarded.

33. The Hon'ble Supreme Court has made it very clear that the directors cannot escape the earlier criminal liabilities even if the company goes into insolvency.

34. The scope of Section 141 has been authoritatively discussed in a catena of cases by the Hon'ble Supreme Court, which is binding on us and there is no scope for redefining it in this case. Suffice it to say, that a prosecution could be launched not only against the company on behalf of which the cheque issued has been dishonoured, but it could also be initiated against every person who at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the company. In fact, Section 141 deems such persons to be guilty of such offence, liable to be proceeded against, and punished for the offence, leaving it to the person concerned, to prove that the offence was committed by the company without his knowledge or that he has exercised due diligence to prevent the commission of the offence. Sub-section (2) of Section 141 also roped in

Directors, Managers, Secretaries or other officers of the company, if it was proved that the offence was committed with their consent or connivance.

35. A Company, though a legal entity, cannot act by itself but can only act through its directors. Normally, the Board of Directors act for and on behalf of the company. This is clear from Section 291 of the Companies Act which provides that subject to the provisions of that Act, the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorized to exercise and do.

36. Palmer described the position thus: "a company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors....

It is further stated in Palmer that:

"Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors."

37. In the light of the ratio laid down by the Hon'ble Supreme Court what is to be looked into is whether in the complaint, in addition to asserting that the applicant is director of the company, it is alleged that he is in charge of and responsible to the company for the conduct of the business of the company. We find that such an averment is clearly made out in the complaint.

38. In *M/s. Bilakchand Gyanchand Co. Vs. A. Chinnaswami*, (1999) 5 SCC 693, the Hon'ble Supreme Court has held that a complaint under Section 138 of the Act was not liable to be quashed on the ground of technicalities. The view was reiterated in *Rajneesh Aggarwal v. Amit J. Bhalla*, 2001 (1) SCC 631, these decisions indicate that too technical an approach on the sufficiency of notice and the contents of the complaint is not warranted in the context of the purpose sought to be achieved by the introduction of Sections 138 and 141 of the Act.

39. Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company.

40. In *Gower and Davies*" Principles of Modern Company Law (Seventh Edition), the theory behind the idea of identification is traced as follows:

"It is possible to find in the cases varying formulations of the under-lying principle, and the most recent definitions suggest that the courts are prepared today to give the rule of attribution based on identification a somewhat broader scope. In the original formulation in the Lennard's Carrying Company case Lord Haldane based identification on a person "who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation". Recently, however, such an approach has been castigated by the Privy Council through Lord Hoffmann in the Meridian Global case as a misleading "general metaphysic of companies". The true question in each case was who as a matter of construction of the statute in question, or presumably other rule of law, is to be regarded as the controller of the company for the purpose of the identification rule."

41. That, the reliance placed by the learned counsel for the applicant on various judgements is not applicable as the complainant in the complaint has made clear assertions that the applicant was responsible for the conduct of the business of the Company. It is now the duty of the applicant to show that he was not responsible for the day to day affairs of the Company.

42. The argument advanced by Mr. Khare, learned Senior Counsel that the applicant was not involved in the active business of the accused-company, and was just a Director of the Company, would not go to prove that he was actively involved in the business of the Company. Whether he was involved in the active business of the company or not is again a disputed question of fact which cannot be adjudicated by this Court in the present proceedings.

43. The order-sheet further reveals that no effective steps have been taken to serve on the accused.

Under Chapter-III of the General Rules (Criminal) regarding service of process or register the processes as maintained his circular letter being C.L.No.42/98 dated: Allahabad: 20/8/1998 has been issued which reads as under:-

"The Hon'ble court has noticed that the present system of service of summons is not effectively working and service upon the witness/ accused persons are not being effected within the period fixed by the courts. The system is effecting the speedy trial of sessions and magisterial cases. In this regard, the court has taken the following decisions for strict compliance by all :-

1. Old practice of fixing one sessions trial for three days in continuation is revived. No other sessions trial except any formal party-heard trial in which one or two formal witnesses are to be examined should be fixed on the that day.
2. The process register as mentioned in rule 12 of chapter III of G.R.Criminal be strictly maintained by all courts. A police official who is receiving the summons must state his name and number in clear block letters in columns no.5 so that the responsibility be fastened upon him.

3. Public prosecutor and D.G.C. (Criminal), as the case may be, should be asked to apply to the court for issue of summons but giving complete particulars of the witness. The summons should, thereafter, be prepared and served upon the witnesses.

4. If the police personnel are not complying with the directions of the court then appropriate action under the provision of the contempt of courts Act be initiated against them."

This High Court has issued the Circulars to all the Judicial Magistrates to take care of the speedy disposal of trial in criminal cases but apparently, the Trial Court herein has not followed the Circular and did not bother to take adequate care for the service of summons,ailable warrants, and that was the reason, it took so much time to serve the applicant.

Conduct of Trial Court

44. It is shocking to see how the trial court has been proceeding in this case. This Court vide order dated 09.09.2020 has directed the trial court to complete the trial expeditiously preferably within a period of six months but the trial court apparently has not followed the directions of this court. They chose to simply adjourn the case and further, exempted all the Directors from appearance and did not proceed with the matter. The conduct of the Trial Court is actually contemptuous in nature.

Conclusion

45. That, in view of the aforesaid facts and circumstances, it is clear that the applicant and other directors had been playing all the tricks under the hat to delay the trial. Even the company if it has gone into insolvency, the directors cannot escape the liabilities.

46. So, the question whether a person is a Director incharge of the affairs of the company at the relevant time, can only be judged during the course of trial and the complaint cannot be quashed in the present proceedings drawn under Section 482 CrPC.

47. Moreover, this matter does not fall under the strait-jacket guidelines laid down by the Hon'ble Supreme Court in the matter of Bhajan Lal (supra) and then followed in M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918, R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, 2005 SCC (Cr.) 283.

48. The Trial Court is directed to proceed with the trial by conducting day to day hearing and not granting any kind of unnecessary adjournments nor granting exemption from appearance to the directors. This Court further directs that the trial should be completed within a period of three months from today.

49. Accordingly, the instant application filed under Section 482 Cr.P.C. is devoid of any merit and is, accordingly, dismissed.

Order Date : 13.02.2024 Rama Kant