

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.M.C. 3937/2009**

% Reserved on : 07th January, 2010
Pronounced on: 12th January, 2010

Shri Raj Chawla Petitioner
! Through: Mr. Pankaj Kumar, Adv.

versus

\$ Securities & Exchange Board of India (SEBI) & Anr.
..... Respondent
! Through: Mr. Gaura Liberhan, Adv.
for R-1
Mr. Pawan Bahl, APP for State.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **V.K. JAIN, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the criminal complaint filed by the respondent against the petitioner under Section 24(1) and 27 of Securities & Exchange Board of India Act, 1992.

2. The petitioner was a Director in M/s Fair Deal Forests Limited, till 30th March, 1997 when she resigned from the

Directorship and also submitted Form-32 with Registrar of Companies. In order to regulate entities, which used to issue instruments such as Agro Bonds, Plantation Bonds, etc., Government of India decided to treat such schemes as Collective Investment Schemes and brought them under the purview of SEBI Act, 1992, with the object of protecting the investors and promoting legitimate investment activities. Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 were thereafter framed by SEBI. Vide its letter dated December 15, 1999/December 29, 1999 and also by way of a public notice, SEBI directed M/s Fair Deal Forests Limited, which was operating Collective Investment Schemes and had raised a sum of Rs.5,20,000/- from the general public, to send an information memorandum to all the investors, detailing the state of affairs of the Schemes, the amount repayable to each investor and the manner in which such amount was determined. The information was required to be sent latest by February 28, 2000, which was later extended to March 31, 2000. In terms of Regulation 73(1) of the above-referred Regulations, the Collective Investment Schemes, which failed to apply for registration with SEBI, were required to wind up the existing schemes and repay the amount, collected from the investors.

Regulation 74 required the company to formulate a scheme of repayment and make repayment to the investors, in case it was not desirous of obtaining provisional registration from SEBI. M/s Fair Deal Forests Limited, however, neither applied for registration with SEBI, nor did it take steps for winding up the Scheme and making repayment to the investors and thereby violated the provisions of Section 12(1B) of SEBI Act, 1992 and Regulation 5(1), read with Regulation 68(1), 68(2), 73 and 74 of the above-referred regulations. Thereupon, in exercise of powers conferred upon it by Section 11(B) of SEBI Act, SEBI directed the company to refund the money collected from the persons, who had invested money in its Collective Investment Schemes, within a period of one month from the date of the order. However, the company failed to comply with the directions given by the SEBI. The above-noted criminal complaint was thereupon filed by SEBI against company and 10 others, including the petitioner Raj Chawla who was stated to be a Director of the company and as such person in charge of and responsible to the company for conduct of its business.

3. In support of his contention that he had resigned as a Director of M/s Fair Deal Forests Limited w.e.f. 30th March, 1997, the petitioner has placed on record the certified copy of Form-32, issued by Registrar of Companies. This document

would show that the petitioner resigned as a Director of M/s Fair Deal Forests Limited w.e.f. 30th March, 1997 and intimation in this regard was given to Registrar of Companies on or before 14th January, 1998. There is no good reason for not accepting an authentic Public Document such as certified copy of Form-32. This is not the case of the respondent that the certified copy, filed by the petitioner, is a forged document. Hence, for the purpose of this petition, I proceed on the basis that the petitioner had actually resigned as a Director of M/s Fair Deal Forests Limited on or before 14th January, 1998, though his case is that he resigned w.e.f. 30th March, 1997.

4. Section 27 of Securities & Exchange Board of India, 1992 reads as under:

“27. OFFENCES BY COMPANIES.--(1)
Where an offence under this Act has been committed by 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 such person liable to any punishment provided in this Act, 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

Section 141 of Negotiable Instruments Act reads as under:

“141. Offences by companies.—(1)

(1) If the person committing an offence under section 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 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.

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section. -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director", in relating to a firm, means a partner in the firm.

It would thus be seen that the provisions of Section 27 of SEBI Act, 1992 are absolutely identical to the provisions of Section 141 of Negotiable Instruments Act and, therefore, the interpretation given by the Court to the provisions of Section

141 of Negotiable Instruments Act would equally apply to Section 27 of SEBI Act.

5. The question whether a criminal complaint under Section 138 of Negotiable Instruments Act can be quashed on the basis of certified copy of Form 32, issued by Registrar of Companies, came up for consideration before me in Criminal Misc. No.923/2009 and 1654/2009, decided on 30th November, 2009. In that case, the petitioner claimed that he had resigned as a Director of the concerned company much before cheques in question, which were later on dishonoured, were issued and, therefore, he was not vicariously liable for the offence committed by the company under Section 138 of Negotiable Instruments Act. After reviewing the case law on subject, relying upon the certified copy of Form 32, filed by the petitioner, it was held that since the petitioner was not a Director, Secretary, Manager or any other person falling under any of the categories (a) to (g), listed in Section 5 of Companies Act at the time of commission of offence, he could not have been a person in charge of the business of the company within the meaning of Section 141(1) of Negotiable Instruments Act. I noted the judgment of this Court in ***Dr.(Mrs.) Sarla Kumar vs. Srei International Finance Ltd.***, 2007 (2) NIJ 208 (Del), where the petitioner, relying upon certified copy of Form 32, had claimed

that she had resigned from the Directorship of the concerned company much prior to issue of cheques in question and this Court, observing that the authenticity of certified copy, issued by Registrar of Companies, could not be disputed and such a document was conclusive of the fact that the petitioner had resigned with effect from the date mentioned in the documents, quashed the complaint holding that the petitioner was not in charge of or responsible for day-to-day affairs of the company. During the course of the judgment, I, *inter alia*, observed as under:

“I am in full agreement with the view taken in the above referred case as regards authenticity and conclusive nature of certified copy of Form 32. When such an authentic and conclusive document is made available to the Court, it would be an exercise in futility to again go into the same question to find out as to whether the petitioner was a Director in the Company or not at the time mentioned in the document. Such an exercise, if undertaken, would not serve any useful purpose but would unnecessarily drag the person concerned to a long drawn trial without rendering any fruitful result.”

6. In **K.K. Ahuja vs. V.K. Vora and Anr.**, 2009 (3) JCC (NI) 194, the Hon'ble Supreme Court summarized the legal position under Section 141 of Negotiable Instruments Act as under:

“(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix ‘Managing’ to the word ‘Director’ makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under Sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that Sub-section.

(iv) Other Officers of a company can not be made liable under Sub-section (1) of Section 141. Other officers of a company can be made liable only under Sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

7. Since the petitioner was not a Director of the company on the date Regulations were framed by SEBI, he cannot be held vicariously liable for violation of those Regulations and the directions, issued to SEBI by M/s Fair Deal Forests Limited. This is not the case of the respondent that the petitioner was Manager, Secretary or a person in accordance with whose directions or instructions, the Board of Directors of the company was accustomed to act. He is not stated to be one of the persons falling in any of the categories (a) to (g) mentioned in Section 5 of Companies Act at the time offence under SEBI Act was committed by the company. Therefore, he could not have been a person in charge of business of the company on the date the offence was committed.

8. There is no allegation that the regulations, framed by SEBI, were violated or the direction, issued by it, was ignored by the company with the consent or connivance of the petitioner or it was otherwise attributable to any act on the part of the petitioner. Therefore, he has not covered even by sub Section (2) of Section 27 of SEBI Act.

9. The learned counsel for the respondent has relied upon the decision of this Court in CrI.Misc. No. 3206 of 2007

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Pvt. Ltd., decided on 10th October, 2007. It was contended by the petitioner in that case that he was only a sleeping Director of the company and had already resigned from the Directorship when the instrument was executed. It was observed by this Court that resignation of the petitioner from the company was a defence which he could take before the Trial Court and summoning order could not be quashed on the ground that the petitioner had resigned. There is nothing in the judgment to indicate that certified copy of Form-32 was filed before the Court by the petitioner in that case. On the other hand, in the present case, the petitioner has placed on record the certified copy of Form-32, authenticity of which has not been disputed by the respondent. Moreover, the decision of this Court in the case of **Dr.(Mrs.) Sarla Kumar** (supra), which is an earlier judgment was not brought to the notice of this Court in the case of **Bharat Poonam Chand Shah**.

10. Though as a general proposition of law, the defence available to the accused is not to be examined at this stage, there can be no valid objection to considering an authentic Public Document such as certified copy of Form-32, issued by Registrar of Companies, in a petition under Section 482 of the Code of Criminal Procedure, when the genuineness of the documents is not disputed and the matter can be finally

disposed of on the basis of such a documents.

11. In **All Carogo Movers (I) Pvt. Ltd. Vs. Dhanesh Badarmal Jain & Anr.** (2007) 12 SCALE 39, the Hon'ble Supreme Court observed as under:-

“It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents.”

In **V.Y. Jose & Anr. Vs. State of Gujarat & Anr.** 2009 I AD (Cr.) (S.C.) 567, the Hon'ble Supreme Court has observed as under:-

“It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.”

In **Minakshi Bala v. Sudhir Kumar** (1994) 4 SCC 142, the Hon'ble Supreme Court, *inter alia*, observed as under in para 7 of the judgment:

“7. If charges are framed in accordance with Section 240 Cr.P.C. on a finding that a prima facie case has been made out—as has been done in the instant case—the person arraigned may, if he feels

aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 Cr.P.C. and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 Cr.P.C. the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Section 239 and 240 Cr.P.C.; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C. to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.”

The above-referred observations in the Hon’ble Supreme Court in the case of **Minakshi Bala** (supra) were considered by the Hon’ble Court in State of Orissa vs. Debendra Nath Padhi (2005) 1 SCC 568 and the Hon’ble Court, inter alia, observed as under:

“It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about the exercise of

jurisdiction under Section 482 of the Code where alongwith the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.”

Thus, there can be no valid legal objection to considering the certified copy of Form-32 issued by Registrar of Companies correctness of which is unimpeachable and which can be otherwise be read in evidence without any formal proof.

12. A criminal trial is a serious matter, having grave implications for an accused, who not only has to engage a lawyer and incur substantial expenditure on defending him, but, has also to undergo the ordeal of appearing in the Court on every date of hearing, sacrificing all his engagements fixed for that day. If he is in business or profession, he has to do it at the cost of affecting his business or profession, as the case may be. If he is in service, he has to take leave on every date of hearing. Besides inconvenience and expenditure involved, a person facing criminal trial undergoes constant anxiety and mental agony, as the sword of possible conviction keeps hanging on his head throughout the trial. Therefore, when there is a reasonably certainty that the trial is not going to result in conviction, it would be neither fair nor reasonable to allow it to proceed against a person such as the petitioner in

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this case.

13. For the reasons given in the preceding paragraphs, the criminal complaint in question, to the extent, it pertains to the petitioner, is hereby quashed. However, the trial shall proceed in accordance with law, against other accused persons.

Crl. MC No.3937/2009 stands disposed of.

(V.K.JAIN)
JUDGE

JANUARY 12, 2010
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