



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE**

**R**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**CRIMINAL PETITION NO. 697 OF 2018 (482)**

**BETWEEN**

UNITED SPIRITS LIMITED  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956,  
WITH ITS REGISTERED ADDRESS AT,  
UB TOWER, NO.24,  
VITTAL MALLYA ROAD,  
BANGALORE-560001  
REP BY ITS AUTHORISED SIGNATORY,  
MR. J. SWAMINATHAN

...PETITIONER

(BY SRI: RAGHURAM CADAMBI &  
SRI. VINAY J.S., ADVOCATE)

**AND**

NEEL RAJESH SHAH  
MAJOR  
SON OF LATE RAJESH HIMMATLAL SHAH,  
REPRESENTED BY  
HIS MOTHER AND POWER OF ATTORNEY HOLDER,  
SMT. PRITI RAJESH SHAH,  
BOTH RESIDING AT,  
18, PREM MILAN, 2<sup>ND</sup> FLOOR, 87BM  
NAPEAN SEA ROAD,  
MUMBAI-400006.

...RESPONDENT

(BY SRI. M.B. ANIRUDH., ADVOCATE FOR R1)

THIS CRIMINAL PETITION IS FILED SECTION 482 PRAYING TO  
QUASH THE COMPLAINT AND ENTIRE PROCEEDINGS IN  
C.C.NO.3118/2017 ON THE FILE OF THE HON'BLE IV ADDITIONAL  
CHIEF METROPOLITAN MAGISTRATE, BENGALURU.





THIS CRIMINAL PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 19.06.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

1. The petitioner who is accused No.1 in C.C.No.3118/2017 is before this Court seeking for the following reliefs:

*"Quash the complaint and entire proceedings in C.C.No.3118/2017 on the file of the Hon'ble IV Additional Chief Metropolitan Magistrate, Bengaluru, as against the petitioner, and grant such other and further reliefs as are just."*

2. The Petitioner – United Spirits Limited (USL) claims to be a leading liquor manufacturer in India, originally incorporated as 'McDowell Spirits Limited' under the Companies Act, 1956, listed on the National Stock Exchange Limited and the Bombay Stock Exchange Limited. The complainant had filed a complaint seeking prosecution of the accused and certain officials employed by the accused, alleging that they had systematically carried out a planned conspiracy for cancelling the complainant's valuable



shares by generating duplicate share certificates worth about Rs.90 lakhs to Rs.1 crore and thereby have committed offences under Sections 477, 467, 418, 416, 405, 403, 197 and 198 read with Sections 34 and 120A of IPC. The Magistrate, having recorded the sworn statement, issued process vide order dated 23.12.2016. Upon service of said process, the petitioner is before this Court seeking for the aforesaid reliefs.

3. The essential allegations made in the private Complaint filed by the complainant under Section 200 of Cr.P.C which came to be registered as PCR No.3917/2016 and thereafter as C.C.No.3118/2017 is that accused No.1 i.e., the petitioner herein and McDowell Holdings Limited are public companies listed on the National Stock Exchange Limited and the Bombay Stock Exchange Limited, accused No.3 – Integrated Enterprises (India) Limited is the



Registrar and Share Transfer Agent of accused No.1 and 2 Companies.

4. The complainant's father, late Rajesh Himmatlal Shah, expired on 12.09.2003. The said father was the owner and held several stocks and securities in his name, jointly in the name of his wife, Smt.Priti Rajesh Shah's portfolio included 3100 equity shares of accused No.1 Company and 620 equity shares of accused No.2 Company. The complainant's father is survived by the complainant, his wife, viz., the complainant's mother and his mother, viz., the complainant's paternal grandmother.
5. All of them had filed a proceeding before the Hon'ble Bombay High Court for the issuance of succession certificates, which was granted on 26.12.2014. Based on the said certificate, the complainant approached accused No.3 for transmission of shares in favour of the complainant and record his name as the owner of



the shares in the records of the accused Nos.1 and 2 companies.

6. The complainant was shocked to receive a letter dated 11.02.2015 from accused No.3 stating that based on the alleged report, the scheduled shares were purportedly lost, accused No.3 had issued duplicate shares to the complainant's father, dematerialised the duplicate shares in the year 2013.
7. The complainant's mother, i.e., wife of deceased Rajesh Himmatlal Shah, wrote to accused No.3 on 09.03.2015, calling upon accused No.3 to furnish details of the manner in which the accused No.3 had issued the duplicate shares. Accused No.3. had forwarded some documents purportedly submitted by the complainant's father and claimed that it had acted appropriately in issuing the duplicate shares. By a separate letter dated 17.04.2015, accused No.3 had also forwarded some of the documents purportedly submitted by the complainant's father in



relation to the shares held in accused No.2 company and again claimed that it had acted appropriately.

8. The complainant contends that accused No.3 ignored the statement made by the complainant that the complainant's father had expired in the year 2003. Hence, the question of the complainant's father submitting any documents in the year 2012-13 would not arise. In that background, the complainant had filed two civil suits in O.S.No.1201/2016 regarding the shares and accused No.1 company and O.S.No.1203/2016 in respect of shares in accused No.2 company seeking a mandatory injunction against accused Nos.1 and 2 companies to register the complainant's name as a true and lawful owner. The complainant alleging that the accused colluded with one or more persons in impersonation of the complainant's father and fraudulently issued duplicate shares, alleged that this crime could not have been committed without the active connivance



of the officials of accused Nos.1 and 2 companies and the said issuance of duplicate shares and dematerialising the same is planned in systematic methodology.

9. The accused created false and forged documents, firstly by recording a change in address. Thereafter, the shares held by the father of the complainant were cancelled and subsequently duplicate shares were issued to that changed address, consequently dematerialising the shares, thereby causing innocent persons to deal with the same.
10. In that background, it is alleged that the accused have committed offences of fraudulent cancellation and destruction of valuable security under Section 477. Forgery of valuable security made, which is an offence under Section 467. This forgery, having been committed for the purpose of cheating, is an offence under section 468. The offence of cheating has been committed by the accused, knowing fully well the



wrongful loss would be caused to the complainant and his family, which is an offence under Section 418. A dead person has been impersonated, which would amount to an offence under Section 416.

11. There is a fiduciary duty owed by the accused. The shares and other documents were held by them in trust; therefore, there is a criminal breach of trust in terms of Section 405. The shares of the complainant/his father have been cancelled and fresh shares have been issued to a third party, which is a misappropriation of the property of the complainant being an offence under Section 403, false certificates have been issued in respect to shares, the same is an offence under Section 197. The said false certificates having been used as true is an offence under section 198; several employees and officers of accused Nos.1 to 3, having committed the offence under the provision of Section 34 and Section 120A, are also attracted. It is on that basis that it is





contended that the action is required to be taken and the matter is referred to investigation by the jurisdictional authority. It is challenging this order that the petitioner – accused No.1 is before this Court.

12. Shri.Raghuram Cadambi, learned counsel appearing for the petitioner, would submit that:

- 12.1.The petitioner Companies have nothing to do with the same. Accused No.3, being the agent, all actions have been taken by accused No.3. It is under the instructions of accused No.3 that accused No.1 has acted, there is no *mens rea*, motive or intent on part of accused No.1 in any of the alleged offences. There is no participation of the accused No.1 in any of these alleged offences. Only the companies having been made parties, no person having been made a party, the Complaint is lacking on material particulars as to who is responsible for what



crime, and mere omnibus allegations have been made against the accused, which are not borne out by records.

12.2. Accused No.1 has acted in a bonafide manner, all the actions of accused No.1 are in terms of the advice given by accused No.3, who is the Registrar, who maintains the Register of Shares under the independent authority.

12.3. His submission is that no offence is made out upon a bare reading of the Complaint. All the allegations made are against accused No.3. There is no particular allegation made against accused No.1. No official of the accused No.1 – company is made a party to the Complaint nor is there is any overt act of commission or omission attributed to the accused No.1. If at all, fraud has been committed by a third party who is not party to the proceedings inasmuch as it is a third party who had submitted false



documents which were relied upon by accused No.3 and subsequently by accused No.1. It is that third party who claimed to be the father of the complainant and as such, any allegations of wrongdoing or otherwise would have to be alleged against such third party. Accused No.1 and Accused No.3 have acted in terms of the applicable law and have not committed any offence.

12.4. He further goes on to submit that even as per the complainant, the accused No.1 is also a victim of fraud by a third party. The Complaint having clearly stated that the accused have been cheated/misled and are victims of fraud perpetuated by an imposter in the memo dated 18.03.2019 filed by the respondents in the NCLT. He submits that even according to the complainant, accused No.1 has been cheated and misled. Thus, if accused No.1 has been so



cheated and misled, it cannot be an accused in the present matter. In further support of the same argument, he relies upon Para 23 of the Petition in C.P.No.7/2017 filed before the NCLT and submits that even according to said pleading, the complainant has admitted that the accused have been victims of fraud by one or more persons.

12.5. He relies upon the judgment of the Hon'ble Apex Court in the case of ***Hridaya Ranjan Prasad Verma vs. State of Bihar***<sup>1</sup>, more particularly Paras 12, 14 and 16 thereof, which are reproduced hereunder for easy reference:

**12.** *On a reading of the Complaint, portions of which have been extracted earlier, it is clear that the main offence alleged to have been committed by the appellants is "cheating" punishable under Section 420 IPC.*

**14.** *On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit*

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<sup>1</sup>(2000) 4 SCC 168 | 2000 INSC 178



*to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*

**16.** *Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the Complaint. That being the position the case comes within the first category of cases enumerated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and as such warrants interference by the Court. Reading the averments in the Complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the Complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property is not alleged expressly or even impliedly in the Complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the Complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the Court. The High Court was not right in declining to quash the Complaint and the proceeding initiated on the basis of the same.*

12.6. There is no vicarious liability under criminal law.

A company cannot be criminally liable for any contravention by its Registrar and share transfer agent. It is the Registrar and share



transfer agent who is to issue duplicate certificates in lieu of misplaced/lost shares. The accused No.1 - Company is not concerned with the same. He relies upon Companies (Issue of Share Certificate) Rules 1960 to contend that the accused have acted in terms thereof and certificates have been issued pursuant to a Board Resolution on the basis of verification made by accused No.3. There is no particular allegation made in the Complaint as regards what is the responsibility of each accused and/or the violation committed by each accused, the omnibus allegations made in a complaint would not inure to the benefit of the complainant and is thus required to be quashed.

12.7.His submission is that there is no vicarious liability under criminal law unless provided by statute and criminal liability as regards a



company can only be recognised when specific acts are attributed to a particular individual who is employed by the Company and/or is a Director. In this regard, he relies upon the judgment of the Hon'ble Apex Court in the case of **RELIGARE Finvest Limited vs. State of NCT of Delhi and another**<sup>2</sup> more particularly Paras 23 and 30, which are reproduced hereunder for easy reference:

**23.** *There was some divergence of opinion amongst certain High Court about the liability of corporate entities. The Calcutta High Court's view was that that only natural persons, could be ascribed with intention or "mens rea". Resultantly, a juristic person such as a company could not be ascribed with criminal intent [Ref Champa Agency v. R. Chowdhury, 16 Sunil Banerjee v. Krishna Nath, 17 and AK Khosla v. Venkatesan 18 ]. The Bombay High Court, differed, and had taken note of developments in the United Kingdom.*

*In Esso Standard Inc. v. Udham Bhagwandas Japanwalla 19 arguments were advanced before the Court on whether a company can have mens rea, and on how the process of attribution would, in fact, operate, with the precise question being whose mens rea would be attributed to the Company. The High Court accepted that a strict test of mens rea was required to locate or ascribe criminal responsibility of a company, on the concerned decision maker. The Court adopted this line of reasoning, approving*

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<sup>2</sup> 2023 INSC 819 | 2023 INSC 819



*Lord Diplock's opinion in Tesco Supermarkets Ltd. v. Nattrass<sup>20</sup>, including the following relevant observations:*

*"In my view, therefore, the question: what natural persons are to be treated in law as being the company for the purpose of acts done in the course of its business, including the taking of precautions and the exercise of due diligence to avoid the commission of a criminal offence, is to be found by identifying those natural persons who by the memorandum and articles of association or as a result of action taken by the directors, or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company."*

*In Meridian Global Funds Management Asia Ltd v Securities Commission<sup>21</sup>, a more nuanced approach was adopted:*

*"These primary rules of attribution are obviously not enough to enable a company to go out into the world and do business. Not every act on behalf of the Company could be expected to be the subject of a resolution of the board or a unanimous decision of the shareholders. The Company therefore builds upon the primary rules of attribution by using general rules of attribution which are equally available to natural persons, namely, the principles of agency. It will appoint servants and agents whose acts, by a combination of the general principles of agency and the Company's primary rules of attribution, count as the acts of the Company. And having done so, it will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons, such as estoppel or ostensible authority in contract and vicarious liability or tort.*

*It is worth pausing at this stage to make what may seem an obvious point. Any statement about what a company has or has not done, or can or cannot do, is necessarily a reference to the rules of attribution (primary and general) as they apply to that Company. Judges sometimes say that a company 'as such' cannot do anything; it must act by servants or agents. This may seem an unexceptionable, even banal remark. And of course the meaning is usually perfectly clear. But a reference to a company 'as such' might suggest that there is something out there called the Company of which one can meaningfully say that it can or*





*cannot do something. There is in fact no such thing as the Company as such, no ding an such, only the applicable rules. To say that a company cannot do something means only that there is no one whose doing of that act would, under the applicable rules of attribution, count as an act of the Company.*

*The Company's primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person 'himself' as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company? One possibility is that the Court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the Court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e. if the act giving rise to liability was specifically authorised by a resolution of the board or an unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the Court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the Court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act etc. of the Company? One finds the answer to this question by applying the usual canons of interpretation, taking into*



*account the language of the rule (if it is a statute) and its content and policy.'*

*Lord Hoffmann, in his opinion stated that:*

*" . . . their Lordships would wish to guard themselves against being understood to mean that whenever a servant of a company has authority to do an act on its behalf, knowledge of that act will for all purposes be attributed to the Company. It is a question of construction in each case as to whether the particular rule requires that the knowledge that an act has been done, or the state of mind with which it was done, should be attributed to the Company. Sometimes, as in *In re Supply of Ready Mixed Concrete (No. 2)* [1995] 1 A.C. 456 and this case, it will be appropriate*

*. . . . On the other hand, the fact that a company's employee is authorised to drive a lorry does not in itself lead to the conclusion that if he kills someone by reckless driving, the Company will be guilty of manslaughter. There is no inconsistency. Each is an example of an attribution rule for a particular purpose, tailored as it always must be to the terms and policies of the substantive rule."*

**30.** *It is, therefore, noticeable that the criminal liability of a company*

*(a) is recognised where it can be attributable to individual acts of employees, directors or officials of a company or juristic persons (Tesco, Meridian Global Funds, Standard Chartered Bank, and Iridium)*

*(b) recognised even if its conviction results in a term of imprisonment (Meridian, Iridium);*

*(c) cannot be transferred ipso facto, except when it is in the nature of penalty proceeding (McLeod Russel)*

*(d) the legal effect of amalgamation of two companies is the destruction of the corporate existence of the transferor company (in this case, LVB); it ceases to exist.*

*(e) that apart, only defined legal proceedings, are succeeded to by the transferee company, which, in this case, is the DBS Bank<sup>32</sup>*



12.8. He relies upon the judgment of the Hon'ble Apex Court in the case of ***Iridium India Telecom Limited vs. Motorola Inc.***,<sup>3</sup> more particularly Para 63, which is reproduced hereunder for easy reference:

*63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the Company.*

12.9. The Complaint has been filed by a power of attorney holder, i.e., the mother of the complainant, who has no knowledge of the facts of the matter. Hence, such a complaint was not maintainable and ought to have been

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<sup>3</sup> (2011) 1 SCC 74 | 2010 INSC 713



dismissed by the learned Magistrate at the time of recording of the sworn statement.

12.10. Insofar as power of attorney is concerned, he relies upon the judgment of the Hon'ble Apex Court in the case of **A.C.Narayanan vs. State of Maharashtra**<sup>4</sup> more particularly Paras 21, 30 and 33, which are reproduced hereunder for easy reference:

*21. In terms of the reference order, the following questions have to be decided by this Bench:*

*21.1. Whether a power-of-attorney holder can sign and file a complaint petition on behalf of the complainant?/Whether the eligibility criteria prescribed by Section 142(a) of the NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?*

*21.2. Whether a power-of-attorney holder can be verified on oath under Section 200 of the Code?*

*21.3. Whether specific averments as to the knowledge of the power-of-attorney holder in the impugned transaction must be explicitly asserted in the Complaint?*

*21.4. If the power-of-attorney holder fails to assert explicitly his knowledge in the Complaint then can the power-of-attorney holder verify the Complaint on oath on such presumption of knowledge?*

*21.5. Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of*

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<sup>4</sup> (2014) 11 SCC 790 | 2013 INSC 612



*Section 145 of the NI Act which was introduced by an amendment in the year 2002?*

**30.** *In the light of the discussion, we are of the view that the power-of-attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the NI Act. An exception to the above is when the power-of-attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the power-of-attorney holder about the transaction in question must be specified in the Complaint. On this count, the fourth question becomes infructuous.*

**33.** *While holding that there is no serious conflict between the decisions in M.M.T.C. [M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234 : 2002 SCC (Cri) 121] and Janki Vashdeo Bhojwani [Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217] , we clarify the position and answer the questions in the following manner:*

**33.1.** *Filing of complaint petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.*

**33.2.** *The power-of-attorney holder can depose and verify on oath before the Court in order to prove the contents of the Complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.*

**33.3.** *It is required by the complainant to make specific assertion as to the knowledge of the power-of-attorney holder in the said transaction explicitly in the Complaint and the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.*

**33.4.** *In the light of Section 145 of the NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the*



*Complaint under Section 138 of the NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the Complaint under Section 138 of the NI Act.*

**33.5.** *The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.*

12.11. The Complaint is based on bald and omnibus averments without any reference to any specific role of the accused and in this regard, he relies upon the judgment of the Hon'ble Apex Court in the case of ***Surendra Nath Pandey vs. State of Bihar***<sup>5</sup> more particularly Para 4 thereof, which is reproduced hereunder for easy reference:

**4.** *Taking into account the contents of FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the appellants in any alleged conspiracy. In CBI v. K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] to which one of us (Ranjan Gogoi, J.) was a party, it has been held by this Court that a criminal prosecution on the basis of such bald and omnibus statement/allegations against the panel advocates of the Bank ought not to be allowed to proceed as the same constitute an abuse of the*

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<sup>5</sup> (2020) 18 SCC 730



*process of the Court and such prosecution may in all likelihood be abortive and futile.*

12.12. He further relies on the judgment of the Hon'ble Apex Court in the case of ***M. N. Ojha vs. Alok Kumar Srivastav***<sup>6</sup> more particularly Paras 19, 20 and 21 thereof, which are reproduced hereunder for easy reference:

**19.** *According to the complainant, the Branch Manager conspired with the borrower and committed criminal breach of trust. Repeated assertions have been made in the Complaint that all the accused persons in conspiracy with each other have diverted huge amount of bank money in a fraudulent manner for their own benefit. Surprisingly enough neither the borrower nor his brother with whom the bank officers are alleged to have colluded is arrayed as accused.*

**20.** *The complainant in his Complaint freely used choicest expressions such as "fraud, collusion, conspiracy and cheating, etc." but did not make any concrete allegations against the appellants suggesting commission of any offence. That a plain reading of the Complaint and taking the allegations and averments made therein to be true on their face value do not reveal the commission of any offence whatsoever by the appellants who were only taking steps to realise the amount due to the Bank from the borrower and in the process encashed the FDRs offered by the guarantors as security for the discharge of the loan. What is the crime they have committed even if they did not proceed against the hypothecated properties before realising the FDRs offered by the guarantors? Where is the misappropriation of money? Whom did they cheat?*

**21.** *In our considered view, criminal law has been set in motion by the complainant to harass the bank officers*

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<sup>6</sup> (2009) 9 SCC 682 | 2009 INSC 1063



*needlessly and to wreak personal vengeance in order to bring them under pressure not to further prosecute the proceedings already initiated by the appellants against the complainant on behalf of the Bank.*

12.13. Based on all the above he submits that the petition is required to be allowed and the Complaint is required to be quashed.

13. Sri. M.B. Anirudh, learned counsel for the respondent - complainant would submit that:

13.1. It is the accused No.1 who is in charge of all the aspects. The Board of accused No.1 in its meeting, has passed the board resolution. It is accused No.1 who has issued the duplicate shares. The complainant is not aware of who exactly the officers are who are actually responsible. That is a matter of investigation and it is for that reason that the complainant had approached the Magistrate Court by way of a private complaint for reference of matter for investigation to the jurisdiction Police. An order





of reference having been made, it is the jurisdictional police who will investigate into the matter and submit a report which will deal with all these aspects. The complainant cannot be expected to know who exactly the person is responsible in a large organisation like the accused since that information was never made available to the complainant in the various correspondence which has been exchanged between the complainant and the accused as also the complainant's mother and the accused.

13.2. He relies on the judgment of the Hon'ble Apex Court in the case of ***State of Haryana and others vs. Bhajan Lal and others***<sup>7</sup> more particularly Para 102 thereof, which is reproduced hereunder for easy reference:

**102.** *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482*

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<sup>7</sup> 1992 SCC (CrI) 426



*of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

- (1) 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.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable 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.*
- (3) 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.*
- (4) Where, the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) 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.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide 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.*

13.3. By relying on the above, he submits that none of the grounds laid down in Bhajan Lal's case are applicable to the present case, and as such, the proceedings are not required to be quashed.

13.4. He relies on the judgment of the Hon'ble Apex Court in the case of ***Neeharika Infrastructure Pvt. Ltd., vs. State of Maharashtra and others***<sup>8</sup> more particularly Para 80 thereof, which is reproduced hereunder for easy reference:

***Conclusions***

**80.** *In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while*

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<sup>8</sup> 2021 SCC Online SC 315 | 2021 INSC 253



*dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:*

*i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognisable offence.*

*ii) Courts would not thwart any investigation into the cognisable offences.*

*iii) It is only in cases where no cognisable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.*

*iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).*

*v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.*

*vi) Criminal proceedings ought not to be scuttled at the initial stage.*

*vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule.*

*viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.*

*ix) The functions of the judiciary and the police are complementary, not overlapping.*

*x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.*



*xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*

*xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the Court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.*

*xiii) The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court.*

*xiv) However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

*xv) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognisable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations make out a cognisable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR.*

*xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during*



*the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent Court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.*

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.*

13.5. Relying on the above, he submits that this Court ought not to thwart the investigation into the cognisable offences. The power under Section 482 of Cr.P.C., should be exercised



sparingly. This is not a case where such power is required to be exercised by this Court.

13.6. He submits that the complainant, having filed proceedings in CP No.06/2017 before the National Company Law Tribunal, Bangalore Bench under Section 58 of the Companies Act 2013, the Company Law Tribunal, Bangalore vide its order dated 18.03.2019 has allowed the said application filed by the complainant and directed transfer of 620 equity shares held in accused No.2 – company standing in the name of Rajesh Himmatlal Shah to the complainant along with benefits like dividend etc.

13.7. Insofar as accused No.1 company is concerned, similar orders have been passed in C.P.No.7/2017 by the Company Law Tribunal Bangalore Bench on 18.03.2019. These orders have been challenged by accused No.1 and accused No.3 jointly by filing a proceeding in



Appeal No.260/2021 (earlier appeal No.107/2019) before the National Company Law Appellate Tribunal at Chennai.

13.8.The Company Law Tribunal in C.P. No.7/2017 has come to a categorical conclusion that the shares belong to the father of the complainant, who had expired on 12.09.2003. There is a prescribed procedure for the transfer/transmission of shares which envisages that such transfer/transmission can be affected by the Board of Directors of the Company only if they are satisfied that there is a bonafide claim made by parties with supporting documents. It came to a conclusion that the accused companies had acted in haste, cancelled the old shares issued and issued new shares. Thus, it was observed that no documents or details were furnished by a third party. However, accused No.3 has acted on the





letter, effected a change in the address, and thereafter, communicated with the alleged imposter.

13.9. The NCLT has come to a conclusion that the manner in which respondents No.1 and 2 therein, i.e., accused Nos.1 and 3 herein, made fast responses would show malafide intention in the impugned proceedings. The third-party did not produce any legal documents in support of his case except a notarised indemnity bond and police certificate, which did not prove that he was the original share allottee; despite the documents not being sufficient, accused Nos.1 and 3 went ahead and acted on such request. Accused Nos.1 and 3 have acted on the basis of a representation without being accompanied by valid documents, which is more or less held by the NCLT to be suspicious.



13.10. The NCLT vide the aforesaid order dated 18.03.2019 in C.P.No.7/2017 had directed accused No.1 to transfer the shares in the name of the complainant along with benefits. He submits that accused No.1 and 3 have jointly challenged the said order in Transfer of Appeal No.260/2021 (earlier appeal No.107/2019) which is now pending before the Company Law Appellate Tribunal at Chennai. His submission is that if at all there was no involvement of accused Nos.1 and 3, then there was no requirement to file an appeal inasmuch as the person who can only be said to be affected by the order would have been the respondent No.3 before the NCLT, namely, the imposter Rajesh Himmatlal Shah and not accused Nos.1 and 3 since they were only directed to transfer the shares to the rightful owner.



13.11. Thus, he submits that this act of the accused Nos.1 and 3 having filed the appeal itself reinforces the suspicion and of the involvement of the officers of accused Nos.1 and 3 may be even of the then the Board of Directors. By referring to the appeal memo, he submits that the accused No.1 has sought to castigate the complainant trying to find fault with the complainant and is, in fact, trying to contend that the shares are not allotted to the father of the complainant but one Himmat Bhai Shah who it is sought to be contended is different from the father of the complainant. They have sought to create an artificial difference by contending that the original allottee's name is Rajesh H Shah S/o Himmat Bhai Shah whereas complainant's father's name is Rajesh Himmatlal Shah S/o Himmatlal D Shah. Therefore, the allottee and the name of the complainant's father are different. It is further



sought to be alleged that the complainant's father had misappropriated the physical shares, sent to the original allottee Rajesh H. Shah S/o Himmat Bai Shah.

13.12. Again, in the appeal memo, it is sought to be contended that there is a gross delay on part of the complainant in approaching the accused. The death of the father having occurred in the year 2003, Succession certificate was obtained in 2013 and the complainant approached accused No.3 in May 2013. Thus, has sought to cast aspersions on the complainant.

13.13. This he submits is not expected of either the Company which has issued the shares or the Registrar of shares. The complainant not knowing anything about the internal management of the Company, the same being a part of indoor management of the Company, the complainant has made the companies as a



party in the Complaint and sought for reference of the matter for investigation. Upon investigation being completed, it is for the jurisdictional police to file a chargesheet implicating the concerned officers. It is too premature for now, for the complainant to furnish the names of the concerned officials.

13.14. As regards the issue of power of attorney, he submits that the power of attorney holder is none other than his mother, who had also applied for the succession certificate along with the complainant. His mother is the wife of the original allottee. She had also addressed several correspondence with the Registrar of Shares and the Company. She is personally aware of the transaction and the details thereof. As such, there is no embargo on a person who knows the facts of the case to depose as a power of attorney. The embargo would only



apply if the power of attorney had no knowledge of the facts. On the basis of the above submissions, he submits that the above Criminal Petition is required to be dismissed.

14. Heard Sri.Raghuram Cadambi, learned counsel for the petitioner and Sri.M.B.Anirudh, learned counsel for respondent No.1 and perused papers.
15. Though several arguments have been advanced by both the counsel, what is required to be seen is whether at this stage it can be said that there is no case made out against the petitioner and/or its officers, requiring the quashing of the Complaint.
16. The allegation of the complainant is that someone had impersonated his deceased father, submitted false documents which were acted upon by accused No.3 and subsequently, by accused No.1, the postal address of the father of the deceased was changed and subsequently duplicate shares generated and issued to that imposter.



17. The contention of accused No.1 is that it is the accused No.3 who had verified all the data. The documents having been submitted by the imposter have been considered and acted upon. It is the imposter who has defrauded both the complainant and the accused and as such, firstly on the ground that the crime has been committed by the imposter and secondly on the ground that the accused No.1 has acted on the verification and action taken by accused No.3, it is contended that accused No.1 has no role to play and that accused No.1 is not guilty of any criminal activities. This submission would have to be examined on the basis of the available records.
  
18. Though it is the Registrar of Shares who maintains the register and carries out necessary activities in relation thereto, the Company cannot absolve itself of its liability for the simple reason that whatever is put across by the Registrar of Shares has also to be verified by the Company and it is the Company's



board which passes the resolution for the issuance of duplicate shares. The reason why it is for the Board to pass the resolution and approve the issuance of duplicate shares is not too far to see inasmuch as it is expected that the Board, which represents the Company, would consider all the aspects and perform its duties in a proper manner.

19. Even assuming that the Board solely acted on the enquiry and due diligence on the part of accused No.3, the contention of accused No.1 is that accused No.3 alone is responsible for the wrongdoing. The manner in which the proceedings had taken place before the NCLT and NCLAT speaks otherwise when the complainant had filed a petition under Section 58 of the Companies Act, 2013 seeking for transfer of shares against accused No.1, accused No.3 and the imposter, accused No.1 and accused No.3 were represented by the same counsel and they took up the contention before the NCLT that both of them





have discharged their duties in a proper manner. Thus, before the NCLT, accused No.1 sought to give a clean chit and Certificate of Excellence to accused No.3 whereas in the present matter, it is now contended that accused No.1 has only acted on the enquiry and due diligence of accused No.3, it at all there is any offence committed it is by Accused No.3. This is not only a contradictory contention and stand but is duplicitous, and an abuse of the process of the Court. This action on the part of accused No.1 is contradictory and would remain to be explained during the course of trial since they have not been explained here.

20. The accused No.1, having categorically stated that it is the imposter who had misled accused No.1 and 3, and accused No.3 has virtually not conducted proper due diligence.
21. Shockingly, when the NCLT vide its order dated 18.03.2019 directed accused No.1 to transfer the



subject shares within 2 weeks as also transfer the benefits thereof like dividends etc., it is accused No.1 along with accused No.3, who have jointly filed Company Transfer Appeal No.260/2021 (Earlier appeal No.107/2019) before the National Company Law Appellate Tribunal at Chennai.

22. If at all accused No.1 had nothing to do with the transaction, accused No.1. firstly ought not to have contested the proceedings in CP No.07/2017 except to state that it had performed its action in a proper manner and ought to have abided by the orders passed by the NCLT. Secondly, the NCLT having come to a conclusion that the complainant was entitled to the shares and directed the transfer of the shares, as observed above shockingly it is the accused No.1 instead of implementing it has challenged the same along with accused No.3 and in the appeal memo, there are several allegations made against the complainant and his father going to the extent of



alleging that the father of the complainant had misappropriated the physical shares sent to respondent No.2 in the appeal i.e., the alleged imposter.

23. Therefore, it is clear that the accused No.1 and accused No.3 have now sought to contend that the alleged imposter is not an imposter but a rightful owner of the shares. These stands on the part of the accused are not only contradictory but are mutually destructive, leading to the unmistakable conclusion that, at present, it cannot be said that no case is made out against accused No.1, I would refrain from holding that a case is made out against all the accused. These would require a thorough investigation to ascertain the veracity and truthfulness of the matter. Moreso when it relates to shares being publicly traded and there is a fiduciary duty on the part of the Company to safeguard its shareholders, if the Company were itself to indulge in



activities to cause harm to the shareholder, it would amount to fence-eating the crop which would require stringent action to be taken so as to preserve the public trust.

24. The decisions in ***Surendra Nath Pandey, M.N.Ojha*** and ***Hridaya Ranjan Prasad Verma*** (supra) which have been relied upon by the accused No.1 to contend that the allegations in the Complaint are bald and omnibus averments is not entirely correct.
25. A perusal of the Complaint would indicate that requisite averments and allegations have been made placing on record that the complainant's father was the owner of the shares. The complainant has obtained a succession certificate. On the basis of the succession certificate, when the complainant approached the accused, he was informed that the shares had already been transferred, and it is on that basis that the Complaint was filed not only suspecting but also alleging malafide and criminal



actions. Merely because the Complaint does not specify as to which of the officers of the accused No.1 are involved in the wrongdoing would not be sufficient for the accused No.1 now to contend that the allegations are bald and omnibus inasmuch as all the actions on part of the accused No.3 as also accused No.1 have happened behind the back of the complainant are part of the indoor management of the accused and these aspects would have to be ascertained during the course of investigation.

26. Be that as it may, the Board of accused No.1 having passed the resolution to issue the duplicate shares, the complicity of the Board would also have to be ascertained. The accused No.1 cannot seek to get away from its liability by making such vague defences and seek for quashing of the Complaint without investigation. In fact accused No.1 ought to have come forward and conducted an investigation of its own to ascertain who are the persons responsible



and taken action against them since accused No.1 owes a fiduciary duty to all its shareholders to protect their rights and shareholding in the Company. Instead of doing so, *exfacie* it appears that accused No.1 is seeking to cover up the lapses and now in the appeal before the NCLAT has sought to contend that the complainant's father himself has misappropriated shares.

27. Even assuming these allegations on part of accused No.1 being correct, what would be required is for a proper investigation to be conducted by the concerned authorities to ascertain the persons responsible and then file necessary charge sheet in relation thereto. In this regard, role of officers of accused No.1, the Board of accused No.1, the officers and Board of accused No.3, the action on part of the complainant himself as also that of his father and the role of alleged imposter would have to be ascertained



upon investigation. This is not a matter where I can come to a conclusion that no offence is made out.

28. The reliance upon the decisions in ***Religare Finvest Limited*** and ***Iridium India Telecom Limited*** (supra) to contend that there is no vicarious liability cannot be sustained. The liability of the officers would be ascertained only after investigation. The fact remains that as on today, the shares which are alleged to belong to the father of the complainant have been transferred to a third party, which has now been challenged by the complainant, the NCLT directing the retransfer, has shockingly been challenged by Accused No.1 and 3.
29. As regards the last contention urged by Sri.Raghuram Cadambi, learned counsel that the Complaint has been filed by a power of attorney holder who does not have any knowledge and in this regard, the decision in ***A.C.Narayanan*** (supra) is pressed into service, I am of the considered opinion



that the said decision would not apply to the present fact situation. That was a situation where the power of attorney holder did not have any knowledge of the matter. In the present case, the power of attorney holder is the mother of the complainant, wife of the deceased shareholder who was entitled to the shares but on account of her concession, the shares are now to be transferred to the complainant. She has had correspondences with the accused companies. She is aware of the holding of the shares by her husband and, subsequent to his death, the entitlement of the complainant. Thus, she cannot, at this stage, be said to have no knowledge of the allegations made in the Complaint. Be that as it may, it is also available for the complainant to tender his evidence in the matter after investigation; at present, for the record of the sworn statement and issuance of the process, the knowledge of the power of attorney is sufficient. At present, for the purpose of recording of the sworn statement and issuance of process, it cannot be said





that the power of attorney holder mother of the complainant does not have sufficient knowledge for the Court to consider her sworn statement. Hence, this submission is also rejected.

30. In view of my above discussion, there being no grounds made out in the above petition, the petition stands ***dismissed***.
31. It is for the Investigating Officer to investigate all and every matter in dispute and submit his report as observed hereinabove.

**Sd/-  
JUDGE**

List No.: 3 Sl No.: 1