

IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side

Present : The Hon'ble Justice Partha Sakha Datta

CRR 12 of 2000

Jay Prakash Gaur  
Versus  
The State of West Bengal & Anr.

For Petitioners: Mr. Sekhar Basu  
Mr. Milon Mukherjee  
Mr. Sandipan Ganguly

For the State Mr. Alok Roychowdhury

For the O.P. No. 2 Mr. Jyotirmoy Adhikary  
Mr. Sanjoy Bose

Judgment on: 13<sup>th</sup> May, 2008

Partha Sakha Datta, J.:-

By this application under Section 482 of the Cr.P.C. prayer is made by the petitioner for quashing of a proceeding being case no. C-543 of 1999 under Section 420/471 of the IPC pending before the learned Metropolitan Magistrate, 15<sup>th</sup> Court, Calcutta so far as it relates to him. The O.P. No. 2, the Director of M/s. 21<sup>st</sup> Century Security Ltd. lodged a complaint against M/s. Sequence

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*24/6/08*

Estates Pvt. Ltd. (accused no. 1), and two Directors accused no. 2 and 3 and three others i.e. accused no.4, 5 and 6. Accused no. 2 is the husband of the accused no.3, while accused no. 4 is the father of accused no. 2 and father-in-law of the accused no. 3. Accused no. 5 is a Finance Broker who introduced accused no. 2 allegedly to the complainant and one Mahendra <sup>Kumar</sup> Jalan. Accused no. 6 is the father-in-law of accused no. 2 and father of the accused no. 3 and also is Chairman cum Managing Director of a company called Joy Prakash Industries Ltd. This accused no. 6 is the petitioner herein.

Accused no. 2, 4 and 5 represented to the complainant and one Mahendra Kumar Jalan that accused no. 4 Mr. R.K. Dikshit, the father of accused no. 2 was a wealthy person having very high reputation in society and that accused no. 6 was a front ranking industrialist in the country. Accused no. 5 who introduced the accused no. 2 to the complainant represented that accused no. 2 and 3 were desperately in need of money for setting up their factory in the name and style of Rashiva International Ltd. and they were holding 32 lac equity shares of Rs.10 each of Joy Prakash Industries Ltd. valued at about Rs.256 crores and the said shares had stood registered in the name of the

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513  
24/6/68

accused no. 1 <sup>who</sup> requested the complainant/company to arrange for finance for accused no. 1, 2 and 3 for Rs.1 crore against security of the aforesaid 32 lac equity shares of Joy Prakash Industries Ltd. The accused no. 5 further falsely represented that the loan would be repaid with interest at the rate of 30% p.a. within 90 days from the date of receipt of the money. Accused no. 1 to 5 knew from the very beginning that they would not repay the said sum or any part thereof but even then the accused no. 2 to 5 continued to make false representations to cheat the complainant and Sri Mahendra Kumar Jalan. Accused no. 2 in course of discussion held over telephone told that he had talked with the present petitioner, accused no. 6, to the effect that the accused no. 6 had approved of the proposal of the accused no. 2 in the matter of pledgement of 32 lac shares of Joy Prakash Industries for the purpose of securing a loan of Rs.1 crore. Being induced by false and fraudulent representation of the accused no. 2 to 5 the complainant agreed to advance a loan of Rs.1 crore only to the accused no.1. Thus, the complainant and Mahendra Kumar Jalan have been cheated in respect of Rs.37.5 lac which was paid to the accused no. 1/company by cheque no. 259032 dated 26-09-1998 drawn on Bank of America, New Delhi Branch. On the said date the accused no. 2 along with



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24/6/98

accused no. 5 came to the office of the company of the complainant and the accused no. 2 delivered 16 lac equity shares claiming the same to be the genuine and original share with the scripts of Joy Prakash Industries Ltd. bearing distinctive numbers as mentioned in paragraph 8 of the complaint and pledged those shares with the company of the complainant at their Corporate Office at no. 2 Clive Ghat Street, Calcutta. The cheque for Rs.37.5 lac was received by the accused no. 2 in presence of the accused no. 5 and deposited the said cheque with the bank account of the accused no. 1 on 30-09-1998 and the said cheque was encashed on that date itself. Acknowledgement of the cheque was granted by the accused no. 2. On 28-09-1998 the complainant/company by another cheque paid a further sum of Rs.37.5 lac favouring accused no. 1 and handed over the same to the accused no. 2. With a view to create confidence that the loan money thus received would be promptly repaid which the accused persons knew from the beginning that the same would never be repaid and with a view to cheat the complainant the accused persons executed few documents including a letter of request, a promissory note, a letter of continuity and affidavit of accused no. 2 along with post dated cheques for repayment of the loan as also a Deed of Pledge. Simultaneously, accused no. 2 in



513  
24/8/08

the presence of the accused no. 1 physically handed over the second lot of 16 lacs equity share scripts claiming to be the original and genuine share scripts of Joy Prakash Industries Ltd. The accused no. 1, 2 and 3 falsely represented that they would redeem the pledged shares within 90 days from the date of receipt of the amount of depository loan on repayment of the said sum of money together with interest to be calculated at 30% of the principal. On 10-11-1998 the complainant company paid a further sum of Rs.25 lacs by cheque no. 259041 drawn on Bank of America, New Delhi Branch in favour of the accused no. 1. and handed over the same to the accused no. 2 in presence of the accused no. 1 and on that day itself the cheque was encashed. Thus, the complainant company paid a total sum of Rs.1 crore. It is alleged that accused no. 4 gave false assurance with a view to deceive and cheat the complainant by falsely assuring the complainant of payment. Accused no. 1/company through accused no. 2 purportedly wrote a letter to Joy Prakash Industries Ltd. on 28-09-1998 and pretended to request them to record in their registers that the aforesaid shares had been pledged with the said complainant/company and requested Joy Prakash Industries to confirm that such pledge was noted knowing that the said Joy Prakash Industries Ltd. would not really confirm the

913  
24/6/98



transaction. Accused no. 2 procured a letter dated 07-10-1998 purported to be written by Joy Prakash Industries Ltd. whereby Joy Prakash Industries Ltd. was presumed to have confirmed to the complainant/company of their having recorded the pledge by accused no.1 of the aforesaid shares but Joy Prakash Industries denied to have written any such letter dated 07-10-1998. Thus, with a view to support false claim of accused no. 1 to 5 accused no. 6 procured *from* Joy Prakash Industries false document i.e. denial of the fact that they had written the letter dated 07-10-1998, and that all the shares scripts were not of Joy Prakash Industries. Criminal conspiracy was hatched by and between the accused persons and in pursuance of the conspiracy the accused persons used some forged share scripts and a false and forged letter of Joy Prakash Industries dated 07-10-1998 to cheat the complainant, Mahendra Kumar Jalan and induced them to pay Rs.1 crore which they would never have paid if they had known that all representations were false and fraudulent.

Offences were alleged to have been committed thus under Section 420/465/467/468/471/120B of the IPC.

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The learned Metropolitan Magistrate issued process against the petitioner under Section 420/471 of the IPC.'

It is contended in the revisional application that if the petition of complaint is read as a whole it would reveal that no case was made out against the petitioner who was the accused no. 6 in the case. The mere fact that the accused no. 6 is the father-in-law of the accused no. 2 and the father of the accused no. 3 is in absence of any material cannot be the ground to say that the said accused no. 6 conspired with the other accused persons. This is more so when in so far as accused no. 6 is concerned no ingredients of the offences under Section 420/471 of the IPC could be made out. It has been submitted by Mr. Sekhar Basu, learned senior Advocate appearing for the petitioner that a careful perusal of the petition of complaint would reveal that accused no. 2 allegedly falsely represented to the complainant that he had a talk with the present petitioner who allegedly approved of the proposal of the said accused no. 2 to pledge 32 lacs shares of Joy Prakash Industries for the purpose of obtaining loan of Rs.1 crore. It is submitted that it was not the allegation in the petition of complaint that at any point of time the petitioner either verbally or in writing himself



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24/6/68

communicated to the complainant of having approved the proposal of the accused no. 2 to pledge 32 lacs shares of Joy Prakash Industries for the purpose of obtaining loan of Rs.1 crore. It has been submitted that alleged false representation of the accused no. 2 to the complainant to the effect that the accused no. 6 has confirmed the proposal of the accused no. 2 in the matter of pledgement of 32 lacs shares is firstly not the evidence of legal character prima facie to bind the petitioner and secondly such alleged representation in absence of any material to the effect such representation was to the knowledge of the petitioner cannot constitute an offence under Section 420/471 of the IPC. The argument further runs that the letter dated 07-10-1998 purported to have been written by Joy Prakash Industries Ltd. confirming to the complainant's company of the said Joy Prakash Industries Ltd. having recorded the pledge by the accused no. 1 of the aforesaid shares has not been alleged at all in the petition of complaint to had been written by the accused no. 6 himself. In other words, it is argued that had it been the case that the accused no. 6 submitted or forwarded the letter dated 07-10-1998 to the complainant/company allegedly confirming proposal of the accused no. 2, then it could have been argued that the accused no. 6 could have a mens rea.

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Nowhere has it been alleged that the accused no. 6 was instrumental in issuing such letter of confirmation dated 07-10-1998. That the said purported letter dated 07-10-1998 was not to the knowledge of the petitioner has been made clear in the petition of complaint itself with the words that the Joy Prakash Industries Ltd. subsequently denied having written any such letter dated 07-10-1998. Therefore, it is argued that the petitioner should not have been summoned to appear by the learned Magistrate to answer charges under Section 420/471 of the IPC. It is argued that the allegation in the petition of complaint that the accused no. 6, i.e. the petitioner procured from Joy Prakash Industries Ltd. a false document i.e. denial of the fact that they wrote any such letter dated 07-10-1998 and that all the share scripts were not of the said Joy Prakash Industries Ltd. is meaningless because the letter of denial was issued when the petitioner came to know that a letter of confirmation had been issued in the name of Joy Prakash Industries Ltd. on 07-10-1998. It is argued that causing issuance of letter by Joy Prakash Industries thereby denying any issuance of letter dated 07-10-1998 itself proves that the petitioner did not at all issue any letter of confirmation on 07-10-1998 and any such letter of confirmation which definitely, as the petition of complaint



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24/4/98

itself tends to show, was not only behind the knowledge of the petition but also not a genuine one. It is argued that the question is whether it is the case of the petitioner that the letter dated 07-10-1998 affirming the proposal of accused no. 2 is false or forged or whether the subsequent letter of denial of affirmation dated 09-11-1998 is false or forged. It is argued that at paragraph 15 of the petition of complaint, the complainant/opposite party no. 2 has described the letter dated 07-10-1998 to be a false and forged letter which had been utilized to cheat. If the said letter dated 07-10-1998 purportedly issued by Jai Prakash Industries is a forged document on the ground that it was not issued by Jai Prakash Industries, then in such event the subsequent letter dated 09-11-1998 issued by Jai Prakash Industries, thereby denying issuance of the forged letter dated 07-10-1998, cannot be deemed to be a forged one. On the other hand, even if it is assumed that the letter dated 07-10-1998 had been issued by Jai Prakash Industries, then the subsequent letter dated 09-11-1998 issued by Jai Prakash Industries merely contained a false statement and a wrong assertion. It is not the case of the complainant/opposite party no. 2 that the subsequent letter

S13  
24/6/98

dated 09-11-1998 had not been issued by the authorized representative of Jai Prakash Industries Ltd. i.e. a person not having requisite competence to issue such letter. In such circumstances the said letter dated 09-11-1998 also cannot be said to be a 'false document' falling within any of the clauses provided under Section 464 of the IPC. It is further argued that a civil suit being suit no. 42 of 1999 had been instituted by Joy Prakash Industries Ltd. before the Hon'ble High Court of Delhi bringing to the notice of the Hon'ble Court the fraudulent nature of the share certificates in the possession of the O.P. No. 2/company (complaint company) and praying for declaration that the said shares were <sup>not</sup> genuine and the Hon'ble High Court of Delhi by order dated 13-01-1999 passed an order to restrain the complainant herein, M/s. M.K.J. Enterprises Ltd. and the accused no. 1/company from dealing with the order utilizing the said share certificate of Joy Prakash Industries Ltd. which was in their possession and, as a retaliatory measure the instant complaint case has been filed by the complainant/company on 12-02-1999, i.e. after the order of the Delhi High Court was passed. Then it is argued that the petition of complaint, read as a whole does not at all bring about any element of criminal conspiracy. Lastly, it is argued that the petitioner cannot be



513  
24/1/08

arraigned as an accused by virtue of vicarious liability on the ground that the petitioner is the Managing Director of Joy Prakash Industries Ltd.

Mr. Basu referred to the decisions in **Maksud Saiyad vs. State of Gujarat & Ors.**, (2008) 1 Cr.LR (SC) 228, **S.K. Alagh vs. State of U.P. & Ors.**, 2008(2) Supreme 152, **Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.**, 1998 SCC (Cri) 1400, **Ashok Chaturvedi and Ors. vs. Shitul H. Chanchanni and Anr.**, 1998 SCC (Cri) 1704, **State of Haryana vs. Bhajan Lal**, AIR 1992 SC 604, **JTH Zwart and Ors. vs. Indrani Mukherjee**, 1990 C.Cr.LR (Cal) 1.

In **Maksud Saiyad** (supra) the criminal proceeding was quashed <sup>on the ground that</sup> against non-payment of loan taken from the bank an application for recovery of the amount was filed before the Debt Recovery Tribunal. In this decision reference was made to **Saroj Kumar Poddar vs. State (NCT of Delhi) & Anr.**, (2007) 2 C.Cr.LR (SC) 187 and **S.M.S. Pharmaceutical Ltd. vs. Neeta Valla and Anr.**, (2007) 3 SCALE 245. The decision in **S.K. Alagh vs. State of U.P. and Ors.**, 2008(2) Supreme 152 has been relied on by the petitioner as in this case it has been held that a charge under Section 406 of the IPC cannot lie against a Director of a company as a Director of

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93  
24/5/08

a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. The decision in **Pepsi Food Ltd. and Anr. vs. Special Judicial Magistrate and Ors.**, 1998 SCC (Cri) 1400 deals with the power of the High Court to have the proceeding quashed against him under Section 482 of the Cr.P.C. or Article 227 of the Constitution of India when the complainant does not make out any case against him. Decision in **Ashok Chaturvedi and Ors.** (supra) is on the point when there is no material for framing of charges an accused is not debarred from invoking the inherent jurisdiction of the Court even when the Magistrate has taken cognizance of offence. The decision in **TH Zwart** (supra) held that incorporation or inclusion of a false statement in a document would not *ifso facto* make the document false because for a document to be false it is to tell a lie about itself.

Learned Advocate for the O.P. No. 2 Mr. N.N. Adhikari submitted that the Court cannot quash a criminal proceeding unless the Court is <sup>satisfied</sup> that continuation of a criminal proceeding is an abuse of the process of the court. According to Mr. Adhikari abuse of the process of the court takes place only when there is improper use of a



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24/6/68

regular legal process by which unfair advantage is obtained by a party to the proceeding over an opponent and every amount of wrong does not constitute abuse of the process. Mr. Adhikari seeks to make a distinction between abuse of the process and wrong process and it is only when abuse of the process is detected then only for the ends of justice a proceeding can be quashed. It is submitted with reference to paragraph 14 and paragraph 15 of the petition of complaint that it cannot be held that the petition of complaint is not maintainable in the eye of law because these two paragraphs disclosed commission of an offence and when such commission of offence is disclosed the court, having regard to the guidelines in **State of Hariyana vs. Bhajanlal., (1992)supple(1)SCC 335** quashed the criminal proceeding. It is submitted that it was the accused/petitioner who was instrumental in procuring a document i.e. denial of the fact that they wrote a letter dated 07-10-1998 and that all the share scripts were not of Joy Prakash Industries. It is submitted that pursuant to criminal conspiracy all the accused persons used some forged share scripts and a false and forged letter dated 07-10-1998 in order to cheat the complainant and Mahendra Kumar Jalan and induced the said company of the complainant to pay Rs.1 crore which the company would not have paid if



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24/4/98



they had known that all the representations were false and fraudulent.

Mr. Adhikari submitted that the accused No. 3 Smt. Rekha Dixit and the present petitioner i.e. accused no. 6 both have filed two separate applications under Section 482 of the Code of Criminal Procedure against the aforesaid order of issuance of process passed by the said Learned Court before the Hon'ble High Court at Calcutta and on 8th April 2004 the application filed by the accused No. 3 being CRR No. 13 of 2000 was dismissed by the Hon'ble Mr. Justice Pradip Kumar Biswas. Against the said judgment the accused No. 3 preferred a Special Leave Petition before the Hon'ble Supreme Court but on 27-08-2004 the said Special Leave Petition was also dismissed. But the <sup>present</sup> application under Section 482 of the Code of Criminal Procedure filed by the petitioner herein i.e. the accused no. 6 being CRR No. 12 of 2000 is pending before the Hon'ble High Court at Calcutta for the last 8 years and by virtue of the stay order dated 5<sup>th</sup> January 2000 passed by the Hon'ble Mr. Justice P.K. Sen in connection with the instant CRR No. 12 of 2000 the entire criminal proceeding pending before the aforesaid Learned Court <sup>has remained pending</sup> ~~has remained~~ for the prolonged period of time. It is worth while to mention here that both the

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accused persons i.e. the accused no. 3 and the accused no. 6 (the petitioner herein), <sup>stand on</sup> ~~the~~ the same footing in the petition of complaint, <sup>and they</sup> filed this two applications before this Hon'ble High Court against the self-same order and on the basis of the self-same grounds with an ulterior motive to stifle the legitimate prosecution of the instant case.

It is submitted that uncontroverted allegations made in the petition of complaint against the accused no. 6 do constitute a cognizable offence on the basis of which it was justified for the learned Magistrate to hold that there was sufficient ground for proceeding against the accused no. 6. It is further submitted that this court may not take a different view from the judgment passed by Hon'ble Justice Pradip Kumar Biswas in CRR No. 12 of 2000 and accused no. 3 and accused no. 6 do not stand on different footing. My attention has been drawn to the decisions in *Hamida vs. Rashid @ Rasheed and Ors.*, (2008) 1 SCC 474, *Zandu Pharmaceutical Works Ltd. and Ors. vs. Mohd. Sharaful Haque and Anr.*, (2005) 1 SCC 122, *State of M.P. vs. Awadh Kishore Gupta and Ors.*, (2004) 1 SCC 691, *State of Karnataka vs. M. Devendrappa and Anr.*, (2002) 3 SCC 89, *Rajesh Bajaj vs. State of Delhi and Ors.*, (1999) 3 SCC 259,

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24/6/08

**Madhu Limaye vs. State of Maharashtra.**, AIR 1978 SC 47, and  
**R.P. Kapoor vs. State of Punjab**, AIR 1960 SC 866.

In **Hamida vs. Rashid** (supra) it was held in line of **Madhu Limaye State of Maharashtra** (supra) that an inherent power of the Court is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. In **Zandu Pharmaceuticals** (supra) it was held that there cannot be any straight jacket formula for exercise of inherent jurisdiction. If it appears that the ingredients of the offences are disclosed and there is no material to show that the complaint is mala fide there would not be no ground to quash a proceeding. In **the State of Madhya Pradesh vs. Awadh Kishore Gupta** (supra) the ratio of the decision was that it was impermissible for High Court to look into the materials the acceptability of which was essentially a matter of trial. In **State of Karnataka vs. M. Devendrappa** (supra) it was held that the inherent jurisdiction of the Court should not be exercised to stifle legitimate prosecution and High Court could not assume the role of a trial court and embark upon an enquiry as to the reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence.

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513  
24/6/78

In **Rajesh Bajaj vs. State of Delhi & Ors.** (supra) it was held that many a cheating is committed in the course of commercial or money transaction and it is not essential that a complaint should verbatim contain all the ingredients of the offence of cheating. **Madhu Limaye** gives the guideline for exercising of inherent power to quash a proceeding. The decision in **R.P. Kapoor vs. State of Punjab.**, AIR 1960 SC 866 has been explained further in **State of Hariyana vs. Bhajanlal** (supra).

As to the submission of Mr. Adhikari that the decision of this court in CRR No. 12 of 2000 dismissing the revisional application praying for dropping of the proceeding as against the accused no. 2 and 3 should govern also the present petitioner requires consideration first. If we read the petition of complaint and make an anatomy thereof we clearly are able to make a distinction between the accused no. 1 to 5 on the one hand and accused no. 6 who is the present petitioner on the other. It is against the accused no. 1 to 5 that allegation of cheating and forgery has been committed with direct expression and allegation of facts. It is clearly discernible that accused no. 6 stands on a somewhat different footing and so far as the said accused no. 6 is concerned there is only

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29/5/08

one allegation against him and before we go to proceed with the examination of that allegation we should bear in mind the guidelines for quashing of a proceeding as laid down in **State of Hariyana vs. Bhajanlal** (supra). It is only when the petition of complaint does not disclose a prima facie cognizable offence or when the allegations in the petition of complaint or the FIR are inherently improbable or absurd, or when the petition of complaint or the FIR is a mala fide one intended to harass the opponent, or when no evidence of legal character is available or when there is legal bar to the entertainability of an application that a criminal proceeding should be quashed. At para 5 of the petition of complaint there is allegation that accused no. 2 over telephone called on Mahendra Kumar Jalan that he had a talk with the present petitioner who had approved the proposal of the accused no. 2 to pledge 32 lack shares of Joy Prakash Industries for the purpose of obtaining loan of Rs.1 crore. This alleged approval of the petitioner conveyed to an another accused regarding approval of the ~~pledgement~~ the pledgement of shares of Joy Prakash Industries can hardly be said to be a lawful material against the present petitioner. Now allegedly it was the accused no. 2 who procured a letter dated 02-11-1998 purported to have been written by Joy Prakash Industries

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Ltd. whereby Joy Prakash Industries denied to have written the letter dated 07-10-1998. It is not the allegation that the present petitioner procured such letter. It is the specific allegation of the complainant that with a view to support the false claim of the accused no. 1 to 5. Accused no. 6 who is the present petitioner procured from Joy Prakash Industries false document i.e. denial of the fact that they wrote the letter dated 07-10-1998 and that all the share scripts were not of Joy Prakash Industries. I am not unmindful of decision in **State of Madhya Pradesh vs. Awadh Kishore Gupta** (supra) where it has been held that it was impermissible for High Court to look into the materials the acceptability of which was essential a matter for trial, but where the documents<sup>are</sup> relied on by both the parties it is but necessary to dwell on the documents. In para 14(C) it is the specific case of the complainant that the accused no. 2 procured a letter purported to be written by Joy Prakash Industries Ltd. In the written notes of argument furnished by the complainant three letters have been referred to - one dated 07-10-1998, another dated 03-11-1998 and another dated 09-11-1998. According to the complainant, complainant on receipt of the letter dated 07-10-1998 wrote a letter to the accused no. 1/company on 03-11-1998 informing them about the noting of the pledge of



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24/6/08



the aforesaid share scripts. It is not the case in the petition of complaint that accused no. 6 wrote the letter dated 07-11-1998. It is not the case in the petition of complaint that the petitioner produced the letter of confirmation dated 07-10-1998 to the complainant. Allegedly, the letter dated 07-10-1998 was issued by senior Manager of Joy Prakash Industries Ltd. That letter dated 07-10-1998 was replied to by the complainant on 03-11-1998 about the noting of the pledge of the aforesaid share and then on 09-11-1998 complainant received the letter from Joy Prakash Industries Ltd. where the company of the present petitioner denied about the ownership of such shares of the accused no. 1. Thus, letter dated 07-10-1998 which was not written by the petitioner has been disowned by the petitioner's authorized signatory through the letter dated 09-11-1998 and in that letter dated 09-11-1998 it was noted that no letter dated 07-10-1998 was sent to note the pledge and it was further noted that pledge of shares should not be noted in the records in view of the provisions of Section 153 of the Companies Act. The letter dated 07-10-1998 issued by Joy Prakash Industries Ltd. was replied to by the complainant's company/21<sup>st</sup> Century Security Ltd. It is not understood how the present petitioner can be fastened with liability of forgery either



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with respect to the letter dated 07-10-1998 or with respect to the letter dated 09-11-1998 as neither of the letters was written by the petitioner. It is argued by Mr. Sekhar Basu, learned Advocate for the petitioner that it is not understood at all how the present petitioner would be in a position to support a false claim of the accused no. 1 to 5 by causing issuance of any letter by Joy Prakash Industries Ltd. denying thereby issuance of any purported letter dated 07-10-1998 which was produced not by the petitioner but allegedly by the accused no. 2 before the complainant. In order to establish prima facie at least charge under Section 471 of the IPC it has to be shown that it was the petitioner who committed forgery of the letter dated 07-10-1998. Mr. Basu argues that the petition of complaint does not say in specific term as to which of the letters is forged - whether the letter dated 07-10-1998 confirming pledgement of shares or letter dated 09-11-1998 disowning the letter dated 07-10-1998 but it has to be established that it was the petitioner who was instrumental in commission of forgery. At para 15 of the complaint it is said that the letter dated 07-10-1998 was a forged one but nowhere in the petition of complaint it has been alleged that it was the petitioner who committed forgery of this letter or who procured the letter from Joy Prakash



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24/6/08

Industries or who furnished the letter dated 07-10-1998 to the complainant.

The decision in **S.K. Alagh** (supra) is relevant here. Petitioner is said to be the Chairman of Joy Prakash Industries. Offence alleged is said to be one of cheating and forgery. Taking a cue from **Sabitha Ramamurthy, (2006) 10 SCC 511** it was held by the Lordships of the Supreme Court that in absence of any provision laid down under the statute a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. It is always alleged that Joy Prakash Industries Ltd. Company committed forgery of the letter dated 07-10-1998 because it is the Joy Prakash Industries Ltd. who issued the letter. Therefore, unless prima facie material is alleged that it was accused no. 6 who is the present petitioner who alone was responsible for commission of forgery then and then only the petitioner can be fastened with criminal liability of cheating and forgery.

In the circumstances, I fail to find out any prima facie offence on reading the petition of complaint alone as against the present petitioner.

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24/6/08

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1' Situated thus, the revisional application is allowed.  
 Criminal Proceeding *so far as it relates to the present problem* is quashed.

A copy of the order shall be sent to the learned Metropolitan Magistrate, 15<sup>th</sup> Court, Calcutta for information and necessary action.

It is further directed to send the L.C.R. immediately to the concerned department as expeditiously as possible.

Urgent xerox certified copies of this order, if applied for, be given to the parties as expeditiously as possible.

Sdf- P. S. Datta, J  
 (Partha Sakha Datta, J)

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 24/6/08