

(2014) 02 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Revision Case Nos. 1305 and 1778 of 2005

E. Bapanaiah

APPELLANT

Vs

Minoo R. Shroff
 Regional Director Vs Minoo R. Shroff

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Companies Act, 1956 — Section 10, 58(10), 58A, 58-A, 58A(10)
Contempt of Courts Act, 1971 — Section 12
Criminal Procedure Code, 1973 (CrPC) — Section 216, 244, 245, 245(1), 245(2)
Foreign Exchange Regulation Act, 1973 — Section 23(1)
Penal Code, 1860 (IPC) — Section 409, 420
Reserve Bank of India Act, 1934 — Section 45

Citation : (2014) 3 ALT(Cri) 260

Hon'ble Judges : S. Ravi Kumar, J

Bench : Single Bench

Advocate : Ponnamm Ashok Goud, Assistant Solicitor General and G. Krishna Murthy, Advocate for the Appellant; L. Venkateshwar Rao, D. Sangeetha Reddy, S. Ravi and Public Prosecutor, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravi Kumar, J.—These two revisions are against the order dated 2-5-2005 in Crl.M.P. No. 995 of 2005 to 1013 of 2005 in C.C. No. 14 of 2005 on the file of Special Judge for Economic Offences, Hyderabad.

2. Brief facts of the case leading to this revision are as follows:

Registrar of Companies, Andhra Pradesh filed complaint against 35 accused persons for offences u/s 58A(9), 58A(10) of the Companies Act and the said complaint is registered as C.C. No. 14 of 2005.

3. The allegations in the complaint are as follows:

The first accused is a company incorporated under the provisions of Company Act(hereinafter referred to as "the Act") for which accused 2 to 8 are directors who originally invited deposits from public through advertisements and the last

advertisement was on 30-6-1997. A. 9 was Managing Director, A. 10 was Joint Managing Director of A. 1 company. A. 11, A. 12, A. 14, A. 15, A. 22 and A. 23 were directors of A. 1 company. A. 13, A. 16 to A. 21 are the present directors of A. 1 company. A. 24 is the Executive Director during the material period of time and A. 25 is a company which entered into an agreement with A. 1 company and A. 25 to A. 35 are the persons who gave assurance to the company law board. On the application filed by A. 1 company represented by A. 12, the Company Law Board passed an order on 29-2-2000 whereunder certain directions were given with regard to repayment of deposits which were to mature thereafter over a period of 12 to 48 months. Company Law Board reviewed the progress of its order dated 29-2-2000 on 2-12-2004 and directed the Registrar of Companies to take appropriate action in terms of Section 58A(9) and 58A(10) of the Companies Act. Since A. 1 has not repaid the deposits that were matured long back and failed to comply with the orders of the Company Law Board as per the scheme formulated by it in spite of extending time for compliance. Department of company affairs and Regional Director of Company Law Board have received number of complaints from the deposit holders with regard to non-payment of deposit amounts as per the Company Law Board orders and all the accused are responsible for the default in payment and they have both individual as well as collective responsibility to discharge the dues to the deposit holders. Therefore, all the accused are liable for punishment u/s 58A(10) for violation of the orders of the Company Law Board.

4. First respondent (A. 2 and petitioner in CrI.M.P. No. 995 of 2005), 2nd respondent (A. 3 and petitioner in CrI.M.P. No. 996 of 2005), 3rd respondent (A. 4 and petitioner in CrI.M.P. No. 997 of 2005), 4th respondent (A. 5 and petitioner in CrI.M.P. No. CrI.M.P. No. 998 of 2005), 5th respondent (A. 8 and petitioner in CrI.M.P. No. 999 of 2005), 6th respondent (A. 9 and petitioner in CrI.M.P. No. 1000 of 2005), 7th respondent (A. 10 and petitioner in CrI.M.P. No. 1001 of 2005), 8th respondent (A. 11 and petitioner CrI.M.P. No. 1002 of 2005), 9th respondent (A. 12 and petitioner in CrI.M.P. No. 1003 of 2005), 10th respondent (A. 26 and petitioner in CrI.M.P. No. 1004 of 2005), 11th respondent (A. 27 and petitioner in CrI.M.P. No. 1005 of 2005), 12th respondent (A. 28 and petitioner in CrI.M.P. No. 1006 of 2005), 13th respondent (A. 29 and petitioner in CrI.M.P. No. 1007 of 2005), 14th respondent (A. 30 and petitioner in CrI.M.P. No. 1008 of 2005), 15th respondent (A. 31 and petitioner in CrI.M.P. No. 1009 of 2005), 16th respondent (A. 32 and petitioner in CrI.M.P. No. 1010 of 2005), 17th respondent (A. 33 and petitioner in CrI.M.P. No. 1011 of 2005), 18th respondent (A. 34 and petitioner in CrI.M.P. No. 1012 of 2005) and 19th respondent (A. 35 and petitioner in CrI.M.P. No. 1013 of 2005) have filed Criminal M.P. No. 995 of 2005 to CrI.M.P. No. 1013 of 2005 respectively u/s 245 Cr.P.C. claiming discharge on the ground that no case has been made out against them warranting a trial or further enquiry in the matter. It is contended that Company Law Board gave direction to A. 1 company only and liability u/s 58A(10) would be fastened only on the company and that would apply to the persons who are in management of

the company. A. 2 to A. 12 have ceased to be the directors of A. 1 company with effect from September, 2000 and A. 26 to A. 35 were never directors or officers of A. 1 company and petitioners who were not directors cannot be prosecuted. The contention of the complainant that A. 2 to A. 12 cannot resign and even if they resigned, they will be liable is unknown to law under the Companies Act. The complainant earlier filed two complaints against the existing management of A. 1 company u/s 58A(10) of Companies Act for violation of very same orders of the Company Law Board and both complainants were filed only against existing management and that there is no prima facie material to frame any charge against the petitioners nor the allegation warrant a trial and therefore, they are to be discharged.

5. On a consideration of contentions and rival contentions, trial court allowed the discharge petitions filed by A. 2 to A. 12, A. 26 to A. 35 and aggrieved by the orders of trial court, complainant represented by Registrar of Companies, Andhra Pradesh filed Crl.R.C. No. 1305 of 2005 and one of the depositors who is also aggrieved by the orders of the Special Judge for Economic Offences filed Criminal R.C. No. 1778 of 2005. Both these cases, arise out of the same order. Therefore, they are heard together.

6. Heard both sides.

7. Advocate for revision petitioner in Crl.R.C. No. 1778 of 2005 filed written legal submissions in support of the contention of the revision petitioner in Crl.R.C. No. 1778 of 2005. He also submitted oral arguments during which he contended, through advertisement dated 28-6-1996 A. 1 company induced many depositors including this revision petitioner. He submitted that in that advertisement, names and addresses of Directors are furnished and further stated that the company has no over due deposits other than the unclaimed deposits and advertisement further declared that company has complied with the provisions of the directions applicable to it and the deposits accepted by the company are unsecured and rank pari passu with other unsecured liabilities. He submitted that company instead of repayment of deposits on maturity as promised in their advertisement, it approached Company Law Board by filing a petition u/s 58A(9) of the Companies Act read with Section 45 of Reserve Bank Act on which Company Labour Board passed scheme order dated 29-2-2000 in Company Petition No. 35 of 2000, As per the said order, fixed deposit amounts are payable as per the directions mentioned in para. 11 of the Scheme Order but the company and its Directors have not made any attempt to repay the fixed deposits in terms of the Scheme Order, on the other hand, without regard to the specific directions of the Company Law Board order and without permission of the Company Law Board they have entered into a strategically alliance namely Memorandum of Understanding dated 6-9-2000 with Messers Mahalakshmi Factoring Services Limited (for short "MFSL"). He further submitted that A. 2 to A. 5, A. 8 to A. 12 after the Scheme Order dated 29-2-2000 resigned from the company to avoid payment of amount as per the Scheme Order and in view of the Company Law

Board Order dated 19-9-2000 the Promoter Director and Group Holding Companies shall continue to be responsible for due compliance of Scheme Order dated 29-2-2000. He further submitted that the company and every officer including Director of the company are jointly and severally responsible for the compliance of the Scheme Order. He further submitted that non-payment of fixed deposits to the deposit holders running into about 99 crores which were collected in accordance with advertisements is clear violation of Section 58A(5) and Section 58A(6)(b) of the Companies Act. The non-payment of amounts as per the scheme order constitutes violation of Section 58A(10) of the Companies Act and the accused are liable for punishment, But the learned trial Judge without considering provisions of 58A(6)(b) and 58A(10) of the Companies Act, discharged the respondents herein, therefore, the same is liable to be set aside.

8. He further submitted that Section 216 of Cr.P.C. has conferred power on the court to alter or addition any of the charge different from the charge alleged and in this case, if the provisions u/s 58A(5)(b) and 58A(10) of the Companies Act is not attracted, it will definitely attract offence u/s 420 I.P.C. for cheating and inducing the depositors to deposit money into the company and the trial court ought to have framed at least that section.

9. He has drawn to the provisions of Cr.P.C. right from taking of cognizance till examination of accused u/s 313 Cr.P.C. and contended that the trial court has not followed the procedure properly.

10. Advocate for revision petitioner in CrI.R.C. No. 1305 of 2005 submitted that resigning or continuing as Director is no consequence in this case because as per the provisions of Section 58(10) of the Companies Act who ever means the person in charge of the company affairs at the time of invitation and taking deposits. He further submitted that this offence is a continuing offence, so from the date of invitation till payment after maturity, offence will continue therefore all the accused who are discharged have to be tried. He further submitted that Director cannot escape from the liability simply by resigning and huge amount is due from the company to the depositors and discharging the accused persons is not at all correct.

11. Learned advocate for respondents 1 to 19 submitted that trial court has power u/s 245(2) Cr.P.C. to discharge the accused at any previous stage of the case if it considers that the charge is groundless. He further submitted that procedure to be followed for the cases instituted otherwise than on police report is in Chapter XIX B of Cr.P.C. commencing from Section 244 Cr.P.C. He further submitted that when any warrant case is instituted on the basis of a complaint other than police report, the Magistrate shall proceed to hear the prosecution and take such evidence that may be produced in support of the prosecution and after doing so, if the Magistrate considers that no case has been made out from the evidence recorded, he shall discharge the accused u/s 245(1) Cr.P.C. u/s 245(2) even before recording the evidence court can discharge the accused if the court considers that the charge is groundless. He further submitted that if the accused

is not discharged either u/s 245(1) or 245(2) Cr.P.C., the court has to proceed under Sections 246, 247 and 248 Cr.P.C. He further submitted that the learned trial judge exercised his power u/s 245(2) Cr.P.C. as the allegations made against the respondents herein are groundless. He further submitted that after framing the scheme, by the company Law Board, direction was given only on 2-12-2004 on the basis of such direction only, the Registrar of Companies filed the complaint for prosecution and by 2-12-2004, these respondents are no way connected with the company affairs of A. 1. He further submitted that direction of company law board is only against the company and when the respondents are nothing to do with the company, the trial court was right in holding that allegations against them are groundless. He further submitted that advocate for revision petitioner repeatedly pointed out that the trial court has not recorded the evidence on behalf of the complainant but that objection cannot be sustained because here the court discharged the accused u/s 245(2) Cr.P.C. He submitted the court cannot invoke that provision if evidence is recorded since discharge u/s 245(1) Cr.P.C. is possible only after considering the evidence so recorded. He further submitted when the court found that the allegations are groundless, there is no necessity for it to record any evidence and therefore there is no illegality in exercising powers u/s 245(2) Cr.P.C. He further submitted that point involved in this case is whether the direction of the company law board is binding on the past Directors. He further submitted that one of the depositors filed Company Petition No. 162 of 2004 against the company represented by its Managing Director 6th respondent (A. 9 and petitioner in Crl.M.P. No. 1000 of 2005), to sentence him u/s 58A(10) of Company Act for violation and disobedience of the orders of the Company Law Board and a Division Bench of this Court through a common order dated 13-3-2010 has dealt with that relief and held the promoters and erstwhile directors have ceased their interest from the date of which they have resigned from the post of Directors hence not liable for the affairs of the company after their resignation from the Board of Directors consequently, they are not personally liable to pay any amount to the depositors. He further submitted that Registrar of Companies i.e., Revision petitioner in Crl.R.C. No. 1305 of 2005 is a party to the said order and now he cannot contend and question the discharge which was made on the very same ground. He further submitted that the revision petitioner in Crl.R.C. No. 1778 of 2005 filed Contempt Case No. 915 of 2002 against the promoter Director and Directors of the company contending that they have committed breach of affidavits filed before the Company Law Board and violated Scheme order and learned single Judge of this court sentenced the promoter Director and other Directors to suffer S.I. for a period of six months and to pay a fine of Rs. 2,000/- each u/s 12 of the Contempt of Courts Act and appeals were preferred against the said order dated 3-8-2007 in Contempt Case No. 915 of 2002 in contempt appeal Nos. 3, 4, 5, 6, 7, 8, 9, 1 and 11 of 2007 and a Division Bench of this Court by an order dated 2-8-2008 allowed the appeal by setting aside the order of the learned single judge in Contempt Case No. 915 of 2002 and as the revision petitioner in Crl.R.C. No. 1778 of 2005 is a party to the said order, he cannot now contend

that discharge is incorrect. He further submitted that the complaint on the basis of which C.C. No. 14 of 2005 is not registered for the offence under Sections 409 or 420 I.P.C. and there are not even any allegation in the complaint attracting the ingredients of these two offences now without any material, the revision petitioner cannot contend that the trial court ought to have taken these sections into consideration. He further submitted that the trial court rightly discharged respondents 1 to 19 herein and there is no illegality committed by the trial court and as such, there are no grounds to interfere with the well reasoned order of the trial court.

12. Both sides have referred to some rulings in support of their respective contentions. I shall refer to them wherever it is necessary while considering the contentions of both parties with reference to material on record.

13. Now the points for determination are:

- 1) whether the trial court committed any error in discharging accused?
2. Whether the trial court has committed any procedural irregularity or illegality while discharging respondents 1 to 19 herein?
3. To what relief?

14. POINTS 1 TO 3:

According to the revision petitioners, Nagarjuna Finance Limited was incorporated under the provisions of Companies Act and invited deposits from the public offering higher rate of interest under Fixed Deposit Scheme such as cumulative, non-cumulative and money multiplier in forty five months. But the company instead of repayment of the deposits on maturity, approached Company Law Board u/s 58A(9) for deferment of repayment of fixed deposit and on that application, Company Law Board passed scheme order dated 29-2-2000 with certain directions and the company and its directors failed to comply the scheme order dated 29-2-2000 then the company Law Board directed the Registrar of companies to prosecute the company, its officers and Directors for violation of Scheme order dated 29-2-2000, on the basis of which, Registrar of Companies filed a complaint before the Special Judge for Economic Offences, Hyderabad.

15. On the other hand, it is the contention of the respondents that they cannot enforce the directions of the Company Law Board under Scheme order dated 29-2-2000 being Former Directors and by the date, the Company Law Board directed the Registrar of Companies to initiate prosecution for violation, these respondents (First respondent (A. 2 and petitioner in CrI.M.P. No. 995 of 2005), 2nd respondent (A. 3 and petitioner in CrI.M.P. No. 996 of 2005), 3rd respondent (A. 4 and petitioner in CrI.M.P. No. 997 of 2005), respondent (A. 5 and petitioner in CrI.M.P. No. CrI.M.P. No. 998 of 2005), 5th respondent (A. 8 and petitioner in CrI.M.P. No. 999 of 2005), 8th respondent (A. 11 and petitioner CrI.M.P. No. 1002 of 2005), 9th respondent (A. 12 and petitioner in CrI.M.P. No. 1003 of 2005), 10th respondent (A. 26 and petitioner in CrI.M.P. No. 1004 of 2005), 11th

respondent (A. 27 and petitioner in CrI.M.P. No. 1005 of 2005), respondent (A. 28 and petitioner in CrI.M.P. No. 1006 of 2005) were not the directors of the company.

16. Here the main contention of the revision petitioners is that respondents have violated the scheme order of Company Law Board and they are liable for prosecution u/s 58A(10) of the Companies Act. Now I shall refer here to the provisions of Section 58A(9) and (10) of the Act for better appreciation. They read as under.

58A:

"(9). Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit the Company Law Board may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

Provided that the Company Law Board may before making any order under this sub-section give a reasonable opportunity of being heard to the company and the other persons interested in the matter."

"(10). Whoever fails to comply with any order made by the Company Law Board under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of (not less than rupees five hundred) for every day during which such non-compliance continues.)"

17. According to the above provisions, Company Law Board either on suo moto or on the application of the depositors can order to make repayment of deposits or part thereof with some condition and according to Section 10, whoever fails to comply the Company Law Board order passed under clause 9 of the Act are liable for punishment.

18. Company Law Board by order dated 29-2-2000 formulated the scheme for repayment of deposits and held "The company and every Officer including the Directors of the company shall be jointly and severally responsible for due compliance of this order."

19. It further held "any failures to comply with this order on the part of the company, its officers and Directors shall attract the penal provision contained under Sub-section 10 of Section 58A of the Act. The Scheme formulated by the Company Law Board is as follows.

20. After the scheme order, Company Law Board has reviewed the progress of scheme order and finally passed an order on 2-12-2004 directing the Registrar of Companies, Andhra Pradesh, Hyderabad to take appropriate action against the company and its Directors for violation of the Scheme Order.

21. For better understanding, I feel it is necessary to extract the order of the Company Law Board dated 2nd December, 2004 which is as follows:

"This Bench by an order dated 29-2-2000 made in CP No. 35/2000 approved a scheme of repayment of deposits by the Company over a period of 5-36 months in respect of 85,160 deposits involving an aggregate sum of Rs. 9,837.30 lakhs. The progress made by the Company in repayment of deposits is being reviewed from time to time. During the hearing held on 02.12.2004 none appeared on behalf of the Company, furnishing the details of up-to-date repayment made by the company in favour of the depositors. The notice sent to Company has been returned by postal department with remarks "office closed". The Company neither filed any status report by way of an affidavit in accordance with the order dated 29.2.2000. However as per the last affidavit dated 05.01.2004 of the Company, the Company has repaid only sum of Rs. 5480.09 lakhs as at 31.12.2003 as against Rs. 9837.30 Lakhs. A number of complaints are being received against the Company for non-repayment of deposits and further applications u/s 634A of the Companies Act, 1956 are received to enforce the scheme order. This Bench has so far received 740 such applications, wherein appropriate orders have been passed transferring the scheme order in respect of 724 applications to the competent forum for execution. It is beyond doubt that the Company and its directors failed to repay the deposits in terms of the Scheme approved by this Bench, thereby the depositors are seriously prejudiced. In these circumstances, the Registrar of Companies, Andhra Pradesh, Hyderabad will take appropriate action against the Company and its directors under the provisions of Section 58A(9) of the Act for violation of the scheme order approved by this Bench."

22. From the above order, it is clear that direction to initiate action for violation is made on 2nd December, 2004. Admittedly, by this date, First respondent (A. 2 and petitioner in CrI.M.P. No. 995 of 2005), 2nd respondent (A. 3 and petitioner in CrI.M.P. No. 996 of 2005), respondent (A. 4 and petitioner in CrI.M.P. No. 997 of 2005), 4th respondent (A. 5 and petitioner in CrI.M.P. No. CrI.M.P. No. 998 of 2005), 5th respondent (A. 8 and petitioner in CrI.M.P. No. 999 of 2005), 6th respondent (A. 9 and petitioner in CrI.M.P. No. 1000 of 2005), 7th respondent (A. 10 and petitioner in CrI.M.P. No. 1001 of 2005), respondent (A. 11 and petitioner in CrI.M.P. No. 1002 of 2005), 9th respondent (A. 12 and petitioner in CrI.M.P. No. 1003 of 2005) are not Directors of the Company. Now the contention of the revision petitioners is that since 58A(10), it is stated that whoever violates the former directors would also come under the definition of "whoever" to support his arguments, he placed reliance on a decision of Supreme Court in *Rai Bahadur Seth Shreeram Durgaprasad Vs. Director of Enforcement*, . In that case, the term "whoever" used in Section 23(1) of the Foreign Exchange Act, 1947 was considered and observed any one who may also include an association of persons or a partnership firm. Reply of respondents for this decision is that the said case has no relevancy as it pertains to the language used in a different legislation and the Honourable Supreme Court give definition to the word "whoever" in the

context of whether it would mean only a natural person or it would include partnership firm association of persons etc., But here in our case, the order of the Company Law Board is very clear in respect of against whom action has to be initiated for violation.

23. The very same point has come up before the Division Bench of this court in the Company Appeals and Writ Petitions in respect of the same Company for which both the revision petitioners herein are parties and by a common order dated 13-3-2010, Division Bench of this court held as follows.

"We are of the view that the promoters and erstwhile directors have ceased their interests from the date on which they have transferred their shares and resigned from the post of directors. Hence, the promoter and directors are not liable for the affairs of the Company after their resignation from the board of directors and consequently, they are not personally liable to pay the amount to the depositors."

24. It is not in dispute that First respondent (A. 2 and petitioner in Crl.M.P. No. 995 of 2005), 2nd respondent (A. 3 and petitioner in Crl.M.P. No. 996 of 2005), 8th respondent (A. 11 and petitioner in Crl.M.P. No. 1002 of 2005), 9th respondent (A. 12 and petitioner in Crl.M.P. No. 1003 of 2005) ceased to be directors from 16-9-2000, A. 4 is ceased to be Director from 28-4-1999, A. 10 is ceased to be director from 1.9.2000, A. 8 is ceased to be director from 8-9-2000, A. 5 is ceased to be Director from 10-9-2000 and A. 9 is ceased to be Director from 31-1 -2001.

25. On examination of provisions of Section 58A(9) and 58A(10) scheme order dated 29-2-2000 of Company Law Board and Company Law Board order dated 2-12-2004 and the findings of the Division Bench of this court in the order passed in Company appeal Nos. 15 and 23 of 2003, Writ Petition Nos. 3780 and 17814 of 2004 and in some company petitions of 2002, 2005, 2006 dated 13-3-2010, the word "whoever" referred in 58A(10) of the Companies Act cannot be extended to former Directors of the company.

26. One of the contentions of the revision petitioners is during the proceedings before Company Law Board Promoter, Director Sri K.S. Raju and one Mr. A.N. Chidamber on behalf of A. 9, A. 24, A. 27, A. 28, A. 29, A. 30, A. 31, A. 32, A. 33, A. 35 filed affidavits assuring payment of money as per the scheme order and on that score, they have to be prosecuted for the violation.

27. For this contention, reply of the other side is that the very same point was considered by Division Bench of this court in the very same order dated 13-3-2010.

28. The company M/s. Nagarjuna Finance Limited filed Company Appeal No. 15 of 2003 in which an application is filed to direct the promoters and Erstwhile Directors and other holding companies to organise funds for repayment of fixed deposits as they filed affidavits assuring repayment of deposits. This aspect was considered in the said order and Division Bench of this Court while considering

the memo. of understanding with MFSL Company which undertook entire responsibility of repayment of deposits of Nagarjuna Finance Limited depositors wherein it is observed that the new management has filed affidavit in different proceedings at different level except the change of management and payment of certain amount to a tune of Rs. 34 crores held that the former Directors and Promoter Directors are not liable on the basis of such affidavits.

29. As already referred above, the revision petitioners herein are parties to the said common order and therefore in view of the specific findings of the Division Bench of this court in the order dated 13-3-2010, the contention of the revision petitioners with reference to the affidavits filed before Company Law Board cannot be accepted.

30. The next contention of the revision petitioners is that the trial court without recording evidence of any of the witnesses in support of the complaint allegations discharged respondents herein and the same is illegal.

31. On the other hand, it is the contention of the counsel for respondents that the court has power u/s 245(2) Cr.P.C. to pass an order of discharge even before stage of recording evidence of prosecution witnesses u/s 244 Cr.P.C.

32. Now I shall refer hereto the provisions of Sections 244 and 245 Cr.P.C.

Section 244 Cr.P.C. reads as follows.

"(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing."

Section 245 Cr.P.C. reads as follows.

"(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

33. From a reading of the above provisions, it is clear that the trial court has power to discharge the accused persons even before taking evidence for prosecution u/s 244 Cr.P.C. when it considers that the charge to be ground less.

34. So, from a reading of the above two provisions, it is clear that if evidence is recorded u/s 244 Cr.P.C., the Magistrate have two options. First option is to

discharge the accused persons u/s 245(1) Cr.P.C. if no case is made out against the accused person and second option is if the accused are not discharged, it has to frame a charge and proceed further u/s 246 Cr.P.C. and 247 Cr.P.C. but u/s 245(2) Cr.P.C. even before recording evidence as contemplated u/s 244 Cr.P.C., the trial court can discharge the accused person if it considers that the charge to be groundless.

35. Here the respondents invoked provisions of Section 245(2) Cr.P.C. and filed petitions to discharge them on the ground that they are no way concerned with the affairs of the company and that they cannot comply with the directions of the Company Law Board and as such, there is no violation.

36. Advocate for revision petitioner relied on a decision of Ajoy Kumar Ghose Vs. State of Jharkhand and Another, , but this case is no way helpful to the petitioners because it was held in that case that the accused can be discharged at any stage even before evidence is led provided that the charge is groundless. Revision petitioners also relied on another decision of Supreme Court in Ratilal Bhanji Mithani Vs. State of Maharashtra and Others, . In that case, honourable Supreme Court held that Section 245(2) Cr.P.C. is an exception to the general rule. In that case, discharge was ordered without considering the evidence already taken as illegal.

37. As already referred above, once the evidence is taken u/s 244 Cr.P.C., trial court can discharge the accused after considering the evidence if it feels that no case is made out against the accused. But at that stage, it cannot discharge the accused on the ground that charge is groundless. In that context, the Honourable Supreme Court held that Section 245(2) is an exception to the general rule of discharge. Therefore, this proposition is no way helpful to the revision petitioners.

38. Revision petitioner in Crl.R.C. No. 1778 of 2005 filed Contempt Case No. 915 of 2002 against the Promoter Director for violation of orders of Company Law Board, Southern Region Bench at Chennai in Company Petition No. 35 of 2000 dated 29-2-2000.

39. A Single judge of this court passed an order holding that the promoter Director of the Company and Director of the Company are liable for punishment under Contempt of Courts Act and the promoter Director and other Director preferred Contempt Appeal No. 3 to 11 of 2007 and a Division Bench of this Court by its order dated 22-8-2008 after considering the fact that the company petition No. 35 of 2000 was suo moto initiated by the Board and that on the deposits of the depositors got matured subsequent to the resignation of the Promoter Director and other Director allowed Contempt Appeal by setting aside the order of the single judge. It appears aggrieved party approached Hon'ble Supreme Court and matter is pending before Supreme Court but there is no stay. In that decision, Honourable Division Bench observed that the Company Law Board did not fasten any personal liability on the promoter Director of the company to repay the deposit of the depositor and further observed that there is

no personal liability whatsoever on any of the Directors of the Company and such liability must flow either from the special contract such as case of guarantee or under any subject statute.

40. It is further observed in the said order which reads as follows.

"The role of the Promoter Director of the Company was not properly explained anywhere. Therefore, mere allegations against the Promoter Director, who was neither a party nor an authorized representative of the Company, or the other Directors of the Company, who are the appellants in Contempt Appeal Nos. 4 to 11 of 2007, cannot make them liable for contempt. The entire ire was against the Company for not repaying the deposits and for that purpose, making allegations against the Promoter Director and the other Directors of the Company, who had resigned long back and the Company (NFL) was taken over by a new management of another Company (MFSL), and with full knowledge of the said fact, making allegations of violation of the Scheme order of the Board indiscriminately in C.A. No. 344/634A/SRB/2001 in C.P. No. 35 of 2000, dated 21.8.2001, is wholly unwarranted."

"Actually, had the depositor, by virtue of permission granted by the Board in the proceedings u/s 634-A of the Act, gone for execution before the competent civil Court, for recovery of the amounts, at least, by this time, he would have recovered the amounts. But, the conduct of the depositor initiating the litigation one after the other, focusing the entire ire on the Promoter Director and the other Directors of the Company, who were not on the Board of the Company, at all, at the point of time when actually the orders passed by the Board under sub-section (9) of Section 58-A of the Act were to be complied with, cannot be appreciated."

"We are, therefore, of the firm view that for every, and each and every violation, initiation of "contempt proceedings" is not the only remedy. The said remedy can be invoked, as held by the apex Court as well as the other High Courts, time and again, only in the circumstances, where the dignity and decorum of the Court and its orders are at serious peril, or because of any fraudulent or mischievous method adopted to disobey the orders of the Court willfully."

41. Honourable Division Bench has elaborately considered almost all the aspects which are now raised here. In fact, the complaint before the trial court is in respect of the very same Scheme order dated 29-2-2000 for which the Honourable Division Bench, held that there is no violation.

42. From the order of the Company Law Board dated 2-12-2004, it is clear that direction was given to the company and its directors which means directors as on the date of 2-12-2004 are to be prosecuted. Learned trial judge has elaborately discussed every aspect and rightly considered the material on record for discharging the respondents.

43. I do not find any illegality or wrong in the order of the learned trial judge and

he has correctly exercised his power u/s 245(2) Cr.P.C. and discharged the respondents as the charge is groundless.

44. On a scrutiny of the material, I am of the view that the trial court has not committed any error for discharging the respondents and that there are no grounds to interfere with the said order.

45. For these reasons, both the revisions are liable to be dismissed as devoid of merits.

46. Accordingly, these two Criminal Revision Cases are dismissed.

47. As a sequel to the disposal of this revision case, the Miscellaneous Petitions, if any, pending shall stand dismissed.