

(2022) 06 CAL CK 0040
In the Calcutta High Court
Case No : C.R.R. No. 3004, 3171 Of 2018

Kanwal Prakash Singh & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 17-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 245, 397, 401
Securities and Exchange Board of India Act, 1992 — Section 11A, 11B, 11(1), 11(4),
24, 26, 26A, 26B, 26C, 26E, 27, 27(1)
Companies Act, 1956 — Section 2(36), 55A, 56, 60, 67, 73

Citation : (2022) 06 CAL CK 0040

Hon'ble Judges : Ananda Kumar Mukherjee, J

Bench : Single Bench

Advocate : Akhilesh Shrivastava, Abhishek Sikdar, Sandipan Ganguly, Prasanta Kumar Dutt, Susanta Kumar Dutt, Syamantak Banerjee

Final Decision : Dismissed

Judgement

Ananda Kumar Mukherjee, J

1. Both the revisional applications under sections 397, 401 of the Code of Criminal Procedure 1973, read with section 26C of Securities and Exchange Board of India Act, 1992 stem out from the impugned order dated 20.08.2018 passed by Learned Judge, 5th Special Court, Calcutta in Special Case No. 18 of 2016 (SEBI/16/17), whereby the applications filed by the petitioners for their discharge under section 245 of Cr. P.C were rejected, imposing a cost of Rs.2,000/-. By these applications legality and propriety of the order has been challenged praying for setting aside the order and quashing of the proceeding against the petitioners.

2. The fact of the case, in gist is that, the petitioners are three of the directors of the accused company, M/s Just Reliable Projects India Limited, which was incorporated on 16th December, 2009 under the Companies Act, 1956, having its registered office at C-19, Uday Shankar Bithi, City Centre, Durgapur-713216.

3. A duty having been cast upon SEBI under section 11(1) of the SEBI Act to protect the interests of investors in Securities and to promote the development of and regulate the securities market through appropriate measures, the Securities Exchange Board of India conducted an enquiry in respect of alleged illegal fund mobilization by the accused company and its directors. It came to light that during the financial year 2010-2013, M/S Just-Reliable Projects India Limited had raised an amount of Rs.11.426 Crores through issuance of redeemable preference shares to 3,558 entities without complying with the regulatory provisions applicable to the public issue norms.

4. The accused company issued public shares without filing any offer documents in violation of section 56 of the Companies Act, 1956. Whenever any offer is made by any company to 50 or more persons, it is deemed to be a public issue and the company has to comply with the disclosure requirements of SEBI. The accused company has issued shares to the investors without making any application for listing of the shares in the stock exchanges, and thereby violated provisions of section 73 of the Companies Act. The accused company further did not comply with the provisions related to issuance of public shares and also violated the provisions of section 56,60 read with section 2(36), 73 of the Companies Act and the SEBI (disclosure and investor protection) guidelines, 2000 read with SEBI (issue of capital and disclosure requirements) Regulation 2009.

5. Due to such violations of the extant laws by the accused persons SEBI issued an order bearing no. WTM/PS/66/ERO/IMD/OCT/2015 dated October 13, 2015, directing the accused company to comply with the SEBI directions and make repayments to the investors. As the accused company did not comply with the said Regulations and with dishonest intentions evaded repayment of the amounts collected by it from the investors, a Complaint case has been lodged against the accused company and its directors/promoters/managers/key management/personnel and persons in charge of the business of accused company's scheme who are responsible for the day to day affairs of the company for offence punishable under section 24 and 27 of the SEBI Act, 1992, tribal under section 26A, 26B and sections 26E of the SEBI Act for violation of section 56, 60 and 73 of the Companies Act, 1956.

6. For such violations the Whole Time Member of Securities and Exchange Board of India held an enquiry under section 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 and in its order dated 13.10.2015 the Whole Time Member of SEBI found that noticees like Virendra Kumar, Gajendra Pal Singh and Kanwal Prakash Singh, the petitioners have contended that they have never managed the affairs of the company. However, having assumed position as directors of the company during the relevant period, they are under legal mandate to comply with the applicable laws. It was found that they cannot claim ignorance of the manner in which the company was operated to raise fund by issuing shares to the public without making an application for listing of the shares in stock exchange.

7. It was found that the petitioners herein are directors of the company from the date of its incorporation. Regarding Gajender Pal Singh and Kanwal Prakash Singh, it was contended that although they with Virendra Kumar and Swarup Dutta promoted the company, they were not consulted with respect to any of the functions of the company and they had sent two representations on 18.6.2010 and 22.6.2010 to Swarup Dutta regarding the unilateral decisions taken to open company's bank account, increase share capital from rupees one crore to rupees three crores without holding Annual General Meeting and changing the registered office address. In course of enquiry it was found by SEBI that except such representations which returned undelivered due to refusal of Swarup Dutta, the directors did not initiate any action. This conduct on the part of the directors of not taking action even after their respective investments in the company was not found acceptable. Virendra Kumar was also found to have invested rupees two lakhs but did not initiate any action for default which makes them responsible for such conduct. On the basis of such enquiry the SEBI restrained M/S Just-Reliable Projects India Limited, the accused company from accessing the capital market by issuing prospectus, offer documents or advertisement soliciting investment of money from public and from buying, selling or otherwise dealing with securities market, directly or indirectly from the date of the order till the expiry of four years from the date of completion of refund to investors. The mode of repayments to investors was to be made through Bank Demand Draft or Pay order and the Company, its directors and other persons were directed to issue public notice in all editions of two National Dailies and in one local Bengal daily. They were directed to provide a full inventory of all of their assets. The order was however not complied by the accused company and its directors, as a result SEBI filed a complaint case before the Learned Judge, Special Court, Kolkata though the Assistant General Manager of SEBI duly authorized by the Board. Cognizance of the offence was taken under section 26 of the Act.

8. The alleged offence is punishable with imprisonment for a term which may extend to ten years or with fine upto 25 crore or both. The offence being an offence of continuing nature, the complaint was lodged before Learned Judge Special Court at Kolkata on 8.12.2016. It is alleged that the accused person have been served with the order passed by SEBI but they have failed to comply making them jointly and severally liable to the offence under section 24 read with section 27 of the SEBI Act, 1992.

9. The present petitioners filed Appeals bearing no 151 of 2017 and 152 of 2017 before the Securities Appellate Tribunal, Mumbai wherein by order dated 6.04.2018 the Hon'ble Tribunal Judge upheld the decision of the SEBI dated 13.10.2015 and on the basis of the submission made by counsel for the appellants Kanwal Prakash Singh and Gajendra Pal Singh, that the amounts collected by the company on the day of which they resigned and their resignations accepted by the company be excluded from the joint and several liability imposed upon the appellants, the Tribunal observed that since this aspect is raised for the first time, the two appellants were given the liberty to make a

representation to SEBI only to the above issue. The order passed by the Appellate Court on the basis of representation made by the counsel for two of the petitioners, Kanwal Prakash Singh and Gajendra Pal Singh clearly indicate that they admitted their liability regarding the amounts collected by the company till the date of their resignations.

10. The accused company had raised a huge amount of money from general public in contravention of legal provisions and without obtaining approval or clearance from ROC, MCA and SEBI as required under the Companies Act, 1956 and the SEBI Act, 1992.

11. The accused company did not take any steps for winding up of the scheme or repayment to the investors, nor did it take any steps to comply with the directions of the SEBI issued by order dated 13.10.2015. The accused company has not the refunded money to the investors and caused huge pecuniary damage.

12. Accused no. 2 to 13 in the complaint are the directors/promoters/key management/personnel and persons in charge of and responsible to the Accused No. 1/Company for the conduct of the business and are liable for the violations of sections 56, 60 and 70 read with section 55A and 67 of the Companies Act, 1956.

13. Three of the accused persons in the complaint, namely Kanwal Prakash Singh, Virendra Kumar and Gajendra Pal Singh filed an application under section 245 of the Code of Criminal Procedure praying for their discharge from the case. Learned Judge, Special Court, Kolkata after considering the materials and the finding of the Whole Time Member of SEBI and the Appellate Tribunal of SEBI, was pleased to hold that there was a prima facie case regarding violation of the provisions of the Companies Act against the accused persons and he dismissed the prayer for discharge and imposed a cost of Rs.2,000/-upon the three petitioners for filing of such application for discharge at the time of framing of charge with an observation that such Act was for the purpose of stalling the proceedings.

14. Two separate revisional applications have been filed by the petitioners espousing the same cause, that simply being directors of the accused company, without having any knowledge or role to play in the day to day activity of the company, they cannot be liable for the offence and the impugned order dated 20.8.2018 passed by Learned Judge, Special 5th Court Kolkata is liable to be set aside.

15. Learned advocate for the petitioners commenced his argument, referring to the portion of the impugned order in page 7 and 8 where the learned Trial Court observed, "So far as the allegations made by the accused persons regarding not having knowledge of the act of the companies is concern I am of the opinion that the same cannot be adjudicated at the time of framing of charge and that can be properly adjudicated in the trial of this case". It is argued on behalf of the petitioners that from such observations it would be apparent that learned Trial Court in a way admitted that no ground exists to proceed against the applicants.

In support of such contention reliance is placed upon the decision in the case of Century Spinning and Manufacturing & Company Limited and others Vs. State of Maharashtra: (1972) 3 SCC 282, where the Hon'ble court held that if on the materials the court comes to the conclusion that there was no ground for presuming that the accused has committed an offence then it can appropriately consider the charge to be groundless and discharge the accused.

16. The second facet of argument is that the petitioners have been made accused only on the presumption that they were directors and shareholders of the company when those 93 allotments were made between 29.5.2010 to 29.7.2011, violating the law. It is submitted that Kanwal Prakash Singh and Gajendra Pal Singh resigned as directors of the company on 29.7.2011 and Virendra Kumar resigned on 29.3.2012, once they came to know about the illegality committed by the officers in the company, who are in charge and responsible for the affairs of the company. It is argued that the delay of the petitioners in submitting their resignation was simply for the reason that they wanted their investments back. Further contention of the petitioners is that, for 93 allotments at least 94 Board meetings and one EOGM are required to be held but the petitioners did not get any notice of such meeting nor did they participate in the Board Meeting. It is argued that SEBI has not been able to produce any evidence that any notice was sent to the petitioners nor have they been able to produce any document to show that the petitioners were present in such purported meetings. According to the petitioners the Articles of the Company can't be violated and the same cannot be changed without Special Resolution in the General Body meeting of the shareholders. It is submitted that the Articles of the Company prohibits transfer or allotment of shares to outsider as such the petitioners cannot be held liable for issuing RPS. The impugned order passed by the learned Trial Judge has further been assailed on the ground that SEBI does not have any details of the Minutes of meetings, Notice of Board Meeting and General Meeting of the accused company nor any other evidence to show that the petitioners have attended the meeting or participated in the same. Under such circumstances it is urged that the impugned order does not find support from any material fact to prima facie establish the involvements of the petitioners in the conduct of the business of the company. Accordingly, the impugned order rejecting the prayer of the petitioner for their discharge is liable to be set aside and the proceeding quashed.

17. To reinforce his argument learned advocate for the petitioners placed reliance upon the following decisions: (1) Century Spinning and Manufacturing Company Limited and others Vs. State of Maharashtra: 1972(3) SCC 282 it has been held therein that,

"Under Sub-section (2), if upon consideration of all the documents referred to in Section 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to

be read along with Sub-section (3), according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two sub-sections together it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in Sub-section (2)."

(2) Referring to *Sri Parmeshwari Prasad Gupta Vs. The Union of India*; (1973) 2SCC 543, Learned advocate for the petitioners pointed out that the director may at the time of summoning meeting of the directors have to serve 72 hours' noticed to every director in writing, through the officer of the Company authorized to convene the meeting. The meeting will not be duly convened even though the omission in giving notice is accidental or due to the fact that the member has informed the officer whose duty it is to serve notice that he need not served notice on him and the business put through at a meeting not duly convene is invalid.

(3) Reliance has also been placed on the decision of *V.B. Rangaraj Vs. V.B. Gopalakrishnan*; (1992) 1 SCC 160 (paragraph 5 to 7), In the said case, it was laid down that,

"The private company means a company which by its Articles, restricts the right to transfer its shares, if any, and limits the number of its shares to 50 (excepting employees and ex-employees who were and are members of the company)it is further held that even when the Memorandum and Articles of the Association are registered, they bind the company and the members thereof. S. 28 provides that the Articles of Association of a company limited by shares may adopt all or any of the regulations contained in Table A in Schedule 1 of the Act. S.31 provides for alteration of the Articles by a special resolution of the company. S.36 states that when the Memorandum and Articles of Association are registered, they bind the company and the members thereof. S.39 provides for supply of the copies of Memorandum and Articles of Association to a member. S. 40 makes it mandatory to incorporate any changes in the Articles of Association in every copy of the Articles of Association."

Therefore in this cited case the said provisions of the Act makes it clear that the Articles of Association are the regulations of the company, binding on the company and its shareholders and that the shares are a movable property and their transfer is regulated by the Articles of Association of the company. Whether under Companies Act or Transfer of Property Act, the shares are therefore transferable like any other movable property. The only restriction on the transfer of the shares of a company is as laid down in its Articles, if any. A restriction

which is not specified in the Article is, therefore, not binding either on the Company or on the shareholders.”

18. Mr. Ganguli, learned advocate for the SEBI argued that the complaint has been filed against the petitioners for violation of certain provisions of the Companies Act. It is submitted that the petitioners Kanwal Prakash Singh, Gajendra Pal Singh and Virendra Kumar as directors of the accused company invested at the time of incorporation of the company, for subscribing the Memorandum of the accused company. The petitioners are the directors and they are responsible for the management and conduct of day to day affair of the company. The petitioners along with other directors in the company during the financial year 2010-2013 have raised an amount of Rs.11.426 crores through issuance of preference shares to 3,558 entities without complying with the regulatory provisions applicable to public issue. On enquiry by SEBI it was found that the petitioners who claim to have no knowledge about the activity of the company had issued notice on 18.6.2010 and 22.6.2010 to one Swarup Dutta, another director alleging that they were not consulted regarding functioning of the company and that decisions were being taken to open companies bank account and increase share capital without holding any Annual General Meeting. The notice were returned to the petitioners but they did not take any steps against Swarup Dutta and petitioner Kanwal Prakash Singh and Gajendra Pal Singh continued as directors till 29.7.2011 and Virendra Kumar continued as director till 29.3.2012. Thus the petitioner/directors were fully aware about the activity of the company during such period till their resignations were accepted. Learned advocate for SEBI further argued that the accused company and the petitioners did not comply with the order passed by the Whole Time Member of SEBI dated 13.10.2015, for which the complaint has been filed before the Judge, Special Court under section 24 and 27 of the SEBI Act.

19. In response to the contention of learned advocate for the petitioners, it is contended that petitioners relied upon a decision in Century Spinning and Manufacturing & Company Limited and others Vs. State of Maharashtra: (1972) 3 SCC 282, It is laid down in the case that where there is no ground for presuming that the accused has committed an offence, then the accused must be discharged. However, it is argued that, it is not profitable for the petitioners to rely on the said decision as the Learned Trial Judge, while rejecting the application for discharge of the petitioners was of the view that from the materials on record a prima facie case alleged against the petitioner has been made out by the complainant. In my considered view the above decision does not lend support to the petitioners’ case. To reinforce the argument of Opposite Party No.2 reliance has been placed in the case State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568 (Para 8,18), where it has been laid down that at the stage of framing of charge roving and fishing inquiry is impermissible and if the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge and that at the stage of framing of charge the defence of the accused cannot be put forth. Learned advocate for SEBI argued that while

refusing the prayer for their discharge, learned Judge observed that the defence of the petitioners that they had no knowledge about the acts of the accused company cannot be adjudicated at the time of framing of charge as the same has to be proved during trial and this clearly indicates that learned Judge has applied his mind and cited cogent reasons for rejecting the applications. It is therefore argued that there is no illegality, irregularity or perversity in the impugned order and the present petitions are liable to be rejected.

20. I have traversed the impugned order dated 20.8.2018, wherein learned judge has considered the allegations made against the petitioners in details and found a prima facie case against the accused person regarding violation of provisions under section 56, 60 and 70 of the Companies Act, 1956 read with section 2(36), 73 of the Companies Act. Learned Trial Judge observe that the claim of the accused person of not having knowledge of the act of the concern company, could not be adjudicated at the time of framing of charge and it can properly be adjudicated during trial of the case. At this juxtapose, it would be worthwhile to refer to the decision in the case of State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568, where it is held that at the time of framing of charge the defence of the accused cannot be put forth. Therefore, the question regarding knowledge of the petitioners/ directors about the business activity of the company can be considered only during trial of the case as it involves disputed question of facts.

21. Learned Judge further discussed the provisions under section 27 of the SEBI's Act which lays down:

27. [Contravention by companies].-(1) Where [a contravention of any of the provisions of this Act or any rule, regulation, direction or order made there under] has been committed by a company, every person who at the time the [contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.- For the purposes of this section,-

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

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

22. The provisions laid down that where there is a contravention of any provisions of the SEBI Act or any rule, regulation, direction or order made thereunder committed by a company, every person who at the time of the contravention was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to proceed against and punish accordingly. Therefore, the petitioners who were the directors of the company from its very incorporation on 16.12.2009 and at the time of issuance of public redeemable preference shares for raising an amount of Rs. 11,42,63,000/- during the financial years 2010-2013 are prima facie responsible and liable to make good the amount. The proviso to section 27(1) lays down that nothing contained in section 27 shall render any such person liable to any punishment provided in this Act, if he "proves" that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. Once a "prima facie case" is established that there is a contravention of the provisions of SEBI Act, committed by the company, every person who at the time the contravention was committed was in charge of, and responsible to the company, for the conduct of the business shall be deemed to be guilty of such contravention but they would not be liable to any punishment if they can prove that the contravention was without their knowledge. The burden of proof therefore would shift on such accused persons under the Act if a prima facie case is brought out against them.

23. In the instant case the petitioners were directors and not mere name lenders to the company. Two of them had invested Rs. 5.5 lakhs each at the time of incorporation of the company. In the impugned order it has been stated that on the basis of submissions made by accused Kanwal Prakash Singh, Gajendra Pal Singh and Virendra Kumar, the Adjudicating Officer of SEBI found that during the tenure of the petitioners as directors the company issued redeemable preference shares to 3558 persons and collected an amount of Rs. 11,42,63,000/- in the financial years froms 2010-2013 without complying with public issue norms as mandated under sections 56, 60 and 73 of the Companies Act, 1956, read with the Companies Act, 2013. The Adjudicating Officer of SEBI directed the accused persons to refund the money collected by the company to the investors with interest of 15% per annum, compounded at half yearly intervals from the date when the repayments became due till the date of actual payment along with other compliance to be made. It is therefore apparent that the accused petitioners were fully aware and had knowledge about the activity of the company and also the contraventions of law made by it. The onus therefore shifts upon the petitioners under proviso to section 27(1) of SEBI Act that they had no knowledge about the contravention of the provisions of law committed by

the Company in mobilizing such huge amount of funds from public shares.

24. In support of their case regarding not having any notice, petitioners relied upon Parmeshwari Prasad Gupta Vs. Union of India; (1973) 2 SCC 543, which lays down that notice had to be served upon the petitioners for constituting a valid meeting and validate any decision taken therein. Furthermore, reliance was placed on V.B. Rangaraj Vs. V.B. Gopalakrishnan; (1992) 1 SCC 160, to support their argument that the Articles of Association of the company is sacrosanct and the same cannot be violated. Therefore, without passing Special Resolution in the General Body meeting no amendment could be made. I have considered the guiding principles laid down in the above decisions and is of the opinion that the said judgments relate to civil proceedings. Therefore, it would not have any application at this stage of a criminal proceeding. The question of the petitioners having knowledge has to be considered at the stage when evidence is adduced and the same can be imputed from various circumstances and source.

25. Order dated 13.10.2015 passed by SEBI reveals that M/s Just-Reliable Projects India Limited has mobilized fund of Rs. 11.43 crores by floating of shares in the market. This Act of the company was not done furtively and surreptitiously. Therefore, the plea of the petitioners that they had no knowledge about the activity of the company is also prima facie unacceptable at this stage.

26. Gajendra Pal Singh and Kanwal Prakash Singh admitted before the SEBI authorities that they had sent a notice dated 18.6.2010 and 22.6.2010 to Swarup Dutta regarding alleged unilateral decisions taken by him to open bank account, increase share capitals of the company without holding Annual General Meeting and also change in the address of the registered office of the company. The aforesaid acts alleged to have been carried out by Swarup Dutta requires prior Board Resolution of the company. The petitioners who claim to be unaware about the activity of the company are well informed about opening of bank accounts, change of Registered address of the company as well as mobilization of fund to the credit of the company. The petitioners did not hand over the company documents to SEBI as directed in order dated 13.10.2015. Therefore, documentary evidence when produced in course of trial would reveal if the concerned authorities have allowed such course of activity without any Board Meeting of the company and also of the fact if the petitioners really had no knowledge about the mode and manner of functioning of the company.

27. The petitioners having issued the notice to Swarup Dutta continued to be directors and did not resign from their office. The illegal activity of the company continued while petitioners were fully aware about such activity till 29.07.2011 and Virendra Kumar till 29.3.2012, their respective dates of resignation.

28. The Whole Time Member of SEBI after examining all materials furnished by such directors and the petitioners passed an order no. WTM/PS/66/ERO/OCT/2015 dated 13.10.2015, holding that the accused company and its director liable for violation of the extant law and directed them to refund the invested

amounts to the shareholders with interest. After lapse of the time for repayment, when the order dated 13.10.2015 was not complied, SEBI lodged a complaint before learned Judge, Special Court, Kolkata.

29. Learned Judge Special Court, Kolkata, in the impugned order reasoned out the basis on which he found "a prima facie case to proceed against the accused petitioners" who had prayed for their discharge. In his order learned Judge, Special Court referred to the proviso to section 27(1) of the SEBI Act which lays down the onus of the petitioners who shall have to prove that the contravention was committed without their knowledge or that they exercised all due diligence to prevent the commission of such contravention.

30. Proviso to section 27(1) of SEBI Act provides an opportunity to such person seeking respite, by prove that he had no knowledge about the contravention made by the company or he exercised due diligence to prevent the commission of such contravention. This onus on the part of the petitioner can be discharged only at the stage of trial as it is a matter related to dispute of facts which lies in the realm of evidence and can be taken up in course of trial. If it is to be assumed that all such detail facts have to be consider by the court at the time of framing of charge, it would be like putting the cart before the horse. In a like manner detail evidence cannot be considered at the time of adjudication of the question whether prima facie case exists against a person for framing of charge. Only after such charge is denied the trial will commence. Therefore, prima facie case having been found to exist against the accused petitioners, the case cannot be foreclosed on the basis of simple claim that the petitioners had no knowledge of the Company's activity. At this stage I have no hesitation to refer on the decision cited by the opposite party no.2, in the case of M.E. Shivalingamurthy Vs. CBI, Bengaluru (2020) 2 SCC 768, where it has been laid down that it is erroneous to discharge an accused on the basis of the version of the accused, all of which are matters of defence that cannot be looked into while considering a discharge petition.

31. The petitioners have claimed that they have been held vicariously liable for the offence committed by the accused company but when such offence was committed they were not the persons in charge of and responsible for the conduct of the business of the accused company. Learned advocate for the petitioners placed reliance upon a decision in the case of Municipal Corporation of Delhi Vs. Ram Krishan Rohatgi; (1983) 1 SCC 1. In (paragraph 15) where it was held as follows:

"So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In

these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

32. In reply learned advocate for Opposite Party No. 2 argued that in the petition of Complaint it has been specifically averred that the accused no. 2 to 13 are the directors/promoters/managers/key management personnel/persons in charge of business of the accused company and are responsible for the day to day affairs of the company and such averments are sufficient to bring the petitioners under the dragnet of section 27 of the SEBI Act. In support of his argument learned advocate for the opposite party no. 2 placed reliance upon the decisions in the case of S.M.S Pharmaceutical Ltd. Vs Neeta Bhalla & Anr. (2005) 8 SCC 89, wherein after considering the decision in Municipal Corporation of Delhi Vs. Ram Krishan Rohatgi; (1983) 1 SCC 1, it has been laid down that to make a director liable for the acts of the company, it has to be specifically averred in the complaint that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of the business of the company. On a careful reading of the petition of complaint it appears that in paragraph no. 14 it has been set out as follows: "The Accused No. 2 to 13 are the directors/promoter/key management personnel and/or persons in charge of and responsible to the Accused No.1 for the conduct of its business and are liable for the violations of the Accused No. 1, as provided under section 27 of Securities and Exchange Board of India Act, 1992." In this regard it is salutary to refer to the decision in the case of Gunmala Sales Pvt. Ltd Vs Anu Mehta and Ors (2015) 1 SCC 103 (para 30, 31), wherein it is held that a complaint cannot be quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. It therefore emerge from the available facts and circumstances and the position of law that there is material averment in the petition of Complaint to disclose that the directors of the accused company were responsible for the conduct of its business. Since the petitioners were adequately notified before the enquiry proceedings were held by the Whole Time Member of SEBI and that they did not comply the order thereafter, learned Judge Special Court, has committed no error in holding that there is a prima facie case against the petitioners to constitute charge against them and thereby the prayer for discharge was rejected. In view of my foregoing discussion I find and the impugned order suffers from no illegality, impropriety or irregularity and calls for no interference.

33. Both the revisional applications filed by the petitioners are accordingly dismissed on contest.

34. Interim orders passed in connection with the case are vacated. Let a copy of this judgment be communicated to the Learned Judge, Special Court, Kolkata

(under SEBI Act) for information with a direction to proceed with the instant case expeditiously.

35. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for, maintaining all formalities.