

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.1980 OF 2022

ORDER:

The present criminal petition is filed seeking to quash the FIR No. 27 of 2022 dated 09.02.2022 registered on the file of Central Crime Station, Hyderabad under Section 409 and Section 420 of the Indian Penal Code, 1860.

2. Heard Mr. S. Niranjan Reddy learned Senior Counsel representing Mr. N. Naveen Kumar, learned counsel for the Petitioners, Mr. Ravichandra Hegde learned counsel representing Mr. Jayant Jaisoorya, learned counsel for Respondent No. 2 and Mr. Khaja Vizarat Ali, learned Assistant Public Prosecutor appearing for Respondent No. 1.

Facts of the case

3. Petitioner No. 1 is the National Stock Exchange (hereinafter the 'NSE'), Petitioner No. 2 is the Managing Director & CEO of the NSE and Petitioner No. 3 is the Chief Regulatory Officer of the NSE. The de facto complainant, who is Respondent No. 2 herein, alleges commission of a large-scale fraud involving a

conspiracy between the Petitioners herein and other entities and individuals to defraud innocent investors like him. A complaint dated 30.12.2021 was filed with the Joint Commissioner of Police, Central Crime Station by Respondent No. 2. The said complaint came to be registered as FIR No. 27 of 2022 under Section 409 and Section 420 of the Indian Penal Code, 1860.

4. In the said FIR, Petitioners Nos. 1 to 3 are arraigned as Accused Nos. 4 to 6 respectively. The other accused are M/s. Anugrah Stock Broking Pvt. Ltd. (hereinafter 'ASBPL'), Mr. Paresh Kariya, Mr. Anil Gandhi, Edelweiss Custodial Services Ltd. (hereinafter 'Edelweiss') and Central Depository Services Ltd. (hereinafter 'CDSL').

5. Based on the contents of the impugned FIR and the complaint, the genesis of the alleged fraud revolves around the scheme run by ASBPL and its directors along with one Mr. Anil Gandhi who is the sole proprietor and director of M/s. Teji Mandi Analytics Pvt. Ltd. (hereinafter 'TMAPL'). It is alleged that Mr. Anil Gandhi introduced Respondent No. 2 herein and his wife to the scheme run by ASBPL. According to the complaint, TMAPL

was the authorised person of ASBPL. The role of TMAPL was to bring in new investors to invest in the scheme run by ASBPL for which a brokerage fee is charged. It is alleged that Mr. Anil Gandhi induced Respondent No. 2 and his wife to open a trading account with ASBPL and promised good profits and returns.

6. Respondent No. 2 and his wife invested in the scheme of ASBPL. Allegedly, a Power of Attorney was obtained to let ASBPL to operate the trading and demat accounts of Respondent No. 2 and his wife. Subsequently, all their funds and securities were transferred to the demat account of the ASBPL. It was through this common demat account that ASBPL did the trading.

7. It is alleged that the funds and securities deposited by Respondent No. 2 and his wife were misused and mis-utilised by ASBPL. It owned a certain amount of money to its clearing agent Edelweiss and therefore, transferred the funds and shares of Respondent No.2 and his wife to Edelweiss. Edelweiss, in turn, without the consent of Respondent No. 2 and his wife sold the shares in the open market.

8. With regards to the Petitioners, it is alleged that they were aware of the fraud being committed by ASBPL. It is also alleged that by failing to take action against ASBPL and its directors, TMAPL and its directors, Edelweiss, the Petitioners have conspired to commit the fraud.

9. The Petitioners herein deny the allegations made in the impugned FIR and have filed the present criminal petition to quash the same.

10. **Contentions of the Petitioners**

i) The only allegation against the Petitioners herein is that they were aware of the commission of the fraud and failed to take any action. These allegations are false, baseless and are based on surmises and conjectures.

ii) The Petitioners are not involved in the day-to-day and micro level management of the NSE relating to broker supervision and inspection. They do not interact with the brokers and are not involved in the trades done by various brokers listed with the NSE including ASBPL and TMAPL.

iii) NSE has taken timely action against the violations committed by ASBPL and TMAPL. It cannot be contended that NSE failed to take any action. The following actions were taken by NSE:

- (a) A letter dated 02.04.2020 was addressed to Edelweiss cautioning it regarding the sale of shares transferred by ASBPL. Further, based on information from the Securities Exchange Board of India (hereinafter 'SEBI'), NSE ordered an external forensic audit of ASBPL for the period from April 2019 to April 30 2020 to be conducted by Ernst and Young (E&Y).
- (b) Based on the preliminary findings of the forensic audit report, NSE initiated disciplinary proceedings and issued a show cause notice dated 17.07.2020 to ASBPL regarding the violations committed by it. On 03.08.2020, ASBPL was disabled from trading on the securities market. Subsequently, on 03.09.2020 an order was passed completely prohibiting ASBPL from trading in all the segments of the NSE.

- (c) On 04.09.2020, NSE directed all the depository participants to freeze all the demat accounts of ASBPL and further directed all the clearing members of ASBPL including Edelweiss not to release the collaterals of ASBPL.
- (d) On 07.09.2020, NSE directed the banks to freeze all the bank accounts of ASBPL.
- (e) Supplementary show cause notices were issued to which no replies were filed by ASBPL. However, a hearing was conducted before the Committee on 24.08.2020 and ASBPL was expelled as a broker from the membership of the NSE vide order dated 26.11.2020.
- (f) On 28.11.2020, a public notice was issued advising the investors of ASBPL to submit their claims in the prescribed format.
- (g) Action was also initiated against TMAPL and Mr. Anil Gandhi by issuing a show cause notice dated 29.09.2020. A Committee Order dated 30.11.2020 was

passed against TMAPL, Mr. Anil Gandhi and one Mr. Riddhi Kalapi Shah (one of the directors) from associating as trading member of the NSE, directly or indirectly, in any capacity for a period of three years from the date of order.

(h) A criminal complaint dated 07.05.2021 was filed before the Metropolitan Magistrate at Bandra, Mumbai against ASBPL and its directors and TMAPL and its directors.

(i) NSE had also previously in 2012-2013, 2013-2014 and 2017-2018 taken action by imposing penalties against ASBPL by imposing various penalties.

iv) The meeting dated 10.06.2020 was conducted at the specific request of one Mr. Prakash Kariya and Mr. Anil Gandhi. The meeting was illegally recorded and is being misused. In the said meeting, it was made clear by Petitioner No. 3 that the Rules and Regulations are to be strictly followed and no help can be provided in any manner.

v) In the absence of any specific role attributed to the Petitioners, no criminal liability can be attracted. No vicarious liability can be attached to offences committed under the IPC. Reliance was placed on **Ravindranatha Bajpe v. Mangalore Special Economic Zone**¹.

vi) No prima facie case is made out against the Petitioners as the ingredients of Sections 409 and 420 of the IPC are not satisfied. Reliance was placed on **Anil Kumar Bose v. State of Bihar**² and **L. Chandraiah v. State of Andhra Pradesh**³.

vii) In any case, the allegations at best qualify as a civil dispute and cannot be converted into a criminal case. Reliance was placed on **Indian Oil Corporation v. NEPC India Ltd.**⁴.

viii) Respondent No. 2 cannot blame the Petitioners as he himself indulged in an illegal scheme involving 'assured returns'.

ix) Respondent No. 2 has suppressed the fact that there is a debit balance to the tune of Rs. 9,69,693.86/- in the books and

¹. 2021 SCC OnLine SC 806.

². (1974) 4 SCC 616.

³. (2003) 12 SCC 670.

⁴. (2006) 6 SCC 736.

records of ASBPL. Hence, the impugned FIR was registered to pressurize the Petitioners to process the claims of Respondent No.2, which were earlier rejected due to the amount owed to the ASBPL.

x) The fraud committed by ASBPL could not have been detected during the course of regular inspections and the same was only detected when the forensic audit was conducted. Therefore, action was taken after the forensic audit was conducted.

xi) Relying on **State of Haryana v. Bhajanlal**⁵ it was contended that the proceedings in the impugned FIR amounts to abuse of process and the allegations are patently absurd and highly improbable. Therefore, the proceedings in FIR No. 27 of 2022 are liable to be quashed.

11. **Contentions of Respondent No. 2**

i) The Petitioners dishonestly failed to protect the interests of the investors and concealed vital facts about the violations committed by ASBPL, Mr. Paresh Kariya and Mr. Anil Gandhi.

⁵. (1992) Supp. 1 SCC 335

This led to investors investing in ASBPL and led to an indirect benefit to the Petitioners.

ii) The records clearly show that there was a dereliction of duty, willful omission and failure to take preventive measures in furtherance of the conspiracy to cause loss to the investors.

iii) The main object and duty of the NSE is to regulate the securities market in public interest and ensure that the trading happens in a transparent and fair manner. They have to ensure that a healthy market is maintained in the interests of the investors.

iv) Under its Byelaws, the NSE is required to regulate the activities of trading members by inspecting their books and accounts. The NSE also has, *inter alia*, the function to monitor the client fund mechanism, restructuring of internal audit, monitoring the financial health of brokers, issuing early warning alerts for client securities, etc.

v) Petitioner Nos. 2 and 3 cannot contend that they were not involved in the management of the trade brokers as they were the Key Management of Personnel of the NSE under the SECC Regulations. Further, Petitioner No. 3 handles and controls the

supervision, surveillance, and risk management measures of all the stockbrokers of the NSE.

vi) ASBPL along with others was involved in the misuse of client funds and securities, failure to settle the clients' accounts, failure to correctly report the shortfall in margin collection in the derivative section, illegally and unauthorizedly lending the money of the investors, providing incorrect details in the Enhanced Supervision Data and wrongly calculating the net worth. NSE was aware of all these violations for a long period of time and the same was concealed from the investors who innocently invested in ASBPL.

vii) Further, all the trades done by ASBPL incentivized the Petitioners herein as they earned huge revenues through the trading of ASBPL. In furtherance of their support to the trading activities of ASBPL appreciation letters were issued by the NSE.

viii) The Petitioners cannot contend that they came to know about the fraud only after receiving information from SEBI. ASBPL was involved in illegal activities and committed violations since 2013 and NSE was aware of the same.

ix) As per the affidavit of the NSE before the Bombay High Court, in 2013-14 an inspection was conducted and a fine of Rs.1,59,000/- was levied on ASBPL for violations pertaining to settlement of clients' accounts, funding of client transactions, operation of trading terminal other than approved users and observations pertaining to CTCL terminals. A fine of Rs. 82,500 was levied for violations pertaining to Non-settlement of client accounts and observations pertaining to contract note. Further, a fine of Rs. 75,000/- was levied in the financial year 2015-2016 for violation pertaining to Non-settlement of client accounts. Further, in the year 2017-2018 a fine of Rs. 1,93,72,000/- was levied for Misuse of client funds & securities; Non-settlement of client accounts Engagement, as a principal, in a business other than that of securities involving personal financial liability; Funding of client transactions; Non-display of notice board and SEBI registration certificate at inspection location; Non-reporting of DP and bank accounts to the Exchange and observations pertaining to email ids and mobile numbers. Therefore, NSE was aware of the constant misuse of clients funds by ASBPL and was also aware of the fact

that ASBPL was involved in incorrectly and wrongfully reporting the margins.

x) Relying on a letter dated 29.12.2020 issued by SEBI it was contended that a joint inspection was conducted by SEBI, NSE, CDSL, and the Bombay Stock Exchange into the affairs of ASBPL for the period between 01.04.2017 and 17.12.2018. During the said inspection various violations were found and a shortfall of funds to the tune of Rs.118 crores was found. Despite the knowledge of such shortfalls in the year 2018, no action was taken by the NSE till 2020.

xi) Further, the forensic audit report for the period between 01.04.2019 to 27.08.2020 reveals that more than Rs.300 crores were siphoned off by ASBPL and still no action was taken by the Petitioners.

xii) Though nominal penalties were levied no action was taken to suspend ASBPL from trading till November 2020. The failure of the Petitioners to take action resulted in Edelweiss selling the shares of the investors worth of Rs. 460 crores.

xiii) The knowledge and support of the Petitioners in commission of the fraud is clear from the letter addressed to Edelweiss on 02.04.2020 and the meeting dated 10.06.2020 where Mr. Prakash Kariya and Mr. Anil Gandhi thanked Petitioner No. 3 for their support.

xiv) Relying on the affidavit filed by CDSL before the Bombay High Court, it was contended that various alerts were issued by CDSL regarding the transfer of large value of shares through off-market transfers for purposes other than settlement purposes. On 10.02.2020, an alert was raised when the funds in the principal account of ASBPL depleted from Rs. 1.53 crore in November 2019 to Rs. 8 lakhs in December 2019. Despite such repeated alerts the Petitioners failed to take any action against ASBPL.

xv) During the period of commission of fraud i.e., 2020-2021, NSE had seen an increase of 77% in the transaction charges. This shows that NSE benefited from the illegal trading of ASBPL.

xvi) Details of breaches of various circulars, Rules, Regulations and Byelaws are provided to contend that NSE failed

to suspend the trading activities of ASBPL leading to investors losing money.

xvii) The Petitioners by failing to take action have induced innocent investors to invest in the fraudulent scheme run by ASBPL. Therefore, at the stage of investigation, proceedings against the Petitioners cannot be quashed.

12. **Contentions of Respondent No. 1**

i) A large-scale fraud has been unearthed involving various persons and entities. Therefore, at the stage of investigation the proceedings should not be interfered with. Reliance was placed in **M/s. Neeharika Infrastructure Private Limited v. State of Maharashtra⁶**.

Findings of the Court

13. A perusal of the pleadings of the parties, the material papers filed by them and the contentions of the learned counsel, prima facie, reveals commission of a large-scale fraud involving entities like the NSE, ASBPL, TMAPL, Edelweiss and other

⁶. AIR 2021 SC 1918

individuals including directors and key managerial personnel of these entities.

14. Since 2013 various violations were committed by ASBPL and the same is admitted by the NSE before this Court and the Bombay High Court. The Petitioners contend that for all the violations committed by ASBPL action was initiated as per the applicable law. On the other hand, Respondent No. 2 contended that had action been taken under the applicable laws, ASBPL would not have committed the fraud. It is alleged that the Petitioners have silently aided and abetted the fraud.

15. According to this Court, prima facie, it appears that serious lapses were committed by the NSE in regulating the trading activities of ASBPL. At the stage of investigation, it cannot be said whether the failure to act effectively was due to any dishonest intention. A case involving several factual issues which are supported by one side and disputed by other side can be only decided during the trial. The Court cannot at the stage of investigation determine the existence of *mens rea*.

16. While the Petitioner Nos. 2 and 3 have contended that they are not involved in the micro management of the trading members, the transcript of the meeting dated 10.06.2020 reveals that the Petitioners had the knowledge of the violations committed by ASBPL. The Petitioners were aware of the misuse of funds in light of the various inspections conducted by them and also the various alerts generated by the CDSL. As stated above, whether the inaction or failure to take appropriate action is deliberate or not can only be decided after the investigation is completed. Therefore, the contention that the ingredients of Section 409 and 420 of the IPC are not satisfied cannot be accepted as the investigation is still underway.

17. It is relevant to note that FIR is not an encyclopedia of facts. It only discloses commission of the offence. It might not include all the details of the accused and the *modus operandi* of the crime. It is only after the investigation is completed that the facts come to light.

18. In **CBI v. Tapan Kumar Singh**⁷, the Supreme Court has held as follows:

“20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. **Similarly,**

⁷(2003) 6 SCC 175

even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.”

19. In **Neeharika Infrastructure Private Limited (Supra)**, the Supreme Court relying on its previous decisions has laid down

the following factors to be considered while exercising the powers under Section 482 of the Cr.P.C.:

“....

- iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the

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

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

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

20. Similarly, in **Skoda Auto Volkswagen India Private Limited v. The State of Uttar Pradesh**⁸, the Apex Court referring to the earlier judgments rendered by it has categorically held that the High Courts in exercise of its inherent powers under Section - 482 of Cr.P.C has to quash the proceedings in criminal cases in rarest of rare cases with extreme caution.

21. Therefore, the powers under Section 482 to quash the proceedings at the stage of FIR shall be exercised very cautiously and in rarest cases.

22. The Petitioners also contended that Managing Directors and Chief Regulatory Officers cannot be held liable, unless any specific overt acts have been alleged against them. In **Sunil Bharti Mittal v. Central Bureau of Investigation**⁹, the Supreme Court in relation to the liability of directors has held as follows:

“42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on

⁸. AIR 2021 SC 931

⁹ (2014) 4 SCC 609

behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be

implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In *Aneeta Hada* [*Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had

criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

23. From the above decision it is clear that proceedings against directors can be quashed if the evidence does not indicate any role played by such directors. Availability of evidence is *sine qua non* to determine whether any specific allegations are made against the directors. In other words, the proceedings against directors cannot be quashed if the role played by them in the commission of the offence is unclear and the investigation is not completed.

24. As stated above, given the extent of the alleged fraud and the parties involved, the Court is not inclined to interfere with the investigation at this stage. Therefore, the present criminal petition is liable to be dismissed.

25. The present Criminal Petition is accordingly dismissed.

As a sequel, miscellaneous petitions, if any, pending in the
Criminal Petition shall stand closed.

12th April, 2022
Mgr

K. LAKSHMAN, J