

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 750 of 2021

1. S.K. Goel
2. S.P. Goel
3. V.K. Aggarwal
4. Shiv Kumar Goel Petitioners

Versus

1. The State of Jharkhand
2. Ajit Kumar Keshri Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. M.S. Mittal, Sr. Advocate.
: Mr. Salona Mittal, Advocate.
For the State : Mr. Ashish Kumar, A.C. to G.A.-II.
For the O.P. No. 2 : Mr. Shailesh, Advocate.

14/ 12.07.2022 Heard Mr. M.S. Mittal, learned senior counsel along with Mr. Salona Mittal, for the petitioners, Mr. Ashish Kumar, A.C. to G.A.-II, for the State and Mr. Shailesh, learned counsel for the O.P. No. 2.

2. This petition has been filed for quashing of the FIR as well as the entire criminal proceeding, arising out of an FIR, in connection with Dhanbad P.S. Case No. 136 of 2020, registered under Sections 420 / 406 / 34 / 120-B of the Indian Penal Code, pending in the court of learned Chief Judicial Magistrate, Dhanbad.

3. The FIR was lodged by the informant alleging therein that the informant and his wife opened two Demat Trading Accounts through franchisee agent Jitendra Agarwalla, Kirana Patti, Jharia in *M/s Bonanza Portfolio Ltd.*, Regd. Office-4353-4C, Madan Mohan Street, Ansari Road, Drayaganj, New Delhi, whose partners / proprietors are S.K.Goyal, S.P. Goyal, V.K. Agarwal, Shiv Kumar Goyal, Narendra Singh. My client ID is R14438 and my wife Kavita Keshri's client ID is R14418. My wife deposited a sum of Rs. 16,11,500/- between 05.06.2018 to 04.03.2020 in her account and I deposited a sum of Rs. 26,87,999/- in my account from 30.01.2019 to 04.03.2020 for investing in shares. I used to invest most of my money in Yes Bank Shares' Future and delivery stock. There was to lots each (total no. 8800x4=35200) in client ID- R14418 and R14438 in future on 06.03.2020. Bonanza Portfolio Limited sold the said shares without giving information to the franchise broker, thereby, committing

breach of trust at the historical lowest price of Rs. 4.95 even through, on that very day, there was credit balance of Rs. 5,43,150.46. In that situation Bonanza company could have sold only those shares whose value equaled to the short amount but instead of doing that the company from its office at Delhi sold out all shares from my account and from the account of my wife even when the trading work was done by local broker Jitendra Agarwal (who performs the job of share-purchase). But neither the local broker was informed, nor I was informed of difference margin. On 06.03.2020 mighty share brokers with help of operators cause fall of Yes Bank shares by 85% for few seconds, and sold off all shares (35200 in number) of both accounts for making wrongful gains. Due to this act of the company, there is less of Rs. 41,78,307.67 in both the accounts. I mailed to the company in this connection on 11th March and 12th March. But no reply was sent from Company's end. It is my claim that the five partners of Bonanza Portfolio S.K. Goyal, S.P. Goyal, V.K. Agarwal, Shiv Kumar Goyal, Narendra Singh under a conspiracy committed fraud and cheating and breach of trust by selling all shares of Yes Bank of my account and my wife's account.

4. Mr. M.S. Mittal, learned senior counsel appearing for the petitioners submits that the petitioner Nos. 1 to 4 are the Directors of the Company namely *M/s Bonanza Portfolio Ltd.*, a Company incorporated under the Companies Act, 1956, having its registered office at 4553/4C, Madan Mohan Street, Ansari Road, Darya Ganj, New Delhi. He submits that the said company is a registered Stock Broker with Securities and Exchange Board of India (SEBI) and a Trading Member of National Stock Exchange of India Ltd. (NSE) and Bombay Stock Exchange of India (BSE) and providing stock broking services to its Clients all over India. He further submits that the accused No. 5 in the FIR, Narendra Singh was an employee of the company and has left employment of the company on 30.06.2020. He further submits that the company has not been made an accused in the FIR and there are no specific allegations against the Directors. He also submits that there are almost 650 employees working

all over India in the aforesaid company.

5. Learned senior counsel has elaborated his arguments by way of submitting that in the FIR it has been mentioned that two lots of Yes Bank Futures, had been bought by the O.P. No. 2 and his wife on a future contract through *M/s Bonanza Portfolio Ltd.* were allegedly sold by the accused at a price of Rs. 4.95 per share, thereby causing a loss of nearly Rs. 41 lacs to the informant and his wife. By way of placing further paragraphs of the FIR, he submits that there is no allegation against the petitioners and the entire story is concocted one. He further submits that the O.P. No. 2 voluntarily opened his trading account with the trading member *M/s Bonanza Portfolio Ltd.* and had opened a Demat Trading Account, vide Client ID No. R14438, for which he had signed / executed a Member Client Agreement dated 19.01.2019, which stipulates the certain conditions of trade. He further submits that another Demat Trading Account with *M/s Bonanza Portfolio Ltd.*, vide Client ID No. R14418 belonging to his wife Kavita Keshri was opened and she has also signed the Member Client Agreement. He further submits that after opening the Trading Account, the informant was provided to Back office’s Information / Data (Online Portal) of the O.P. No. 2, and for the same, the informant was provided with *Log-in-ID* and *Password* through the Welcome letter. He further submits that the informant was regularly accessing his account on online portal by using his Log-in ID and Password, as provided by the company. He further submits that O.P. No. 2 and his wife have created their purchase positions of Yes Bank Future in their respective Codes on 19.02.2020, and details thereof are given as under:-

| Name of Client | Scrip | Quantity | Average Buy price of 19.02.2020 | Value of Future Contract | Expiry |
|----------------------|--------------|----------|---------------------------------|--------------------------|------------|
| Mr.Ajit Kumar Keshri | Yes Bank F&O | 17600 | 29.66 | 5,22,016/- | 26.03.2020 |
| Mrs. Babita Keshri | Yes Bank F&O | 17600 | 30.02 | 5,28,352/- | 26.03.2020 |

6. Learned senior counsel further submits that on 19.02.2020, the informant and his wife created their purchase positions of Yes Bank

Future of two lots in their respective trading codes with future contract expiry date 26.03.2020 and the size of one lot contains 8800 shares and both the informant and his wife purchases 2 lots i.e. 8800x2 in their respective trading codes, and details thereof are stated hereinabove.

7. By way of referring to Para-23 of the petition, he submits that by the end of 05.03.2020, both the informant and his wife had the following open outstanding positions of Yes Bank Future and details thereof are as under:-

| Name of Client | Scrip | Quantity | Average Buy price of 05.03.2020 | Value of Future Contract | Expiry |
|----------------------|--------------|----------|---------------------------------|--------------------------|------------|
| Mr.Ajit Kumar Keshri | Yes Bank F&O | 17600 | 32.70 | 5,22,016/- | 26.03.2020 |
| Mrs. Babita Keshri | Yes Bank F&O | 17600 | 32.70 | 5,28,352/- | 26.03.2020 |

8. Learned senior counsel further submits that on 05.03.2020 and 06.03.2020, the Government of India & Reserve Bank of India had publicly issued a press release with regard to Yes Bank that it was placed under Moratorium and withdrawal was capped to Rs. 50,000/- and also issued a circular by the National Stock Exchange of India (NSE) vide No. 22/2020 dated 05.03.2020 and 06.03.2020. He further submits that due to this press release by the Government of India and RBI/NSE on 06.03.2020, immediately when the market opened there was high volatility in the market price of Yes Bank Future, on the platform of Exchange, i.e. National Stock Exchange and there was continuing downward movement in the price of the scrip of Yes Bank Future on the platform of the Exchange. He further submits that the details thereof has been disclosed in para-33 of the petition. He further submits that on 06.03.2020 there was a seller freeze at Rs. 4.95 for Yes Bank Futures, and the contracted futures of the informant and his wife of 17600 each were sold at Rs. 4.95 per share / value. He submits that this action has been taken by the company in terms of the Member Client Agreement. He refers to Clauses relating to Declaration and submits that any action with regard to omission, suspension or trading, decision or ruling of any

exchange or regulatory, governmental or other body or of any other person, which is beyond the Trading Member's control, the company shall not be responsible for any losses, if it is beyond the control of the company. He further refers to Liquidation and close out position, which is in para-9 of the said agreement and submits that it has been disclosed thereof that any and all losses and financial charges on account of such liquidation / closing out shall be charged and borne by the client. He draws the attention of this court towards the Dispute Resolution, as provided in the said agreement and submits that there is mechanism of arbitration. He took the court to the Disclosure of the said agreement and by way of referring one of the Clause submits that it has been disclosed that trading in Equity Shares, derivate contracts or other instruments traded on the Stock Exchange, which have varying element of risk is generally not an appropriate avenue for someone of limited resources / limited investments and / or trading experience and low risk tolerance. He refers to the Policies and Procedures of the said agreement and submits that the company is having the rights to sell clients' securities or close clients' positions without giving notice to the client, on account of non-payment of client's dues. On this point, he submits that mechanism is provided and SEBI has also wrote letters to the stock holders for the mechanism including the police that in such a situation, straightway there is no requirement of lodging the FIR. He further submits that the daughter of the informant has also opened her Trading Account with the same company and for the loss, she has adopted the mechanism provided under the regulations of the SEBI and she went for the arbitration. He further submits that there are instances of other Stock holders to go for the arbitration arising out of the crush of the Yes Bank Share and that has been brought on record by way of filing the rejoinder by the petitioners.

9. On the point of not making the company as one of the accused, he relied in the case of ***Sharad Kumar Sanghi Vrs. Sangita Rane, reported in (2015) 12 SCC 781***, wherein the Hon'ble Supreme Court in Paras- 11, 12 and 13 held as follows:-

*“11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arraigned as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *AneetaHada v. Godfather Travels and Tours (P) Ltd.* [*AneetaHada v. Godfather Travels and Tours (P) Ltd.*, (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881.*

12. At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22-10-2001, had opined, thus:

“It appears prima facie from the complaint filed by the complainant, documents, evidence and arguments that the accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima facie sufficient grounds exist for registration of a complaint against the accused under Section 420 IPC and is accordingly registered.”

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”

10. He also relied in the case of ***Sushil Sethi Vrs. State of Arunachal Pradesh***, reported in (2020) 3 SCC 240, wherein the Hon'ble Supreme Court in Paras-6 and 8.2 held as follows:-

“6. Considering the averments and the allegations in the FIR and even the charge-sheet the main allegations are that the company, namely, M/s SPML Infra Limited supplied sub-standard materials—runner bucket turbines and the supplied runner bucket turbines were not as per the technical specifications. It is also required to be noted that there is no FIR/complaint/charge-sheet against the company—M/s SPML Infra Limited and the appellants are arrayed as an accused as the Managing Director and Director of M/s SPML Infra Limited respectively. From a bare reading of the FIR and even the charge-sheet, there are no allegations that there was a fraudulent and dishonest intention to cheat the Government from the very beginning of the transaction. Even there are no specific allegations and averments in the FIR/charge-sheet that the appellants were in-charge of administration and management of the company and thereby vicariously liable. In light of the aforesaid, the prayer of the appellants to quash the criminal proceedings against the appellants for the offence under Section 420 IPC is required to be considered.

8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In *Maksud Saiyed v. State of Gujarat* [*Maksud Saiyed v. State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which

would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.”

11. On the point of no allegation against the Directors of the company in the FIR and neither are there any materials to prove their role, coupled with criminal intent and as such continuation of the proceedings would be an abuse of the process of law. He relied in the case of ***Shiv Kumar Jatia Versus State of NCT of Delhi***, reported in (2019) 17 SCC 193, wherein the Hon'ble Supreme Court in Paras-21 and 28 held as follows:-

21. By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

28. Having regard to the case law referred above by applying the facts of the case on hand we are of the view that the case of the appellant-Accused 2 Shiv Kumar Jatia in criminal appeal

arising out of SLP (Crl.) No. 8008 of 2018 falls within one of the categories enumerated in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] to invoke the inherent powers under Section 482 CrPC either to prevent the abuse of the process of court or otherwise to secure the ends of justice.

12. Learned senior counsel further relied in the case of ***Bhushan Power & Steel Ltd. Versus State of Jharkhand***, reported in (2016) SCC Online Jhar 689, wherein this Hon'ble court in para-8 held as follows:-

“8. I have carefully considered the submissions of the learned counsels and the decision rendered in Gian Singh case (supra). It is well settled that judicial proceeding is not an instrument of needless harassment and the court should be circumspect and judicious in exercising the discretion and take relevant facts and circumstances into consideration. In view of the counter affidavit filed by the informant-Bank there is no chance of recording a conviction in so far as the present petitioners are concerned and the entire exercise of trial is destined to be an exercise in futility. Summoning of an accused in a criminal case is a serious matter. So far as the written report of the respondent no. 2-the bank which is part of the F.I.R., there is no specific allegation or even whisper that the petitioner being the company of the Managing Director has any role in the said fraudulent withdrawal rather the amounts in question were debited from the company's account. Accordingly, the continuation of criminal proceeding on the basis of the F.I.R. Dhanbad (Bank More), P.S. Case No. 708 of 2012 against these petitioners being absolutely uncalled for, deserves to be quashed.”

13. On the same point, he further relied in the case of ***Sunil Bharti Mittal Versus CBI***, reported in (215) 4 SCC 609, wherein the Hon'ble Supreme Court in Paras-42 to 43 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

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 *AneetaHada [AneetaHada 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.”*

14. Learned senior counsel submits that the entire case is arising out of a civil dispute and for the civil dispute, criminality has been put into by way of filing the FIR and if the civil dispute is there, criminal proceeding will not proceed, as has been held by the Hon'ble Supreme Court in the case of ***GHCL Employees Stock Option Trust Versus India***

Infoline Ltd., reported in (2003) 4 SCC 505. Paras-12 and 13 are quoted hereinbelow:-

“12. From a bare perusal of the complaint and the allegations made therein, we do not find in any of the paragraphs that the complainant has made specific allegations against Respondents 2 to 7. In Para 2 of the complaint, it is alleged that Respondents 2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorised representative interacted has also not been specified. Although in Para 11 of the complaint it is alleged that the complainant on numerous occasions met Accused 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in Para 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated the debit note. In the entire complaint there are bald and vague allegations against Respondents 2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.”

15. He submits that for the similar facts and circumstances in the case of **Angel Broking Ltd. Versus State of Gujarat**, reported in (2018) SCC Online Guj 3772, it was found that there is not criminality held and the penal Sections i.e. 406 and 420 of the Indian Penal Code were not attracted. Paras- 2.1, 14 and 15 of the said judgment are quoted hereinbelow:-

“2.1 Complainant No. 2 filed private complaint with the Chief Judicial Magistrate Court at Jamnagar, alleging that, respondent No. 2 was having share trading and demat account with the applicant company. It is alleged that on account of the recession in the market, without prior permission of the respondent No. 2, the complainant company sold off the shares of complainant at a very low price, thereby causing loss to the complainant and to recover such loss, the applicant company issued false bills for

recovery of an amount of Rs. 2,96,000/-. It is also alleged in the complaint that the complainant has mentioned transactions from 08.05.2006 to 22.05.2006, wherein, according to the complainant, shares were purchased at high price and were disposed off at a very low price that too from the account of the complainant and behind the back of the complainant.

14. Having examined the relevant documents on record, the Court comes to the conclusion that the transfer of shares which took place on National Stock Exchange by the applicant company on behalf of the respondent No. 2 is in response to the due course of its business and inconformity with the agreement between the parties. The Criminal case therefore, registered subsequently appears to be an afterthought with a view to overcome the liability of the respondent No. 2, which has arisen out of the transactions. It is also found that though under the agreement clause, the remedy to resolve the dispute is made, including filing a complaint with the SEBI, the respondent No. 2 has not resorted to such remedy and has thought it fit criminal proceedings, which in the opinion of the Court, is clear abuse of process of law.

15. The perusal of the criminal complaint, suggest that on the very same day, learned Magistrate has passed order under Section 156(3) of Cr.P.C. directing registration of the F.I.R. Contents of the complaint do not reveal any specific role of any of the applicants No. 2 to 5 so as to attract provisions of Sections 406, 408 and 420 of the I.P.C. There is no allegations to suggest that any of the applicants had misrepresented before the complainant so as to influence her decision to enter into the transaction. In fact, there is no allegation that the complainant had ever met the applicants in connection with any of the share transactions. The principles of vicarious liability cannot be invoked in the facts of the present case.”

16. He further submits that there is no allegation so far as these petitioners are concerned in the FIR and this aspect of the matter has been considered by the Hon'ble Gujarat High Court in the case of **Religare Securities Versus State of Gujarat**, reported in (2014) SCC Online Guj 8607. Paras-5, 11, 13 and 14 thereof are quoted hereinunder:-

“5. Learned Advocate Mr. Patel has drawn attention of the Court to the complaint filed by the complainant and other relevant material on record. It was submitted that the complainant has dragged 4 employees as the accused; however, no specific or independent allegations made against any of the accused in the complaint. It was submitted that accused has acted in accordance with law and in accordance with terms and agreement entered into between the parties.

11. In the present case as referred above, there is no whisper about the role played by each of the accused in respect of grievance of the complainant. Joining the employees as an accused without assigning any role and without making any specific averment in the complaint, is bad. The ratio laid down in the case of GHCL (supra) supports the say of the petitioner.

13. It is the say of the petitioner that they opted to sell the shares of the complainant pursuant to the agreement entered into between the parties. In any case, there is considerable force in the submission that it is a dispute of civil nature and initiation of proceedings was abuse of the process of the Court. At this stage, on re-reading of the complaint the other fatal defect came to the notice is-complainant has not made company as a party. In both these cases complaint is not filed against the company. Name of company is just referred and company is not made accused.

14. In view of above Special Criminal Applications No. 8129 of 2008 and 7936 of 2008 succeed mainly on two grounds i.e. dispute of civil nature and vicarious liability is unknown in criminal law. In view of above, both the petitions are allowed. Rule is made absolute.”

17. On these grounds, learned senior counsel submits that this Court is competent to quash the FIR itself, as the dispute is purely civil in nature and there is mechanism of arbitration and the Member Client Agreements are safeguarding the company. There is no direct allegation against the petitioner Nos. 1 to 4, who are the Directors of the company and the company is not made an accused, the entire proceeding is fit to be quashed.

18. Per contra, Mr. Shailesh, learned counsel appearing for the O.P. No. 2 draws the attention of the Court by way of referring the FIR and submits that the local agent namely Jitendra Agrawall has got opened the trading account of the informant and his wife at Dhanbad. By way of referring the contents of the FIR, he submits that there are direct allegation against the company and in view of that the FIR has been rightly instituted. He further submits that margin amount was being maintained by the O.P. No. 2 in the trading account since last two years and the O.P. No. 2 was operating the same. He further submits that the mala fide is made out in view of the fact that prior to 05.03.2020 and on 04.03.2020 a sum of Rs. 25,000/- has been transferred from the trading account to the saving account of the informant. He submits that the company has sold the shares, but for what purpose, the same is the subject matter of investigation. He further submits that the FIR is not an encyclopaedia and the same is the subject matter in the case of *Kiren Dey Sarkar & Ors. Versus State of Assam*, reported in (2009) 12 SCC 342.

19. He further submits that so far as the judgment relied by learned senior counsel appearing for the petitioners in the case of *Sharad Kumar Sanghi (Supra)*, he submits that the same is distinguishable in the facts and circumstances of the present case. He further submits that in none of the cases, the FIR has been quashed and only after investigation, the same has been quashed and in the case of Sharad Kumar Sanghi (Supra), the complaint was filed, cognizance was taken by the learned court against the Managing Director of the company and the company was not made there as an accused, that's why the entire proceeding was quashed. On these grounds, he submits that this court may not interfere at this stage as the investigation is still going on and there are parameters of quashing the FIR. Lastly he submits that no case of interference is made out at this stage to quash the FIR.

20. Mr. Ashish Kumar, learned A.C. to G.A.-II appearing for the State submits that there are allegations and this Court at this stage may not interfere in the matter and quash the entire proceedings.

21. After hearing the parties at length, this Court has gone through the materials available on record and finds that in the Member Client Agreement, it has been disclosed that the M/s Bonanza Portfolio Ltd. shall not be responsible for any loss, if it has been done, which is beyond the control. Declaration of the said agreement has been quoted hereinbelow:-

Declaration

I/we understand that Bonanza Portfolio Limited shall not be responsible of any losses, costs or damages resulting directly or indirectly from the below mentioned circumstances:

(i) Any action, omission, suspension or trading, decision or ruling or any exchange or regulatory, governmental or other body or of any other person which is beyond the Trading Member's control ”

22. Liquidation and close out position in the said agreement brokers' right is protected due to non-payment of the margin and other amounts, which is held as under:-

Liquidation and close out position

“Without prejudice to the stock broker's other rights (including the right to refer a matter to arbitration), the client understands that the stock broker shall be entitled to liquidate / close out all or any of the client's positions for non-payment of margins or other amounts, outstanding debts, etc. and adjust the proceeds of such liquidation / close out if any, against the client's liabilities / obligations. Any and all losses and financial charges of account of such liquidation / closing out shall be charged and borne by the client. ”

23. The dispute resolution provides an arbitration as per the Rules, Byelaws and Regulations of the Exchanges where the trade is executed and circulars / notices issued thereunder as may be in force from time to time. In the case in hand on 05.03.2020 there are circulars of RBI and Government of India about the moratorium of Yes Bank. In the said agreement, risk disclosure document disclosed and it was tried to be

communicated that one has to prepare for financial risk. Risk and Disclosure Document of the agreement is quoted hereunder:-

Risk Disclosure Document

“You must know and appreciate that trading in Equity Shares, derivate contracts or other instruments traded on the Stock Exchange, which have varying element of risk is generally not an appropriate avenue for someone of limited resources/limited investments and / or trading experience and low risk tolerance. You should therefore carefully consider whether such trading is suitable for you in light of your financial condition. In case you trade on Stock Exchanges and suffer adverse consequences or loss, you shall be solely responsible for the same and Stock exchanges/its Clearing Corporation and / or SEBI shall not be responsible, in any manner whatsoever, for the same and it will not be open for you to take a plea that no adequate disclosure regarding the risks involved was made or that you were not explained the full risk involved by the concerned stock broker. “

24. The policies and procedures stipulate that the stock broker will have sole discretion to decide referred stipulated margin percentage, depending upon the market condition. Policies and Procedures of the said agreement is quoted hereinbelow:-

Policies and procedures

“The stock broker has the right but not the obligation, to cancel all pending orders and to sell/ close / liquidate all open positions/ Securities / shares at the pre defined square off time or when Market to Market (M to M) percentage reaches or crosses a stipulated margin percentage, whichever is earlier. The stock broker will have sole discretion to decide referred stipulated margin percentage depending upon the market condition. In the event of such square off, the client agrees to bear all the losses based on actual executed prices
The client agrees that the loss(es) if any, on account of anyone of more steps as enumerated hereinabove being taken by the stock broker, shall be borne exclusively by the client alone and agrees not to question the reasonableness, requirements, timing, manner, form, pricing etc., which are chosen by the stock broker. ”

25. In view this Member Client Agreement, there are procedure of dispute mechanism under the Rules and Regulations of the SEBI. The documents brought on record by way of filing the rejoinder affidavit by the petitioners suggests that the other stock holders, who have suffered loss due to moratorium policy of the Yes Bank have gone for arbitration. The daughter of the informant has also gone for the arbitration for the same loss arising out of Yes Bank moratorium. Admittedly, the Government of India and the RBI have come forward with the notification to put the Yes Bank under the moratorium and the clauses in the agreement provide protection to the company that if any loss due to the notification has occurred, the broker will not be responsible. The Central Government order has been brought on record at Page-134 of the petition. The circular dated 11.08.2020 of the SEBI speaks of arbitration mechanism in Stock Exchanges and the letter dated 06.11.2020 of the SEBI suggest that the Stock Exchange shall resolve service related complaints at its end. However, in case the complainant is not satisfied with the resolution, the same may be referred to the investor Grievance Redressal Committee (IGRC) after recording the reasons in writing by the Chief Regulatory Officer of the Stock Exchange or any other officer of the Stock Exchange, authorized in this behalf by the Managing Director and in the same letters, it has further been stipulated that for any dispute between the member and the client relating to or arising out of the transactions to Stock Exchange, which is of civil nature, the complainant / member shall first refer the complaint to the IGRC and / or to arbitration mechanism provided by the Stock Exchange before resorting to other remedies available under any other law. By letter dated 09.04.2012, the SEBI wrote a letter to the Commissioner of Police, Delhi disclosing therein that there is need to sensitize the officers manning the police stations about the grievance redressal mechanism already in place for dealing with complaints of civil nature against the intermediaries. It has been further mentioned that while the complainant may give the impression that the complaint is of criminal nature like cheating and forgery attracting the provisions of Indian Penal

Code, the complaint may actually of civil nature is redressable under the aforesaid mechanism of SEBI. The guidance on complaints of clients with police authorities against Stock Brokers has been brought on record at Page-176 of the petition, which speaks of a general principle when there is a specific legislation and a specific authority to deal with matters pertaining to their area of activity then hasty action under general laws should be avoided. As such, the police authorities can take action in cases, which are beyond the jurisdiction of the Stock Exchange and also beyond the aforesaid mechanism, as discussed Supra.

26. Looking into the FIR, it is crystal clear that the company is not made an accused and the petitioner Nos. 1 to 4 are the Directors of the company and there is no direct allegation or any whisper against the Directors of *mala fide*. Law is well settled that if a wrong has been done by a company, the representative of the wrong doer can be proceeded with, where the company is made a party, which is lacking in the case in hand. The entire allegation and the mechanism of SEBI with regard to such dispute suggest that this case is civil in nature. There is no doubt that criminal proceedings and civil proceedings can go on simultaneously if there are allegations of criminality and it is proved both the cases can go simultaneously, however, it is well settled that if the criminality is not made out, the continuation of criminal case will amount to an abuse of the process of law.

27. In view of the above facts and in the entire totality of the matter, considering the arguments of both the sides and for the reasons and analysis, it is a fit case to exercise the power under Section 482 Cr.P.C.

28. Accordingly, the FIR as well as the entire criminal proceeding, arising out of an FIR in connection with Dhanbad P.S. Case No. 136 of 2020, registered under Sections 420, 406 / 34 / 120-B of the Indian Penal Code, pending in the court of learned Chief Judicial Magistrate, Dhanbad, are hereby quashed.

29. As such, this petition is allowed and disposed of. Pending interlocutory application, if any, stands disposed of.

30. It is made clear that so far as the civil liability is concerned, this Court has not made any opinion on that and if any civil liability is raised that will be considered in accordance with law and without prejudiced to this order.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-