IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.05.2025

\+ **CRL.M.C. 354/2022 & CRL.M.A. 1597/2022**

NIRMAL KUMAR SINGH .....Petitioner

versus

THE SECURITIES AND EXCHANGE BOARD OF INDIA .....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sagar Chaturvedi, Ms. Megha Chaturvedi, Mr. Ramaditya Singh Jadon & Ms. Shiwani Anand, Advs.

For the Respondent : Mr. Ashish Aggarwal & Ms. Shivangi Shokeen, Advs.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking quashing of the complaint, being, CC No.11/2017 (hereafter '**the subject complaint**') and all consequential proceedings arising therefrom *qua* the petitioner.

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

2. The petitioner has also challenged the order on charge dated 22.12.2021 in the subject complaint. By the said order, the learned Trial Court held that a *prima facie* case for commission of offence under Section 24(1) of the Securities and Exchange Board of India Act, 1992 ('**SEBI Act**') is made out against M/s Karmbhoomi Real Estate Limited (hereafter 'accused company'). It was also found that a *prima facie* case for commission of offence under Section 24(1) read with Section 27 of the SEBI Act is made out against all the other accused persons, including the petitioner. Consequently, charges were framed for the offence against the accused persons.

3. The brief facts of the case are as follows:

3.1 The subject complaint was filed by the respondent against accused company and its Directors, including the petitioner. It is alleged that the accused persons were responsible for sponsoring, causing to sponsor and for floating/ launching the Collective Investment Scheme ('**CIS**') without obtaining registration from the respondent complainant Board. It is alleged that the accused persons illegally mobilised funds from the public under CIS in violation of the relevant provisions of the SEBI Act and concerned regulations, whereunder such a practice has been declared as fraudulent and unfair trade practice.

3.2 It is alleged that the complainant Board had received a complaint *vide* email dated 26.11.2013, *inter alia*, alleging that the accused company had launched a CIS without obtaining a certificate of registration from the complainant Board. An enquiry was started and

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

information was sought from the accused persons regarding the business activities carried on by the accused company. Since no information was received, considering the material on record, that is, the information forwarded in email dated 26.11.2013 as well as information obtained from MCA 21 Portal, an *ex parte* interim order dated 30.12.2014 was passed by a Whole Time Member of SEBI finding that the accused company was *prima facie* engaged in fund mobilising from the public, by floating or launching CIS, without obtaining a certificate of registration. A number of directions were issued to the accused persons, including, to not collect fresh money from investors under the existing schemes, to not divert any funds raised and to submit a full inventory of assets obtained through the raised money.

3.3 Pursuant to the same, the accused company submitted a reply on behalf of all accused persons submitting that the schemes were not in nature of CIS and were in nature of sale/ purchase of plots. Subsequently, on receipt of the relied upon documents, the accused company contended that the documents were manipulated in collusion by a rival entity and there were glaring differences between its documents and those relied upon before passing of the *ex parte* interim order.

3.4 After affording an opportunity of personal hearing, Whole Time Member of SEBI by final order dated 30.11.2015 found that the conditions as specified in Section 11AA(2) were met and the schemes offered by the accused company were in the nature of CIS. A number

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

of directions were also passed, however, despite lapse of sufficient time, it is alleged that the same were not complied with and the investors were nor repaid along with the assured returns and no Winding Up and Repayment Report was filed either.

3.5 It is alleged that the petitioner and the other accused Directors are responsible for the day-to-day affairs of the accused company and responsible for the conduct of the accused company at the relevant time. The petitioner was a Director from incorporation till 28.03.2014.

3.6 By the order on charge dated 22.12.2021, the learned Trial Court directed framing of charges against the accused persons for the offence under Section 24(1) of the SEBI Act. It was observed that specific averments were made against the petitioner in the complaint. The relevant portion of the order dated 22.12.2021 is reproduced hereunder:

> "***9.*** *The perusal of the brochures, leaflets and the registration letters available on record suggest that the accused company was infact indulged in CIS without any valid registration. The company was admittedly mobilizing funds and the predominant objective of the scheme was not to sell any plot of land or any other tangible product. The quid pro quo for the investments made by the investors was infact the promised profit in terms of money and not any product. It is rightly pointed out by the Ld. Counsel for the complainant that neither any sale deed was executed by the accused company in favour of the investors nor any of the allotment letters infact revealed any plot number or other identifiable character with respect to any plot of land. The estimated realizable cost at the end of term was infact quantified in terms of money and not in terms of the value of the land. Some of the leaflets infact suggested that apart from the promised returns free land ownership and accidental insurance, in addition to the promised returns were also offered. However, the predominant object of the transaction was returns in terms of money and it was*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

not a sale purchase of land transaction. Evidently, the money was collected for the purpose of scheme in lieu of the promised returns.

Further, there was no role prescribed for the investors in the management of the investment and they were not having any control upon the day-to-day activities of the company. Except for the promised returns, the investors infact were not assigned any role at all. Thus I cannot but disagree with contentions that the accused persons were not involved in any CIS

10. *It is not in dispute before me, at this stage, that above-said scheme was run by accused persons without any valid registration.*

11. As far as the contentions of the Ld. Counsel for accused no.4 is concerned the same is also merit-less. As per Section 27 of the SEBI Act when an offence is being committed by a company, every person, who at the time of the offence was incharge of or was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be prosecuted alongwith the company. The complainant has specifically alleged that the accused no.4 alongwith accused no.2, 3, 5, and 6 are the directors of the accused no. 1 and persons incharge of its day-to-day affairs and responsible for conduct of the business of the company/accused no.1."

(emphasis supplied)

4. The learned counsel for the petitioner submitted that the learned Trial Court had mechanically framed the charge against the petitioner without appreciating that the complaint filed by the respondent against the petitioner is based upon bald and vague allegations and has been filed without application of mind as such there is no mention as how the petitioner was responsible for the day to day affairs of the accused company and what was the role of the petitioner.

5. He submitted that there is no shred of any evidence or any document which shows the involvement of the petitioner in commission of offence and there is even no document upon which

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

even the signature of the petitioner can be found and there is no material on record which may raise grave suspicion of the commission of the alleged offence by the petitioner.

6. He submitted that for charge to be framed against the petitioner, it was insufficient that a *prima facie* suspicion exists against the petitioner and strong suspicion should be established. He submitted that there also should be some material which is capable of being translated into evidence.

7. He submitted that language of Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') is *pari materia* to Section 27 of the SEBI Act and law in that regard is well settled that a Director cannot be made liable merely because they hold a designation or office in the accused company.

8. *Per contra*, the learned counsel for the respondent submitted that there is clear evidence against the petitioner as he was one of the first Directors of the company and promoter of the accused company. He submitted that the order dated 30.11.2015 has attained finality where it was found that the accused company is running a CIS and any defence to the contrary will be established during the course of the trial.

9. He submitted that the entire business of the accused company was to collect money from the public in violation of the SEBI Act and relevant regulations, whereby, the present case is not like one under NI Act, where only a particular transaction at a particular point of time is in question.

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

10. He submitted that the petitioner had attended Board Meetings and there are various documents that show that he had signed various documents on behalf of the accused company. He submitted that the petitioner can thus not claim to be in ignorance of the nature of operations of the accused company. He further submitted that the mobilisation was carried out during the tenure of the petitioner.

ANALYSIS

11. At the outset, it is relevant to note that the inherent jurisdiction of the Court under Section 482 of the CrPC ought to be exercised sparingly especially when the matter is at the initial stages as the same has the effect of scuttling the proceedings without the parties having an opportunity to adduce the relevant evidence. The Hon'ble Apex Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others*** **: (2006) 6 SCC 736** has discussed the scope of jurisdiction under Section 482 of the CrPC to quash criminal proceedings. The relevant portion of the same is reproduced hereunder:

> "***12.*** *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few— Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri)*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) ***A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.***

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) ***The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.***

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

(emphasis supplied)

12. While dealing with a challenge to summoning order and order framing notice under the NI Act, the Hon'ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)* : 2022 SCC OnLine SC 513**, adverting to a catena of judgments, had underscored the parameters for exercising inherent jurisdiction to quash the proceedings. The relevant portion of the said judgment is reproduced hereunder:

> ***"14.*** *The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges' bench in* ***State of Haryana v. Bhajan Lal*** *[1992 Supp (1) SCC 335 : AIR 1992 SC 604], and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.*
>
> > *'****103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice****.'*
>
> ***15.*** *In the impugned judgment, the learned Judge had rightly relied upon the opinion of Justice J.S. Khehar for a Division Bench in* ***Rajiv Thapar*** *(supra), which succinctly express the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges,*
>
> > *'****28.*** *The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice.*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. ***Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same.****'*

16. *The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter.* ***What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.***

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process*…"*

(emphasis supplied)

13. In the present case, the limited ground agitated by the petitioner is that the complaint is bereft of necessary averments in relation to his role in the accused company and that the learned Trial Court has erroneously framed charges against him without considering that there is no strong suspicion. No arguments have been made in relation to

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

whether the schemes run by the accused company were in the nature of CIS.

14. Before proceeding further, it is relevant to note that charges have been framed against the petitioner for the offence under Section 24(1) read with Section 27 of the SEBI Act.

15. Section 27 of the SEBI Act which deals with contravention by companies is more or less similar to Section 141 of the NI Act which deals with reads as under:

> *"**27. Contravention by companies**—(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder 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."*

16. The Hon'ble Court in the case of ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan* : (2023) 10 SCC 685** had summarised the law in reference to Section 141 of the NI Act as under:

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

"*57.* ***When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be.*** ***But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention.*** *He must make out a case that making him stand the trial would be an abuse of process of Court.* ***He cannot get the complaint 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****.* ***Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.***

58. *Our final conclusions may be summarised as under:*

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. *The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. ***The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.***

58.3. *Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm.* ***But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.***

58.4. ***If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court."***

(emphasis supplied)

17. The factual issues that serve as defences in the case are not appropriate for determination under the powers conferred by Section 482 of the CrPC at this stage. It is well-established that this Court should refrain from expressing any views on disputed questions of fact

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

in proceedings under Section 482 of the CrPC, as doing so could preempt the findings of the trial court. The relevant paragraphs of ***Gunmala Sales (P) Ltd. v. Anu Mehta*** **: (2015) 1 SCC 103** in this respect reads as under:

> "***34.*** *We may summarise our conclusions as follows:*
>
> ***34.1.*** ***Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.***
>
> ***34.2.*** *If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.*
>
> ***34.3.*** *In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint…****Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings.*** *It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court.* ***Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.***
>
> ***34.4.*** *No restriction can be placed on the High Court's powers under Section 482 of the Code.* ***The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court.*** *There are no fixed formulae to be followed by the High Court in this regard*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

and the exercise of this power depends upon the facts and circumstances of each case. ***The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director****."*

(emphasis supplied)

18. In the case of ***H.R. Kapoor v. Securities and Exchange Board of India*** **: 2008 SCC OnLine Del 194**, a Coordinate Bench of this Court, while dealing with a similar issue, had held that Section 27 of the SEBI Act is similar to Section 141 of the Negotiable Instruments Act, 1881, and while dismissing the petition for quashing of the concerned complaint, held as under:

"13. ***The above provision is more or less similar to Section 141 of the Negotiable Instruments Act, 1881 ('NI Act') which stipulates that where the offence has been committed by a company, every person in charge of the affairs of the company and responsible to it for the conduct of its business "at the time of offence was committed" would be deemed to be guilty of the offence. This presumption of guilt can, however, can be rebutted by such person if he can prove that it was committed without his knowledge.*** *However, this stage arises only after the complainant has discharged the initial burden. Where the offence has been committed by a company, in order to invoke the deeming provision of 27 (1) SEBI Act, it will have to be averred in the complaint that the person who is arraigned in his capacity as a Director of such company was in charge of the affairs of the company and responsible to it for the conduct of its business "at the time of commission of the offence".*

14. In ***N. Rangachari****, which was a case arising under the NI Act, the averment in the complaint read as under:*

"That accused No. 1 is a company incorporated under the Companies Act. Accused Nos. 2 and 3 are its Directors. They are incharge of and responsible to accused No. 1 for

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

conduct of business of accused No. 1 Company. They are jointly and severally liable for the acts of accused No. 1."

15. After referring to the earlier judgments in S.M.S. Pharmaceuticals v. Neeta Bhalla (supra); Saroj Kumar Poddar v. State (NCT of Delhi), (2007) 3 SCC 693 : AIR 2007 SC 912; Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15 : AIR 2004 SC 4274; Rajesh Bajaj v. State of NCT of Delhi, (1999) 3 SCC 259 : AIR 1999 SC 1216; Bilakchand Gyanchand Co. v. A. Chinnaswami, (1999) 5 SCC 693 : AIR 1999 SC 2182; and Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631 : AIR 2001 SC 518, the Supreme Court concluded in ***N. Rangachari*** *as under (AIR p. 1682):*

'18. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were incharge of the affairs of the company. ***It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.***

19. We think that, in the circumstances, the High Court has rightly come to the conclusion that ***it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the complaint****. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the Officers incharge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not incharge of the affairs of the company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion of the trial.'

16. Relying on ***N. Rangachari****, this Court in* ***Sushila Devi*** *declined to quash the complaint holding that the complaint contained sufficient averments to attract the offence under the SEBI Act. The precise averments in the complaint read as under:*

'7. The accused No. 1 is a company registered under the provisions of the Companies Act and the accused Nos. 2 to 9 are the directors of the accused No. 1 company. The accused Nos. 2 to 9 are the persons incharge and responsible for the day-to-day affairs of the company and all of them were actively connived with each other for the commission of the offences.'

17. ***In view of the decision in Sushila Devi which is on identical facts concerning a complaint by SEBI against a plantation company, and which follows the judgment of the Supreme Court in N. Rangachari, the inevitable conclusion is that the complaints in question do make out a prima facie case against the petitioners for the offences complained of under the SEBI Act."***

(emphasis supplied)

19. In view of the aforesaid cases, it is clear that the complaint ought not to be quashed before the parties have been allowed to lead evidence if the same contains necessary averments, unless such unimpeachable material is brought by the accused to show that interference of the Court is required and trial should not be allowed to continue against the accused.

20. In the present case, necessary averments have been made in the complaint and a *prima facie* case is made out against the petitioner considering the orders of the Whole Time Director who found that the

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

schemes run by the accused company are in the nature of CIS. No unimpeachable material has been put forth by the petitioner to show that he was not involved or in charge of the regular affairs of the accused company. On the other hand, it is argued on behalf of SEBI that there is cogent material to show the involvement of the petitioner, including his presence in board meetings as well as him being one of the first Directors and promoter of the accused company. It is relevant to note that the allegations in the present case relate to the very nature of operations of the accused company. While the role of the petitioner would be seen during the course of the trial, at this stage, it cannot be held that merely because the specific role of the petitioner is not spelt out in the complaint, the same is sufficient to exonerate him.

21. Insofar as the challenge to the order on charge is concerned, it is argued on behalf of the petitioner that strong suspicion is also required for framing of charges, despite which, the charges have been framed by seeing the existence of *prima facie* case against the petitioner. It is also argued that the charges have been mechanically framed by the learned Trial Court. It is apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the Code of Criminal Procedure, 1973 ('**CrPC**').

22. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons.

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI*** **: (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
> *(ii)* ***Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.***
> *(iii)* ***The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.***
> *(iv)* ***If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
> *(vi)* ***At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***
> *(vii)* ***If two views are possible and one of them gives rise to***

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

(emphasis supplied)

23. In the case of ***State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294**, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. ***The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.***

xxx

12. ***The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into****. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

> *offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."*
>
> (emphasis supplied)

24. In view of the above, it is clear that this Court, at the stage of framing of charges, is not required to evaluate the evidence or hold a mini trial. As specifically noted in the case of ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** (*supra*), the Court is not required to venture into the probability of conviction at this stage and is only required to look into the *prima facie* case without delving into the probative value of the material on record. It is correct that grave suspicion is required for framing charges against an accused, however, it cannot be said that no strong suspicion exists against the petitioner merely because the complaint only contains the necessary averments against the petitioner.

25. It is the case of the prosecution that the very nature of operations of the accused company were in contravention of the SEBI Act and concerned regulations as the accused persons were running a CIS and mobilizing funds from investors without obtaining the necessary registration. It is not denied that the petitioner was one of the first Directors of the accused company for a significant portion of the time period in which the mobilization of funds was carried out by the accused company. The respondent has also argued that the petitioner was not only one of the Directors of the accused company, but that he filed various documents on behalf of the accused company

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

and attended Board Meetings. No argument has been preferred that the operations of the accused company were not in the nature of CIS. In view of the same, at this stage, *prima facie*, it is improbable that the petitioner was unaware of the very nature of operations of the accused company if he was actively partaking in Board Meetings and grave suspicion exists against him.

26. As noted above, to quash the proceedings by petition filed under Section 482 of CrPC, the petitioner is to place some unimpeachable and uncontroverted evidence which is beyond suspicion or doubt. Thus, any defence in relation to the petitioner being an inactive Director cannot be probed at this stage in the absence of any direct and unimpeachable material to show the same. In such circumstances, at this stage, in the absence of such evidence, the question as to whether the accused person was responsible for the affairs of the accused company at the relevant time becomes a factual dispute, which is to be seen during trial.

27. Clear unambiguous averment in relation to the petitioner has been made in the complaint and from the totality of facts, at this stage, it cannot be said that the petitioner was not in charge of, and was responsible to, the company for the conduct of the business of the accused company at the time of commission of offence. Exercising the inherent jurisdiction at this juncture to quash the proceedings, before the respondent has had an opportunity to lead its evidence, will be an abuse of the process of law.

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28

28. In view of the above, this Court finds no reason to interfere with the order on charge passed by the learned Trial Court or to quash the complaint.

29. The present petition is dismissed in the aforesaid terms.

30. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 6, 2025

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:12.05.2025
18:52:28