

- S.K. Sharma Vs. Registrar of Companies 2004(4) RCR Criminal 434
- Lok Manya Negi Vs. Registrar of Company Punjab, HP and Chandigarh

Representing Advocates:

Mr. Vikas Mohan Gupta for petitioners in CRM-M-32022-2014

Mr. Manish Jain, Mr. Siddhant Jain, and Mr. Manav Jain for petitioner in CRM-M-34214-2014

Mr. Piyush Khanna for respondent(s)

HARPREET SINGH BRAR J. (Oral)

1. Present petitions under Section 482 of Cr.P.C. have been filed seeking quashing of complaint No. 38 dated 27.11.2000 titled as “Registrar of Companies Vs. J.C. Khandelwal and Others” pending before learned Chief Judicial Magistrate, Patiala and further seeking quashing of summoning order dated 27.11.2000 whereby the learned CJM, Patiala has summoned the petitioner under Section 58A(10) of the Companies Act, 1956.
2. Both the petitions are decided by a common order and the facts are taken from the CRM-M-32022-2014. The petitioners-accused in both the petitions are erstwhile employees of Punjab State Industrial Development Corporation and Industrial Development Bank of India.
3. Brief facts of the case are that the Euro Cotspin Limited, was incorporated on 22.08.2014 as a Public Limited under the Companies Act, 1956 and is having its registered office at Vill- Dehar, Lalru, Ambala Chandigarh Highway, Distt. Patiala. The accused No.1 to 9 are directors of the company according to the particulars filed in the office of the complainant and are the officer in default. The accused company had failed to make repayment of deposit accepted by it and several such depositors approached the Company Law Board under Section 58-A(9) of the Companies Act, 1956 to seek order of the Board for getting repayment of their deposits. The company and its directors were directed by the Company Law Board vide order dated 09.08.2000 to repay the deposits alongwith outstanding interest at contracted rate till the date of repayment not later than 31.10.2000 and further the company was directed by Company Law Board to file an affidavit of Compliance of these directions

by 10.11.2000 with the Registrar of Companies Punjab, H.P. & Chandigarh. The company has not furnished any information to the office of the complainant (Registrar of Companies, Jalandhar) regarding compliance of the order of the Company Law Board despite the issuance of notice by the office vide letter No.TC/14967/647 dated 25.08.2000. The directors of the company have failed to comply with the order of Company Law Board dated 09.08.2000 and thereby they have made themselves liable to be punished under Section 58-A(10) of the Companies Act, 1956.

¹ Learned counsel for the petitioners *inter alia* contends that the petitioners are alleged to have been the Nominee Directors of the financial institutions and the complaint has been filed on the allegations that the company has failed to make the payment of deposits accepted by it and such depositors have approached the Company Law Board under Section 58/A(9) of the Companies Act 1956 to seek the relief for getting repayment of their deposits. The learned counsel for the petitioners refers to order dated 09.08.2000 passed by the learned Company Law Board, Northern Region Bench New Delhi. The Company Law Board has returned a categorical finding that respondent-company is a 100 % export oriented manufacturing unit and is being supported by UTI and PSIDC by way of substantial participation in the capital of the Company. The prayer made by the depositors to make UTI and PSIDC as party and issuance of necessary directions to repay the outstanding interest was rejected and the learned Company Law Board observed that as per Section 58(9) of the Companies Act 1956, only Company which has accepted the deposits can be directed to repay the deposits and UTI and PSIDC cannot be made a party or directed to meet the deposited claims. Once the PSIDC was not made liable to repay the deposit, the petitioners cannot be made liable for offence under Section 58-A(10) of the Act. Moreover, the petitioners are Nominee Directors, and for all intents and purposes, they have no concern with the day to day business of the accused company, nor they have any control over the authority which issued FDRs to the depositors and the complainant has not even impleaded the Company as one of the accused and in the absence of the Company being impleaded as the accused, no criminal liability can be fastened on the petitioners. Similarly situated co-accused has approached this Court by filing CRM-20471-M of 2005 seeking quashing of the complaint (supra) and this Court vide order dated 08.04.2008, in the aforementioned case, titled as **“Lok Manya Negi Vs. Registrar of Company Punjab, HP and Chandigarh”** has quashed the proceedings against the petitioner therein. Learned counsel for the petitioners prays for quashing of the criminal proceedings against the petitioners on the ground of parity as their case is identical to that of Lok Manya Negi, who was granted relief by this Court.

4. Per contra, learned counsel representing the respondent- complainant submits that the probable defence set up by the accused cannot be looked into at this stage by this Court as it is a matter of trial as to whether the petitioners being Nominee, are responsible for day to day business of the

Company or not. These facts can only be determined on the basis of evidence adduced by the parties before the trial Court.

- 2 Having heard the learned counsel for the parties and after perusing the record, it transpires that the case of the petitioners is identical to that of Lok Manya Negi and petitioners are only the nominated Directors in the accused-company on behalf of their official position in their respective Corporation. Moreover, in view of the Section 41-A of the State Financial Corporation Act (hereinafter to be referred as 'the Act'), no suit or prosecution or other proceedings shall lie against any person appointed as Director (Administration), Managing Agent or Manager by the Financial Corporation under Section 27 or 32-A of the Act for any action taken in the good faith. As such, the petitioners are entitled to the protection provided to them under Section 41-A of the Act. This Court in **S.K. Sharma Vs. Registrar of Companies 2004(4) RCR Criminal 434** has concluded that Nominee Director cannot be held liable for any default made by the Company as they are not responsible for day to day business of the Company and the Nominated Directors in the accused company on behalf of the Corporation are entitled to the protection granted under Section 41-A of the Act.
5. After reasoned analysis of the factual matrix and the judicial precedents, the present petition deserves to be allowed. As such the impugned complaint No. 38 dated 27.11.2000 titled as "**Registrar of Companies Vs. J.C. Khandelwal and Others**" pending before learned Chief Judicial Magistrate, Patiala and the summoning order dated 27.11.2000 whereby the learned CJM, Patiala has summoned the petitioners under Section 58A(10) of the Companies Act, 1956 and all subsequent proceedings arising therefrom are quashed qua the petitioners in both the petitions.
6. Both the petitions, stands allowed.
7. Pending CRM(s), if any, are also disposed of accordingly.

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