Special Case No.- 05/99
Reg No.43/14
CNR WBCS01-000003-1999
Order No. 184
Order dated 08.04.25

Today is fixed for ER of OA of A3 M/s Shiba Wire and Steel Products Ltd. and hearing discharge petition of A4 Gobindo Prasad Bajoria and hearing the petition regarding return of unrelied documents.

Ld. PP for CBI is present.

On behalf of CBI one report is filed regarding the property of accused company M/s Shiva Wire and Steel Products Ltd. wherefrom it appears that the company has no property within Dinhata, Coochbehar, Purba Medinipur, Balarampur District Purulia, Raghunathpur, Alipore, Helencha, North 24 Parganas, Additional Registrar Assurance 3 Kolkata, Baghnan, Howrah, Coochbehar, Mekhliganj, Haldibari, Sub-Registrar area.

Accordingly the case be filed for present against the company Shiva Wire and Steel Products Ltd.

The remaining two accused persons namely Gobinda Prasad Bajoria (A4) and Niharendu Roy (A2) are present by filing hazira.

The petition dated 24.04.19 filed by accused No. 4 Gobinda Prasad Bajoria u/s 239 CrPC is taken up for hearing.

Heard both sides.

Ld. Advocate for the accused submits that the said accused has resigned from the director of the company on 07.11.1994 which was accepted and hence, he is not liable for any illegal omission or commission of the aforesaid company.

It is further submitted that the cheques No. 148803 and 148804 dated 07.10.1994 and 08.10.1994 were not signed by him and hence, he is not liable for the alleged fraudulent activity of the company as a director. Accordingly Ld, advocate for the accused Gobinda Prasad Bajoria (A4) has prayed for discharge from this case.

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Refuting contention of the ld. Advocate for the accused person, Ld. PP for CBI submits that the accused Gopal Bajoria (since deceased) and accused Gobinda Prasad Bajoria (A4) were inter related and they made collusion with accused no. 2 Niharendu Roy the erstwhile bank official of United Bank of India had withdrawn money amounting to Rs.12,18,200/-. The alleged transactions were taken place on 08.10.94 and 07.10.94 when the accused no. 4 was a director of the company. According to the ld. PP for CBI subsequent resignation of a director will not exonerate him from the criminal liability for his fraudulent activities during his tenure as a director of the company.

Accordingly ld. PP for CBI has prayed for rejection of the petition dated 24.04.19 u/s 239 CrPC filed by the accused No. 4 Gobinda Prasad Bajoria.

Perused the case record.

On perusal of the case record I find that on 31.08.04 (order no. 56) my predecessor in office after considering the entire materials on record has been pleased to frame charge against the present accused person for commission of offence punishable u/s 120B IPC r/w section 420, 467, 468 and 477A IPC. A separate charge was also framed against accused No.4 Gobinda Prasad Bajoria for commission of offence punishable u/s 420 IPC and the case was fixed for evidence.

During trial eight witnesses were examined and case was pending for further evidence and thereafter the accused No.4 had filed this petition on 24.04.19.

On perusal of the case record it further appears on 14.06.01 (Order No. 20) wherein the accused no. 4 was absolved from representing the accused No. 3 M/s Shiva Wire and Steel Products Ltd.

From the case record, it further appears that the alleged transactions were taken place through cheques bearing no. 148883 and 148884 dated 07.10.94 and 08.10.94 respectively.

Accordingly to the prosecution those two cheques were received for clearance on 20.10.94 and 28.10.94 respectively at SBI, Elgin Road Branch. Those two cheques were neither debited to the account nor return unpaid to the collecting bank thus honoured fraudulently. The present accused person was a director of M/s Shiba Wire and Steel Products Ltd is an undisputed fact.

Even for the sake of argument, in case the entire submission of accused no. 4 is taken as correct , even then the accused No. 4 is not responsible for any activity of the company since 07.11.94. but in the instant case, the transactions were taken place on 07.10.94, 08.10.94 when the cheques were issued and 28.10.94 and 20.10.94 when the cheques were presented for encashment and actually honoured.

It clearly shows that the accused No. 4 was a director at the time of alleged fraudulent transactions and he cannot evade his liability for the loss cause to the United Bank of India.

The argument that the accused No. 4 did not personally sign the cheques in question does not hold much water as the company was benefited from the fraudulent transactions and the liability of each of the director will be evaluated only after analyzing the entire evidence on record.

Therefore, in my view, not signing the cheques is not a ground for discharge from this case.

Further more, my predecessor in office had already framed charged after considering the entire materials on record including those points now raised by the accused no. 4. As a successor in office, I have no authority to alter the finding of my predecessor in office which amounts to revision of own order. Section 362 CrPC creates a bar in this regard it becomes more important in such a case where the accused person is unable to show that any subsequent changes have been taken place.

Considering all these aspects, the petition u/s 239 CrPC filed by the accused No. 4 stands rejected.

To 18.06.25 for further evidence.

Sd/-

Judge, 3rd Special
(CBI Designated) Court,
Bankshall Court, Calcutta