





**V. Narasingh, J.**

1. Assailing the order dated 12.01.2026 passed by the learned District & Sessions Judge, Cuttack in 2(c) C.C. (Comp.) No.09 of 2021, rejecting the prayer of the Petitioner under Section 227 of Cr.P.C.<sup>1</sup> for discharge, the present criminal revision has been preferred.

2. Heard learned counsel for the Petitioner and learned DSGI, Senior Counsel, Mr. Parhi, along with learned CGC, Mr. Panda, for Opposite Party No.1.

3. Brief facts germane for just adjudication run thus;

Utkal Chambers of Commerce & Industry Ltd. (UCCI) was incorporated as a Public Company Ltd. by guarantee without share capital on 13.01.1964. On 04.09.2019, the Petitioner was declared elected uncontested as Vice-President (Industries) and functioned as such till she resigned on 11.02.2021.

3-A. In the 4<sup>th</sup> Board of Directors Meeting of UCCI on 15/17.07.2020, a resolution was passed to ensure compliance with the Companies Act, 2013.

Resolution No.3, which is relevant, is extracted hereunder;

“RESOLUTION-3

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<sup>1</sup> **227. Discharge.**— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.



RESOLVED that all actions, decisions required to be taken by the Company (UCCI), be and are hereby decided to be undertaken in accordance with the extant provisions of Companies Act, 2013 in order to prevent the Company from violating the Act.

It was further RESOLVED that early and prompt action be taken to complete the amendments required in the Articles of Association on priority basis following the procedures provided in the Companies Act, 2013 and with observance of the COVID stipulations.”

3-B. When matter stood thus, on 09.12.2020, Opposite Party No.1 issued a letter under Section 206(1)<sup>2</sup> of the Companies Act, 2013 seeking clarification regarding alleged irregularities in the affairs of the company, and in response thereto, the President of UCCI, Proforma Opposite Party No.2 in the present criminal revision and accused No.1 before the Designated Court, submitted clarification on 16.12.2020 and thereafter, show cause notices were issued to the Petitioner on 17.02.2021 for alleged violation of Sections 4(1)(a)<sup>3</sup> of the Companies Act,

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<sup>2</sup> **206. Power to call for information, inspect books and conduct inquiries.—**

(1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

(a) to furnish in writing such information or explanation; or  
(b) to produce such documents,

within such reasonable time, as may be specified in the notice.

<sup>3</sup> **4. Memorandum.—**(1) The memorandum of a company shall state—

(a) the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company:

Provided that nothing in this clause shall apply to a company registered under Section 8;



2013 and notice dated 19.02.2021 for violation of Section 5(6)<sup>4</sup> of the Companies Act, 2013.

3-C. Reply to such show cause was submitted by the Petitioner on 05.03.2021. When the matter stood thus, a show cause notice dated 11.05.2021 (Annexure-H/8) under Section 447<sup>5</sup> of the Companies Act, 2013 was issued to the Petitioner in the light of the reply of the company submitted on 16.12.2020, alleging that the company is presenting itself and carrying on its business similar to that of a Company registered under Section 8<sup>6</sup> of the Companies Act,

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<sup>4</sup> **5. Articles.**—xxx      xxx      xxx

(6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

<sup>5</sup>**447. Punishment for fraud.**—Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud [involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years:

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

Explanation.—For the purposes of this section—

(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”

<sup>6</sup> **8. Formation of companies with charitable objects, etc-** (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and



(c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4)(i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under Section 224 of the Insolvency and Bankruptcy Code, 2016.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.



2013, which corresponds to Section 25 of the Companies Act, 1956 without obtaining a licence from the Central Government to that effect.

It was stated that non-obtaining of such licence, attract the provisions under Section 447<sup>5</sup> of the Companies Act, 2013 and the Petitioner was called upon to show cause by letter dated 11.05.2021 (Annexure-H/8) issued by Opposite Party No.1, as noted above.

3-D. In response thereto, the Petitioner submitted a show cause on 27.05.2021 detailing therein that she has absolutely no complicity in the matter and in fact, she was one of the Directors, who flagged that the Articles of association (AoA) of the Company are not in consonance with the Companies Act, 2013 and for which she was suspended from the Board on 14.01.2021 and she resigned on 11.02.2021. The Petitioner also asserted that in the light of the recitals in the show cause, the offence under Section 447<sup>5</sup> of the Companies Act, 2013 is ex-facie not attracted qua the Petitioner. Hence, requested that no action ought to be initiated against her.

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(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable [\* \* \*] with fine which shall not be less than twenty-five thousand rupees but which may extend to 3[twenty-five lakh rupees:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under Section 447.



3-E. The Opposite Party instituted the 2(c) C.C. Case in question, **"on account of the replies received from the Directors were not satisfactory"**.

3-F. The prayer of the Petitioner seeking discharge under Section 227<sup>1</sup> of the Cr.P.C. having been negative by the Designated Court, the present criminal revision has been preferred.

4. Learned counsel for the Petitioner submits that the recitals in complaint petition, even if accepted at their face value no offence under Section 447<sup>5</sup> of the Companies Act, 2013 is made out and learned Designated Judge, mechanically relying on the judgment of the Apex Court in the case of **State of Orissa vrs. Debendra Nath Padhi**<sup>7</sup>, declined to exercise jurisdiction and in the given facts of the case at hand non-exercise of such jurisdiction being the outcome of perverse appreciation, the matter merits interference by this Court in exercise of its revisionary power.

5. Per contra, learned CGC, Mr. Panda submits that there is no infirmity in the impugned judgment in as much as the learned Designated Court has rightly held that, at the time of framing of charge, the defence plea of the Petitioner cannot be taken into account resulting in a "mini trial". As such, sought dismissal of the present criminal revision.

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<sup>7</sup> *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568



6. During the course of submission, the learned counsel for the Petitioner also urged that, in the absence of the company being cited as an accused, the very institution of 2(c)CC case is bad in law.

To fortify his submission in this regard, he relied on the judgment of the Apex Court in the case of ***Iridium India Telecom Ltd. v. Motorola Inc.***<sup>8</sup> and ***Cox & Kings Ltd. v. SAP India (P) Ltd.***<sup>9</sup>

It is fairly stated that such contention has not been mentioned in the petition filed before the Designated Court, though raised during the course of submission and it is his further submission that since the same is a point of law, there is no embargo to raise it before this Court as well.

7. Learned CGC, Mr. Panda, states that because of non-availability of the pleadings in the said regard, the learned Designated Court presumably did not take the same into account and as such, did not record a finding on the said score. But, the Petitioner ought not to have any grievance on the said count, though conceding that it being a point of law can be raised before this Court.

8. It is also apropos to reiterate the settled position that a question of law can be raised at any stage of a proceeding. Reference can be respectfully made to the following judgments of the Apex Court;

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<sup>8</sup> *Iridium India Telecom Ltd. v. Motorola Inc.*, (2011) 1 SCC 74

<sup>9</sup> *Cox & Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1



1. R. Nagaraj v. Rajmani<sup>10</sup>
2. Sanghvi Reconditioners (P) Ltd. v. Union of India<sup>11</sup>
3. Greater Mohali Area Development Authority v. Manju Jain<sup>12</sup>
4. State of Madras v. Rajagopalan<sup>13</sup>
5. Ariane Orgachem (P) Ltd. v. Wyeth Employees Union<sup>14</sup>, (2015) 7 SCC 561

9. To buttress his submission that the learned Designated Court erred in law in appreciating the scope of Section 227<sup>1</sup> of the Cr.P.C., learned counsel for the Petitioner, relied on the following judgments;

- i. ***Union of India vs. Prafulla Kumar Samal and others***<sup>15</sup>
- ii. ***Satish Mehra vs. Delhi Administration and another***<sup>16</sup>
- iii. ***Dipti Ranjan Patnaik and Ors. Vs. State of Odisha***<sup>17</sup>
- iv. ***Nitu Gupta and others vs. State of Odisha***<sup>18</sup>

9-A. Mr. Panda, learned CGC, submits that on the face of it, the said judgments are distinguishable on account of the facts in the present case and are not

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<sup>10</sup> R. Nagaraj v. Rajmani, 2025 SCC OnLine SC 762

<sup>11</sup> Sanghvi Reconditioners (P) Ltd. v. Union of India, (2010) 2 SCC 733

<sup>12</sup> Greater Mohali Area Development Authority v. Manju Jain, (2010) 9 SCC 157

<sup>13</sup> State of Madras v. Rajagopalan, (1955) 2 SCC 112

<sup>14</sup> Ariane Orgachem (P) Ltd. v. Wyeth Employees Union, (2015) 7 SCC 561

<sup>15</sup> Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4

<sup>16</sup> Satish Mehra vs. Delhi Administration, (1996) 9 SCC 766

<sup>17</sup> Dipti Ranjan Patnaik v. State of Odisha, 2021 (I) ILR - CUT- 167

<sup>18</sup> Nitu Gupta and others vs. State of Odisha, 2021 ORI 452



applicable and reiterates his submission that, in view of the judgment of the larger Bench of the Apex Court in the case of **Debendra Nath Padhi (Supra)**<sup>7</sup>, rightly relied upon by the learned Designated Court, the criminal revision is liable to be dismissed.

10. To appreciate the rival contentions, it is apposite to quote Section 227<sup>1</sup> of the Code of Criminal Procedure, 1973.

**"227. Discharge-** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

*(Emphasized)*

It may not be out of place to note that the said provision was introduced for the first time in the Code of Criminal Procedure, 1973.

11. To effectuate the principle that in the absence of a prima facie case, an accused should not be made to go through the ignominy of a criminal trial, in the backdrop of enactment of Section 227<sup>1</sup> by Code, 1973 and in the light of the law laid down in the case of **Debendra Nath Padhi (Supra)**<sup>7</sup>, the competing claims have to be adjudicated.



12. The complaint in question relates to alleged violation of Section 8<sup>6</sup> of the Companies Act, 2013 (25 of the Companies Act, 1956) and it is stated that the Petitioner is liable to be prosecuted under Section 447<sup>5</sup> of the Companies Act, 2013.

13. It is strenuously urged by the learned counsel for the Petitioner that even if the materials relied upon by the prosecution are accepted as it is, no prima facie case is made out against the Petitioner.

In this context, the attention of this Court is drawn to the complaint petition filed before the learned Designated Court, which is on record at Annexure-2. In the said complaint petition, the Petitioner is arrayed as Accused No.8.

13-A. Paragraphs-3 to 6 of the complaint petition, which are relevant for just adjudication, are extracted hereunder;

"3. That, it has observed from the letter No.UCCI/2(7)/ 2020/237 dated 16.12.2020 of the company submitted with the office of the complainant wherein it is stated that:

"The intent and contents of MOA clearly establishes that the Utkal Chamber of Commerce and Industry Ltd. incorporated under the Companies Act, 1956 is similar to that of a Section-8<sup>6</sup> (erstwhile Section-25) not-for-profit company mainly to promote and protect the interest of its members representing the trade, commerce and industry in the state of Odisha. However, the company is not registered under erstwhile Section 25 of the Companies Act, 1956



and not obtained any license to that effect from the ROC, Odisha, Cuttack.

From the above, it is clear that the company is presenting it-self and carrying its business similar to that of a company registered under Section 8<sup>6</sup> of the Companies Act, 2013 (erstwhile Section 25 of the Companies Act, 1956) without obtaining a license from the Central Government to that effect which attracts the provisions made under Section 447 of the Companies Act, 2013.

4. Thus, the Directors/Officers of the company are liable for punishment under Section 447 of the Companies Act, 2013.

5. That, prior to filing of this instant case, a Show Cause Notice was issued to the accused vide office of the complainant's Notice No.ROC/Compt/VIP/74/2020/263(8) dated 11.05.2021 calling upon to explain as to why necessary penal action shall not be Initiated against them under Section 447 of the Companies Act, 2013 for violation of Section 447 of the Companies Act, 2013. But, the replies received from the Directors were not satisfactory.

6. That, the accused No.1 to 8 are the directors/officers of the Company at all relevant times and hence the directors/officers of the Company who are in default."

*(Emphasized)*

14. And, referring to the same, it is submitted by the learned counsel for the Petitioner that it is the admitted case of the prosecution, that the complaint was instituted on account of a letter dated 16.12.2020 of the Company submitted to the complainant, Assistant Registrar of Companies-cum-Asst. Official Liquidator. Admittedly, the said letter



relied upon by the complainant is on record before this Court as well as the learned Trial Court and the said letter was issued by Proforma Opposite Party No.2 in his capacity, as the President.

For convenience of reference the said letter dated 16.12.2020 relied upon to institute the complaint, is culled out hereunder;

**UTKAL CHAMBER OF COMMERCE & INDUSTRY**

**UCCI**  
Ensuring Prosperity

**OF THE DISTRICT**

Ref. No.: UCCI/2(7)/2020/2376

Date: 16<sup>th</sup> Dec'2020

To  
The Asst. Registrar of Companies-cum-AOL, Odisha,  
Corporate Bhawan, 3<sup>rd</sup> Floor, Plot No.9(P),  
Sector-1,CDA, Cuttack-753014

**Sub: Calling of Information/Explanation under Section 206(1) of the Companies Act,2013 in the matter of The Utkal Chamber of Commerce and Industry Limited (UCCI).**

Dear Sir,

In inviting a reference to your letter No.ROC/Comt/74/2020/1497(8) dated 09/12/2020 enclosing therewith a copy of reference dated 20/10/2020 received from Shri Amar Patnaik, Hon'ble Member of Parliament (Rajya Sabha) enclosing therein a complaint dated 05/10/2020 against the Company, calling for Information/Explanation under Section 206(1) of the Companies Act,2013, we hereby submit the following Information/clarification/explanation for your kind perusal:

- The Utkal Chamber of Commerce & Industry Limited** is a public Company limited by Guarantee and not having Share Capital, registered under the erstwhile Companies Act, 1956 with Registrar of Companies (RoC), Odisha, Cuttack on 13/01/1964 having CIN: U9111OR1964GAP000468 and registered office located at N6, IRC Village, Nayapalli, Bhubaneswar-751015, Odisha.
- The intent and contents of MoA clearly establishes that the Utkal Chamber of Commerce & Industry Ltd. incorporated under the Companies Act, 1956 is similar to that of a Section-8 (erstwhile Section-25) not-for- profit company mainly to promote and protect the interest of its members representing the trade, commerce and industry in the state of Odisha. However, the Company is not registered under erstwhile Section 25 of the Companies Act, 1956 and has not obtained any license to that effect from the ROC, Odisha, Cuttack.
- In view of the differences amongst office bearers as regards certain clauses in AoA of the company, UCCI has obtained an expert opinion of a group of 3(three) Company Secretaries in practice recently on 26.02.2020 on certain conflicting issues including the role of the Executive Committee (EC) vis-à-vis the Board of Directors (BOD) appearing in the Articles of Association (AoA) of the Company. The Company Secretaries in their report have clearly opined that -

**QUOTE**

Some of the Articles of Association of UCCI are not in consonance with the provisions of the Companies Act, 1956/ 2013 and rules there under. It is the Executive Committee and not the Board of Directors, of the UCCI, which is all powerful and vested with all the executive and administrative powers under Clause 30 (a) & (b) of AoA of the UCCI. This is an anomaly in the AoA of the UCCI. Section 179(1) of the Companies Act, 2013 provides that the Board of a company shall be entitled to exercise all such powers, and to do all such acts and things as the company is authorized to exercise and do. However, since this is company similar to Section 25(Now Section-8) Company, created by guarantee. We will very soon call an EGM as per procedure laid down in our Articles of Association and effect the necessary amendments to the AoA as to be approved by the members and following provisions in the AoA and Companies Act.

**Unauthenticated Copy**  
**Certified to be a True Copy**

**Contd. to Page 2**

17/12/2020

13-08-2024

16, IRC VILLAGE, NAYAPALLI, BHUBANESWAR-751015, ODISHA, INDIA  
Phone: (0674) 2922000, 2922598, 7735296035  
contactus@utkalchamber.in / Registrar of Companies-753014  
Website: www.utkalchamber.in  
Odisha, Cuttack



Continuation Sheet .....





Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the MoA or AoA or in any regulations not in consistent therewith and duly made there under, including regulations made by the company in General meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the MoA or AoA of the company or otherwise, to be exercised by the company in General meeting.

As per Section 6 of the Companies Act, 2013 wherever there is an inconsistency between the provisions of the Companies Act and that of AoA of the Company, the provisions of the Companies Act override the provisions in AoA and the provisions of the Companies Act shall prevail.

**UNQUOTE**

4. Being a Company limited by Guarantee and not having a Share Capital, UCCI has not yet adopted the MoA & AoA in consonance with the provisions of Table-B and Table-H of Schedule-1 of the Companies Act, 2013.

5. The expert opinion of the Company Secretaries suggesting alteration/amendment in the AoA of the Company was placed before the 4<sup>th</sup> Executive Committee Meeting of UCCI held on 29/02/2020 and it was decided to convene an EGM for considering and adopting the required alterations/amendments in its MoA & AoA suitably to make the provisions in commensurate with those specified in Table-B and Table-H of Schedule-1 of the Companies Act, 2013.

6. A meeting of Board of Directors was called on 10/08/2020, to discuss and finalize the issue of amendments so as to be in consonance with the provisions of Companies Act 2013, but the same could not take place due to the Honorable court order of Senior Civil Judge, Bhubaneswar .

7. However, because of the prevailing COVID-19 pandemic situation and because of the restrictions imposed by the Govt. authorities, the Company could not convene the Extra-ordinary General Meeting of Members for the purpose as yet.

8. However, the Company shall put forth the required alteration and amendments in its M&AoA in an EGM to be convened within 2 months giving the resolution to be passed after the same is approved by the E.C and we will take all steps to comply with the Companies Act 2013.

9. The Directors have no intention to violate the Act of 1956 or of 2013 and have committed no fraud and as such no penal action be taken against the Company or the Directors as our intent to amend the AoA in line with Companies Act 2013 has been clarified above. The circumstances particularly the COVID restrictions hampered our genuine desire for changes/amendments in AoA of the Company and caused this delay.

Hope this clarifies the matter.

Thanking you,

Yours faithfully,  
For The Utkal Chamber of Commerce & Industry

*Ramesh Mahapatra*  
(Ramesh Mahapatra)  
President

सत्य प्रतिलिपि प्रमाणीत की जाती है  
Certified to be a True Copy

*Shane*  
उप-कम्पनी रजिस्ट्रार-तथा-उप-शासकीय समापक  
ओडिशा, कटक  
Dy. Registrar of Companies-cum-  
Dy. Official Liquidator  
Odisha, Cuttack  
13.08.2024

15. On perusal of the complaint petition, it is seen from paragraph-5, as quoted above, before filing of the case, a show cause notice was issued to the Petitioner on 11.05.2021.

But, as her reply was found to be not satisfactory, the proceeding was instituted. Thus, it is clear that show cause was taken into account, by the complainant, before institution of the case at hand.





2. Sri Dhiren Kumar Dhal : Honorary secretary
3. CA. Giridhari Lal Sharma : Honorary Treasurer
4. Sri Sanjeev Mahapatra : Honorary Joint secretary
5. Sri Jyotirmoy Mohanty : Honorary Joint Treasurer

The following member of Board of Directors dissented for adoption of above resolution.

1. Sri Ramesh Mahapatra : President
2. Sri Ashok Kumar Sharda : Vice President (C)
3. Sri Dipak S. Rathor : Vice President (G)

Before the conclusion of the meeting, Sri Ramesh Mahapatra, President, Sri Ashok Kumar Sharda, Vice President (C) and Sri Dipak Rathor, Vice President (G) left the meeting. Then the meeting was presided over by Sri Dhiren Kumar Dhal, Hon. Secretary. After deliberation all the above resolutions were adopted with majority votes.

There being no other matter to discuss the meeting ended with vote of thanks to their chair.

xxx

xxx

xxx"

*(Emphasized)*

It is worth reiterating that the Petitioner as Vice President along with Proforma Opposite Party (accused) Nos.5, 3, 7 and 8 were signatories to such resolution.

Proforma Opposite Party Nos. 2, 6 and 4 refused to sign the same.

(The sequence of Proforma Opposite Parties is reflected above, as per the Board Resolution dated 15/17.07.2020 of assenting and dissenting members.)



16. It is apt to note that the letter dtd 16.12.2020 of the Proforma Opposite Party No.2, in his capacity as President, was the *raison d'être* for launch of prosecution, as evident from a bare perusal of the complaint.

The relevant extract of the complaint is culled out hereunder for convenience of ready reference;

"AND WHEREAS, this office has observed from the letter No.UCCI/2(7)/ 2020/237 dated 16.12.2020 of the company submitted with this office wherein it is stated that:

"The intent and contents of MOA clearly establishes that the Utkal Chamber of Commerce and Industry Ltd. incorporated under the Companies Act, 1956 is similar to that of a Section-8 (erstwhile Section-25) not-for-profit company mainly to promote and protect the interest of its members representing the trade, commerce and industry in the state of Odisha. However, the company is not registered under erstwhile Section 25 of the Companies Act, 1956 and not obtained any license to that effect from the ROC, Odisha, Cuttack."

From the above, it is clear that the company is presenting it-self and carrying its business similar to that of a company registered under Section 8 of the Companies Act, 2013 (erstwhile Section 25 of the Companies Act, 1956) without obtaining a license from the Central Government to that effect which attracts the provisions made under Section 447 of the Companies Act, 2013.

AND THEREFORE, the undermentioned addressee being relevant Officers/ Directors of the Company, who is/are in default, are hereby called upon to Show Cause within 14 (fourteen) days hereof as to why necessary penal action under Section 447



of the Companies Act, 2013 shall not be initiated against them.”

*(Emphasized)*

17. The Petitioner inter alia stated in her reply to the show cause that she joined the company **for the first time** as a Vice-President (Industries) on **November, 2019**. And, she was suspended on **14.01.2021** and she resigned on **11.02.2021**, even before the show cause in question dated **11.05.2021** was issued to her.

As such, she was no longer an “office bearer” on the date of issuance of such show cause.

This factual aspect is not disputed by the learned CGC, being matter(s) of record.

18. It is the further submission of the learned counsel for the Petitioner that even if the allegation as leveled are taken at its face value, by no stretch of imagination allegations of fraud can be leveled against the Petitioner for which the prosecution under Section 447<sup>s</sup> of the Companies Act, 2013 has been instituted.

In fact, it is submitted, referring to the materials on record, including the reply to the show cause notice submitted and considered by the prosecution, that it unambiguously demonstrates that the Petitioner had done everything within her domain, as a law-abiding person, to prevent the precipitation of illegality on account of non-compliance with the



statutory prescriptions as stipulated under Section 8<sup>6</sup> of the Companies Act, 2013 (Section 25 of the Companies Act, 1956), for which she was suspended.

18-A. It is also submitted that fraud has been defined under Section 447<sup>5</sup> of the Companies Act, 2013. And, non-filing of return would ipso facto does not come under such definition of fraud. And, it is further urged that instances of allegation/accusation of fraud have to be specifically pleaded and in absence thereof, the same cannot be alleged mechanically in the complaint.

19. Learned CGC, Mr. Panda submits that the submissions of the learned counsel for the Petitioner in the first blush may be found to be attractive, but has to be rejected as untenable, since entertaining such contention would result in "Mini trial" which has to be shunned while considering prayer for discharge under Section 227<sup>1</sup> of Cr.P.C., as has been decided by the larger Bench judgment of the Apex Court in the case of ***Debendra Nath Padhi (Supra)***<sup>7</sup>.

20. On the basis of materials on record relied upon by the prosecution, the sum and substance of the allegation against the Petitioner was that returns were not filed by the company in terms of Section 8<sup>6</sup> of the Companies Act, 2013 (Section 25 of the Companies Act, 1956). **Admittedly, incorporation of the Company was on 13.01.1964 and the**



**Petitioner having been declared elected as uncontested Vice-President joined as the Director of the Company for the first time on 04.09.2019.**

In the reply to the show cause, it was unequivocally stated by the Petitioner that on 15/17.07.2020 in the 4<sup>th</sup> Board of Directors Meeting, which has been referred to in the show cause issued to the Petitioner, at the first given opportunity, the Petitioner flagged the issue of non-compliance of Section 8<sup>6</sup> of the Companies Act, 2013 (Section 25 of the Companies Act, 1956).

And, in support of such recitals in reply to the show cause, the materials were placed before the learned Designated Court and also this Court.

But, the learned Court below refused to take into account the same inter alia on the ground that the same is the defence of the Petitioner.

21. It is worth reiterating that the documents relied upon by the Petitioner had their moorings in the show cause reply submitted by her, which forms part of the complaint case. The same being reflected, in paragraph-5 of such complaint petition reads as under;

"5. .... But, the replies received from the Directors were not satisfactory".



Hence, it is manifestly clearly that no new materials were introduced to substantiate her prayer for discharge.

22. At this juncture, in the factual matrix of the case at hand reference can be gainfully made to the judgment of the Apex Court in the case of **Rukmini Narvekar vs. Vijaya Satardekar and others**<sup>19</sup> wherein, referring to the judgment of the Apex Court in the case of **Debendra Nath Padhi (Supra)**<sup>7</sup>, it was clarified that when there are materials which unequivocally demonstrate that the prosecution case is ex-facie untenable, the same ought to be taken into account.

Paragraph-22 of the said judgment is extracted hereunder;

"22. Thus in our opinion, while it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of *D.N. Padhi case*, there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e.

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<sup>19</sup> *Rukmini Narvekar v. Vijaya Satardekar*, (2008) 14 SCC 1



where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted."

*(Emphasized)*

23. As noted above, in the considered view of this Court the learned Designated Court erroneously held that the Petitioner is attempting to call upon the Court to delve into the stand of the defence, which would result in a "mini trial".

24. On a perspicuous analysis of the materials on record, relied upon by the prosecution, this Court is persuaded to hold that the learned Designated Court failed to appreciate that the materials on record referred to by the Petitioner were considered by the complainant, while rejecting the show cause reply of the Petitioner. Hence, the learned Trial Court arrived at wrong conclusion that they are being introduced for the first time by way of defence.

25. Reference by the Designated Court to Section 448<sup>20</sup> of the Companies Act, 2013 establishes that it has completely misdirected itself in appreciating the materials on record. It is nobody's case that the Petitioner is liable under Section 448<sup>20</sup> of the Companies Act, 2013.

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<sup>20</sup> **448. Punishment for false statement.**—Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—  
(a) which is false in any material particulars, knowing it to be false; or  
(b) which omits any material fact, knowing it to be material,  
he shall be liable under Section 447.



25-A. In doing so, the learned Designated Court committed a classic fallacy of posing the wrong question(s) for which evidently did not get the right answers. Even otherwise as already noted in the light of the judgment of the Apex Court in the case of ***Rukmini Narvekar (Supra)***<sup>19</sup>, there is no absolute embargo for the Courts to look into the materials, produced by the defence at the time of framing of charge, which unequivocally and demonstratively point to the innocence of an accused.

26. On a bare reading of the complaint, as filed, it is seen that the same is against the company and as urged by the learned counsel for the Petitioner, the company has not even been cited as an accused and the genesis of the institution of the complaint is a letter dated 09.12.2020 issued by Proforma Opposite Party No.2 as President, which ought to have been construed in the face of resolution passed by the Petitioner and others on 15/17.07.2020, extracted hereinabove, admittedly not signed by the said Opposite Party, who wrote the letter dated 09.12.2020, resulting in initiation of the complaint case.

27. On a conspectus of materials on record, this Court is persuaded to hold that the Petitioner has been able to unequivocally demonstrate that the prosecution case is ex-facie untenable and also establish that "*there is no sufficient ground for*



*proceeding against her”* and the exercise of jurisdiction by the Designated Judge in rejecting her prayer for discharge, is outcome of perverse appreciation of facts and fallacious application of law. As such, warrants interference by this Court in exercise of its revisional jurisdiction.

28. In the factual backdrop of the case at hand, qua the Petitioner, it can be said that it’s a glaring instance of “more sinned against than sinning”<sup>21</sup>.

29. The criminal revision is thus allowed. The impugned order dated 12.01.2026 passed by the learned District & Sessions Judge, Cuttack in 2(c) C.C. (Comp) No.09 of 2021 is set aside.

The Petitioner stands discharged of the accusation in 2(C).C.C (Comp) Case No.9 of 2021 on the file of learned District & Sessions Judge, Cuttack.

30. The question of maintainability of the complaint under Section 447<sup>s</sup> of the Companies Act, 2013, in the absence of a company being cited as an accused, is left open.

31. The criminal Revision and the pending I.A. are disposed of accordingly.

**(V. NARASINGH)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 23<sup>rd</sup> February, 2026/ Santoshi*

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<sup>21</sup> *King Lear*: William Shakespeare