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SLP(Crl.)No. 1509 OF 2001  
ITEM No.201

Court No. 1

SECTION IIA  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 1509/2001  
(From the judgement and order dated 01/03/2001 in CRLRA 28/99  
of The HIGH COURT OF JUDICATURE OF BOMBAY, BENCH AT PANAJI)

SURESH PRABHAKAR PRABHU

Petitioner (s)

VERSUS

MIRA WILMA PIMENTA & ANR.

Respondent (s)

( With Appln(s). for ex-Parte stay )  
( For Final Disposal )  
( With Office Report )  
With

SLP(Crl.)No.1577/2001

[SURESH PRABHAKAR PRABHU VS. NARESH B. RAMANI & ANR.]

(With appln. for stay and exemption from filing c/c of the impugned  
judgment and office report ) (For final disposal)

SLP(Crl.)No.1578/2001

[SURESH PRABHAKAR PRABHU VS. SHRIHARI B. RAMANI]

(With appln.for stay and exemption from filing c/c of the impugned  
judgment and office report) (For final disposal)

SLP(Crl.)No.1579/2001

[SURESH PRABHAKAR PRABHU VS. GULF COANS HOTELS PVT. LTD. & ANR.]

(With appln. for stay and exemption from filing c/c of the impugned  
judgment and office report)(For final disposal)

SLP(Crl.)No.1580/2001

[SURESH PRABHAKAR PRABHU VS. FLAVIANO V. PIMENTA & ANR.]

(With appln. for stay and exemption from filing c/c of the impugend  
judgment and office report)(For final disposal)

SLP(Crl.)No.2303/2002

[BERND HILDENBRAND & ANR. VS. STATE OF WEST BENGAL & ANR.]

SLP(Crl.)No.2304/2002

[BERND HILDENBRAND & ANR. VS. STATE OF WEST BENGAL & ANR.]

(With appln. for stay and exemption from filing c/c of the impugned  
judgment )

SLP(Crl.)...CRLMP 582/2002

[GULF GOANS HOTEL (P) LTD. VS. SURESH PRABHAKAR PRABHU & ANR.]

(With office report)

SLP(Crl.)...CRLMP 649/2002

[FLAVIANO V. PIMENTA VS. SURESH PRABHAKAR PRABHU & ANR.]

SLP(Crl.)...CRLMP 797/2002

[MIRA WILMA PIMENTA VS. SURESH PRABHAKAR PRABHU & ANR.]

Date : 29/08/2002 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE ARIJIT PASAYAT

...2/-

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For Petitioner (s) Mr. Ashok H. Desai, Sr. Adv.

in SLP 1509, 1577,  
1578, 1579 & 1580  
of 2001

Mr. Gopal Jain, Adv.  
Mr. Amit Desai, Adv.  
Ms. Tripti Kapadia, Adv.  
Mr. R.N. Karanjawala, Adv.  
Ms. Nandini Gore, Adv.  
Ms. Meghna Mishra, Adv.  
Mr. Ashish Jha, Adv.  
Mr. Hrishikesh Barwah, Adv.  
Ms. Manik Karanjawala, Adv.

in SLP 1578 & 1579  
of 2001

Mr. Ranjit Kumar, Sr. Adv.  
Mr. Gaurab Banerjee, Adv.  
Ms. Avantika Keswani, Adv.  
Mr. R.N. Karanjawala, Adv.  
Ms. Manik Karanjawala, Adv.

For Respondent (s)

Mr. Pallav Sishodia, Adv.  
Mr. Yogesh V. Nadkarni, Adv.  
Mr. A. Raghunath, Adv.

Mr. Dhruv Mehta, Adv.  
Mr. Mohit Choudhary, Adv. for  
M/s KL Mehta & Co., Advs.

Mr. K.V. Vishwanathan, Adv.  
Mr. Vikrant Rohila, Adv.,  
Ms. Shruti Chaudhary, Adv.  
Mr. Suman J. Khaitan, Adv.

For State of West Bengal

Mr. Tapash Ray, Sr. Adv.  
Mr. Satish Vig, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Delay condoned in SLP(CRL.)..../2002 CRLMP 582, 649  
& 797. The Special Leave Petitions are dismissed.

SLP(CRL.) NOS. 1509, 1577, 1578, 1579 & 1580/2001@@  
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Counsel made their submissions for one hour.  
Leave granted.

The judgment of the High Court whereby applications  
filed by Suresh Prabhakar Prabhu were rejected, are  
allowed. It is made clear that this decision will in no  
way affect the complaints filed against other Directors.

The appeals are allowed.

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SLP(Crl.) Nos. 2304 & 2303 of 2002@@  
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Leave granted.  
Interim orders to continue.

The proceedings before the Trial Court to continue.  
It will not be necessary for the petitioners to be present in  
person in the Court and their personal presence is dispensed  
with. The operation of the arrest warrant is stayed.

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Kalyani. (S.L. GOYAL)@@  
AA  
COURT MASTER@@  
A AA  
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(Signed Order is placed on the file.)

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.....L.....I.....T.....T.....T.....T.....T.....T.....J.  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 879 OF 2002@@  
EE  
(arising out of SLP(CRL.) No. 1509 of 2001)

Suresh Prabhakar Prabhu ... Appellant

vs.

Mira Wilma Pimenta & Anr. ... Respondents

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WITH  
Criminal Appeal Nos. 880, 881, 882 & 883 OF 2002@@  
EE  
arising out of SLP(Crl.) Nos. 1577, 1578, 1579 & 1580 of 2001  
and  
SLP(Crl.) Nos.2304 & 2303 of 2002.

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CRL.A. Nos. 879, 880, 881, 882 and 883 of 2002@@  
CC  
@ SLP(Crl.) 1509, 1577, 1578, 1579, 1580 of 2001@@  
CC

Leave granted.  
Suresh Prabhakar Prabhu was Managing Director of Western India Financial Services Limited, Mumbai. His case is that on 6th May, 1996 he resigned from Directorship of that Company and then was a candidate in the election to the Lok Sabha, result of which was notified on 15th May, 1996. After his election he was appointed as a member of Union Cabinet on 17th May, 1996.

In the instant case, the dispute arose because in November/December, 1996 cheques were issued by the Western India Financial Services Ltd., but those were dishonoured on ...2/-

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being presented. This led to the filing of complaints under Section 138 of the Negotiable Instruments Act, 1881 (in short the Act) and summons were issued against the Directors including Suresh Prabhakar Prabhu.

Applications under Section 482 of the Code of Criminal Procedure, 1973 (in short the Code) were filed by Suresh Prabhakar Prabhu asking for quashing the proceedings in which summons were issued. 23 criminal revision applications came up to be heard and decided by the Single Judge of the High Court. In 18 of these applications, the High Court came to the conclusion that Shri Suresh Prabhakar Prabhu had in fact resigned as a Director on 6th May, 1996 and that the cheques had been issued after he had ceased to be a Director of that Company. In 5 remaining criminal revision applications the proceedings were not quashed inasmuch as the Single Judge observed that the complainant had disputed, the factum of the resignation of Suresh Prabhakar Prabhu as on the date when the cheques were issued and therefore the case must proceed to trial.

The dismissal of the criminal revision petitions in respect of five complaints is a subject matter of challenge  
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before us. It is not denied that the finding of the High Court in 18 cases pertaining to the same Company, namely, Western India Financial Services Ltd. that Suresh Prabhakar Prabhu had resigned on 6th May, 1996 and was not a Director on the date when the cheques were issued has become final. In the criminal revision applications which were not allowed the finding of the High Court is not that Suresh Prabhakar Prabhu had continued to be the Director of the Company on the date when the cheques were issued. Mr. Dhruv Mehta the learned counsel for the respondent has stated that it was on 14th November, 1996 that the Board was re-constituted and resignation of Shri Suresh Prabhakar Prabhu was accepted. He submits that the cheques had been issued prior to that date.

In our view, inasmuch as the finding of fact that had been recorded in 18 cases by the High Court as Suresh Prabhakar Prabhu had ceased to be a Director of the Company as on 6th May, 1996 has become final it was not proper for the High Court to permit in respect of the same Company five other cases to proceed, merely because the respondent had disputed the correctness of the holding of elections etc. It does not stand to reason. Whether Suresh Prabhu was a Director of the Company in November/December 1996 is a question of fact. That  
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question of fact stood determined by the High Court when it allowed the 18 criminal revision applications by holding that he had resigned which resignation had become effective long before the issuance of the cheques in question. Once this finding had been recorded, the High Court ought to have applied the same while considering the other criminal revision applications, notwithstanding the non-acceptance of the factum

election of the complainant. We need not go into the question as to whether the resignation of the Director becomes effective from the date he resigns as sought to be contended by Mr. Ashok Desai, because in the present case we are satisfied that the High Court having decided in 18 cases that the resignation had become effective as on 6th May, 1996 no other view with regard thereto was possible. This being so, the judgment of the High Court whereby applications filed by Suresh Prabhakar Prabhu were rejected, are allowed. It is made clear that this decision will in no way affect the complaints filed against other Directors.

SLPs(Crl.) Nos. 2304 & 2303 of 2002@@  
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Leave granted.

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: 5 :

Interim orders to continue.

The proceedings before the Trial Court to continue. It will not be necessary for the petitioners to be present in person in the Court and their personal presence is dispensed with. The operation of the arrest warrant is stayed.

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.....CJ.

.....J  
(K.G. BALAKRISHNAN)

.....J  
(ARIJIT PASAYAT)

New Delhi;  
August 29, 2002.