

2016 (0) AIJEL-HC 235586

GUJARAT HIGH COURT

Hon'ble Judges:R.M.Chhaya, J.

N.L.Forex Limited Versus State Of Gujarat

SPECIAL CRIMINAL APPLICATION No. 1667 of 2009 ; *J.Date :- JUNE 9, 2016

- [CONSTITUTION OF INDIA](#) Article - [226](#)
- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [482](#)

Cases Referred to :

1. Hiralal Harilal Bhagwati V/s. Cbi, New Delhi, 2003 5 SCC 257
2. Iridium India Tele Com Ltd. V/s. Motorola Inc., 2011 1 SCC 74
3. Maksud Saiyed V/s. State Of Gujarat & Ors., 2008 5 SCC 668
4. Niranjan Singh Karan Singh Punjabi, Advocate V/s. Jitendra Bhimraj Bijjaya & Ors. & Ors., 1990 4 SCC 76
5. S.K.Alagh V/s. State Of Uttar Pradesh & Ors., 2008 5 SCC 662
6. [Standard Chartered Bank V/s. Directorate Of Enforcement, 2005 4 SCC 530 : 2005 \(3\) GLH 316 : 2005 \(275\) ITR 81 : 2005 CrLJ 4917 : 2005 \(5\) Scale 97](#)
7. State Of Maharashtra V/s. Messrs Syndicate Transport Co (P) Ltd., AIR 1964 Bom 195
8. State Of Rajasthan V/s. Shamsheer Singh, 1985 Supp SCC 416
9. Sunil Bharti Mittal V/s. Central Bureau Of Investigation, 2015 4 SCC 609
10. Supdt. And Remembrancer Of Legal Affairs V/s. Anil Kumar Bhunja & Ors., 1979 4 SCC 274

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2016 JX(Guj) 778 : 2016 AIJEL_HC 235586

JUDGMENT :-

1 By way of this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal procedure, 1973 (hereinafter referred to as "the Code" for short), the petitioner has prayed for quashing and setting aside the order dated 28.03.2006 passed below Exh:29 and order dated 30.06.2009 passed below Exh:63 in Special Case No.1 of 2004, which is pending before learned Special Judge, CBI Court, Ahmedabad.

2 At the outset, it deserves to be noted that the matter was pending at the stage of notice and the proceedings were stayed vide order dated 25.09.2009 qua the present petitioner and thereafter, the said order came to be modified by further order dated 22.01.2013.

3 In light of the aforesaid facts and with consent of learned counsel for all the parties, the matter was heard fully for its final hearing. Rule. Learned counsel for the respective respondents waive Rule for the respondents and is heard forthwith.

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4 Heard Mr.K.S.Nanavati, learned Senior Counsel with Mr.P.K.Nanavati, learned counsel for Nanavati Associates for the petitioner Company, Mr.R.C.Kodekar, learned Retainer Counsel for C.B.I and Mr.L.B.Dabhi, learned A.P.P for the respondent State.

5 The following facts emerge from the record of the petition:-

5.1 The petitioner is Company registered under the Companies Act, having its head office at Mumbai. The petitioner Company is engaged in the business of money exchange and has various counters at different Airports throughout India.

5.2 Record indicates that on receipt of specific information, C.B.I inspected the office of the petitioner Company at Sardar Vallabhbhai Patel International Airport, Ahmedabad, on 14.01.2001 along with the custom counter and the rooms used by the custom officers on duty at the Airport. As per the information, the custom officers on duty at the Airport used to collect foreign currency as well as Indian currency on incoming passengers and unauthorized in connivance with the petitioner's firm to get it exchanged. The officials of C.B.I conducted the said check on 14.01.2001 at Sardar Vallabhbhai Patel International Airport, Ahmedabad as above.

5.3 Record further indicates that during said check by C.B.I, four custom officials, who were on duty, were found in possession of cash exceeding limit without making any declaration in Currency Declaration Register and in the changing room, Indian currency as well as foreign currency were found of different denomination along with one bottle of Johnny Walker whiskey (1 Liter). During the said check, at the counter of the petitioner's firm, it was found that 47 Omani Riyals were only exchanged on that day. Record further indicates that currency amount of Rs.1,21,400/-, 325 U.S Dollar, 90 U.A.E Dirhams and 10 U.K Pounds were also found unaccounted with the petitioner's firm.

5.4 The persons on duty of the petitioner s firm were unable to explain the possession of the unaccounted currency, and Books of Accounts of the petitioner s firm also did not reflect the unaccounted currency.

5.5 In light of the aforesaid factual background, the complaint came to be registered for the offences under Sections 477A and 34 read with Section 109 and 114 of the Indian Penal Code, Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. After the investigation, C.B.I filed chargesheet against two custom officers, authorized persons as well as two Directors of the petitioner Company and the petitioner Company. It is pertinent to note that after the chargesheet was filed, original accused Nos.5 and 6 and the present petitioner being accused No.7 submitted an application for discharge as provided under Section 227 of the Code on 25.10.2004, which came to be rejected vide order dated 28.03.2006 passed below Exh:29. The record also indicates that on the same day, charge came to be framed against the present petitioner as well.

5.6 The said order came to be challenged by original accused Nos.5 and 6 i.e. Directors of the petitioner s Company and the petitioner by way of filing Special Criminal Application No.686 of 2006, inter alia, prayed as under:-

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"(A) Your Lordships may be pleased to issue appropriate writ, order or direction to quash and set aside chargesheet dated 12.02.2004, in Special Case No.1 of 2004 and order dated 28.03.2006 below Exh:6 in Special Case No.1 of 2004, and order dated 28.03.2006 below Exh:29;

(B) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to stay further proceedings in Special Case No.1 of 2004 pending before Hon'ble Court No.4 of learned Special Judge, CBI and be further pleased to day operation and implementation of order dated 28.03.2006 passed by learned Special Judge, CBI below Exh:29 in Special Case No.1 of 2004;

(C) An ex parte ad interim relief in terms of prayer

(B) above may kindly be granted.

(D) ***."

5.7 This Court [Coram: Hon'ble Mr.Justice K.S.Jhaveri] vide order dated 27.12.2006 was pleased to partly allow the said petition qua original accused Nos.5 and 6 i.e. Directors of the petitioner Company and on statement made by learned counsel for the petitioner, permitted the petitioner i.e. petitioner No.3 in Special Criminal Application No.686 of 2006 and the present petitioner Company to withdraw the same vide order dated 27.12.2006. It is pertinent to note at this stage that in paragraph Nos.8 and 9 of the order dated 27.12.2006 passed by this Court in Special Criminal Application No.686 of 2006, this Court observed as under:-

"8. In the premises aforesaid this petition is partly allowed. The chargesheet dated 12.02.2004 in Special Case No. 1 of 2004 and order dated 28.03.2006 below exh. 6 and 29 are hereby quashed and set aside qua petitioners no 1 and 2 only. Rule is made absolute accordingly.

9. It shall be open to the petitioner no. 3 to file appropriate application before the trial court."

5.8 After withdrawing the petition challenging the order of discharge passed below Exh:29 dated 28.03.2006 in Special Case No.1 of 2004, present petitioner preferred another application being Exh:63 and prayed as under:-

"a) Your Honour may be pleased to pass appropriate order absolving the present applicant from the prosecution in the present case on the foregoing grounds and others which may be urged at the time of the hearing.

b) ***."

5.9 The said application came to be rejected vide order dated 30.06.2009. It is also pertinent to note that though the petitioners by way of filing petition had earlier challenged order dated 28.03.2006 passed below Exh:29 in Special Case No.1 of 2004 and withdrew earlier petition, present petition is filed, inter alia, challenging the earlier order as well as subsequent order dated 30.06.2009 passed below Exh:63.

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6 Learned counsel for the petitioner raised following contentions and has also submitted written submissions :-

(i) That 2 Directors of the petitioner Company being original accused Nos.5 and 6 along with the present petitioner had filed Special Criminal Application No.686 of 2006, which came to be allowed qua two Directors of the petitioner Company i.e. original accused Nos.5 and 6 vide order dated 27.12.2006 and therefore, link or connection between the offence and the petitioner Company stands severed.

(ii) As provided in the order dated 30.06.2009, the petitioners preferred another application being Exh:63, which has been wrongly rejected even though there is no link or connection between the alleged offence and the petitioner Company.

(iii)It was contended that it is nowhere held that accused No.3 viz. Shri Mahesh Keshavlal Patel and accused No.4 viz. Shri Jitendra Dwarkadesh Balodiya were guided by the petitioner Company, so as to impute their alleged criminal intent on the petitioner and it is not the case of the prosecution that the said accused were guided the petitioner Company.

(iv) Accused Nos.3 and 4 were the exchange officers employed by the petitioner Company and even if, there is criminal intent on their part, the same cannot be imputed on the employer petitioner Company.

(v) There is no concept of vicarious liability in Criminal law unless the statute covers it within its ambit.

7 Learned counsel for the petitioner Company has relied upon the following judgments on the said aspect:-

(i) Hiralal Harilal Bhagwati Vs. CBI, New Delhi [2003 (5) SCC 257]

(ii) Maksud Saiyed Vs. State of Gujarat & Ors. [2008 (5) SCC 668]

(iii)S.K.Alagh Vs. State of Uttar Pradesh & Ors. [2008 (5) SCC 662]

8 Relying upon the judgment of the Bombay High Court in the case of State of Maharashtra Vs. Messrs Syndicate Transport Co (P) Ltd. [AIR 1964 Bom. 195], it was contended by learned counsel for the petitioner that the Company cannot have mens rea and in absence of mens rea, the proceedings must be quashed and set aside. It was also contended that the Company cannot be prosecuted and punished for criminal offences that involve personal malicious intent.

9 Learned counsel for the petitioner has further relied upon the judgment of the Apex Court rendered in the case of Standard Chartered Bank Vs. Directorate of Enforcement [(2005) 4 SCC 530] to buttress the said contentions. It was contended that as two Directors have been discharged vide order dated 27.12.2006 passed by this Court in Special Criminal Application No.686 of 2006, the petitioner is not any more connected with the alleged offence. Relying upon the judgments of the Apex Court in the cases of Iridium India tele Com Ltd. Vs. Motorola Inc. [(2011) 1 SCC 74] and Sunil Bharti Mittal Vs. Central Bureau of Investigation [(2015) 4 SCC 609], it was contended that only criminal intent of the 'alter ego' of the

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Company that is the personal group of persons that guided the business of the Company, would be imputed to the Company/Corporation. It was also contended that the offence as alleged in the chargesheet, which are alleged to have been committed by human being, cannot be attributed to any juristic persons.

10 Lastly, relying upon the statements recorded and materials collected during investigation, it was contended that for the common intention of deriving benefit of other accused as recorded in the chargesheet, the petitioner Company cannot be made vicariously liable for such offence of accused Nos.3 and 4. It was, therefore, contended that any further continuation of the present case against the petitioner would amount to abuse of process of law and therefore, the same deserves to be quashed and set aside.

11 Per contra, Mr.R.C.Kodekar, learned Retainer Counsel for C.B.I has taken this Court through the factual matrix arising out of this petition and has raised the following contentions:-

(i) Having withdrawn the earlier matter, the second discharge application was not maintainable.

(ii) There is no provision in the Code to pursue the second application in respect of discharge. Explaining the provision as laid down under the Code, it was contended that after discharge only stage comes is the commencement of trial.

(iii)It was also contended that knowing fully well that second discharge application is not maintainable, present petition is filed. It is evident from the prayers couched in the petition i.e. prayer 17(A) of the petition that it is nothing, but second round of litigation under Article 226 of the Constitution of India read with Section 482 of the Code.

(iv) As per the material collected during the course of investigation, it clearly reveals that the present petitioner Company being employer of accused Nos.3 and 4 hatched conspiracy with the custom officers of accused Nos.1 and 2 and committed the offence by forging its registers and are found in possession of unaccounted foreign currency as well as Indian currency and therefore, there is a presence of mens rea on part of the petitioner Company itself.

12 Relying upon the evidence and material collected and statements of PWs:11, 12, 19, 16, 17, 18 and 20 as well as other documents like cheque memo, receipt memo, encashment certificate etc, it was contended that there is ample material on record against the present petitioner original accused No.7. Relying upon clause 3 of the Memorandum of Instruction as well as letter of the petitioner Company to RBI, it was contended that accused Nos.3 and 4 are representatives/authorized officials of the petitioner company and therefore, it was contended that there is overwhelming evidence against the petitioner Company and prima facie case is established and there is fair chance of convicting the petitioner Company.

13 Relying upon the judgments of the Apex Court rendered in the cases of Standard Chartered Bank & Ors. Vs. Directorate of Enforcement & Ors. [2005 (4) SCC 530] and Sunil Bharti Mittal Vs. Central Bureau of Investigation [2015 (4) SCC 609], it was contended that the petitioner Company being corporate body can be prosecuted for the offence as alleged. It was also contended that the petitioner being legal entity, mens rea can be established by the

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acts/omissions of its employees i.e. accused Nos.3 and 4. The petitioner Company has vital interest in the business and it was contended that at Sardar Vallabhbhai Patel International Airport, Ahmedabad, registers were prepared and verified by accused Nos.3 and 4 as authorized officers of the petitioner Company.

14 Relying upon the judgments of the Apex Court in the cases of Supdt. And Remembrancer of Legal Affairs Vs. Anil Kumar Bhunja & Ors., [1979 (4) SCC 274], Niranjana Singh Karan Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijjaya & Ors. & Ors. [1990 (4) SCC 76- and 2005 (1) SCC 568, it was further contended that while deciding discharge application, generally the Court has to only consider the materials placed before it by the Investigating Officer by considering sufficient grounds for proceedings against the accused. It was reiterated under the guise of the petition under Article 226 of the Constitution of India read with Section 482 of the Code that the petitioner has sought same relief(s) by way of second round of litigation, which in fact is not maintainable. It was further submitted that on the contrary, present petition is an abuse of process of law and the same deserves to be dismissed.

15 Mr.L.B.Dabhi, learned APP for the respondent State has adopted the arguments made by Mr.R.C.Kodekar, learned Retainer Counsel for CBI and has submitted that the petition is devoid of merits and the same deserves to be dismissed. No other and further submissions are made by learned counsel for the respective parties.

16 Before considering the submissions made by learned counsel for the parties, it would be appropriate to relook to the prayers prayed for in earlier petition filed by the petitioner being Special Criminal Application No.686 of 2005, wherein the petitioners had challenged the order below Exh:29 passed in Special Case No.1 of 2004 as well as very chargesheet dated 28.03.2006 as per the prayers quoted hereinabove.

17 On perusal of the order dated 27.12.2006 passed by this Court, more particularly para-9 thereof, it reveals that the petitioners withdrew the said petition. However, this Court in para-9 permitted the petitioners to approach the Trial Court again. Therefore, it is an admitted position that the present petition is the second petition and second round of litigation on the same point as pointed out by learned counsel for C.B.I. However, keeping the said question open i.e. whether this second petition is maintainable or not; treating this petition also under Article 226 of the Constitution of India, this Court has thought it fit to hear the parties on the main issue on merits.

18 In light of the aforesaid view taken by this Court, judgments cited by learned counsel for the petitioner in para-5 are not necessary to be dealt with.

19 On examination of the record, it clearly appears that the petitioner Company is in the business of foreign exchange and has counter at Sardar Vallabhbhai Patel International Airport, Ahmedabad and accused Nos.3 and 4 are the employees of the petitioner Company. It deserves to be noted that the Memorandum of Instructions for fullfledge money changers, inter alia, provides that money changer should at the end of each calender year furnish to the office of the R.B.I under whose jurisdiction they are functioning, their names, their specimen signature, their representatives, who are authorized to undertake the business and even the change is to be listed promptly.

20 Apropos the said provision in the Memorandum, record indicates that the petitioner Company informed the R.B.I that Mr.Vijay Patel, Mr.Mahesh Patel, Mr.Girish Patel and one

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Mr.Mukesh Himmatlal would be the authorized persons of the petitioner Company as per para-3 of the Memorandum and shall be authorized to buy and sell currency notes during calender year 2000. Therefore, it clearly transpires that accused Nos.3 and 4 were the authorized officers of the petitioner Company as per para-3 of the memorandum.

21 Considering the prima facie evidence on record in form of various statements of witnesses, cheque memo, receipt memo, other documentary evidences in form of encashment certificate, there is ample evidence, which links the petitioner Company. Only because two Directors, who were also arraigned as accused against whom the chargesheet in question was quashed would not absolve the petitioner Company totally. The fact remains that accused Nos.3 and 4 have acted for and on behalf of the petitioner Company. Observation made by this Court in earlier order, para-7 relates to the two Directors against whom the chargesheet is quashed. In facts of this case, accused Nos.3 and 4 have acted as the authorized persons of the petitioner Company and therefore, it cannot be said that the petitioner Company is made vicariously liable for omission of its employees.

22 The petitioner has relied upon the judgment of the Apex Court in the case of Hiralal Bhagwati (Supra), wherein the very petitioner withdrew the petition. The same with respect relates to the immunity granted under Kar Vivad Samadhan Scheme, 1998 and therefore, the said judgment would not be applicable to the present case. Similarly, the petitioner has relied upon the judgments of the Apex Court in the cases of Maksud Saiyed Vs. State of Gujarat & Ors. [2008 (5) SCC 668] and S.K.Alagh Vs. State of Uttar Pradesh & Ors. [2008 (5) SCC 662 (Para-16)]. In the case on hand, the petitioner is the Company, who had license to deal with foreign exchange at Sardar Vallabhbhai Patel International Airport, Ahmedabad, which, in fact, the petitioner Company operated/functioned through accused Nos.3 and 4 as its authorized persons. In the case of Maksud Saiyed (supra), the Apex Court has considered the concept of vicarious liability in criminal law vis. a vis. its Managing Director where the company is the accused, whereas the case on hand, the petitioner is the Company, who in fact had filed earlier application for discharge being Exh:29, which came to be dismissed vide order dated 28.03.2006, against which the petitioner has also preferred Special Criminal Application No.686 of 2006, which came to be withdrawn. In light of the aforesaid, the ratio laid down by the Apex Court in the case of Maksud Saiyed (supra) does not take the case of the petitioner any further. The petitioner Company charged directly for the commission of the offence as alleged.

23 At this juncture, it would be appropriate to refer to the judgment of the Apex Court in the case of Standard Chartered Bank (supra), wherein the Apex Court has observed thus:-

"25. The question, therefore, is what is the intention of the legislature. It is an undisputed fact that for all the statutory offences, company also could be prosecuted as the "person" defined in these Acts includes "company, or corporation or other incorporated body."

26. Even for offences under Section 56(1)(ii) FERA Act, the company could be prosecuted as the amount involved is less than rupees one lakh and there is no mandatory sentence of imprisonment and the prescribed punishment is imprisonment for a term which may extend to three years or with fine or with both. It is also pertinent to note that the object of the amendment was to have more stringent provisions where the amount involved in the offence is more than rupees one lakh. It is not reasonably possible to assume that amendment to the Section was carried out to

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give immunity to corporate bodies from prosecution for serious offences. The scheme of the Indian Penal Code also would show that for serious and graver offences, mandatory sentence of imprisonment is prescribed and for less serious offences the court is given a discretionary power of imprisonment or fine.

27. In the case of penal code offences, for example under Section 420 of the Indian Penal Code, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under Section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellants' plea is accepted that for the offence under Section 417 IPC, which is an offence of minor nature, a company could be prosecuted and punished with fine whereas for the offence under Section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted as there is a mandatory sentence of imprisonment.

28. So also there are several other offences in the Indian Penal Code which describe offences of serious nature whereunder a corporate body also may be found guilty, and the punishment prescribed is mandatory custodial sentence. There are series of other offences under various statutes where accused are also liable to punished with custodial sentence and fine.

29. The contention of the appellants is that when an offence is punishable with imprisonment and fine, the court is not left with any discretion to impose any one of them and consequently the company being a juristic person cannot be prosecuted for the offence for which custodial sentence is the mandatory punishment. If the custodial sentence is the only punishment prescribed for the offence, this plea is acceptable, but when the custodial sentence and fine are the prescribed mode of punishment, the court can impose the sentence of fine on a company which is found guilty as the sentence of imprisonment is impossible to be carried out. It is an acceptable legal maxim that law does not compel a man to do that which cannot possibly be performed [impotentia excusat legem]. This principle can be found in Bennion's Statutory Interpretation 4th Edn. At page 969. "All civilized systems of law import the principle that *lex non cogit ad impossibilia*." As Patterson, J. said "the law compels no impossibility". Bennion discussing about legal impossibility at page 970 states that, "If an enactment requires what is legally impossible it will be presumed that Parliament intended it to be modified so as to remove the impossibility element. This Court applied the doctrine of impossibility of performance [*Lex non cogit ad impossibilia*] in numerous cases [State of Rajasthan vs. Shamsher Singh, 1985(Supp.) SCC 416; Special Reference No.1 of 2002 reported in 2002(8) SCC 237].

30. As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the Legislature is to give complete immunity from prosecution to the corporate bodies for these grave

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offences. The offences mentioned under Section 56(1) of the FERA Act, 1973, namely those under Section 13, clause (a) of sub-section (1) of Section 18; Section 18A; clause (a) of sub-section (1) of Section 19; sub-section (2) of Section 44, for which the minimum sentence of six months' imprisonment is prescribed, are serious offences and if committed would have serious financial consequences affecting the economy of the country. All those offences could be committed by company or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences, if these offences involve the amount or value of more than one lakh, and that they could be prosecuted only when the offences involve an amount or value less than one lakh.

31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the Section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the life, liberty and property of the citizens. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.

32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment. We overrule the views expressed by the majority in Velliappa Textiles on this point and answer the reference accordingly. Various other contentions have been urged in all appeals, including this appeal, they be posted for hearing before appropriate bench."

24 In light of the aforesaid, the petitioner cannot now seek shelter of the earlier order, whereby the petitioner had challenged the very said order passed below Exh:29 dated 28.03.2016 and had withdrawn the same. The contention raised by learned counsel for the petitioner that only criminal intent of 'alter ego' of the Company i.e. group of persons that guided the business of the petitioner company would be imputed of the Company would not take the case of the petitioner any further. As noted hereinabove, as per para-3 of the Memorandum, accused Nos.3 and 4 are the authorized officers/employees of the petitioner Company, who were the authorized persons of the petitioner Company.

25 Considering both the orders impugned and record of this petition, it clearly appears that the charge has already been framed on the same day on which the order dated 28.03.2006 came to be passed rejecting the application for discharge filed by the petitioner along with the other accused being Exh:29 and therefore, it cannot be said that the same is in any manner an

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abuse of process of law. At the stage of considering the application of discharge, the Court has not to weigh the evidence, but has to consider the materials placed before it and has to consider whether there is any sufficient ground to proceed against the accused.

26 In light of the aforesaid, both the orders impugned in this petition are legal and proper. Even if the aspect of 'alter ego' as contended by learned counsel for the petitioner is examined, the fact remains that accused Nos.3 and 4 are authorized persons of the petitioner Company itself and therefore, the Company does not get absolve only because the chargesheet filed qua two Directors has been quashed by this Court. The petitioner Company, therefore, cannot be permitted to read the earlier order passed by this Court as per its convenience, whereas it is an admitted fact that the very petitioner Company had withdrawn the earlier petition. It clearly appears from both the orders impugned that the learned Trial Court has examined the same in its real scope and ambit and therefore, has rightly rejected the application below Exh:63.

27 In the present case also, the counter at Sardar Vallabhbhai Patel International Airport, Ahmedabad was operated by the authorized persons of the petitioner Company for and on behalf of the petitioner Company and therefore, only because of the order passed by this Court in Special Criminal Application No.686 of 2006 dated 27.12.2006 in favour of two directors, would not mean that the petitioner Company cannot be prosecuted for the alleged offences and no immunity can be granted to the petitioner Company on the principle of 'alter ego' as tried to be canvassed by learned counsel for the petitioner Company.

28 Role played by accused Nos.3 and 4 as authorized persons of the petitioner Company and in light of the sufficient evidence, whereby prima facie involvement of the Company is borne out, there are sufficient grounds for proceedings against the petitioner Company.

29 Considering the ratio laid down by the Apex Court in the case of Standard Chartered Bank (Supra), having committed serious offence that too of foreign exchange as alleged in the chargesheet, the petitioner Company cannot be let free for such offence and therefore, the contention that there was no mens rea on part of the company, also deserves to be negated.

30 The application for discharge has been, in fact, examined in the present case twice by learned Trial Court and once by this Court and therefore, the contention raised by learned counsel for the petitioner that the impugned orders and the chargesheet are abuse of process of law, deserves to be negated. The petitioner cannot be permitted to dissociate itself from accused Nos.3 and 4, who are the authorized officers of the petitioner company. In the facts and circumstances of the case and as per the record of the case, it cannot be said that there is no case against the present petitioner. Even at the cost of repetition, it deserves to be noted that accused Nos.3 and 4 as authorized officers of the petitioner Company have operated foreign exchange counter at Sardar Vallabhbhai Patel International Airport, Ahmedabad, wherein ample evidence is collected, which deserves to be examined by the competent Court at the time of trial. No case for discharge is made out by the petitioner company.

31 In light of the aforesaid, this is not a fit case for exercise of jurisdiction under Article 226 of the Constitution of India read with Section 482 of the Code and therefore, present petition deserves to be dismissed. Rule is discharged.

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