
(2011) CriLJ 4778

Calcutta High Court

Case No: C.R.R. No"s. 2788 and 4483 of 2008

National Stock
Exchange of India Ltd.
and Another etc.

APPELLANT

Vs

The State of West
Bengal and Another
etc.

RESPONDENT

Date of Decision: July 29, 2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 200, 203, 204, 245(2), 397#Penal Code, 1860 (IPC) â€” Section 34, 405, 406, 406, 511#Securities Contracts (Regulation) Act, 1956 â€” Section 11(1), 2, 29, 4

Citation: (2011) CriLJ 4778

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: Jomalya Bagchi, Sourav Chatterjee, for the Appellant; Amit Bhattacharyee, Ayan Bhattacharya for Respondents and Alok Roy Chowdhury, for State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Syamal Kanti Chakrabarti, J.

Both these revisional applications have been preferred for setting aside the order dated 28.05.2008 passed

by the learned Metropolitan Magistrate, 11th Court, Calcutta in Case No. C/2220 of 2002 under Sections 406, 406/511/34 IPC.

2. Since the aggrieved parties have filed two separate revisional applications against the aforesaid common order both the revisional applications

are taken up for consideration together for the sake of convenience and brevity.

3. In CRR 2788 of 2008 preferred by the National Stock Exchange of India Limited and National Securities Clearing Limited both the companies

have claimed that they are public limited companies incorporated under the provisions of Companies Act, 1956 with the object of facilitate, assist,

regulate and manage in the public interest relating to securities of all kinds to provide specialized, advanced, automated and modern facilities for

treading, clearing and settlement of securities and to ensure trading in a transparent, fair and open manner. Their objects include support, develop,

promote and maintain a healthy market in the best interest of the investor, agent, public and the economy. It is a stock exchange duly recognized by

the Central Government/Securities and Exchange Board of India u/s 4 of the Securities Contracts (Regulation) Act, 1956 (ACRA). The petitioner

No. 2 is a wholly owned subsidiary of the petitioner No. 1 undertaking the cleaning and settlement of transactions done by the petitioner No. 1.

Because of inimical relation the opposite party No. 2 Surendra Kumar Jain, Director, Rusoday Securities Limited filed written complaint against

nine accused persons including the two petitioners hereinbefore the learned Metropolitan Magistrate, 11th Court at Kolkata which is registered as

CC No. 2220 of 2002 u/s 406/511/34, IPC. In the said complaint case the accused petitioners filed an objection petition dated 14.02.2006

praying for their discharge u/s 245(2) Cr.P.C. By order dated 28.05.2008 the learned Magistrate has allowed the petition in part and discharged

seven accused persons namely, accused No. 3 Mr. Ravi Narayan, Managing Director of National Stock Exchange India Limited, accused No. 4

Mr. Raghavan Patram, Director of National Securities Clearing Corporation Limited, accused No. 5 Ms. Chitra Ramkrishnan, Director of

National Stock Exchange of India Limited, accused No. 6 Mr. J. Ravichandra, Vice President and Company Secretary, National Stock Exchange

of India Limited, accused No. 7 Mr. M. L. Sonejee, Senior Vice President, National Securities Clearing Corporation Limited, accused No. 8 Mr.

R. Sundarama, Assistant Vice President, National Stock Exchange of India Limited and the accused No. 9 Mr. D. Datish Kumar, Assistant Vice

President of National Stock Exchange of India Limited and rejected the prayer for discharge made by the two petitioners. Being aggrieved by and

dissatisfied with such order the present two petitioners have preferred this revisional application being 278 of 2008. On the contrary the opposite

party No. 2 filed another revisional application u/s 397/399 Cr.P.C. being Criminal Revision No. 101/2008 before the learned Chief Judge, City

Sessions Court, Calcutta for setting aside the said order passed by the learned Court below discharging seven accused persons cited above

impleading them as opposite party Nos. 1 to 7.

4. In revisional application No. 4483 of 2008 the opposite party No. 2 Surendra Kumar Jain had prayed for transfer of the said criminal revision

No. 101 of 2008 pending before the Court of learned Additional Sessions Judge, Sixth Fast Track Court, Bichar Bhavan, Calcutta for hearing

along with the revisional application No. CRR 2788 of 2008. The said prayer was allowed by this Hon"ble Court by order dated 19.01.2009. As

both the revisional applications relate to same order this Hon"ble Court has decided that both the matters should be heard together and disposed

of the CRR No. 4483 of 2008 accordingly. Therefore, the revisional application No. 101 of 2008 pending before the learned Additional Sessions

Judge, Sixth Fast Track Court, Bichar Bhavan is also now taken up for consideration under same C.R.R. No. 4483 of 2008 along with CRR

2788 of 2008.

5. I have perused the impugned order dated 28.05.2008. In dealing with the prayer for discharge the accused persons raised five points in support

of their contentions namely, a) The complaint is barred by limitation, b) No properties were entrusted to accused Nos. 3 to 9 u/s 29 of the

Securities Contracts (Regulation) Act, 1956, c) Incapacity of the accused Nos. 1 and 2 being company incapable to commit an offence, d) Money

entrusted will not be within the definition of "property", e) That the dispute of the complainant relates to civil suit in nature and as such the

petitioners accused cannot be criminally prosecuted. Mr. Roy Chowdhury, the learned lawyer for the State has also argued on the same line before

this Court.

6. In dealing with all these points the learned Court below has held relating to the question of limitation that it has been claimed in the complaint that

the complainant, came to know about the commission of the alleged offence on 03.07.2001 from the written statement filed by the accused

persons in a suit being No. 429 of 2000 before the Hon"ble High Court at Calcutta. So the period of limitation will commence from the date of the

knowledge, i.e., 03.07.2001 as provided in Section 469(1)(b) Cr.P.C. Since the period of limitation for taking cognizance of an offence u/s 406

IPC is three years from the date of knowledge and cognizance was taken on 18.05.2002 the learned Court below has held that the complaint was

within the period of limitation and the accused persons are not entitled to claim any discharge on grounds of limitation.

7. So far as second point is concerned the learned Court below has considered the provisions of Section 29 of the Securities Contracts

(Regulation) Act, 1956 together with Article 22 of Chapter IX of the bye-laws June, 2000 of the National Stock Exchange of India Limited and

held that in the petition of complaint it is alleged that the money was entrusted with accused Nos. 1 and 2 while accused Nos. 3 to 9 were the

persons in charge of those two companies. Therefore, the case is not maintainable against accused Nos. 3 to 9 being barred by law and there are

inherent infirmities in the complaint which vitiates the trial and should not be continued in order to prevent abuse of the process of law. Therefore,

he has decided to discharge accused Nos. 3 to 9. So far as the third point is concerned, regarding vicarious liability of the company the argument

advanced by the accused Nos. 1 and 2, i.e., both the petitioners herein, was not accepted by the learned Court below. He has referred to the

principles laid down in the case of Standard Chartered Bank and Others etc. Vs. Directorate of Enforcement and Others etc., . In the said case

the Hon"ble Apex Court held that though a company cannot be sentenced to imprisonment, it can nevertheless, be prosecuted and saddled with

the punishment of fine. The same principles were followed by this Hon"ble Court in the case of Messrs. Raymond Limited (KFT Division) v.

Messrs. H. B. Doshi reported in (2006) 1 C.Cr.L.R. (Cal) 186 and the case of Messrs. Bhaskar Tea and Industries Limited reported in (2007) 2

C.Cr.L.R. (Cal) 737. Accordingly, he has rejected the prayer of discharge made by the two petitioner companies. So far as the fourth point is

concerned, the learned Court below has held that the word "property" used in the code has a much wider sense than the expression "movable

property". Therefore, the shares and bank guarantees must come under the definition of "property" as they have corporal existence. The essential

ingredients of Section 406 IPC are that the property regarding which the offence is alleged to have been committed must have been entrusted to

the accused or he must be dominant over it. Therefore, he has rejected the argument of the accused persons. So far as the fifth and last point is

concerned the learned Court below is of the view that the alleged facts may give rise to both civil claim and criminal offence. Merely because a civil

claim is maintainable does not mean that criminal complaint cannot be maintained. In this respect he has referred to and relied upon the principles

laid down in Lalmoni Devi v. State of Bihar and Ors. reported in (2001) SCC (Cri) 275 : (2001 AIR SCW 2504).

8. From another point of view the learned Court below has taken an affirmative view on this point because in connection with another revisional

application being CRR 514 of 2003, this Hon"ble Court held inter alia, that there is prima facie case under Sections 406, 406/511 and 34 IPC and

said findings has reached its finality.

9. Both the contending parties are aggrieved by and dissatisfied with the findings of the learned Court below for which in CRR 101 of 2008 the

opposite party No. 2 has prayed for setting aside the entire order dated 28.05.2008 but in a separate revisional application being CRR 2788 of

2008 both the petitioner companies have prayed only for setting aside the said order so far they are concerned and to discharge them from the said

complaint case No. C-2220 of 2002.

10. The revisional application being CRR 514 of 1993 was, however, preferred by the petitioner Rushaday Securities Limited against order dated

21.01.2003 passed by the learned Court below. By such order the said complaint case No. C-2220 of 2002 was dismissed u/s 203 Cr.P.C. This

Hon"ble Court while considering the order of dismissal has observed that the learned Court below has approached the controversial issue from a

wrong angle and misdirected himself into the matter which will be reflected from the observation of the learned Magistrate as quoted:

Admittedly there has been entrustment of properties of the petitioners but the question is under what regulations forfeiture of these properties is to

be made. According to the complainant forfeiture is to be made as per regulation of NSEIL but the forfeiture has been made by the accused

persons in accordance with the regulations of NSCCL.

11. This Hon"ble Court has further observed that whether the "said forfeiture was as per regulation of NSEIL or in accordance with the regulations

of NSCCL cannot be a matter for consideration at the time of issuing process u/s 204 Cr.P.C. after the stage of 200 Cr.P.C. is over. Moreover,

this Hon"ble Court also observed that the observation of the learned Magistrate for rules, regulations, bye-laws or legal contract applicable to

forfeiture of petitioners" properties is yet to be finalized and is not a concluded contract as yet - this cannot be a ground to indicate any prima facie

case for issuing process. At this stage the learned Magistrate ought not to have considered the ultimate result of the complaint and is not required to

enter into the detailed observation of the merit of the case. Accordingly this Hon"ble Court disposed of the said revisional application with the

following observation:

The learned Magistrate acted illegally by dismissing the complaint when he himself observed that there was entrustment of properties of petitioner

and the accused persons forfeited the same.

This Court held further:

His own findings make out a prima facie case to proceed further into the matter.

Accordingly, this Hon"ble Court set aside the order of learned Magistrate dated 21.01.2003 and directed him to pass necessary order in

accordance with law in view of the indication made in the aforesaid order of the Hon"ble Court dated 02.02.2005.

12. In the above context the merit of the above revisional applications are to be considered and for this purpose the relevant provision of Section

29 of the Securities Contracts (Regulation) Act, 1956 and Article 22 of Chapter (IX) of the bye-laws June, 2000 of the National Stock Exchange

of India Limited are quoted below:

Section 29. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the

governing body or any member, office bearer or servant of any recognized stock exchange or against any person or persons appointed under sub-

section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made

there under.

Chapter IX of the bye-laws June, 2000 of the National Stock Exchange of India Limited
Article 22 -Margin Deposit to be held by the Exchange -

The margin deposits shall be held by the Exchange and when they are in the form of Bank Deposit Receipts and securities and such Receipts and

securities may at the discretion of the relevant authority be transferred to such persons or to the name of a Bank approved by the Exchange. All

margin deposits shall be held by the Exchange and/or by the approved persons and/or by the approved Bank solely for and on account of the

Exchange without any right whatsoever on the part of the depositing trading member or those in its right to call in question the exercise of such discretion.

13. In the petition of complaint the petitioner has claimed that he is a shareholder of Rushday Securities Limited which is a Trading Member in the

National Stock Exchange of India Limited (NSEIL) and NSEIL is a recognized stock exchange within the meaning of Section 2(f) of the Securities

Contracts (Regulation) Act, 1956.

14. In pursuance of the terms and conditions set out by the NSEIL the petitioner company entrusted a sum of Rs. 1.34 crores by way of cash to

NSEIL including bank guarantee to the extent of Rs. 58.75 lacs which was entrusted with NSCCL, an agent of NSEIL. That apart shares valuing

approximately Rs. 25 lacs at the prevailing market price rate was entrusted with NSCCL. All the said entrustments were made during the period

from 1994 to 1997 for the purpose of carrying on business of stock broking through NSEIL and the properties entrusted with NSEIL and

NSCCL came under the dominion and control of accused Nos. 3 to 9 who were in charge and responsible in the day to day affairs of the business

of NSEIL and NSCCL at all material point of time. On or about 03.07.2001 the petitioner company came to know that the various securities

which were entrusted by the petitioner company with NSEIL and NSCCL were dishonestly used and disposed of in violation of the direction of

law which prescribed the mode in which such trust was to be discharged. In fact, on being asked the complainant executed an undertaking in the

prescribed form on or about 19.06.1995. Clause 19 whereof is relevant for the purpose of determining the guilt of the accused. The said clause

runs as follows:

Without prejudice to the foregoing, NSEIL shall be entitled to forfeit any property, fund, amount, deposit or other sum due to the undersigned or

to the credit of the undersigned in such event or contingencies as may be stipulated in the rules, regulations and bye-laws of the NSEIL in force

from time to time.

15. In the written statement filed on behalf of the NSEIL and NSCCL in the suit SC 429 of 2000 before the Hon"ble Court it has been averred

that the outstanding position of securities of the petitioner company were regulated in accordance with the discretionary powers of NSCCL as

provided in item No. 17 of circulation No. NSCC/CM/C&S/030 issued in pursuance of Chapter VIII of the bye-laws of NSCCL. It is contended

by the complainant in paragraph 8 of the petition of complaint that such discretion as exercised by NSCCL are repugnant to the provisions of

Clauses 7, 18 and 26 of Chapter IX of the bye-laws of NSEIL as ought to have been relied upon by the accused persons. Thus accused persons

have violated directions of the Securities Contracts (Regulation) Act, 1956 by imposing the stipulations as framed under the bye-laws of NSCCL

in relation to the complainant company"s outstanding positions of securities and denied applicable stipulations as contained in the bye-laws of

NSEIL as also agreed by the aforesaid undertaking.

16. In the above context both the parties have referred to and relied upon plethora of cases in support of their respective contentions as mentioned

below:

Cases relied upon by the petitioners:

i) All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another,

ii) B. Suresh Yadav Vs. Sharifa Bee and Another,

iii) K.L.E. Society and Others Vs. Siddalingesh,

iv) M. Saravana Porselvi Vs. A.R. Chandrashekar @ Parthiban and Others,

v) Arun Vyas and Another Vs. Anita Vyas, .

vi) State rep. by D.S.P., S.B.C.I.D., Chennai Vs. K.V. Rajendran and Others,

vii) Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, .

- viii) Subramaniam Sethuraman Vs. State of Maharashtra and Another, .
- ix) 1990 C.Cr.L.R. (Cal) 174 [Ashutosh Sarkar & Ors. v. Naturam Das alias Rajjak & Anr.]
- x) 2006 (1) C.Cr.L.R. (Cal) 177 [Tajmul Hossain Shah alias Tajul Shah alias Anr. v. The State of W.B. & Am.]
- xi) 2006 (1) CHN (Cal) 578 [Raymond Ltd (JKFT Division) v. HV Doshi & Bros Pvt. Ltd.]
- xii) Costao Fernandes Vs. State at the instance of D.S.P..C.B.I. Bombay,
- xiii) Punjab National Bank and others Vs. Surendra Prasad Sinha, .
- xiv) Maksud Saiyed Vs. State of Gujarat and Others,
- xv) S.K. Alagh Vs. State of U.P. and Others,
- xvi) 2008 (7) Supreme 794: (2009 AIR SCW 1836) [R. Kalyani v. Janak C. Mehta & Ors.]
- xvii) 2005 (3) E.Cr. Notes (Cal) 465 [National Stock Exchange of India Ltd & Anr. v. State of W.B. & Anr.]
- xviii) The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others,
- xix) 2010 STPL (Web) 404 SC: (AIR 2011 SC (Cri) 1215) [Jeffrey J. Diermeier & Anr. v. State of West Bengal & Anr.]
- xx) 2008 (5) RAJ 285 [Bholu Ram v. State of Punjab & Anr.]

Cases relied upon by the complainant opposite party No. 2:

- i) Om Prakash Mehta v. State & Anr. [2006 (1) CCC (HC) 12: (2006 Cri LJ (NOC) 91 (Del)].
- ii) Pratap Singh Shishodia v. State [1988 (1) Crimes 8]: (1987 All LJ 1403).
- iii) Mahant Abhey Dass Vs. S. Gurdial Singh and Others, .
- iv) Muhammedu Noohu Muhammedu Bashir Vs. K. Balakrishnan and Others, .
- v) Anil Kumar Aggarwal Vs. K.C. Babu, .
- vi) Rajesh Bajaj Vs. State NCT of Delhi and Others, .
- vii) Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, .
- viii) S.W. Palanitkar and others Vs. State of Bihar and another, .

- ix) Harbhajan Singh Vs. State of Punjab, .
- x) M.N. Damani Vs. S.K. Sinha and Others, .
- xi) Oriental Insurance Co. Ltd. and Others etc. Vs. State of Bihar and Another .
- xii) Meera Vs. Mathew, .
- xiii) Murari Mohan Koley v. State of W.B. [2005 (1) RCR (Cri) 939 (Cal).
- xiv) Sunita Jain v. Pawan Kumar Jain [(2008) 2 C Cr LR (SC) 58].
- xv) State of U.P. v. Surendra Kumar [(2006) 2 SCC (Cri) 150].
- xvi) State of Kerala Vs. M.M. Manikantan Nair, .
- xvii) State of Orissa Vs. Debendra Nath Padhi, .
- xviii) Ajay Mehra v. Durgesh Babu [2003 SCC (Cri) 1530].
- xix) The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others, .
- xx) Standard Chartered Bank and Others etc. Vs. Directorate of Enforcement and Others etc., .
- xxi) Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, .
- xxii) M/s. Raymonds Ltd. v. H. K. Doshi [(2006) 1 C Cr LR (Cal) 186].
- xxiii) M/s. Bhaskar Tea & Industries Ltd. v. State [(2007) 2 C Cr LR (Cal) 737].
- xxiv) Ramdas Bhikaji Chaudhari Vs. Sadanand and Others, .
- xxv) Pritam Singh and Another Vs. The State of Punjab, .
- xxvi) N.R. Ghose Vs. The State of West Bengal, .
- xxvii) Masud Khan Vs. State of Uttar Pradesh, .
- xxviii) T.V. Sarma Vs. R. Meeriah and Others, .

17. From the submissions so made by the learned advocates for both the contending parties and the materials on record I find that the following

points need now be considered:

- a) Whether the petition of complaint is barred by limitation,

b) Whether the order dated 02.02.2005 passed in CRR 514 of 2003 is a bar to entertain the second revisional application,

c) Whether misuse of the discretionary power of the petitioner company contrary to the written undertaking can be decided by the revisional Court

without evidence.

d) Whether the learned Court below is justified in discharging the accused Nos. 3 to 9.

18. So far the first point is concerned it is claimed in the petition of complaint that the complainant company came to know about the encashment

of the bank guarantee on or after 03.07.2001 while a written statement was filed on that date in Suit No. 429 of 2000 on behalf of NSEIL and

NSCCL before the Hon"ble High Court at Calcutta. The claims so made in paragraph 7 of the petition of complaint is rebuttable but the person

denying such fact should be given reasonable opportunity to prove that the complainant had knowledge of the above misuse of discretionary power

prior to 03.07.2001. This is a pure question of disputed fact which cannot be decided by the revisional Court within its limited power without

evidence.

19. So far as the third point is concerned in paragraph Nos. 5, 6 and 7 of the petition of complaint the misuse of the discretionary power has been

narrated in the following manner:

5. That your petitioner"s company upon being asked executed an undertaking in the prescribed form on or about 19/6/95 and one of the Clause

19 of the aforesaid undertaking is reproduced here under:

Without prejudice to the foregoing, NSEIL shall be entitled to forfeit any property, funds, amounts, deposit or other sum due to the undersigned or

to the credit of the undersigned in such events or contingencies as may be stipulated in the Rules, Regulations and Byelaws of the NSEIL in force

from time to time.

6. That by executing the aforesaid undertaking your petitioner in turn agreed that any of its property entrusted with NSEIL could be forfeited in

accordance with the stipulation contained in rules and bye-laws of NSEIL.

7. That on or after 3/7/2001 your petitioner's company came to the conclusion that the various securities which were entrusted by your

petitioner's company with NSEIL & NSCCL were dishonestly used and disposed of in violation of the direction of law which prescribed the

mode in which such trust was to be discharged. It came to the knowledge of your petitioner when written statement filed on or about 3/7/2001 in

suit No. 429 of 2000 on behalf of NSEIL & NSCCL before the Hon"ble High Court at Calcutta.

20. Now this claim of the complainant made in paragraph Nos. 5 to 7 is also a disputed question of fact with reference to their written undertaking

the intention of which will have to be adjudicated upon evidence to be adduced in course of trial and not before that and it is for the learned Trial

Court to decide upon evidence the binding force of undertaking given by the petitioner company, i.e., the complaint on or about 19.06.1995 being

asked by the accused company. Unless parties are given adequate opportunity to adduce evidence on this point the revisional Court cannot decide

the matter without evidence. So I hold this point also cannot be taken into account as a valid ground praying for pre trial discharge.

21. So far as the second and fourth points are concerned, the effect of order dated 02.02.2005 passed by this Hon"ble Court in CRR 514 of

2003 cannot be overlooked. It is contended by the learned lawyer for the State that the said order of the Hon"ble Court has reached its Finality

since none moved for setting aside the said finding of the Single Bench of this Hon"ble Court within prescribed time. Since this Hon"ble Court by

the aforesaid order has come to the conclusion that ""the own finding of the learned Trial Court makes out prima facie to proceed further into the

matter"" it forbids the learned Trial Judge to entertain any application for pre trial discharge. Ignoring this aspect the learned Trial Court has

entertained the petition and allowed the prayer for discharge without evidence in favour of accused Nos. 3 to 9 and rejected such prayer in respect

of accused Nos. 1 and 2 which is accordingly not sustainable in law.

22. Much argument has been advanced by the learned advocate for the petitioners in CRR No. 2788 of 2008 that the company being a juristic

person is not liable in any criminal prosecution on grounds of encashment of the bank guarantee by its agents 3 to 9 who were in fact in-charge of

control and day to day affairs of their company. In fact, such a plea has also been taken by the complainant which has been referred to in

paragraph 4 of the petition of complaint in the following manner:

All the above entrustments were made during the period 1994 to 1997 for the purpose of carrying on business of stock broking through NSEIL

and the properties entrusted with NSEIL & NSCCL came under the dominion and control of accused person Nos. 3 to 9 is as much as accused

persons 3 to 9 were in-charge of and responsible for the day to day conduct of the affairs of the business of NSEIL and NSCCL at all relevant

period including at the time of commission of the offence.

This is also a pure question of fact which cannot be decided by the revisional Court without evidence. It is also argued that the bank guarantee

cannot be treated as property within the meaning of Section 405, IPC and as such the petitioners are not liable for prosecution u/s 406. I fully

subscribe to the views rendered by the learned Trial Court to the effect that the word "property" is used in the Court in much wider sense than the

expression "movable property". In the case of R.K. Dalmia Vs. Delhi Administration, it has been set at rest by the Hon"ble Apex Court that there

is no good reason to restrict the meaning to the word "property" to "movable property" only when it is used without any clarification in the Section

or other Sections of the Penal Code.

23. The ratio of the cases referred to and relied upon and cited by the lawyers for the contending parties relates to some given fact in the context of

which the principles were enunciated. But in absence of any proof of fact the merit of the complaint cannot be decided by the revisional Court and,

therefore, I hold that there is no scope for consideration of the application on the merit since all the points agitated by both the contending parties

relate to the disputed questions of fact.

24. In view of what has been stated above I hold that the learned Trial Court has discharged the accused Nos. 3 to 9 and entertained their prayer

for discharge in flagrant violation of the mandate of solemn order of this Court dated 02.02.2005 passed in CRR 514 of 2003 and decided the

questions of fact at pre trial stage without giving opportunities to both the parties to adduce evidence and as such the said order is not sustainable in

law. Therefore, I do not find any merit in the revisional application being CRR 2788 of 2008 filed by the company, which is accordingly dismissed.

In view of what has been stated above, I further hold that there are sufficient merits in the revisional application filed by the opposite party No. 2

being Revisional Application No. 101 of 2008 and accordingly the same is allowed. The impugned order is hereby set aside reserving rights and

contentions of both the parties agitated before me for consideration of the learned Trial Judge in due course. The learned Trial Court is directed to

proceed with the case as per law and to dispose of the same as expeditiously as possible preferably within a period of four months from the date

of communication of the order. Let a copy of this order along with the LCR be sent at once to the learned Court below. Interim order, if any,

stands vacated.

25. Both these revisional applications are thus, disposed of.

26. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.