



2026 INSC 42

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(Arising out of SLP (Crl.) No. 11530 OF 2024)

YERRAM VIJAY KUMAR

...

APPELLANT(S)

VERSUS

THE STATE OF TELANGANA & ANR. ...**RESPONDENT(S)**

WITH

CRIMINAL APPEAL NO. OF 2026
(Arising out of SLP (Crl.) No. 14783 OF 2024)

RAJEEV KUMAR AGARWAL

...**APPELLANT(S)**

VERSUS

THE STATE OF TELANGANA & ORS. ...**RESPONDENT(S)**

JUDGMENT

J.K. Maheshwari, J.

1. Leave granted.
2. The present appeals have been filed against the impugned Judgment dated 20.06.2024 passed by the Single Bench of High

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Reason:

Court for the State of Telangana at Hyderabad (hereinafter referred to as "**High Court**") whereby the petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "**CrPC**") of the Appellants – accused was dismissed. The prayer in the said petition was to quash the criminal proceedings in complaint case bearing C.C. No. 58 of 2022 filed by Respondent No. 2 – Complainant against the Appellants where the Special Court for Economic Offences at Hyderabad (hereinafter referred to as "**Special Court**") has taken cognizance of offences under Sections 448 & 451 of the Companies Act, 2013 (hereinafter referred to as "**Companies Act**") and Sections 420, 406, 426, 468, 470, 471 & 120B of the Indian Penal Code, 1860 (hereinafter referred to as "**IPC**").

FACTS

3. The genesis of the dispute lies in the affairs of a private limited company, namely M/s Shreemukh Namitha Homes Private Limited (hereinafter referred to as "**Company**"), which was incorporated on 19.08.2015 under the provisions of the Companies Act by the Complainant and his wife, Namitha. At the

time of incorporation, they were the promoters, first Directors and majority shareholders of the Company. Accused No. 1, i.e., Appellant in the Criminal Appeal arising out of SLP (Crl.) No. 11530/2024 was inducted as a Director in the Company on 03.09.2016. Accused No. 2, i.e., Appellant in the Criminal Appeal arising out of SLP (Crl.) No. 14783/2024 was inducted as a Director in the Company on 27.08.2015. The initial disputes between the parties arose with regard to management and control of the Company.

4. The original Articles of Association (hereinafter referred to as “**AoA**”) of the Company did not provide any fixed tenure for Directors, nor did it contemplate their retirement by rotation. On 17.08.2016, Accused No. 1 entered into a Memorandum of Understanding with the Complainant and certain other stakeholders, pursuant to which he agreed to make substantial financial investment, approximately to the tune of Rs. 30 crores, in a real estate project of the Company. The arrangement contemplated sharing of profits in mutually agreed proportions.

5. An Extra-Ordinary General Meeting (hereinafter referred to as “**EOGM**”) is stated to have been held on 22.08.2016, preceded by a Board Meeting on 21.07.2016, in which amendments to the AoA were approved and uploaded on the website of the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) on 12.09.2016. As alleged by Accused No. 1, no notice of either meeting was served upon him despite being a Director of the Company at the relevant time. The relevant portion of the amended AoA is reproduced as thus: -

“64. *(i) Subject to the provisions of Section 149, the board shall have the power at any time, and from time to time, to appoint a person as an additional director, provided the number of directors and additional directors together shall not at any time exceed the maximum strength fixed by the Board for the articles.*

***(ii)** Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to provisions of the Act.”*

6. As a result of the amendment in the AoA, the tenure of a Director was fixed until the date of next annual general meeting of the company.

7. On 02.11.2021, the complainant and his wife convened another EOGM wherein the AoA were further amended, in terms of which, all Directors other than the Complainant and his wife were required to retire annually and seek re-appointment. Pursuant thereto, an Annual General Meeting was held on 30.11.2021 wherein resolutions for re-appointment of the Accused were placed. The said resolutions failed as the Complainant and his wife, holding majority shareholding, voted against them. As such, the accused ceased to be Directors of the Company with effect from 30.11.2021.

8. Such removal was challenged by Accused No. 1 before the National Company Law Tribunal at Hyderabad (hereinafter referred to as “**NCLT**”) by filing Company Petition No. 10 of 2022, which is pending adjudication.

9. Subsequent to such challenge, on 19.05.2022, the Complainant filed a private complaint before the Special Court alleging that Accused No. 1 illegally convened an EOGM on 01.12.2021 without authority, appointed third parties as Directors in the Company, fabricated the Board and shareholders’

resolutions, and uploaded statutory filings along with other forged and false documents on the website of the Ministry of Corporate Affairs. In parallel, two civil suits were also instituted by the Appellants before the competent civil courts seeking a permanent injunction against the Company and the Complainant from violating the terms and conditions of MoU dated 17.08.2016 and a declaration that the agreements to sell executed by the Complainant with respect to the properties of the Company be declared void, respectively.

10. The Special Court recorded the sworn statement of the Complainant and, by order dated 10.10.2022, took cognizance of the alleged offences and issued summons to the Appellants, leading to registration of C.C. No. 58 of 2022. Aggrieved by the summoning order and further proceedings, the Appellants invoked inherent jurisdiction of the High Court under Section 482 of CrPC and filed the quashing petition. The Appellants *inter alia* contended that the dispute was essentially civil and corporate in nature; the criminal complaint was a counterblast to the proceedings pending before NCLT; cognizance of offences

involving alleged fraud under the Act, particularly Section 447 was barred by Section 212(6) of the Act in the absence of a complaint by the Serious Fraud Investigation Office (hereinafter referred to as “**SFIO**”) or other authorised agency; and that the mandatory statutory procedure as per the Companies Act preceding investigation were not followed.

11. The High Court *vide* the impugned judgment dismissed the quashing petition, holding that the allegations disclosed a *prima facie* commission of serious offences involving forgery and fraud, and that disputed questions of fact could not be examined in a petition under Section 482 of CrPC. The Appellants have, therefore, approached this Court by way of the present appeals.

ARGUMENTS ADVANCED

12. Mr. Shailesh Madhiyal, learned Senior Advocate appearing on behalf of the Appellants, vociferously urged that the High Court failed to appreciate that the learned Special Court had taken cognizance of various offences including Section 448 of the Companies Act. It is his submission that Section 448 of the

Companies Act clearly specifies that whoever fails to act as per mandate of the said provision shall be liable to be punished under Section 447 of the Companies Act. Therefore, the Special Court should not have taken cognizance under said provisions against the Appellants despite there being an express legal bar contained in the second proviso to Section 212(6) of the Companies Act, which prohibits the taking of cognizance of offences covered under Section 447 of the Companies Act except on a complaint made by the categories of persons prescribed thereunder, namely, the Director of SFIO or any officer of the Central Government authorised by an order in writing in that behalf.

13. It is further submitted that a bare reading of Section 448 makes it clear that any person who makes a false statement as specified therein "shall be liable under Section 447". In other words, the liability for an offence under Section 448 is directly linked to Section 447, which prescribes the punishment for fraud. Therefore, the legal bar imposed by the second proviso to Section 212(6) of the Companies Act, as applicable to Section

447, is squarely applicable to offences alleged under Section 448 of the Act, hence, the Special Court is precluded from taking cognizance of such offences on filing of a private complaint by the Complainant.

14. It is also submitted that the cognizance by the Special Court was without jurisdiction as the procedure mandated under Section 206 of the Companies Act was not followed. Section 206 provides that the Registrar of Companies, on receiving information, shall seek explanation and conduct enquiry. On being satisfied about violation of the Companies Act in running the affairs of the company, the Registrar may conduct enquiry and can then report to the Central Government for conducting further investigation, which, if satisfied, may entrust the case to SFIO for further investigation. In the instant case, the said procedure has been completely bypassed.

15. Learned Senior Counsel further submitted that the Complainant has given a criminal cloak to a civil dispute inasmuch as there are several civil cases pending between the parties in respect of the present dispute. The Appellants have

filed O.S. No. 55 of 2022 before the III Junior Civil Judge, Kukatpally, O.S. No. 99 of 2022 before the XV Additional District Judge, Kukatpally, and C.P. No. 10 of 2022 before the National Company Law Tribunal, which are all pending for adjudication. Therefore, the impugned proceeding was maliciously instituted and liable to be quashed.

16. *Per contra*, Mr. Kumar Vaibhaw, learned Advocate appearing for Respondent No. 1 - State of Telangana, submitted that the Special Court has taken cognizance of the offences based on the material placed on record and had issued summons to the Appellants. It is submitted that there is no bar on the Special Court in taking cognizance of the offence under Section 448 of the Companies Act, on a private complaint. It is further submitted that all the contentions raised by the Appellants have to be examined at the time of framing of charges, and the Appellants ought not to be permitted to ask for quashing of the private complaint and the order taking cognizance under Section 482 CrPC. There are several disputed questions of fact which need to be looked into for the purpose of adjudication, and such

an adjudicatory process cannot be undertaken by the Court in proceedings under Section 482 CrPC.

17. Learned Senior Advocate, Mr. Jayant Muth Raj, appearing for Respondent No. 2 - Complainant, adopted the submissions made on behalf of Respondent No. 1 - State and further submitted that the Companies (Amendment) Act, 2015 (hereinafter referred to as "**2015 Amendment Act**") came into effect on 29.05.2015, and from such date, Section 212(6) of the Companies Act was amended to delete Section 448 and other provisions from its ambit. Prior to the amendment, Section 212(6) covered offences under various provisions of the Companies Act, including Section 448, which attracted the punishment for fraud provided in Section 447 of the Act. However, after the amendment, the bar on taking cognizance is applicable only for the offence under Section 447 of the Act. It is submitted that the present complaint has been filed for the offence under Sections 448 and 451 of the Companies Act, and not under Section 447. In view of the amendment made to Section 212(6), there is no bar on the Special Court from taking cognizance of offences under

Section 448 of the Act on the basis of a private complaint. The bar is applicable only for offences under Section 447.

18. It is also submitted that the Appellants had surreptitiously conducted an EGOM on 01.12.2021 without the requisite quorum and illegally appointed two Directors in an attempt to usurp managing control over the Company from Respondent No.

2. The Appellants fraudulently submitted FORM DIR-12 to the Ministry of Corporate Affairs, declaring the aforesaid appointments, despite being well aware of the fact that they no longer held the position of Director after 30.11.2021.

19. It is submitted that the Appellants have played fraud on the members of the Company and have falsified the records of the Company. The Appellants, with an intention to deceive the shareholders and other Directors of the Company and with an intent to usurp the management of the Company, passed resolutions appointing the wife of Accused No. 1 and another person as Directors of the Company falsifying the records of the Company. Therefore, it constitutes serious offences under the Companies Act as well as under the IPC. The allegations require

trial, and cannot be quashed at this stage. The impugned judgment does not suffer from any legal infirmity and does not warrant interference by this Court. As such, the present appeals deserve to be dismissed.

ISSUES FOR CONSIDERATION

20. After hearing learned counsel for the parties at length and on perusal of the facts and material placed on record, the following issues arise for consideration:

- (i) *Whether cognizance of the alleged offences under Sections 448 and 451 of the Companies Act could have been taken on a private complaint in view of the statutory scheme of the Companies Act and if not, whether the criminal proceedings must be quashed in respect of those sections?*
- (ii) *If the proceedings for the offences under Sections 448 and 451 of the Companies Act ought to be quashed, would the criminal proceedings also have to be quashed in respect of the offences under the IPC in light of the provisions as contained in Section 436(2) of the Companies Act?*

(iii) *Whether continuation of the criminal proceedings would amount to abuse of process of law, warranting interference under Section 482 of CrPC?*

ANALYSIS OF ISSUE 1:

Since Issue 1 has a material bearing on the other issues framed, we are analysing the contentions in that respect, first.

Scheme of the Companies Act

21. In the present case, cognizance has been taken by the Special Court under Sections 448 and 451 of the Companies Act. Section 448 of the Companies Act prescribes the punishment for false statement by any person in any return, report, certificate, financial statement, prospectus, statement or other document required by the Companies Act or Rules. Section 448 of the Companies Act is relevant for the purposes of this case and is therefore quoted for reference: -

“448. Punishment for false statement. – Save as otherwise provided in the 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.”

22. Section 451 of the Companies Act punishes repeated commission of an offence punishable either with fine or with imprisonment within three years by a company or an officer of the company. Section 451 is also relevant, and is therefore quoted: -

“451. Punishment for repeated default. – If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.”

23. Section 448 of the Companies Act, in turn, makes a reference to Section 447 of the Companies Act, which prescribes the punishment for fraud. The said Section is integral to Section 448 therefore reproduced as under: -

“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 3[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.”*

24. The thrust of the argument presented by the Appellants is that there is a specific bar contained in the second proviso to

Section 212(6) of the Companies Act which prevents the Special Court from taking cognizance of an 'offence covered under Section 447' except upon a complaint in writing made by the Director, SFIO or any officer of the Central Government authorized, by general or special order in writing in this behalf by the Government. Section 212(6) of the Companies Act is relevant and is therefore quoted herein:

"212. Investigation into affairs of Company by Serious Fraud Investigation Office. –

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, maybe released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by —

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government."

25. Making a reference to the second proviso of Section 212(6) of the Companies Act, it is argued by the Appellants that in the absence of a complaint as specified therein, merely on a private complaint by the Respondent No. 2, cognizance could not have been taken by the Special Court.

26. Therefore, what falls for our consideration is whether the offence under Section 448 of the Companies Act is an 'offence covered under Section 447' of the Companies Act as mentioned in the Section 212(6) of the Companies Act, which would then attract the bar against taking cognizance under the second proviso to Section 212(6) of the Companies Act.

27. It is pertinent to note that the phrase 'offence covered under Section 447' was introduced by means of a substitution in Section 212(6) of the Companies Act in the 2015 Amendment Act with effect from 29.05.2015. Prior to the amendment, instead of the phrase '*offence covered under Section 447*', Section 212 of the Companies Act mentioned "*the offences covered under sub-*

sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447”.

28. After the amendment to Section 212 in 2015, instead of individually mentioning different sections which attract the punishment for fraud under Section 447 of the Companies Act, ‘offence covered under Section 447’ was substituted. However, if we look to the Companies (Amendment) Bill, 2014 (Bill No. 185 of 2014) it provides the Statement of Objects and Reasons. In Clause (xii) of the same, it is mentioned:

“(xii) to amend sub-section (6) of section 212 of the said Act to provide for bail restrictions to apply only for offence relating to fraud u/s 447;”

29. The intent of legislature, as evinced from the ‘Statement of Objects and Reasons’ of the said Bill is to limit the applicability of

the rigorous twin-conditions for grant of bail set out in Section 212(6) to the offence under Section 447 of the Companies Act.

30. In the context of the facts of this case, in the matter of taking cognizance with respect to 'offence covered under section 447', the interplay has been brought by the legislature under Section 212(6) of the Companies Act. The said section is in two parts - (I) the 'offence covered under section 447' shall be cognizable and (II) no person accused of any offence under those sections shall be released on bail, subject to twin conditions as mentioned therein. The first proviso to Section 212(6) provides a relaxation to children below 16 years of age, women, sick or infirm in the matter of releasing on bail. The second proviso relates to taking cognizance and makes a reference to first part of Section 212(6) whereby the Special Court has been permitted to take cognizance only on a complaint in writing by the Director, SFIO or any officer of the Central Government authorised by general or special order in writing in this behalf by the government. The said special provision has been enacted because

as per Section 439 (1) and (2) of the Companies Act the other offences of the Companies Act were made non-cognizable.

31. In addition to Section 447 of the Companies Act, the provision under Section 448 of the Companies Act also has relevance, it criminalizes a statement made by any person in any return, report, certificate, financial statement, prospectus, statement or other document required by the Companies Act or Rules, which is (a) false in any material particulars, knowing it to be false or (b) which omits any material fact, knowing it to be material. In such case, the person shall then be liable under Section 447 of the Companies Act, which lays down the punishment for fraud. As per Section 447 of the Companies Act, depending on whether (a) the amount involved is more or less than ten lakh rupees or one per cent of turnover of the company, whichever is lesser or (b) involves public interest or not, the punishment has been prescribed in terms of imprisonment and fine.

32. Particularly, the stipulation that the 'person (s)' shall be 'liable under Section 447' is contained not only in Section 448 of

the Companies Act, but also for offences as contained in Sections 34, 56(7), 66(10). Additionally, it has been mentioned that the ‘person (s)’ shall be ‘liable for action under Section 447’ in case of offences as mentioned in Sections 7(5), 7(6), 8(11), 34, 36, 38(1) (c), 46(5), 76A, 86(2), 90(12), 140(5), 229, 251, 339(3) of the Companies Act. As such, some offences under the Companies Act have been elevated to the level of ‘fraud’. It appears that Section 447 is the catch-all provision laying down the punishment for fraud, in various manifestations thereof, in a multitude of Sections of the Companies Act. The word ‘fraud’ itself has been given a very wide and all-encompassing meaning in Section 447 of the Act, where it is defined in explanation (i) to Section 447 as:

“‘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;”

33. From a bare perusal of the aforementioned provisions of the Companies Act, it is clear that Section 447 of the Companies Act lays down the punishment for ‘fraud’ in various forms. In the

present case, cognizance has been taken by the Special Court under Section 448 and 451 of the Companies Act. Section 448 itself does not lay down any punishment for its contravention, it simply lays down the ingredients of the offence of making a false statement and provides that in case such a false statement is made, the ‘person(s)’ shall be liable under Section 447 of the Companies Act. That is to say, even if, after trial, an offence under Section 448 is proved to have been committed by a ‘person’, it is only with the aid of Section 447 of the Companies Act that the punishment for the said offence may be imposed. Section 448 of the Companies Act, therefore, cannot be read in isolation and must be read along with Section 447 of the Companies Act. Therefore, the offence under Section 448 is an offence ‘covered under Section 447’ of the Companies Act mentioned in Section 212(6), since the offence under Section 448 is inextricably linked to the punishment for ‘fraud’ as mentioned in Section 447 and as such, the second proviso to Section 212(6) of the Companies Act is attracted.

34. If the intention of the legislature were to bar the Special Court from taking cognizance of only the offence under Section 447 of the Companies Act, there would be no need to mention offences ‘covered under’ Section 447 in Section 212(6) of the Companies Act. Prior to the 2015 Amendment Act, various offences of the Companies Act were mentioned in Section 212(6) which, when proved, made the accused liable for the punishment prescribed for ‘fraud’ under Section 447 of the Companies Act. After the amendment, which was intended to ensure that the restrictive twin-condition for grant of bail is applied only in cases where Section 447 of the Companies Act has been invoked, the words ‘offence covered under Section 447’ was substituted.

35. That being said, the bar on taking cognizance by the Special Court in cases involving Section 447 of the Companies Act was a safeguard which was put in place to prevent filing of frivolous complaints by disgruntled company members / shareholders or competitors with vested interests. As such, in case an allegation of fraud under Section 447 of the Companies Act is to be made out, the complaint has to be made by the Director, SFIO or an

officer authorized by a written order of the Government. This adds a further level of scrutiny and investigation prior to taking cognizance in cases where allegations of fraud are made and ensures that cognizance is not taken by the Special Court simply upon filing of a private complaint.

View taken by different High Courts

36. During hearing, it has been brought to our notice that the Single Bench of the High Court in its earlier judgment dated 06.06.2022, ***Sumana Paruchuri v. Jakka Vinod Kumar Reddy***¹ had interpreted the provisions as contained in Section 212(6) and Section 447/448 of the Companies Act in a challenge made by the accused therein to the criminal proceedings initiated on a private complaint and held as thus:-

“16. As seen from Section 212 (6) of the Companies Act, 2013, it provides a safeguard against frivolous complaints and ensures that a prosecution for fraud can only be launched after due investigation. Learned counsel for the respondent No. 1 contended that the respondent No. 1 was entitled to file complaint as a shareholder of the company under Section 439 (2) of the Companies Act, 2013. But, an exception is carved out under Section 439 (1) itself that every offence under the Act except the offences referred to in sub-section (6) of Section 212 of the Act shall

¹ 2022:TSHC:30033.

be deemed to be non-cognizable. As such, Section 439 of the Companies Act, 2013 is not applicable to offences covered under Section 447 of the said Act. The contention of the learned counsel for the respondent No. 1 was that under Section 439 of the Companies Act, 2013, the Court can take cognizance of any offence including Section 447 of the Act so long as the SFIO had not been assigned investigation by the Central Government under Section 212 of the Act. But the heading of Section 439 of the Act itself would read as "offences to be non cognizable". Hence, cognizance of the offence under Section 447 of the Act could not have been taken by the trial Court on a private complaint, as it is a cognizable offence.

17. Under Section 206 of the Companies Act, 2013, the Registrar of Companies based on the information received by him, seek for explanation, call for production of document and conduct enquiry. If the Registrar is satisfied on the basis of information available with him, or furnished to him or on a representation made to him by any person that the business of a company is being carried out not in compliance with the provisions of the Act, he can proceed with enquiry. If the enquiry conducted by the Registrar discloses material for further investigation, he, under Section 210 of the Companies Act, 2013 can report to the Central Government to conduct investigation into the affairs of the company. If the Central Government considers the allegations as true and considering the gravity of the offence that the matter was fit to be investigated by the SFIO, directs the matter to be investigated by the SFIO under Section 212 of the Companies Act, 2013. The Investigating Officers who were having better investigation skills in forensic auditing, corporate affairs and capital market would conduct investigation. If the Complainant is aggrieved, he should have resorted to the procedure as contemplated under the Act. The Registrar of Companies is a competent person to call for the records, conduct an enquiry and to arrive at an opinion. If there is any material, he would submit a report to the Government for investigation by SFIO. If SFIO is able

to collect material sufficient to prosecute then it would file charge sheet after taking necessary sanctions from the Central Government. If the contention of the Complainant that any shareholder can file a complaint for fraud is accepted, it would open flood gates for any person commencing criminal proceedings merely by filing a complaint. There were several companies with millions of shareholders. The condition prescribed under Section 212(6) of the Act is a safeguard against frivolous criminal complaints. As such, I do not find any merit in the contention of the learned counsel for the respondent No. 1 that a private complaint for fraud is maintainable before the Special Court.

x x x x

21. Since the punishment for the offence under Section 448 of the Companies Act, 2013 was also under Section 447 of the Act, it was covered by the bar of taking cognizance under Section 212(6) of the Act.”

37. This judgment of the High Court pronounced on an earlier date than the impugned order has not been noticed by the High Court while passing the impugned judgment. We acknowledge the judgment dated 06.06.2022 and its pronouncement on the proposition of law as contained therein. The issue in the present appeal is the same as in the earlier case, the High Court ought to have considered its previous judgment which is on an identical question of law in almost similar factual situation. Principles of judicial comity and *stare decisis* are applicable to the High Court and the Court while passing the impugned order should have

noticed its earlier judgment and, if so required, referred the matter to a larger bench.

38. The Madras High Court in ***Sivananda Rajaram v. M/s New Shipping Kaisha Ship Management Pvt. Ltd.***² quashed a complaint case under Section 447 in light of the bar against taking cognizance under Section 212(6) of the Companies Act.

39. The Karnataka High Court has taken a similar view in ***M. Gopal v. Ganga Reddy***³ and quashed the order of the Magistrate taking cognizance under Section 447 of the Companies Act on a private complaint filed by a shareholder. The Court held that the shareholder can go through the procedure under Section 213 of the Act in order to make a complaint which may eventually result in prosecution under Section 447 of the Companies Act.

40. The Delhi High Court in ***Yogesh Chander Goyal and Ors. Vs. State and Anr.***⁴ has referred to the judgments of the Madras High Court and Karnataka High Court and held that the order

² Criminal Petition (OP) No. 19154/2021.

³ 2022:KHC:35824.

⁴ 2024 SCC OnLine Del 3197.

taking cognizance under Section 447 of the Companies Act on a private complaint cannot be sustained in law.

Application of principles to the facts of the present case

41. Coming to the facts of this case, the High Court in the impugned judgment has not discussed or addressed the provisions of law as contained in Sections 448/451 read with Section 212(6) of the Companies Act nor has it referred to its previous judgment on similar facts. It has reached a finding that a mini-trial cannot be conducted by the High Court when exercising its inherent jurisdiction under Section 482 of the CrPC. The Court has found that allegations against the Appellants are serious in nature and they require trial to elicit the true facts of the case.

42. It goes without saying that the Special Court in the present case has, in its order dated 10.10.2022 taken cognizance under Section 448, 451 of the Companies Act and Sections 420, 406, 426, 468, 470, 471 & 120B of the IPC. We have found above that the punishment section for Section 448 of the Companies Act is

Section 447 of the Companies Act and both sections cannot be read in isolation, since they are inextricably linked.

43. It is trite law that anything that cannot be done directly, also cannot be done indirectly. Merely because there is a bar under the second proviso to Section 212(6) of the Companies Act against taking cognizance of the offence under Section 447 of the Companies Act unless specific conditions mentioned therein are met, does not mean that cognizance may be taken by the Special Court under Section 448 of the Act without including the punishment section, i.e. Section 447 on filing of a private complaint.

44. Non-inclusion of the punishment section under Section 447 since the very inception will also lead to procedural absurdity since ultimately the said Section 447 of the Companies Act must be invoked in order to impose any punishment after trial is conducted. In saying so, we are aware of the proposition of law that cognizance is taken of an offence and not of a section under the law, and at the stage of framing charges, the Court may add or remove sections. However, in the present case, when there is a

specific requirement under law which acts as a pre-condition for taking cognizance under Section 447 of the Companies Act, the decision of the Special Court to take cognizance under Section 448 of the Companies Act without invoking the punishment section, Section 447 cannot be countenanced.

45. As such, the offence under Section 448 of the Companies Act is an ‘offence covered under Section 447’ as mentioned in Section 212(6) of the Companies Act and therefore, the bar against taking cognizance under the second proviso of Section 212(6) of the Companies Act, unless specific conditions are met, is attracted in the present case. Cognizance, therefore, in such a case, cannot be taken merely by filing of a private complaint by the Complainant. However, it is not to say that the Complainant is left absolutely remediless. The right recourse for a person, who makes an allegation of fraud in the affairs of a company is to file an application under Section 213 of the Companies Act before the NCLT upon satisfying the eligibility under Section 213(a) and 213(b) of the Companies Act.

46. The offence under Section 451 of the Companies Act is for punishment in case of repeated default. Since we are finding that cognizance cannot be taken for Section 448 of the Companies Act without following the requirements under the second proviso to Section 212(6) of the Companies Act, cognizance of 'repeated default' under Section 451 of the Companies Act is not made out.

47. As an upshot of the above discussion, the inescapable conclusion reached is that the complaint case bearing C.C. No. 58/2022, the order dated 10.10.2022 of the Special Court and all consequential proceedings to the extent of Section 448 and 451 of the Companies Act shall stand quashed.

ANALYSIS OF ISSUE 2 AND 3

48. It has been contended before us by the Appellants that in view of the provisions as contained in Section 436(2) of the Companies Act, if the offences under the Companies Act are quashed, the Special Court may not try the offences under the sections of the IPC under which cognizance has been taken *vide* order dated 10.10.2022 of the Special Court.

49. Section 436(2) of the Companies Act is relevant and is therefore reproduced as under:

“436. Offences triable by Special Courts. –

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.”

50. It is contended by the Appellants, in light of the aforementioned provision, that a Special Court under the Companies Act may try offences under the IPC only when it is also trying an offence under the Companies Act and not when the offences under the Companies Act have been quashed.

51. A similar question arose before this Court in **S. Satyanarayana v. Energo Masch Power Engg. & Consulting (P) Ltd.**,⁵ albeit in slightly different factual scenario and in the context of the Companies Act, 1956, where this Court held that when multiple persons are made accused in respect of the same set of facts, even if some of them are prosecuted against for the offences under the Companies Act and others are being prosecuted against only for the offences under the IPC, the

⁵ (2015) 13 SCC 1.

Special Court can try all the accused persons together in order to avoid multiplicity of proceedings.

“11. We accordingly set aside the findings of the High Court that taking of cognizance against Accused A-4, A-5, A-6 and A-9 is without jurisdiction on the ground that the complaint does not make out a *prima facie* case for the offences under Section 628 of the Companies Act, 1956 against the said accused. At this stage, it may be noted that the Special Court is empowered to try the offences under the Companies Act along with other Acts by virtue of a notification issued by the erstwhile Government of Andhra Pradesh dated 13-3-1981 which empowers such Special Courts to try offences under specified enactments such as the Companies Act, 1956 the Income Tax Act, 1961, the Wealth Tax Act, 1957, etc., which reads as follows:

“... even if such cases include offences punishable under the Penal Code, 1860 and any other enactments, if such offences form part of the same transaction....”

(vide Notification reproduced in Supt. of Customs v. Kannur Abdul Kader Mohammed Haneefa [2014 SCC OnLine Hyd 622 : (2014) 310 ELT 49]), SCC OnLine Hyd para 15.

Thus, even if a number of persons are accused of offences under a special enactment such as “the Companies Act and as also the IPC” in respect of the same transaction or facts and even if some could not be tried under the special enactment, it is the Special Court alone which would have jurisdiction to try all the offences based on the same transaction to avoid multiplicity of proceedings. We make this observation because at some stage in the hearing the learned

counsel addressed us on this point. We make it clear that in the present case all the accused are liable to be tried by the Special Court in respect of the offences under IPC as well as the Companies Act as alleged in the complaint.”

52. The High Court of Madhya Pradesh dealt with a similar question in ***Sunil Mandwani v. State of M.P.***⁶ where the FIR was registered under various sections of the IPC only yet the accused approached the Court seeking discharge on the ground that only offences under the Companies Act are made out and therefore only a Special Court under the Companies Act has jurisdiction to try the case. In that context, the Court held that since no trial has been initiated against the accused under the Companies Act, in the absence of offences under the Companies Act, the relevant Special Court does not have jurisdiction to try the IPC offences and only the Court having territorial jurisdiction may try such offences.

53. Pertinently, it is to be noticed that in ***S. Satyanarayana*** (Supra), this Court has relied upon the notification of the erstwhile Government of Andhra Pradesh dated 13.03.1981 which had empowered Special Courts under the Companies Act,

⁶ 2019 SCC OnLine MP 1248.

1956 to try cases under the IPC and other enactments if such offences form part of the same transaction. Even though no such notification has been brought on record for designation of Special Courts under the Companies Act, 2013, on research it is found that 'The Special Court for trial of Economic Offences- cum-VIII Additional Metropolitan Sessions Judge Court-cum-XXII Additional Chief Judge, City Civil Court, Hyderabad' has been designated as the Special Court for the State of Telangana by the Central Government *vide* Notification bearing F. No. 01/12/2009- CL-I (Vol. IV) dated 23.03.2017. In this notification issued in exercise of powers conferred under Section 435(1) of Companies Act, there is no mention of offences under the IPC, it merely mentions '*...hereby designates the following Courts mentioned in the Table below as Special Courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the said Act*'.

54. That being said, under the Companies Act, Section 436(2) governs the jurisdiction of the Special Court. The requirement of 'same transaction' is not present in Section 436(2) which only

lays down the pre-requisite that the Special Court should be trying offences under the Companies Act, for it to also try offences under the IPC. As such, once the offences under the Companies Act are quashed, it is the Court of appropriate territorial jurisdiction which would have jurisdiction to try the private complaint filed by the Respondent No. 2 against the Appellants. The learned Judge of the Special Court where the C.C. No. 58 of 2022 is pending shall take steps, in consultation with the Principal District Judge of the district to transfer the complaint case to the appropriate court having territorial jurisdiction to try the complaint case.

55. Arguments have also been made by the Appellants about the propriety and legality of continuance of the proceedings in respect of offences under the IPC and it has been submitted by the Appellants that the complaint case insofar as it relates to offences under the IPC, is abuse of process of law since there are two civil suits and one company petition pending between the parties. However, we are not convinced by this argument. It is trite law that mere institution or pendency of civil proceedings

between the parties cannot be a ground to quash the criminal proceedings instituted by the Respondent No. 2 by filing a complaint case or to conclude that the dispute is purely civil in nature.

56. The Respondent No. 2 and the Appellants were in a commercial relationship and the inception of the dispute can be traced to a tussle for control over the Company. The civil suits filed by the Appellants are for seeking a permanent injunction against the Company and the Complainant from violating the terms and conditions of MoU dated 17.08.2016 and, a declaration that the agreements to sell executed by the Complainant with respect to the properties of the Company be declared void, respectively, while the Company Petition has been filed before the NCLT challenging the removal of the Appellants from directorship in the Company. Pendency of these proceedings would not absolve the criminality as alleged in the complaint, in the facts and circumstances of this case.

57. Therefore, without expressing any views on merits of the complaint case, we hold that there is no reason or ground to

quash the offences under the IPC of which cognizance has been taken by the Special Court.

58. Issues 2 and 3 are answered as above.

CONCLUSION

59. In the interest of abundant clarity, as per the discussion hereinabove, we have held that where the Special Court under the Companies Act is taking cognizance of an offence under a section in the Companies Act which, if proved, would make the person(s) 'liable under Section 447' or 'liable for action under Section 447', it must also invoke Section 447 with the corresponding section and in such a case, it must comply with the bar against taking cognizance as specified in the second proviso to Section 212(6) of the Companies Act.

60. In view of the discussion, the present appeals are partly allowed, the impugned judgment of the High Court is set aside with the following directions:

- I. The complaint case bearing C.C. No. 58/2022, the order dated 10.10.2022 of the Special Court and all

consequential proceedings to the extent of Section 448 and 451 of the Companies Act shall stand quashed.

II. The learned judge of the Special Court where the C.C. No. 58 of 2022 is pending shall take steps, in consultation with the Principal District Judge of the district to transfer the complaint case to the appropriate court having territorial jurisdiction to try the complaint case. The said transfer shall be made within a period of 4 weeks and then the complaint case shall be adjudicated on its own merits, uninfluenced by any of the observations made hereinabove, as expeditiously as possible.

III. We make it clear that the observations made hereinabove in paragraph 56 are not an expression of any views on the merits of the complaint, however, the competent Court, which is continuing the offences under the IPC and maintaining the private complaint may examine all relevant objections, if any, raised at appropriate stage or during trial by way of defence, uninfluenced by the above observations.

61. All pending applications shall stand disposed of. There shall be no order as to costs.

.....J.
(J.K. MAHESHWARI)

.....J.
(K. VINOD CHANDRAN)

NEW DELHI;
JANUARY 9, 2026.