

THE HIGH COURT OF SINDH KARACHI

J.C.M. No. 28 of 2021

[N.P. Spinning Mills Limited vs. Muhammad Siddique and another]

Petitioner : N.P. Spinning Mills Limited through
Mr. S. Ahsan Ali Shah, Advocate.

Respondent 1 : Muhammad Siddique through Mr.
Abdul Ahad, Advocate.

Respondent 2 : Nemo.

Date of hearing : 06-09-2024

Date of order : 06-09-2024

ORDER

Adnan Iqbal Chaudhry J. - This is a complaint by a company under section 497(1) of the Companies Act, 2017 against the ex-Company Secretary, the Respondent No.1. It is averred that even after he was terminated from service, he continued to withhold the record of the company, hence liable to be penalized under section 497(1).

2. The facts appear to be that during a shareholder's dispute, the group in majority control on the Board removed the Respondent No.1 as Company Secretary and asked him to deliver over the record of the Company. Allegedly, the Respondent No.1 procrastinated, citing a *status quo* order passed in JCM No. 18/2021, a dispute between the shareholders. Irked by his response, the company sought to register an FIR against him, and also made a complaint to the Securities & Exchange Commission of Pakistan [SECP]. When no action was taken by either, the company filed the instant JCM on 15-07-2021. By letter dated 23-07-2021, the SECP informed the company that it was not inclined to take cognizance in view of the *status quo* order passed in JCM No. 18/2021, and asked the company to approach the 'High Court' directly under section 477(1) of the Companies Act. But then, on 26-07-2021, the company proceeded to make an application to the

Additional District & Sessions Judge under section 22-A CrPC. At the hearing before that Judge on 28-08-2021, the Respondent No.1 delivered over the record to the company, and the company did not press the application under section 22-A CrPC.

3. Learned counsel for Respondent No.1 submits that since the record has already been delivered over to the company, this JCM has become infructuous. However, learned counsel for the Petitioner submits that the offence of withholding record having been committed, the Respondent No.1 is nonetheless liable to penalty under section 497(1) of the Companies Act, 2017.

4. Apart from the purpose of the complaint at this stage when the record has already been delivered to the company, learned counsel for the Petitioner is also confronted with the maintainability of a complaint under section 497(1) of the Companies Act before the Company Bench. He submits that the 'court' in sections 477(1) and 497(1) is the Company Bench as defined in section 2(33) of the Act. However, that is not so. Firstly, in the context of offences under the Companies Act, the word 'court' in sections 477(1) and 497(1) is a reference to the court under section 482 of the Act, viz. the "court of Sessions or such other court as may be notified under section 37 of the Securities and Exchange Commission of Pakistan Act, 1997". By a recent notification dated 02-08-2024 issued under section 37 of the SECP Act, 1997, that court is now the Special Court (Offences in Banks), Karachi. Secondly, and as discussed *infra*, even that court does not have jurisdiction to entertain the instant complaint.

5. Section 497 of the Companies Act, 2017 reads:

"497. Penalty for wrongful withholding of property.— (1) Any director, chief executive or other officer or employee or agent of a company who wrongfully obtains possession of any property of the company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act shall, on the complaint of the company or any creditor or contributory thereof or a memorandum placed on record by the registrar or an

officer subordinate to him, be punishable with a fine not exceeding one million rupees and may be ordered by the Court, or officer, Commission or registrar or the concerned Minister-in-Charge of the Federal Government trying the offence, to deliver up or refund within a time to be fixed by the said Court, officer, Commission or registrar or the concerned Minister-in-Charge of the Federal Government any such property improperly obtained or wrongfully withheld or wilfully misapplied and any gain or benefit derived therefrom.

(2) Whoever fails to comply with an order under sub-section (1), shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to five hundred thousand rupees.”

6. It will be seen that the word ‘court’ in sub-section (1) of section 497 is used along with other *fora* such as the “officer, Commission or registrar or the concerned Minister-in-Charge”. Therefore, the punishment of fine thereunder can be imposed by the court only if it is the forum designated to try that offence.

7. From section 477 read with section 482 of the Companies Act it is apparent that the Special Court (Offences in Banks) Karachi (previously the Sessions Court) is designated to take cognizance of only those offences that are punishable by imprisonment and listed in the Eighth Schedule to the Companies Act. While that Schedule includes the offence under sub-section (2) of section 497, it does not include the offence under sub-section (1) of section 497 for that is not punishable by imprisonment but only by way of a fine. As per section 478 read with section 476 of the Companies Act, it is the SECP that has exclusively jurisdiction to take cognizance of an offence which is punishable under the Act by way of a penalty/fine only. In other words, a complaint under section 497(1) of the Companies Act can only be entertained by the SECP, not by Company Bench. This JCM is therefore dismissed.

JUDGE

SHABAN*