**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 9563 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No
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KHS MACHINERY PRIVATE LIMITED, THROUGH MANISHA VRAJLAL
THAKKAR AUTHORISED SIGNATORY & ANR.

Versus

REGISTRAR OF COMPANIES, & ANR.

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Appearance:

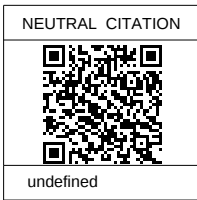
MR SACHIN D VASAVADA(3342) for the Applicant(s) No. 1,2
MR SAMRAT N MEHTA(3949) for the Applicant(s) No. 1,2
MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1
MR. CHINTAN DAVE, APP for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 07/07/2025****ORAL JUDGMENT**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C') has been filed on behalf of the petitioners seeking quashment of the complaint i.e. Special Company Act Case No. 12 of 2017, as well as the process issued by the learned Principal District and Sessions Judge, Ahmedabad, Rural.

2. Briefly stated, the impugned complaint was filed by the respondent against petitioner no. 1 - KHS Machinery Private Limited, including the petitioner no. 2, alleging the contravention of



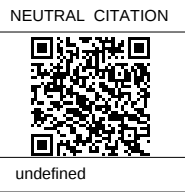
Section 134(3)(o) and Section 135 of the Companies Act, 2013 (hereafter 'Companies Act') pertaining to Corporate Social Responsibility (CSR). It has been alleged by the respondent that the petitioner company has been in default of its CSR obligations for the financial year 2014-15.

3. It is the case of the petitioner that Petitioner No.1-Company, upon satisfying the eligibility criteria prescribed under Section 135 of the Companies Act, 2013, constituted a Corporate Social Responsibility (CSR) Committee and framed its own CSR Policy in accordance with the statutory mandate. In line with its CSR obligations, the Company began spending amounts towards social causes as stipulated in its CSR Policy. All relevant disclosures, including the constitution of the CSR Committee, CSR Policy, and details of expenditure, were duly made in the Board of Directors' Report, in compliance with Section 134(3)(o) of the Companies Act. Despite adherence to the statutory provisions and due disclosures, Respondent No.1 has filed a criminal complaint against the Petitioners with an ulterior motive and in abuse of the process of law. Hence, the present petition.

4. The relevant portion of the questioned complaint is as under:-

“5. That, the company has violated the provisions of section 135r/w section 134(3) (o) of the Companies Act, 2013 [hereinafter refer as "the Act"] by not Disclosing the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year and not specifying any reason for under spending the Corporate Social Responsibility [hereinafter refer as "CSR"] amount in its Boards Report for the financial year 2014-15.

6. That the matter regarding violation/contravention as

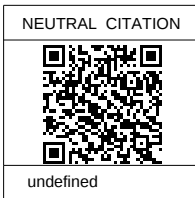


aforesaid was taken up with the accused hereof vide this office Show Cause Notice (SCN) dated 20.09.2017, a copy thereof is enclosed herewith as Annexure-"A". The Accused no. 1 has responded to show cause notice vide their letter dated 27.09.2017 and it is not considered satisfactory. A copy of the said letter is annexed herewith and marked as "ANNEXURE- B".

7. That the Ministry vide letter no. 12/03/2017-CSR (PART-III-A) dated 14.08.2017 and the Regional Director (NWR), Ahmedabad vide their letter no. RD (NWR)/Section 135/2016/2648 dated 06.09.2017 has directed this office to launch the prosecution for violation of Section 135r/w 134 (3) (0) of the Companies Act, 2013 against the Company and / or its officers/ directors in default. The said sanction was received by the Complainant's office on 07.09.2017 and therefore, this complaint is well within the limitation period under section 468 as well as under other provisions of chapter XXXVI of Criminal Procedure code, 1973. A Copy of the Ministry letter no. 12/03/2017-CSR (PART-III-A) dated 14.08.2017 and the Regional Director (NWR), Ahmedabad letter no. RD (NWR)/Section 135/2016/2648 dated 06.09.2017 are enclosed herewith and marked as Annexure-"C". (Colly).

8. That the Complainant hereinabove submit in view of the findings herein above in Para 3 -5 of this complaint, that the Accused 1 & 2 have contravened the provision of Section 135r/w Section 134 (3) (o) of the Companies Act, 2013 and rendered themselves liable to be punished under section 134 (8) of the Companies Act, 2013."

5. The learned counsel appearing for the petitioners states that the present case pertains to Section 134(8) of the Companies Act and the said offence has been decriminalized vide Companies (Amendment) Act, 2020 [hereafter '**Amendment Act**'] by the Parliament and the punishment in the said provision has been reduced to fine. It is therefore prayed that the benefit of ex-post facto reduction in punishment should be given to the petitioners herein. In support of these arguments, the learned counsel has placed reliance on various judgments of the Hon^{ble} Supreme Court and High Courts.



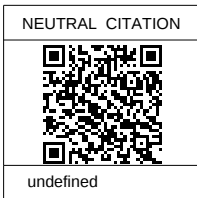
6. The learned counsel appearing for the respondent ROC fairly submits that the position of law has changed after the Amendment Act, inasmuch as the offence in question has been decriminalized, and the benefit of ex-post facto can be granted to the petitioners as per decision of Hon“ble Supreme Court in **T. Barai v. Henry Ah Hoe and Anr.:** (1983) 1 SCC 177.

7. The learned counsel appearing for both the parties concede that the complaint pending before the concerned Court can be quashed and the matter can be sent to the Adjudicating Authority.

8. This Court has heard arguments addressed on behalf of both the parties and perused the material available on record.

9. This Court“s attention has been drawn to the decision of the Hon“ble Supreme Court in case of **T. Barai v. Henry Ah Hoe and Anr.(supra)** wherein it has been held that in case the punishment prescribed is reduced by the Amendment Act, then the benefit is given to the accused. The relevant paras are reproduced hereunder:-

“22. It is only retroactive criminal legislation that is prohibited under Art. 20(1). The prohibition contained in Art. 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence.

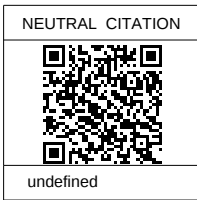


punishable under s. 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common- sense. This finds support in the following passage from Craies on Statute Law, 7th edn. at pp. 387-88 :

“A retrospective statute is different from an e x post facto statute. "Every ex post facto law " said Chase J. in the American case of Calder v. Bull() "must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive ; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement : as statutes. of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post' facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction ...There is a great and apparent. difference between making ai: unlawful act lawful and the making an innocent action criminal and punishing it as a crime.

23. To illustrate, if Parliament were to re-enact s. 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life, instead of the present sentence death or imprisonment for life, then it cannot be that the Courts would still award a sentence of death even in pending cases.”

10. Thus, the position of law stands crystal clear from the aforesaid judgment. Evidently, the benefit of decriminalization of the offence ought to enure to the benefit of the petitioner, inasmuch as the Amendment Act passed by the Central Government has decriminalized the punishment in cases pertaining to Corporate Social Responsibility (CSR) violations and reduced the consequences to imposition of fine only. There appears to be no justifiable reason



to deny the retrospective benefit of such decriminalization to the petitioner–accused.

11. In view of the above, this Court is of the considered opinion that the complaint pending before the learned Trial Court cannot legally sustained and the matter deserves to be referred to the concerned Adjudicating Authority, as contemplated under the relevant provisions of the Companies Act, for adjudication of penalty in accordance with law. Consequently, the impugned complaint and the order issuing process against the petitioners are hereby quashed and set aside. It is further directed that the impugned complaint shall stand transferred to the competent Adjudicating Authority. All parties shall be at liberty to raise all issues and contentions before the said authority in accordance with law.

12. It is clarified that this Court has not examined the matter on merits and all observations are confined to the legal sustainability of the complaint in its present form.

MANISH MISHRA

(J. C. DOSHI,J)