

apprehension by the ANF officials has not been denied specifically by the appellant. The appellant in his statement under Section 342 Cr.P.C. has stated that the recovered Charas was not his property and has been foisted upon him by the police. The case law cited by the appellant's counsel is distinguishable on facts and circumstances of present case.

17. For the foregoing reasons, the prosecution has proved the guilt of the appellant beyond reasonable doubt and has successfully discharged its burden through consistent and confidence inspiring **D** evidence.

18. We do not find any illegality or infirmity in the impugned judgment warranting interference of this Court in Appeal. The appellant has no case on merits, but looking at his ailment and his physical condition that he is diabetic, which resulted in amputation of his right leg, we, while dismissing the appeal, reduce his quantum of sentence from life imprisonment and fine to that of 20 years imprisonment. These are the reasons of the short order dated 15.9.2010 by which the appeal was dismissed.

Appeal dismissed.

S B L R 2011 Sindh 105**[High Court of Sindh (Karachi)]***Present: Syed Hassan Azhar Rizvi, J*

Sarfaraz Quidri---Petitioner

versus

Light Metal & Rubber Industries
(Pvt) Ltd & others---RespondentsJudicial Misc. Petition No. 30 of 2009 decided on 26th August 2010**A) Companies Ordinance, 1984---Section 265---
Investigation of Company's affairs---Appointment of
Inspector---Petitioner moved application for appointment of**

Chartered Accountant for scrutiny of respondent Company--- Admittedly Respondent No.1 is a business company of Quadri Family & there were serious disputes regarding the accounts amongst the Petitioner & Respondents No. 2 to 4 who were the share holders of the company which was not in a good financial position---Respondent No.3 in his letter stated that company was not in a good position & required to take important decisions & had given two options (a) to run the company (b) to sell the company---Under Section 265 of the Ordinance of 1984, the investigation of company's affairs the Commission shall appoint one or more competent persons as Inspector to investigate the affairs of Company & to report thereon in such manner as the Commission may direct, if (i) the company, by a resolution in general meeting, or (ii) the Court by order declare that the affairs of the company ought to be investigated by an Inspector by the Authority---In proceedings u/s 265 full fledged inquiry in the form of a trial was not required to be held nor any formal evidence was to be recorded before passing the order u/s 265 of the Ordinance, the Court has to only satisfy itself *prima facie*, of course, on the material placed before it, that a case for investigation through an Inspector was called for & it was for the Inspector to ascertain & determine the truth or otherwise of the allegations during the investigation to be conducted by him where-after he had to submit report to the concerned authority---The matter rests in the discretion of the Court to be decided after following the summary procedure as laid down in section 9 of the Ordinance---There were serious disputes regarding the accounts amongst the petitioner and respondent Nos. 2 to 4 who all are share holders of the company--- Petitioner had made serious allegation of embezzlement & misappropriation of Company's funds that huge amount had been transferred to the accounts of respondent No.2 in the balance sheet---In these circumstances, it was **held**; that there was no harm if the scrutiny of the accounts of company since year 2007 be made. *Prima facie* on the basis of material placed along with memo of petition and the written statement the case of investigation through an Inspector was made out---The Court directed the Security & Exchange Commission to appoint a competent person preferably a Chartered Accountant/approved Auditor as Inspector to investigate

the affairs of the Company regarding its accounts since 2007 & submit report within stipulated period---CMA was allowed.

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(Brothers Steel Ltd. & others v. Mian Mirajuddin & others, PLD 1995 SC 320) relied upon. (PLD 1965 SC 221, PLD 1997 Karachi 736, 1988 CLC 1955, 2005 CLD 463, 1982 SCMR 494 & PLD 2006 SC 328) referred.

Mr. Badar Alam, Advocate for the petitioner.

Mr. Emadul Hassan, Advocate for the respondents.

Date of hearing: 7th April 2010

ORDER

'SYED HASSAN AZHAR RIZVI; J:-

1. Deferred.

2. By this order I would decide the CMA No. 723/2009 filed by the petitioner to appoint any licensed/approved Auditor/Chartered Accountant from the list maintained by the State Bank of Pakistan for scrutiny of accounts of respondent No. 1 (Company) since the year 2007 onwards and to submit report within a specific time to be fixed by this Court. The respondent No. 1 is a private limited Company, being a family concern of late Muhammad Haroon Quadri having paid up capital of Rs. 3,000,000/- comprising of 30,000/- shares of Rs. 100/- each, carrying on its business of manufacturing rubber and aluminum stoppers, caps, seals and discs for pharmaceuticals. The petitioner holds 6625 shares of Rs. 100/- each 22.084% each of capital of the company. The shares holding of the petitioner and respondents and their respective status in the company are as under:-

- i) Petitioner 6,625 shares (Chairman) (22.084%)
- ii) Respondent No. 2 10,125 shares (Shareholder) (33.75%)
- iii) Respondent No. 3 6,625 shares (Managing Director) (22.083%)

SBLR

iv) Respondent No. 4 6,625 shares (Director/Secretary) (22.083%)
30,000

The respondent No. 1 was incorporated by its original sponsors, bearing Registration No. KAR 2184 of 1966-67 having paid up capital of Rs. 3,000,000/-, comprising of 30,000/- ordinary shares of Rs. 100/- each. In the year 1980 Muhammad Haroon Quadri the predecessor-in-interest of the petitioner and respondents Nos. 2 to 4 had purchased the entire share holdings of respondent No. 1 from its original sponsors/share holders and distributed /allotted the shares among his members. On 17.12.1998 at the demise of Mr. Muhammad Haroon Quadri the predecessor-in-interest of the petitioner/respondents Nos. 2 to 4, his movable and immovable properties including share holding of 9000 shares of Rs. 100/- each in the respondent No. 1 were distributed by the respondents Nos. 2 to 4 and the petitioner among their entire family members through a Mutual Family Settlement Agreement dated 31.7.1999. During the period when the petitioner was getting his education, he used to attend the factory/respondent No. 1 and to assist his late father in his business and the late father of the petitioner, who was head of the family and actual owner of respondent No. 1 had fixed the remuneration and facilities of the petitioner, his other sons, the respondents Nos. 3 and 4. The detail of which are as under:-

- i) Salary plus life insurance per annum
 (to be equally paid monthly) Rs. 107,000/-
- ii) Defence Saving Certificate per
 fiscal year Rs. 50,000/-
- iii) Bonus/Recreation allowance
 Once in fiscal year Rs. 50,000/-
- iv) Free Housing/lodging Car
 Petrol, medical expenses &
 income Tax Wealth Tax at actual.

After demise of Muhammad Haroon Qaudri, the petitioner and respondents by mutually consent restructured their remunerations benefits and facilities as follows:-

i)	Salary of the petitioner & Respondents Nos. 3&4	Approx	Rs. 105,000/- per month.
ii)	Income from sale of Scrap		Rs. 100,000/- per month
iii)	Household expenses, cell phones, Land line phone, medical expenses, Electricity bill, petrol, entertainment, Approx		Rs. 150,000/- per month
iv)	Payment of Household expenses to respondent No. 2 (mother) at fixed of		Rs. 35,000/- per month.

The respondent No. 1 was registered as private limited Company, however it was actually a partnership business of Quadri family comprising of the petitioner and respondents Nos. 2 to 4, being partners. On 16.8.2007 the petitioner proceeded to Chicago, USA by consent and leave of respondents Nos. 2 to 4, where his son and daughter had got admissions for their higher education. Upto the month of November, 2008 the respondents Nos. 3 and 4 deposited petitioner's monthly salary in petitioner's bank account and credit card account at MCB and City Bank, Karachi respectively, and thereafter discontinued to deposit the same. Since 16.8.2007, the respondents Nos. 3 and 4 also discontinued the payment to the petitioner of his expenses on account of cell phone, medical and petrol. The respondent No. 3 and 4 deposited petitioner's electricity and land line telephone bills upto April 2009 and thereafter discontinued the same. The petitioner came back to Karachi from Chicago, USA on 22.5.2009, visited the office/factory and found the duplicate bogus/unofficial accounts were being maintained by the respondents Nos. 3 and 4 and they were taking proper interest in managing and running the business of the company. The petitioner also hold meetings with the respondents who told him that the company is being run in losses and requested him to make further investment in the company to save it from being wound up. Vide letter dated 20.6.2009 the respondent No. 3 on the basis of fabricated and false financial statements, appended with the letter stated that the

company is not in good financial position and required the Directors/Share Holders to take important decisions, either to run or sell the company. From perusal of the pre-audited balance sheet of the company as on 30.4.2009 it transpired to the petitioner that the respondent transferred Rs. 30,71,530/- to the accounts of respondent No. 2. For that circumstances the petitioner considered that it would be just, proper and equitable that the scrutiny of accounts of the company may be ordered to be made by an approved/licensed Auditor/Chartered Accountant to be selected from the list of Auditors/Chartered Accountants maintained by the State Bank of Pakistan.

The respondent No. 3 who is Managing Director of the respondent No. 1 and legally constituted attorney of the respondents Nos. 2 and 4 filed Counter Affidavit to the application CMA No. 723/2009 and stated that the petition has been filed under malafide intentions for ulterior motives and in vengeance as the petitioner has been removed from directorship w.e.f 27.3.2009. It is further stated that the petitioner has approached this Court with unclean hands, misrepresented the facts and has concealed material facts. It is stated in the Counter Affidavit that the petitioner has not even attended the Board Meetings and never gave any strategic directions at the relevant time. It was only after his removal from the directorship and stoppage of his monthly payment and expenses w.e.f 28.11.2008 that out of vengeance the petitioner is creating all out efforts to create nuisance and problem for the respondents. It is further stated that the respondent No. 3 always made efforts to keep the factory running hence tried to convince the petitioner to forego the fixed monthly payments. It is also stated in the Counter Affidavit that due to the reason of lavish expenditure by the petitioner that ultimately the company got into financial crises and it was only then that some major decision had to be taken including removal of the petitioner as Chairman, stoppage of his monthly payments etc in the larger interest of the Company and for all stakeholders including creditors, suppliers, customers, employees. It is further stated by the respondent No. 3 in his Counter Affidavit that time and again he requested the petitioner being Chairman of the Company at the relevant time until he was removed as per law for further investments and

increasing the product lines for the growth of the Company, but the petitioner never paid any heed, rather he always resisted such moves. It is further stated that the petitioner has filed the instant petition in the hope that he might get some money by selling the Company as he most of time is now living in USA and has no interest in the Company's affairs. The respondent No. 3 in his Counter Affidavit also stated that accounts of the Company are being regularly audited by an independent firm of Chartered Accountants. The petitioner was removed from the directorship as well as Chairmanship of the Company for the reasons mentioned in the Board Minutes dated 27.3.2009. The Security & Exchange Commission of Pakistan had also enquired about the removal of petitioner. It is stated in the Counter Affidavit by the respondent No. 3 that the petitioner being brother of the respondents was never stopped from entering the factory and approaching the records although he was no more director in the company and a shareholder can look into the books of accounts of a company only upon a formal request. It is also submitted by the respondent No. 3 that accounts of the company prepared by an old trusted accountant of the company are duly audited by an independent firm of Chartered Accountant. The respondent No. 3 reiterated in the Counter Affidavit that respondents have no intention to sell the company as the factory is the only source of income of the respondents including the petitioner and also employees and workers. The respondent No. 3 submitted the petitioner's demand for appointment of another chartered accountant in presence of existing independent chartered accountants who carry out due audit of books of accounts is unwarranted.

One Irfan Ahmed Siddiqui the general attorney of the petitioner filed affidavit-in-rejoinder to the Counter Affidavit to application CMA No. 723/2009 and stated that since the respondents Nos. 3 and 4 with malafide intentions, started harassing the petitioner by making false complaints against him to the Police, to get him involved in false criminal cases, therefore, the petitioner appointed the said Irfan Ahmed Siddiqui who is father-in-law of the petitioner as his general attorney and proceeded to USA. It is stated in the affidavit-in-rejoinder that since the respondent No. 1 is a family concern of a Quadri family

and it is not the creation of respondents, therefore the petitioner cannot be deprived by the respondents from getting similar benefits which they are getting from the company by utilizing joint assets/properties. It is further stated in the affidavit-in-rejoinder by the petitioner's attorney that the petitioner during his visit of Company had taken photocopy of relevant ledgers and pre-audited balance sheets, which were attested and countersigned by the Chief Accountant of the Company, after obtaining permission of the respondents Nos. 3 and 4 which have been annexed with the main petition. The attorney of the petitioner in his affidavit-in-rejoinder denied that the photocopies of the attested and pre-audited balance sheet for the year 2008-2009 annexed with main petition are loose papers, contain rough figures or the same are forged and fabricated. It is further stated in the affidavit-in-rejoinder that the company has been incurring losses for the last several years.

Mr. Badar Alam, Advocate for the petitioner argued that admittedly the petitioner is a share holder of the respondent No. 1 Company for more than 20% share according to the Memorandum and Articles of Association of the respondent No. 1 showing share holdings of late Muhammad Haroon Quadri's family members. Though the respondent No. 1 was registered as private limited company, however it was actually partnership business of Quadri family, comprising of petitioner and respondent Nos. 2 to 4.

- (i) In PLD 1965 SC page 221, it is held that in the case of private limited company the tendency of the Courts has uniformly been to treat it more or less a partnership and to apply the same principles in the winding up of a private limited company as would entitle a partnership to have a partnership firm dissolved. Commonly the exclusion of a partner from the management of the firm, the existence of a state of deadlock between the partners of the justifiable lack of confidence in the management have been regarded as just and proper grounds for dissolving a private limited company.
- (ii) In PLD 1997 Karachi page 736 Mr. Justice Rana Bhagwan Das as the lordship then was has held that

relationship between the partnership firm in the form of company limited by shares with equal shareholding – Two Directors from each of parties with 50 per cent shareholding indicated that company itself was incorporated by two brothers as family concern – Conduct and attitude of parties towards each other indicated that there was complete lack of faith and confidence and business of company was standstill for more than two and half years – Court while exercising jurisdiction under Companies Ordinance, 1984, was competent to take into consideration subsequent events and developments taking place even after institution of winding up petition – Parties had been attempting to distribute assets but no mutual settlement could be arrived – Court exercising its discretion could mould relief in view of changed circumstances in order to avoid multiplicity of litigation and to do complete justice between parties.

(iii) In 1988 CLC 1955 Mr. Justice Saeeduzzaman Siddiqui as the lordship then he was has held that in the case of private limited company where there is a complete mistrust between the co-directors and or there is a deadlock in the company on account of such mistrust then the principles contained for dissolution of partnership could be applied for dissolving a private limited company.

Mr. Emadul Hasan, Advocate for the respondents argued that the petitioner never challenged the accounts during his Chairmanship. The respondent Nos. 3 and 4 being Executive Directors were running the company and known to the dealers, whereas the petitioner went to USA and not taking part in the management of the respondent No. 1. It is further argued that there is no complain of respondents or any creditors, he has referred Section 188(1)(b) of Companies Ordinance, 1984, according to which.

"A director shall ipso facto cease to hold office if – he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absence from the directors."

He has also referred to Section 263 of the Companies Ordinance, 1984, which relates to the investigation of affairs of company on application by members or report by Registrar.

I have heard both the learned counsels for the parties, perused the record, case law and the relevant provisions of law referred by the learned counsels of both the parties. It is an admitted position that the respondent No. 1 is actually a business of Quadri family and the petitioner and respondents Nos. 2 to 4 belong to Quadri family. It is also an admitted position that there are serious disputes regarding the accounts amongst the petitioner/respondents Nos. 2 to 4 who are the share holders of the respondent No. 1. The company/respondent No. 1 is not in a good financial position as stated by the respondent No. 3 in the letter dated 20.6.2006, in that letter the respondent No. 3 stated that the company is not in good financial position and required to take important decisions and given two options (a) to run the company (b) to sell the company, a copy of the said letter was sent to the petitioner and the same is enclosed as annexure P/25 at page 237.

Mr. Emadul Hasan, Advocate has referred 2005 CLD, 463 "(g) Companies Ordinance (XLVII of 1984)---Provision of S. 290 Companies Ordinance, 1984 is intended to avoid winding up, if possible, and keep the company going while, at the same time, taking remedial measures to cure mismanagement of the company."

The petitioner in paragraph-15 of the petition stated that the respondent No. 3 and 4 with malafide intentions to conceal their illegal acts and embezzlement and misappropriation of Company's funds suggested to the petitioner to sell out/wind up the Company through a private deal. It is also stated in para 15 of the memo of petition that at the first page of pre-audited Balance Sheet as on

30.4.2009 (annexure P/18) the respondents transferred a huge sum of Rs. 30,71,530/- to the accounts of respondent No. 2, which, it appears represents the amounts withdrawn by the respondents from time to time on account of their respective salaries and benefits.

Under Section 265 of the Companies Ordinance, 1984, the investigation of company's affairs the commission shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the (Commission) may direct, if – (i) the company, by a resolution in general meeting, or (ii) the Court, by order, declare that the affairs of the company ought to be investigated by an inspector appointed by the (Authority).

PLD 1995 SC 320 Brothers Steel Ltd and others vs. Mian Mirajuddin and others. The Hon'ble Supreme Court of Pakistan has held that, "Application for appointment of Inspector for investigation of company's affairs, Court has only to satisfy itself, *prima facie* on the basis of the material placed before it, that case for investigation through an Inspector is called for. That Inspector has to ascertain and determine the truth or otherwise of the allegation during the investigation to be conducted by him whereafter he has to submit the report to the concerned authority. Matter in fact vests in the discretion of the Court, to be decided after following the summary procedure as laid down in S.9 of the Companies Ordinance, 1984.

In proceedings under section 265 of the Companies Ordinance, 1984 full-fledged inquiry in the form of a trial, is not required to be held nor any formal evidence is to be recorded before passing the order under section 265 of the Ordinance, the Court has to only satisfy itself *prima facie*, of course, on the material placed before it, that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegations during the investigation to be conducted by him whereafter he has to submit report to the concerned authority. The matter in fact rests in the discretion of the Court, to be decided after following the summary procedure as laid down in section 9 of the Ordinance.

Since there are serious disputes regarding the accounts amongst the petitioner and respondents Nos. 2 to 4, who are all share holders of the respondent No. 1 company. The petitioner has made serious allegation of embezzlement and misappropriation of the Company's/respondent No. 1 funds. It is also mentioned by the petitioner in para 15 of the memo of petition that huge amount of Rs. 30,71,530/- has been transferred to the accounts of respondent No. 2 in the balance sheet annexure P/18. By the instant application the petitioner has prayed to appoint any licensed/approved Auditor/Chartered Accountant from the list maintained by the State Bank of Pakistan and scrutiny of the accounts of respondent No. 1/Company since the year 2007 onward and to submit report within the specific time to be fixed by the Court whereas the respondents vehemently opposed appointment of another Chartered Accountant, according to respondent No. 3 that will create unnecessary operational burden for respondents and the respondents are not in financial position to afford another audit.

In 1982 SCMR page 494 relevant page 496, it is held by the apex Court that, "It cannot be denied that mention of wrong provision of law in an application would not deprive the Court of the power and jurisdiction if otherwise the same is available under the law. "Further it is held in PLD 2006 SC page 328 relevant 337 that, it is primarily the duty of the Court and others adjudicating forum to decide lis before them in accordance with law. The Courts are not relieved of this duty on account of an act or omission of litigant or a lawyer."

In my opinion there is no harm if the scrutiny of the accounts of respondent No. 1 company since year 2007 be made. *Prima facie* on the basis of material placed alongwith the memo of petition and with the written statement of the respondents the case of investigation through an Inspector is made out. I therefore, direct the Security and Exchange Commission of Pakistan to appoint a competent person preferably a Chartered Accountant/approved Auditor as Inspector to investigate the affairs of the Company/Respondent No. 1 regarding accounts of respondent No. 1 Company since 2007 and to submit detailed

report thereon within a period of 30 days from the date of his appointment. The Commission is further directed to fix/settle the fees of the Inspector which will be paid by the respondent No. 1. Office is directed to send the copy of this order to the Security and Exchange Commission of Pakistan with the direction to comply with the orders expeditiously. The listed application is allowed in the above terms.

3&4 Deferred till the submission of the report of the Inspector.

Interim orders already granted shall continue till then.

Order accordingly.

S B L R 2011 Sindh 117

[High Court of Sindh (Karachi)]

Present: Irfan Sadat Khan, J

Pervez Iqbal---Plaintiff

versus

Mrs. Rana/Nadia Iqbal Siddiqui---Defendant

Suit No. 914 of 2004 decided on 3rd September, 2010

A) Presumption---Person shown as one of the witness of Plaintiff was subsequently for unknown reasons was dropped---
Validity---The presumption would arise that had he been examined he would have deposed against the interest of Plaintiff.

[P-122 & 123]A

B) Specific Performance of Contract---Suit for---**Non-execution of agreement of Sale**---**Validity**---For the alleged sale of property worth millions of rupees there was neither any agreement to sell nor there was any receipt in respect of token/advance money from the owner of the property herself. Even