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**(1991) 10 MAD CK 0046**

**In the Madras High Court**

**Case No : Criminal Appeal No. 63 of 1987**

Assistant Registrar of Companies

APPELLANT

Vs

H.C. Kothari and others

RESPONDENT

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**Date of Decision : 10-10-1991**

**Acts Referred:**

Companies Act, 1956 — Section 13, 209A, 372, 372(10), 372(13)  
Criminal Procedure Code, 1973 (CrPC) — Section 218, 468, 469

**Citation : (1992) 75 CompCas 688**

**Hon'ble Judges : Padmini Jesudurai, J**

**Bench : Single Bench**

**Advocate : K. Ilias Ali, for the Appellant; S.V. Subramanian, for the Respondent**

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**Judgement**

Padmini Jesudurai, J.—This appeal against the acquittal is filed by the Assistant Registrar of Companies, Madras 6, challenging the acquittal,

of the respondents, tried by the Additional Chief Metropolitan Magistrate - Economic Offences-II, Egmore, Madras, in C.C. No. 126 of 1985,

for an offence u/s 372(2) and (4) read with section 374 of the Companies Act, 1956.

2. The appellant filed the complaint against the respondents for the above offence on the allegation that they were the directors of Investment Trust

of India Limited (hereinafter referred to as ""the company"" ) at the relevant time and an inspection by the Deputy Director (Inspection) attached to

the office of the Regional Director, Company Law Board, Madras, made u/s 209A of the Companies Act (hereinafter referred to as ""the Act"" )

revealed that, during the financial years 1980, 1981 and 1982, the investments made by the company in the shares of other bodies corporate, was

in excess of the 30 per cent. limit prescribed u/s 372(4) and the approval of the

central Government and the required resolution u/s 372(4) of the

Act had not been obtained. After issue of show-cause notices, the complaint was filed.

3. During the trial, on behalf of the prosecution, the Inspecting Officer was examined as PW-1 and a Senior Technical Assistant in the office of the

Registrar of Companies, Madras, was examined as PW-2. The printed balance-sheet for the years 1980, 1981 and 1982 were marked as exhibits

P-1 to P-3 respectively. The letter dated August 24, 1984, from the Regional Director, Company Law Board, Madras, to the Registrar of

Companies, Madras, was marked as exhibit P-4 and the copy of the show-cause notice sent to the company and its directors as exhibit P-5 and

the reply, covering letter, further replies and covering letters as exhibits P-6 to P-10, and the printed copy of memorandum and articles of

association of the company as exhibit P-11.

4. The respondents, when questioned, denied having committed the offence and claimed that their company was an investment company. Though

no defence witness was examined, the office copy of the reply sent by the company to PW-1's letter dated August 31, 1983, was marked as

exhibit D-1 and the letter dated January 6, 1982, sent by the Registrar of Companies, Madras, to the company was marked as exhibit D-2. The

learned Magistrate acquitted the respondents on the ground that the prosecution was barred by limitation and that the company was an investment

company within the terms of section 372(10) and as such the limitation regarding the investment would not apply to the company. Aggrieved with

the acquittal, the complainant has filed this appeal.

5. Thiru Ilias Ali, learned counsel for the appellant, contended that the findings of the learned Magistrate were erroneous, that there was nothing to

indicate that the Registrar of Company had knowledge prior to August, 28, 1984, about the commission of the offence and it was only after PW-

1's inspection report reached him that he got knowledge and as such the prosecution was within time. On the second ground, learned counsel

submitted that, in 1980, 1981 and 1982, the investments of the company were not on shares but the activities had been diversified and the

company was investing in hire-purchase, leases, etc., and that during the above period, the company could not be described as an investment

company, though its original memorandum and articles of association still continue to have investing in share and securities as the principal business

of the company. According to learned counsel, the income from other sources was more than the income from investments and as such the

company could not be described as an investment company. The appeal had, therefore, to be allowed.

6. Per contra, Thiru S. V. Subramaniam, learned senior counsel for the respondents, would submit that exhibits P-1 to P-3 was duly sent to the

Registrar of Companies and received by him on June 9, 1981, May 12, 1982, and May 30, 1983, respectively, and the period of limitation would

start running for each of these offences from the date of the receipt and as such the complaint was barred by limitation and the trial court had rightly

held it to be so. The enlargement of the objects clause of the memorandum is to empower the company to undertake certain other activities like

hire-purchase, leasing, etc. Investment in shares and securities continued to be the main object and exhibits P-1 to P-3 and also the other records

of the company proved that this was so. Learned counsel further urged that income from investments was not the real test and that the real test

would only be the extent of investment made. Learned counsel, therefore, justified the acquittal.

7. The question that arises for consideration is whether the acquittal of the respondents by the learned Magistrate can be sustained.

8. It is seen that respondents Nos. 4 and 5 have since died and the charge abates as against respondents Nos. 4 and 5. This appeal is dismissed

against them on the above ground.

9. Taking up the first point, namely, limitation, we find that the offence u/s 372 read with section 374 of the Act is punishable only with fine and as

such, u/s 468(2)(a), the period of limitation is six months. The relevant part of section 469(1), Criminal Procedure Code, relating to the

commencement of the period of limitation is as follows :

469. Commencement of the period of limitation, - (1) The period of limitation, in relation to an offender, shall commence ...

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such

offence comes to the knowledge of such person or to any police officer,

whichever is earlier;

10. According to the appellant, as mentioned in para 8 of the complaint and as spoken to by PW-1, the Registrar of Companies had knowledge of

the commission of the offences only on August 28, 1984, when PW-1's inspection report was received. The complaint had been filed on February

2, 1985, and was thus within the period of limitation. According to learned counsel for the respondent, limitation starts running from June 9, 1981,

May 12, 1982, and May 30, 1983, when exhibits P-1 to P-3 were respectively received by the Registrar of Companies. The prosecution,

therefore, had been instituted beyond the period of limitation. The question, therefore, would arise as to when the Registrar of Companies could be

said to have had knowledge of the commission of the offences.

11. The concept of limitation in criminal matters is of recent origin. As the Supreme Court has pointed out in *State of Punjab Vs. Sarwan Singh*, :

The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a

long time as a result of which, material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and

belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of

fairness of trial as enshrined in article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the

State or a private complainant, must abide by the letter of the law or take the risk of the prosecution failing on the ground of limitation.

12. Though in the single complaint alleged violations for three years - 1980, 1981 and 1982 - are clubbed together, we fail to see how there could

be a joint trial for these three offences. Violation of section 372(2) for each year is a distinct and separate offence which, u/s 218 of the Criminal

Procedure Code, calls for a separate trial. Exhibit P-1, the printed balance-sheet for the financial year 1980, has reached the Registrar of

Companies, Madras, on June 9, 1981, exhibit P-2 on May 12, 1982; and exhibit P-3 on May 30, 1983. According to the appellant, limitation

would not start running from these dates for each of the offences, since the Registrar of Companies did not have knowledge about the commission

of the offence. The appellant cannot contend that, in spite of the receipt of

exhibits P-1 to P-3, the Registrar of Companies had no knowledge about the commission of the offence and that it was only after the report of PW-1 was received, that knowledge was obtained. It is not disputed that the contents in exhibits P-1 to P-3 are true and correct and that they were received on the dates stated above. While so, it cannot be urged that the Registrar of Companies - which definition in section 2(40) of the Act means an additional or a Joint or a Deputy or an Assistant Registrar performing the duty of registering companies under the Act - had no knowledge of the contents of exhibits P-1 to P-3 or of the offence. The Registrar of Companies is deemed to have knowledge of the contents of exhibits P-1 to P-3 and of the offence on the day when they are received by him.

13. After receiving the balance-sheet, it is not open to the Registrar to keep these balance-sheet in cold storage, keep his eyes closed to them and then to deny knowledge of these contents, thereby defeating the law of limitation. The very object of the bar of limitation would be defeated if the contention of the appellant is accepted. When the balance-sheets are received by the Registrar of Companies, he is deemed to have knowledge about the contents of the balance-sheets and, consequently, of the offence, and limitation will start running from that day onwards. The complaint relating to the year 1980 will have to be filed within six months from the date of receipt of exhibit P-1, namely, June 9, 1981, the complaint for the offence relating to the year 1981, within six months from the date of receipt of exhibit P-2, namely, May 12, 1982, and the complaint relating to the year 1982 within six months from the date of receipt of exhibit P-3, that is, May 30, 1983. The present complaint is filed only on February 2, 1985, which is far beyond the period of limitation. The trial court had rightly held it to be so. Further, in the instant case, exhibit D-2 shows that, regarding the financial year 1979, the Registrar of Companies had sent letter to the company on this very same issue on December 24, 1981, and a reply has been received from the company on January 29, 1982. During this period, exhibit P-1 had already been received by the Registrar of Companies. After the reply dated January 29, 1982, there had been no response and no further action. On August 12, 1983, PW-1 writes to the company and on August 31, 1983, exhibit D-1 reply had been received. This

issue u/s 372 is also one of the matters on which clarifications had been sought for and yet the complaint is filed only on February 2, 1985. The first contention is answered against the appellant.

14. Regarding the second ground for acquittal, namely, that the company is an investment company and as such is entitled to exemption under sub-

section 13 of section 372, it is not denied by the respondent that the aggregate of the investments made by the company in other corporate bodies

exceeds 30 per cent. of the subscribed capital of the company. The respondents, however, would seek protection under the exception is sub-

section (13) which exempts investment companies from sub-sections (2) and (5) of section 372. The question, therefore, is whether the company

is an investment company. The term "investment company" has not been defined in the Act, though a description of an investment company is

found in sub-section (10) of section 372 of the Act. Sub-section (10) is as follows :

(10) Provided that in the case of a company whose principal business is the acquisition of shares, stocks, debentures and other securities

(hereinafter in this section referred to as "an investment company").

15. An investment company is, therefore, a company whose principal business is the acquisition of shares, debentures or other securities. It is clear

that the income derived from the business is not the criteria. The test would rather be, as to what the principal business of the company is. A

balance-sheet should show what the principal business of the company is.

16. In the instant case, exhibit P-11 is the printed memorandum and articles of association. The object of the company is shown as "to carry on the

business of an investment trust and to buy, underwrite and invest in and acquire and hold shares stocks, debentures, debenture stocks, bonds,

applications and securities issued or guaranteed by any company constituted for carrying on business", and so on. Sub-clauses (2) and (5) also

make it clear that the object of the company is to acquire shares, debentures, securities and so on. No doubt in 1975, the objects clause of the

memorandum has been enlarged to empower the company to undertake certain other activities like, hire-purchase, leasing, etc. However, it is seen

that, in 1980, out of the share capital of Rs. 30 lakhs, investment in shares was Rs. 20.72 lakhs, in 1981 out of the subscribed capital of Rs. 50.83

lakhs, investment in shares was Rs. 21.38 lakhs and in 1982 out of the subscribed capital of Rs. 59.83 lakhs, investment in shares was Rs. 24.87

lakhs. This shows that investment in shares and securities continued to be one of the main activities of the company, even after the company had

diversified into other activities. No doubt, on a percentage basis, there has been a reduction in investment in shares. However, as the test for an

investment company is whether its principal business is whether its principal business is acquisition of shares, etc., the facts and figures show that

acquisition of shares continued to be the principal business of the company. While so, the company is an investment company within the proviso to

section 372(10). It could also be stated that, even in the directory for the year 1985 made by the Directory of Joint Stock Companies in India,

published by the Research and Statistics Division of the Department of Company Affairs, Ministry of Industry, Department of Company Affairs,

this company has been classified as an investment company. In the 1980 Directory also, the same classification is made. The trial court, therefore,

had rightly held that the company is an investment company and as such is entitled to the benefit of the exemption.

17. Finding both the ground of acquittal to be legally and factually sustainable, this appeal against the acquittal is to be dismissed.

18. In the result, this appeal, in so far as it relates to respondents Nos. 4 and 5, is dismissed as the charge having abated and, in so far as it relates

to the other respondents, it is dismissed.