

(2014) 11 MAD CK 0545

In the Madras High Court

Case No : Crl. O.P. No. 28160 of 2009 and M.P. Nos. 1 and 2 of 2009

Brajesh Sharma

APPELLANT

Vs

M.O. Roy

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Companies Act, 1956 — Section 100, 629(A)

Criminal Procedure Code, 1973 (CrPC) — Section 468, 470, 470(3)

Citation : (2014) 11 MAD CK 0545

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioners are accused in E.O.C.C.No. 124 of 2006 on the file of the learned Addl. Chief Metropolitan Magistrate E.O.II, Egmore, Chennai. The respondent is the complainant in the case. The respondent has filed the said complaint alleging that the petitioners have violated Section 100 of the Companies Act, 1956, thereby, they are liable for punishment under Section 629(A) of the Companies Act. Seeking to quash the said case, the petitioners are before this Court with this petition.

2. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent as well as perused the records carefully.

3. Though several grounds were raised in the petition, the learned counsel appearing for the petitioners would focus his arguments on the ground that the prosecution in the instant case is barred by limitation under Section 468 of the Code of Criminal Procedure. The learned counsel pointed out that the maximum punishment provided under Section 629(A) of the Companies Act is only fine for which as per Section 468 of the Cr.P.C. the limitation period is only six months from the date of commencement of the offence.

4. In the instant case, though the occurrence has taken place during the years 2000, 2001 and 2002, the same came to light on 27.02.2002 itself, but, the private complaint was filed only in the year 2006 and thus according to the

learned counsel for the petitioners, the prosecution is barred by limitation.

5. But in the counter, the respondent has stated that on noticing the offence committed, investigation has commenced in the year 2003 and immediately thereafter, the petitioners/accused company filed a writ petition in W.P.No. 32922 of 2003 challenging the said investigation. This Court granted stay to the further investigation. The said interim order was made absolute on 31.01.2005. A petition to vacate the stay was filed by the respondent/complainant and the same was dismissed. As against the same, appeal was filed by the Government before the Division Bench and ultimately the Division Bench vacated the order of stay only on 27.04.2005. Therefore, after 27.04.2005 investigation was taken up and a report was drawn only on 01.12.2005. Thereafter, the Central Government gave permission to launch prosecution only on 01.05.2006. It is further stated that within six months from 01.05.2006, the present complaint has been filed and thus it is not barred by limitation.

6. I have considered the above submissions.

7. Of course as per Section 470 of Cr.P.C., as stated in paragraph 6 of the counter, the period spent on stay order has to be excluded while computing the period of limitation. In this case, the stay was ordered on 23.10.2003 and it was vacated on 27.04.2005. This period has to be necessarily excluded while computing the period of limitation. But after 27.04.2005, the complaint was not filed within six months, the reason stated is that some time was taken to complete the investigation and to get permission from the Central Government.

8. The learned counsel appearing for the respondent would submit that this period has to be excluded while computing the period of limitation as per Section 470(3) of the Code of Criminal Procedure. For better understanding, let us look into the said provision, which reads as follows:

Section 470(3): Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, than, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.?In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

9. Referring to the said provision, the learned counsel submitted that in the instant case, the Central Government gave permission only on 01.05.2006 and the complaint was launched within six months from the said date and thus the complaint is not barred by limitation.

10. In my considered opinion, the said contention cannot be accepted at all. The

consent or sanction as has been referred to in sub-clause 3 of Section 470 of Cr.P.C. relates to consent or sanction which is obtained under the Statute itself. Here in this case, to prosecute a person for offence punishable under Section 629(A) of the Companies Act, neither any consent nor any sanction from the Central Government is required. It may be true that on the administrative side permission is obtained from the Central Government to launch prosecution, but that permission cannot be equated to a consent or sanction to be obtained statutorily as referred to under sub-section 3 of Section 470 of the Cr.P.C. Therefore, this period cannot be excluded at all from the period of limitation. If it is done, obviously the complaint is barred by limitation because the complaint was not launched within six months atleast from 27.04.2005, the day when stay order was vacated.

11. Admittedly the complaint was launched only in the year 2006, thus the prosecution is barred by limitation. Therefore, the proceedings is liable to be quashed.

12. In the result, the petition is allowed and the proceedings in E.O.C.C.No. 124 of 2006 on the file of the learned Addl. Chief Metropolitan Magistrate E.O.II, Egmore, Chennai is quashed. Consequently, the connected miscellaneous petitions are closed.