

(2011) 05 SC CK 0044

In the Supreme Court Of India

Case No : Criminal Appeal No. 950 of 2004

C.B.I.

APPELLANT

Vs

Blue Sky Tie-Up Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Foreign Exchange Regulation Act, 1973 — Section 13, 18(1), 18A, 19(1), 44(2)
Monopolies and Restrictive Trade Practices Act, 1969 — Section 48A
Penal Code, 18

Citation : (2011) 6 SCALE 436

Hon'ble Judges : G.S. Singhvi, J; Chandramauli Kr. Prasad, J

Bench : Division Bench

Advocate : P.P. Malhotra, ASG, P.K. Dey and Anil Katiyar, for the Appellant; Tara Chandra Sharma and Kishan Datta for State of West Bengal, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against order dated 23.7.2002 passed by the learned Single Judge of the Calcutta High Court whereby he partly allowed the application filed by Respondent Nos. 1 to 3 u/s 482 of the Code of Criminal Procedure and quashed the proceedings of Special Case No. 6 of 1999 qua Respondent No. 1.

2. A perusal of the record shows that Appellant-CBI registered case No. RC5(E)/97/CBI/BS&FC/DLI dated 19.5.1997 for offences under Sections 120B/409/477A of the Indian Penal Code and u/s 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. After conducting investigation, the Appellant filed six charge-sheets bearing Special Case Nos. 4/99, 5/99, 6/99, 7/99, 8/99 and 9/99 in 1st Special Court, Alipore, 24, Paragana (South), Kolkata against M/s S.R. Ramamani, S/Shri Deepak Kumar Choudhary, Shyamal Bhattacharya, S.K. Aggarwal, Arun Kumar Singhania, Respondent No. 1.-M/s Blue Sky Tie-up Pvt. Ltd., Ranbir Kumar Ghosh, Imtiaz Rashid and Arunabha Mitra.

3. On being noticed, Respondent Nos. 1 to 3 filed an application u/s 482 Code of Criminal Procedure for quashing the proceedings of Special Case No. 6 of 1999 by claiming that they had not committed any offence. The learned Single Judge partly allowed the application and quashed the proceedings insofar as Respondent No. 1 is concerned. He did so on the premise that the entire money due to the complainant has been paid and the company being a body corporate cannot be prosecuted.

4. Shri P.P. Malhotra, learned Additional Solicitor General relied upon the Constitution Bench judgment in Standard Chartered Bank and Others etc. Vs. Directorate of Enforcement and Others etc., and argued that in view of the law laid down in that case, the quashing of proceedings against Respondent No. 1 is liable to be annulled. Shri Tara Chandra Sharma, learned Counsel for the State of West Bengal, submitted that the State has no role to play in the matter.

5. We have considered the submission of Shri Malhotra and carefully gone through the judgment relied upon by him.

In that case, K.G. Balakrishnan, J. (as he then was) referred to some of the judicial precedents on the subject and expressed his views in the following words:

As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the Appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. The offences mentioned u/s 56(1) of the FERA Act, 1973, namely, those u/s 13; Clause (a) of Sub-section (1) of Section 18; Section 18A; Clause (a) of Sub-section (1) of Section 19; Sub-section (2) of Section 44, for which the minimum sentence of six months' imprisonment is prescribed, are serious offences and if committed would have serious financial consequences affecting the economy of the country. All those offences could be committed by company or corporate bodies. We do not think that the legislative intent is not to prosecute the companies for these serious offences, if these offences involve the amount or value of more than Rs one lakh, and that they could be prosecuted only when the offences involve an amount or value less than Rs one lakh.

As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in

accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.

In his concurring opinion, D.M. Dharmadhikari, J. observed as under:

The argument advanced on behalf of the company and corporate bodies that as the minimum prescribed punishment of imprisonment cannot be imposed on juristic person like company or corporation, Section 56 of the Act cannot be invoked against the company or corporation cannot be accepted. It is to be noted that there are other provisions in the Act, where on conviction of companies or corporations, adverse consequences flow against the offending companies and corporations such as u/s 69 of blacklisting them and u/s 50 penalising them. The prosecution of the companies and corporations u/s 56 of the Act and imposing on them the punishment of fine which is possible to be imposed, therefore, is not ruled out. Section 56 of the Act provides for imposition of minimum prescribed sentence of imprisonment wherever possible and also fine. Such a construction of the provisions of Section 56 of the Act to make it workable cannot be said to be a construction impermissible only because the statute under construction is a penal statute. Section 56 cannot be so construed as to make it ineffective against companies and corporations. Merely because there is no specific mention in the section that in the event of breach committed by the companies and corporations, the punishment can only be in the nature of fine is no ground to read into the provision a fatal lacuna. The provision which is clearly applicable equally to natural and juristic persons, if construed reasonably in the manner indicated above, would be found workable and capable of fulfilling the object of the Act.

Arun Kumar, J. also agreed with K.G. Balakrishnan, J. and D.M. Dharmadhikari, J. and observed:

By a purely technical process of reasoning corporations should not be allowed to go scot-free. There are several statutes making corporations liable for conviction which prescribe punishment by way of imprisonment as well as fine. An interpretation as suggested on behalf of the Appellant will result in corporations escaping liability in all cases. Here we may point out that Section 48A of the Monopolies and Restrictive Trade Practices Act, 1969 specifically makes

corporations liable for prosecution while at the same time providing that in case of conviction they will be liable to imprisonment and also fine. In the face of this specific provision will corporations be allowed to escape liability on same reasoning as is being advanced here on behalf of the Appellants? In my view allowing corporations to escape prosecution for offences u/s 56 FERA for the only reason that corporations cannot be punished with imprisonment even though the punishment by way of fine which is also prescribed under the section can be levied on them, will be defeating the statutory mandate regarding bringing to book offenders under FERA.

B.N. Srikrishna, J. wrote dissenting opinion on his own behalf and on behalf of Santosh Hegde, J. and opined that the view taken by the majority of the Court in *The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others*, that the company cannot be prosecuted for offences which require imposition of a mandatory term of imprisonment coupled with fine and in such a case the Court cannot impose only a fine is correct.

6. Since, the majority of the Constitution Bench ruled in *Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.* (supra) that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body, the contrary view taken by the learned Single Judge cannot be approved. We also find that for majority of offences with which Respondent No. 1 has been charged, the Court has the discretion to impose fine. Therefore, quashing of proceedings against Respondent No. 1 cannot be sustained.

7. In the result, the appeal is allowed. The impugned order is set aside and the concerned Court is directed to proceed against Respondent No. 1 in accordance with law.

8. A copy of this order be immediately forwarded to the Presiding Officer, 1st Special Court, Alipore. 24, Paragana (South), Kolkata.