
(1976) 03 CAL CK 0010
In the Calcutta High Court

Cushrow Russy Irani

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 17-03-1976

Acts Referred:

COMPANIES ACT, 1956 — Section 207, 372, 374, 81

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 204, 468, 469

Citation : (1977) CriLJ 160

Hon'ble Judges : A.N. Banerjee, J

Bench : Single Bench

Judgement

A.N. Banerjee, J.—This Rule is directed against an order dated 26-12-75 passed by the learned Chief Metropolitan Magistrate, Calcutta condoning the delay for filing the petition of complaint u/s 372 read with Section 374 of the Companies Act. 1956 and also for quashing the proceeding taking cognizance of the aforesaid offences. It appears that on 26-12-75 Registrar of Companies, West Bengal filed an application u/s 473 of the Code of Criminal Procedure praying for condonation of the delay on the grounds stated therein. The learned Chief Metropolitan Magistrate before Whom the said application was filed recorded an order on the petition itself. The order runs as follows:

Perused the petition. Heard the learned Advocates. It appears that in the present petition delay in filing the petition has been sufficiently explained and as the prosecution is in the interest of the State and on the ground of public policy the delay is condoned u/s 473 of the Code of Criminal Procedure for taking cognizance u/s 372 of the Indian Companies Act.

On the same date he took cognizance and issued processes against the accused petitioner fixing 9-2-76 for appearance. Thereafter the accused petitioner appeared before him and subsequently filed the present application. In the petition of complaint it was alleged that an inspection of the Statesman Ltd. was carried out u/s 207(4) of the Companies Act 1956 and it transpired during inspection that the said Company namely Statesman Ltd. had made investment

in the share of M/s. Nachiketa Publications Limited Bombay. M/s. Nachiketa Publications Limited was incorporated at first as a Private Limited Company on 30-1-69 with its registered office at 5, Kasturibai Building, Bombay. On 18-7-69 the said investee Company was converted into public limited Company when its total subscribed capital was Rs. 5,000 comprising of 50 Equity Shares of Rs. 100 each. The Statesman Limited the investing Company was not connected with the aforesaid Company in the beginning but later on wanted to acquire the shares of the said Company. In a meeting of the Board of Directors of the investing Company on 4-6-69 the Board considered a note prepared by the accused petitioner who was the Managing Director of the investing Company at the relevant time regarding the feasibility of acquiring interest by the Statesman Limited in the said investee Company, It was decided in the said meeting that the Statesman Limited would acquire some shares of M/s. Nachiketa Publications Limited. "Thereafter on 13-11-69 the Statesman Limited acquired 5 shares of Rs, 100 each out of the total shares. Thereafter in a meeting of the Board of Directors of the Statesman Limited it was decided that the Statesman Limited would acquire further 95 shares out of a so-called rights of shares made by the said Nachiketa Publications Limited. On 12-3-70 Statesman Limited acquired 95 shares out of these allegedly Right shares issued by the investee Company by acquiring 95 shares. Thus the Statesman Limited came to have 100 shares out of 180 shares issued and subscribed in that Company.

It was alleged in the petition of complaint that such acquisition of 95 shares by the Statesman Limited made on 12-3-70 was within an year of the first allotment and also within two years from the date of incorporation of Nachiketa Publications Limited. It was further alleged that such acquisition of 95 shares was without the approval by a resolution in the General Meeting of the Investing Company and approval of the Central Government as contemplated u/s 372(4) of the Companies Act. Thus the accused petitioner who was said to be also on the Board of M/s. Nachiketa Publications Limited and also was the Managing Director of the Statesman Limited at the relevant time committed an offence u/s 372 read with Section 374 of the Companies Act 1956. It is as against such order regarding contention of the delay by the learned Chief Metropolitan Magistrate and also taking of cognizance of the said offences the accused petitioner moved this Court and obtained the present Rule. Mr. Banerjee, learned Advocate appearing with Mr. Prasun Chandra Ghosh and S.P. Roy Choudhury for the petitioner submitted that the learned Chief Metropolitan Magistrate condoned the delay without complying with the provisions of Section 473 of the Code of Criminal Procedure 1973 and that in any event the accused petitioner ought to have been given an opportunity of being heard before the bar of limitation was lifted by the learned Magistrate. According to Mr. Banerjee denial of such an opportunity to the accused petitioner offended the principles of equity and natural justice, With regard to the alleged offences Mr. Banerjee's contention was that the acquisition of 95 shares by the Statesman Limited did not contravene the provisions of Sub-section (4) of Section 372 of the Companies Act

inasmuch as the first proviso to that sub-section read with Section 81 of the Companies Act was applicable in the present case. In other words Mr. Banerjee's contention was that the Statesman Limited which were holding 5 shares from before were offered by Nachiketa Publications Limited and accepted such offer and acquired 95 Right shares. Thus neither the Statesman Limited nor the accused petitioner committed any offence. Mr. Banerjee's further grievance was that the enquiry under the Companies Act was taken up sometime in 1971 and that it was only in July 1973 Registrar of Companies, West Bengal wrote to the Statesman Limited regarding acquisition of shares of M/s. Nachiketa Publications Limited and directed the Statesman Limited to show cause as to why penal action should not be : taken against the responsible officers of the Company for the contravention of the provision of Section 372 of the Companies Act, 1956. Mr. Banerjee pointed out that in reply to such letter of the Registrar of Companies the Statesman Limited wrote back on 31-7-73 explaining the circumstances under which the Statesman Limited acquired 95 Right shares and the fact that Sub-section (4) of Section 372 of the Companies Act was not attracted. On receipt of such letter the Registrar of Companies wanted to have a certified copy of the letter from M/s. Nachiketa Publications Limited offering 95 Right shares. This request of the Registrar of Company was also complied with on 15-2-74, This was also acknowledged by the Registrar on 2-3-74. But thereafter on 30-9-74 Registrar of Companies issued a notice to 8 directors of Statesman Limited for contravention of Section 372(2) of the Companies Act, 1956. This notice was also replied to and it was only on 26-12-75 the petition of complaint was filed by the Registrar of Companies along with an application for condonation of the delay before the learned Metropolitan Magistrate. In such circumstances Mr. Banerjee contended that the learned Chief Metropolitan Magistrate should not have condoned the delay and in any event should not have taken cognizance of the offences alleged. Mr. J, N. Ghosh with Mr. Anjan Mukherjee learned Advocates appearing for the Registrar of the Companies submitted that the learned Chief Metropolitan Magistrate appeared to have condoned the delay u/s 473 of the Code of Criminal Procedure 1973 and that it would be apparent from the order passed by the learned Magistrate that after applying his mind to the facts of the case he condoned the delay stating the reasons therefore. In such circumstances Mr. Ghosh contended that this Court sitting in its revisional jurisdiction should not substitute its subjective satisfaction to that of the learned Chief Metropolitan Magistrate by saying that the delay had not been properly explained. Mr. Ghosh submitted further that on the question of merit regarding the offences it was premature inasmuch as it would be apparent from the petition of complaint itself that Nachiketa Publications Limited did not come within the first proviso of Sub-section (4) read with Section 81 of the Companies Act 195C. Mr. Bikash Chandra Sen learned Advocate appearing for the State supported the contention of Mr. Ghose.

2. It would appear that the Criminal Procedure Code 1973 prescribes for the first time the principle of limitation in relation to certain categories of offences.

Chapter XXXVI of this Code deals with limitation for taking cognizance of certain offences. Period of limitation means the period specified in Section 468 for taking cognizance of offences. Section 468 imposes a bar to taking cognizance after lapse of the period of limitation. It says that no court shall take cognizance of an offence of the category specified in Sub-section (2) after the expiry of the period of limitation. If the offence is punishable with fine only then the period of limitation is six months under Clause (a) of Sub-section (2) of Section 468. In this case we are concerned with this clause. Sections 469 and 470 of the Code lay down the commencement of the period of limitation and exclusion of time in certain cases. Section 471 excludes the date on which the court is closed and Section 472 lays down that in the case of continuing offence a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 473 runs as follows:

Extension of period of limitation in certain case- Notwithstanding anything contained in the foregoing provision of this Chapter any court may take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice.

3. The first question which arises for consideration is whether in extending this period of limitation court is obliged to give an opportunity to the person against whom such period of limitation is being extended of being heard before the passing of an order condoning such delay. In my view the scheme in the Criminal Procedure Code does not provide for such an opportunity to an accused of being heard before consideration of the question of limitation in accordance with the provisions of Chapter XXXVI of the Code. It is only at the time of taking cognizance bar of limitation is imposed upon the court and it is said that no court shall take cognizance of an offence of the category specified in Sub-section (2) after the expiry of the period of limitation vide Section 468. At that time the accused is nowhere on the scene. It is also to be noticed that the bar is with regard to taking of the cognizance of the offences and not of the offender. It is only after cognizance of an offence is taken Magistrate is required to proceed in accordance with the provision of Sections 202 to 204 of the Code for the purpose of either dismissing the petition of complaint or for issue of processes against an offender. Therefore, at the time the Magistrate takes cognizance of the offence the accused cannot be heard nor can he raise any grievance of his not being given an opportunity of being heard at that time. After the process is issued and the accused appears before the Magistrate it is open to him to raise the question regarding the bar of limitation and it is for the learned Magistrate to consider at the proper stage of the proceeding whether the accused can avail of the bar of limitation as imposed upon the court, I, therefore, do not think that the principles of natural justice was denied by not giving an opportunity to the accused petitioner of being heard at the time of the learned Chief Metropolitan Magistrate was considering the application for condonation of the delay filed by the Registrar of the Companies.

4. I may now come to the question whether learned Chief Metropolitan Magistrate acted in accordance with the terms of Section 473 of the Code in taking cognizance of the offence even after the expiry of the period of limitation. A plain reading of Section 473 of the Code makes it clear that any court may take cognizance of an offence after the expiry of the period of limitation if (1) it is satisfied on the facts and in the circumstances of the case (2) that the delay has been properly explained or (3) that it is necessary so to do in the interest of justice. Therefore, a Magistrate can condone the delay or overlook the bar of limitation if after taking into consideration the facts and circumstances of the case he is satisfied that delay has been properly explained or that it is necessary to take cognizance of the offence in the interest of justice. In the present case I am afraid the learned Chief Metropolitan Magistrate did not act in terms of Section 473 of the Code. He brought in extraneous matters such as interest of the State and ground of public policy in condoning the delay. It is not understood ...what the learned Magistrate meant by the said expressions "in the interest of the State and on the ground of public policy." In his explanation the learned Magistrate has added one more ground which to me also appears to be extraneous. He has stated therein "the purpose of implementing the provision of a Welfare Legislation." Such consideration of extraneous matters without as it appears, taking into consideration the facts and circumstances of the case cannot be said to be in accordance with the provisions of Section 473 of the Code. I do not know what would have been the views of the learned Magistrate if such extraneous matters had not weighed with him in considering the question regarding extension of the period of limitation u/s 473 of the Code. In that view of the matter I am of the view that the matter must go back to the learned Chief Metropolitan Magistrate. Calcutta for consideration of the question of extension of the period of limitation in accordance with the provisions of Section 473 of the Code and then to proceed according to the provision of law after setting aside the impugned order dated 26-12-76 and other subsequent orders. The learned Chief Metropolitan Magistrate will proceed from the stage the case reached with the filing of the petition of complaint along with the petition for condonation of delay prior to the passing of the order dated 26-12-1976 in accordance with the provision of law and in the light of the observation made above. The learned Magistrate will also consider the question of limitation on the materials already on record.

5. The Rule is disposed of accordingly, let the records go down as early as possible.