(2011) 10 DEL CK 0186

In the Delhi High Court

Case No : Criminal M.C. No. 766 of 2010 and Criminal M.A. 2778 of 2010

Daya Ram Verma and Others APPELLANT

Vs

Securities and Exchange Board of India RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Companies Act, 1956 — Section 2(24), 5
Criminal Procedure Code, 1973 (CrPC) — Section 251, 319
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1), 141(2)
Securities and Exchange Board of India Act, 1992 — Section 24(1), 27

Citation : (2011) 9 AD 399 : (2012) 171 CompCas 66 : (2012) 1 ILR Delhi 527

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Joginder Sukhija, for the Appellant; Sanjay Mann, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The Respondents filed a complaint before the Learned CMM, Tis Hazari for offences punishable u/s 24(1) and 27 of the Securities and Exchange Board of India Act, 1992 (in short SEBI Act) against M/s. Master Green Forest Ltd. In the complaint it was alleged that the accused company was operating collective investment scheme and raised a huge amount from the general public in contravention with the SEBI Act and Regulations. Besides the allegations against the company, the allegations against its Directors and promoters who were not arrayed as an accused were that the accused through its promoters/ Directors who are the persons in-charge and responsible for the day-to-day affairs of the company and all of who actively connived with each other for the commission of the offence. In Para 20 it was further alleged that the accused company and its promoters and Directors in-charge and responsible to the accused company for the conduct of its business were liable for the violation of the accused company as provided u/s 27 of the SEBI Act. On the said complaint being filed only arraying the company as an accused, Learned ACMM vide its order dated 15th December, 2003 observed that the perusal of the complaint discloses commission of offence punishable u/s 24(1) and 27 of the SEBI Act and accordingly all the accused be summoned for 21st February, 2004 and therefore, on 23rd August, 2004 when the process was not returned back, fresh summons were issued.

2. On 31st January, 2005 the case was listed before the Learned Additional District and Sessions Judge on transfer in view of the administrative orders passed by this Court. Again since process was not received back, fresh summons were issued against the accused persons. On 15th April, 2005 SEBI was granted an opportunity to furnish the complete details of the accused for enabling the Court to summon the accused and the matter was fixed for 9th September, 2005. However, complete details were not furnished and thus the matter was again adjourned on the 9th September, 2005 and 9th December, 2005. On 10th March, 2006 the complainant submitted to the Court that on account of computerization of the ROC report no details have been supplied as yet to the SEBI. Thus, the matter was adjourned to 26th May, 2006 for further proceedings. Despite all this particulars were not furnished when last opportunity was granted to the Complainant on 13th October, 2006 for furnishing particulars and it was directed that the accused be summoned for 1st December, 2006 for appearance. On this date a list was filed naming the Petitioners as the Directors of the said company. It is against this order summoning the Petitioners and framing notices u/s 251 Cr.P.C. that the Petitioners are before this Court seeking quashing of the proceedings pending against the Petitioners and the complaint in the complaint case titled SEBI v. M/s. Master Green Forest Limited being complaint case No. 1250/2003.

3. Learned counsel for the Petitioner contends that the Petitioners were not arrayed as an accused and no summons were issued to them vide order dated 15th December, 2003. It is in the garb of filing the fresh address of the accused that the complainant filed the list of the Directors, shareholders etc. and got them summoned. There is no application of mind by the Learned Trial Court while issuing summons against the Petitioners. Further, since no summons were issued in the first instance the Petitioners could not have been summoned as Director except as provided u/s 319 Cr.P.C. Reliance is placed on Ranjit Singh Vs. State of Punjab, .

4. It is further contended that even as per the complaint no specific role has been assigned to the Petitioners. Merely stating that all the Directors and promoters connived with each other and were in-charge and responsible for the day-to-day functioning of the company cannot fasten the vicarious liability on the Petitioners, there being no specific allegations against the Petitioners. Reliance in this regard is placed on National Small Industries Corp. Ltd. v. Harmeet Singh Paintal & Anr. J.T. 2010 (2) 161; G.D. Goyal v. State Crl.M.C. 4575/2005 decided by this Court on 22.05.2007; Rajesh Bagga v. State & Anr. 2005 (124) DLT 312; Charanjit Singh v. D.B. Merchant Banking Services Ltd. 1 (2002) BC 489 to contend that only on specific allegations being raised, the Petitioners could have

been summoned and not merely by virtue of their being the Directors of the accused company.

5. Learned counsel for the Respondent on the other hand contends that it is well settled legal proposition that the Magistrate takes cognizance of the offence and not the offences. Reliance is placed on Raghubans Dubey Vs. State of Bihar, to contend that there were specific averments in the complaint regarding the Directors and promoters and that is why they were summoned as the accused vide the order dated 15th December, 2003. However, since details were not available with the Respondents time was granted by the Learned Trial Court to furnish the details i.e. the names and addresses of the accused. The present is not a case where the committal proceedings took place before the Learned Additional Sessions Judge. The Learned Additional Sessions Judge was acting as a Court of original jurisdiction because this Court in exercise of its administrative powers had directed that all complaints of SEBI will be tried by the Learned Additional Sessions Judges. Thus, the Learned Additional Sessions Judge was competent to summon the Petitioners as accused and the issuance of process by the Learned Additional Sessions Judge was not without jurisdiction. Reliance is placed on Panther Fincap and Management Services Ltd. and Others Vs. Securities and Exchange Board of India . Reliance is further placed on H.R. Kapoor Vs. Securities and Exchange Board of India, to contend that u/s 27 of the SEBI Act every person, who at the time when the offence was committed was in-charge and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the said offence and shall be liable to be proceeded against. The decisions relied by the learned counsel for the Petitioner relate to the offences u/s 138 read with Section 141 of the Negotiable Instruments Act unlike Section 27 of the SEBI Act. Reliance is also placed on Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, to contend that no case for quashing is made out at this stage as the ingredients in the complaint disclose the commission of a cognizable offence. It is thus stated that no case for quashing of the proceedings is made and the petition be dismissed.

6. I have heard learned counsel for the parties and perused the records. Indubitably, the Court takes cognizance of the offence and not the offenders. No doubt in the memo of parties filed along with the complaint only the company was made an accused however, perusal of the order dated 15th December, 2003 summoning the accused shows that the Learned ACMM has used the word "accordingly all the accused be summoned for 21st February, 2004". The use of these words show that the Learned ACMM was conscious of the fact that besides the accused company i.e. M/s. Master Green Forest Limited there were other accused also. Further the complaint clearly stated that the Directors and promoters of the company who were the persons in-charge and responsible for the day-to-day affairs of the company and all of them actively connived with each other for the commission of the offence. Thus, the role of the promoters and Directors was specifically mentioned in the complaint. It was further

mentioned that the accused company and its promoters and Directors in-charge and responsible to the accused company for the conduct of its business were liable for the violations of the accused company as provided u/s 27 of the SEBI Act. Thereafter opportunities were given to the Respondent to furnish the details so that process could be issued against the accused. Thus, it is not as if all of a sudden vide the order dated 13th October, 2006 the accused were summoned. In view of the facts of the present case the contention of the Petitioner that the summons having not been issued in the first instance by the Learned Magistrate, the Learned Additional Sessions Judge could not have issued the summons unless the stage u/s 319 Cr.P.C. was arrived at deserves to be rejected. Thus, the reliance of the Petitioner on Ranjit Singh (supra) is wholly misconceived.

7. Regarding the issue whether the complaint discloses sufficient evidence against the Petitioners or not, it may be noted that as reproduced above the complaint clearly states that the promoters and Directors of the company in-charge and responsible for the conduct of its affairs have connived with each other and have committed the offence. In K.K. Ahuja Vs. V.K. Vora and Another, it was held:

27. The position u/s 141 of the Negotiable Instruments Act, 1881 can be summarized thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix Managing to the word Director makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in Clauses (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in-charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case u/s 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable u/s 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, be averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

8. In the present case the offence alleged is of running a collective investment scheme contrary to the provisions of SEBI Act and Regulations. No doubt Section 27 of the SEBI Act makes responsible all other Directors of the company who are responsible and in-charge of the day-to-day affairs of the company, however in a case of conspiracy number of people can be involved and this is the allegation of the Respondent in the complaint. Thus, I find no merit in the contention that even on the facts of the present case no case for proceeding against the Petitioners are made out.

Petition and application are dismissed.

