

**(2001) 01 KAR CK 0069**  
**In the Karnataka High Court**  
**Case No : Criminal Petition No. 2681 of 1998**

Dr. C.R. Bhansali

APPELLANT

Vs

K. Ramesh and another

RESPONDENT

**Date of Decision :** 09-01-2001

**Acts Referred:**

Companies Act, 1956 — Section 113, 113  
Criminal Procedure Code, 1973 (CrPC) — Section 482, 482

**Citation :** (2001) 44 CLA 69 : (2001) 104 CompCas 732 : (2001) ILR (Kar)  
734 : (2001) 4 KarLJ 254 : (2001) 4 KCCR 394 SN

**Hon'ble Judges :** K.R. Prasad Rao, J

**Bench :** Single Bench

**Advocate :** Sri Basavaprabhu S. Patil, for the Appellant; Sri K. Ramesh, for the Respondent

## Judgement

K.R. Prasad Rao, J.

The petitioner who is the accused 2 in C.C. No. 337 of 1997 filed this petition u/s 482 of the Cr. P.C. seeking for quashing the above proceedings registered against him by the impugned order passed by the Special Court for Economic Offences, Bangalore City.

2. 1st respondent herein filed a complaint in the Trial Court alleging that petitioner herein who is the Chairman and Director of the CRB Capital Markets Limited situated at New Delhi, failed to return the shares sent by him with the endorsement of transfer in his name within two months as required under the provisions of Section 113 of the Companies Act (for short, the "Act").

3. Learned Magistrate recorded the sworn statement of the complainant and thereafter ordered for registering the case against the petitioner for the above said offences and for issue of process to him. It is the said order which is now challenged in the present proceedings.

4. 1st respondent herein appearing in person before this Court remained absent

and unrepresented.

5. I have heard the arguments advanced by the learned Counsel for the petitioner.

6. Learned Counsel for the petitioner raised the following contentions;

(i) The Court below has no jurisdiction to entertain this complaint since the Head Office of the above said company is situated at Delhi from where the shares are to be sent back making endorsement of transfer on them.

(ii) According to the procedure laid down u/s 113(3) of the Act, the shareholder has to first make a complaint of non-compliance with the provisions of Section 113(1) of the Act, before the Company Law Board and it is the Company Law Board which has to take necessary action for getting the transfer endorsement made on the share certificates and for returning them to the shareholder by fixing the time within which the transfer endorsements are to be made on the share certificates. The said order may also provide for all costs and incidental expenses to the application, shall be borne by the company or by any officer of the company responsible for the default.

(iii) By virtue of the Government Notification dated 15-2-1995 prosecution powers have been delegated to SEBI Officers. So, the individual shareholders are not entitled to file any complaint in this regard.

(iv) On the liquidation proceedings initiated against the above company in Company Petition No. 191 of 1997; in the Company Court at Delhi, an order has been passed appointing the official liquidator as provisional liquidator, copy of which is produced as Annexure-C. So, without leave of the Company Court, no legal proceedings shall commence or if pending shall be proceeded with against the company by virtue of the provisions u/s 446(1) of the Act.

7. It is clear from the provisions of Section 623 of the Act that if any offence against this Act which is punishable with fine only is committed by any person within a Presidency town, such person may be tried summarily and punished by any Presidency Magistrate of that Presidency town. Since the Head Office of the above said company is situated at Delhi and since the address of the petitioner in complaint is given as the resident of New Delhi, showing his designation as Chairman and Director of the above said company and since the offences are alleged to have been committed by him, only the Presidency Magistrate of New Delhi alone has got jurisdiction to try the above offence. So, in the first instance, I find that the Court below has no jurisdiction to entertain this complaint. Further, as rightly pointed out by the learned Counsel for the petitioner, the provisions of Section 113(3) of the Act, make it clear that the complaint is to be made by the shareholder only to the Company Law Board and the Company Law Board is empowered to take necessary action in this regard to make good the default, if any committed by the company or by any of its officers and even the Director of the company and to pay the costs to the applicant-shareholder.

Further, by virtue of the amendment of Section 113 of the Act, by the Companies (Amendment) Act, 1988, which came into force with effect from 31-5-1991, the word "Court" is substituted by the "Company Law Board" in the said provisions. It is therefore, clear that the jurisdiction of Regular Magistrate Courts to entertain the complaint is taken away by virtue of this amendment and the said powers are conferred on the Company Law Board. So, I find that the complaint filed by the 1st respondent herein, before the Court below is also riot maintainable. It is further found from the provisions of Section 446 of the Act that, without leave of the Company Court, no judicial proceedings can be initiated against the company or any of its officers in respect of the company, which is under liquidation soon after the official liquidator is appointed as provisional liquidator by the Company Court. Since the 1st respondent-complainant has not taken leave of the Company Court to file the above complaint, I find that on this ground also the above said complaint is not maintainable.

8. For the above reasons, I find that the proceedings in the above case are liable to be quashed.

9. In the result, this petition is allowed and the proceedings in C.C. No. 337 of 1997 pending against the petitioner are hereby quashed.