
(2014) 11 CAL CK 0106
In the Calcutta High Court
Case No : C.R.R. No. 1864 of 2008

Dwarka Prasad Agarwal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Companies Act, 1956 — Section 21(1)(iv)(c), 628, 638
Criminal Procedure Code, 1973 (CrPC) — Section 468, 469, 472
Factories Act, 1948 — Section 38

Citation : (2014) 11 CAL CK 0106

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Sujay Bandyopadhyay, Advocate for the Appellant; Dipanjan Datta, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.—Proceeding in Complaint Case No. C/4239 of 2003 pending before the learned 10th Metropolitan Magistrate, Kolkata under Section 628 of the Companies Act has been assailed in this revision petition.

2. The prosecution case, as alleged in the petition of complaint, is to the effect that an inspection was carried out in respect of the books of accounts and other records of the accused company. Pursuant thereto, a show-cause notice dated 12.02.1998 was issued upon the said accused company alleging that the company had an outstanding liability towards the depositors to the tune of Rs. 104,01,435/- as on 31.03.1997. Information was sought for from the accused company as to how it would arrange to pay back its huge liability to depositors and what would be the source of funds to make such payment. The company, inter alia, responded that the said liability was a book liability. In the opinion of the inspecting officer such version of the company was incorrect and if the said liability was construed to be a book liability it would amount to admission on the part of the company and that there was incorrect and inaccurate figure stated in its books of accounts which constituted an offence under Section 628 of the Companies Act. The reply of the company to the aforesaid show-cause notice

was received by the Registrar of Companies on 25.02.1998 and the same was construed to be not maintainable in law.

3. With regard to the aforesaid accusation a complaint dated 30th July, 2003 was filed before the Court of the Chief Metropolitan Magistrate, Kolkata. The learned Chief Metropolitan Magistrate took cognizance of the offence and transferred the case before the learned 10th Metropolitan Magistrate, Kolkata.

4. Mr. Bandyopadhyay, learned counsel appearing for the petitioners submitted that offence came to the knowledge of the complainant on 25.02.1998 when the reply filed by the accused company was found to be not maintainable in law. Offence under Section 628 of the Companies Act is punishable with two years imprisonment. Therefore, the complaint ought to have been filed within three years from the date of its commission or knowledge thereof. The impugned prosecution was, however, instituted after five years and was barred by limitation. He accordingly prayed for quashing of the proceeding.

5. Mr. Datta, learned counsel appearing for the complainant submitted that the complainant came to know of the offence on 28.03.2003 upon receipt of letter from the Regional Director vide letter No. RD/T/2027/Inspn./4170 dated 28.03.2003 accordingly the complaint was filed within the period of limitation.

6. I have considered the rival submissions of the parties as well as the materials on record. It has been claimed by the complainant that he had come to know of the offence on 28.03.2003 vide letter No. RD/T/2027/Inspn./4170 written by the Regional Director on the selfsame date.

7. I am, however, unable to persuade myself that the said date is the starting point of the knowledge of the complainant, namely, Registrar of Companies with regard to commission of offence. It appears from the averments made in paragraph 8 of the petition of complaint that pursuant to the show-cause notice dated 12.02.1998 the accused company had submitted a reply to the complaint dated 25.02.1998 which the latter found to be not maintainable in law.

8. Hence the date on which the Registrar of Companies, that is, the complainant herein, came to an opinion that the reply of the accused company was not maintainable in law ought to be construed as the date of knowledge as to the offence.

9. For better appreciation, the averments in paragraph 8 and 9 is set out hereinbelow:

"8. That the show cause notice No. TS-3/30935 dated 12-02-1998 was issued to all accused by the complainant under Registered Post with A/D. But, the reply dated 25-02-1998 of the accused was not maintainable under law.

9. That the above violation of the Act was come to the knowledge of the complainant on 28.03.2003 when he received a letter from the Regional Director vide his letter No. RD/T/2027/Inspn./4170 dated 28.03.2003 directing therein to

launch the prosecution for the aforesaid violation against the accused and, as such, the complainant has filed this instant case well within the period of limitation as provided under section 468 and 469 of the criminal Procedure Code, 1973."

10. It is clear from the aforesaid averment that the date the complainant had arrived at a subjective decision that the explanation of the accused company in its reply dated 25.02.1998 was not maintainable is the date of his knowledge as to the offence under section 628 of the Companies Act. The period of limitation cannot be extended by referring to letter written by Regional Director in 2003 calling upon the complainant to file the complaint by treating the same as the date of his knowledge as to such offence.

11. For the aforesaid reasons, I find much force in the argument of learned counsel appearing for the petitioners that the impugned criminal proceeding which was filed five years after the knowledge of the complainant as to the commission of offence under section 638 of the Companies Act is clearly barred by limitation under Section 468 of the Code of Criminal Procedure and is liable to be quashed.

12. Furthermore, the alleged offence of making incorrect statement in the books of accounts cannot be said to be a continuing one an offence punishable under Section 472 of the Code of Criminal Procedure.

13. In similar circumstances, the Apex Court in JJ. Irani & Anr. Vs. State of Jharkhand, JT 2014(9) SC 131 quashed prosecution under the provisions of the Factories Act on the ground that the date of knowledge of the complainant, i.e. Inspector of Factories of the alleged offence ought to be construed from the report of preliminary investigation of the accident and not from the date of final report and letter written by the Government calling upon him to file the complaint. The Apex Court, inter alia, held as follows:

"15. We have heard the matter and considered the issue at length and we find ourselves unable to uphold the reasoning of the High Court. Jambekar's case (supra) is of no assistance in deciding the present case. In that case this Court accepted that from a reading of the report of the incident it was difficult for anyone to come to the conclusion that an offence under Section 21(1)(iv)(c) has been committed. The Inspector's statement that the report did not convey to him any knowledge that the offence was committed was accepted and this Court concluded that the Inspector did not acquire the knowledge of the "commission of the offence" when he received the report. The case before us is entirely different. Here the Inspector was himself part of the team, which conducted the preliminary inquiry between 5th and 6th March, 1989. As observed earlier, the inquiry is a detailed investigation going into all aspects of the occurrence. In these circumstances it is not possible to hold that the Inspector of Factories, who undertook a detailed inquiry into the accident along with the Chief Inspector of Factories, remained ignorant that the offences in question have been allegedly

committed. It is proper to assume that an officer, conducting an investigation, comes to know what has happened, that being the only purpose of the investigation.

16. We find that it has not been disputed at any stage that the complainant was not associated with and did not participate in the preliminary investigation from 5th to 6th March 1989 along with the Chief Inspector of Factories. This is obvious from the letter/report of preliminary investigation dated 08.03.1989. The Inspector must be taken as having acquired knowledge of the alleged commission of the offence soon before or at least on 08.03.1989, when the report of preliminary investigation was sent to the Commissioner of Labour, Bihar. In fact, a perusal of allegations of the offence against the appellants, makes it clear that an inquiry or investigation at the site of the accident was not necessary in order to gain knowledge of the alleged breach. For instance, the failure to submit "Plans of Pandals and Structures" as required under Section 6(1) (aa) of the Act read with Rule 8 of the Bihar Factory Rules, 1950; not drawing up an "on-sight" Emergency Plan and Disaster Control for the Pandals and Structures as required under Section 41B(4) of the Factories (Amendment) Act, 1987 are alleged breaches, which could have been ascertained even from the office record of the Inspector. The third breach is not taking precautions in case of fire as envisaged under Section 38 of the Factories Act, 1948 read with Rule 62 of the Bihar Factories Rules, 1950 or providing a safe means of escape in the event of fire for all persons, and providing necessary equipment and facilities for extinguishing fire, can be easily and must have been ascertained at the first inspection of the site. We are clearly of the view that it was not necessary for the Inspector to have waited to receive the report on 23.04.1990 from the Government under cover of the letter dated 21.04.1990 directing him to file a complaint for the prosecution of the appellants. We thus agree with the view of the learned Chief Judicial Magistrate, Jamshedpur and disagree with the view of the High Court."

14. The ratio of the aforesaid decision applies with full force to the facts of this case.

15. Accordingly, the impugned proceeding being Complaint Case No. C/4239 of 2003 pending before the learned 10th Metropolitan Magistrate, Kolkata under Section 628 of the Companies Act is quashed.

16. The petitioner shall be discharged from his bail bonds, if any.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.