(2000) 08 KAR CK 0021

In the Karnataka High Court

Case No : Criminal Revision Petition No. 541 of 1998

Essar Steel Limited and Others APPELLANT

Vs

Mr. H.V. Jayaram RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Companies Act, 1956 — Section 205 (5) (b), 205 A (1), 205 A (8), 207, 621 (1)
Criminal Procedure Code, 1973 (CrPC) — Section 177, 201, 397

Citation : (2000) 4 KCCR 2905

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

Advocate : S. R. Raviprakash, for the Respondent

Final Decision : Allowed

Judgement

G. Patri Basavana Goud, J.—The Respondent Mr. H.V. Jayaram is a share holder of the first Petitioner M/s. Essar Steel Limited (''Company'' for short), a company registered under the Companies Act, 1956 (''Act'' for short), with its registered office at Hazira in Surat District, Gujarat State. Respondent however is a permanent resident of Bangalore City. So also, his wife is a share holder of the said Company. The other Petitioners are the Managing Director, Whole Time Director and the Company Secretary of the Company.

2. On 24.9.1996, the Company declared a dividend of 10 per cent on the Company''s equity shares. The said dividend had to be either paid in cash or by cheque or by warrant posted to the address of the share holders within 42 days. The dividend so far as the Respondent is concerned, is dated 4.11.1996 i.e. 41st day, but is posted at Madras on 6.11.1996 i.e., 43rd day, posting of the warrant having been done by a third party called Data Soft Ware Research Company Limited, Madras. There were two dividend warrants, which the complainant received, one on 15.11.1996 and another on 16.11.1996. The complainant''s case is that the dividend thus not having been paid within 42 days and the warrant also not having been posted within the said period, posting of the

warrant having been done on the 43rd day, there was violation of Section 207 of the Act. It is the case of the complainant that the Company and the other Petitioners arrayed as accused, namely. Vice-President/Managing Director, the other Whole Time Directors and the Company Secretary, were liable to be so punished for an offence u/s 207 of the Act.

The further case of the complainant is with regard to violation of Section 205A(1) of the Act. The said provision requires that where a dividend has been declared by the Company but has not been paid or claimed within 42 days from the date of declaration, to any share holder entitled to payment of the dividend, the Company shall, within seven days from the date of expiry of the said period of 42 days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of 42 days to a special account to be opened by the Company in that behalf in any scheduled bank. If this is not done, then, under Sub-section (8) of the said Section 205A, same is punishable with fine which may extend to Rs. 500.00 for every day during which failure continues. The complainant alleges that no such special account as required by Sub-section (1) of Section 205A of the Act was opened by the Company, and as such, the Company, Managing Director, the other Whole Time Directors and the Company Secretary arrayed as accused in his complaint, were liable to be punished under Sub-section (8) of Section 205A of the Act.

With the above said allegation, the complainant filed a complaint before the Special Court for Economic Offences, Bangalore, the Court presided over by a Judicial Magistrate First Class, u/s 200 Code of Criminal Procedure Learned Magistrate took cognizance, recorded the sworn statement of the complainant, and on consideration of the same and the documents that the complainant produced, concluded that there was sufficient ground to proceed against the Company as well as the Managing Director, While Time Directors and the Company Secretary that had been arrayed as accused, i.e. against all the accused A-1 to A-6 for the offence punishable u/s 205A(8) of the Act, and against the Managing Directors and the Whole Time Directors, namely A-2 to A-5 for the offence u/s 207 of the Act. Learned Magistrate accordingly directed issuing of process. Being aggrieved by the same, Petitioners-accused have approached this Court u/s 397 Code of Criminal Procedure

3. The main ground urged on behalf of the Petitioners-accused is that the Court at Bangalore has no jurisdiction, and that the complaint could be filed only at the place where the registered office of the Company is situated. Respondent-complainant, however, urges that the Bangalore Court also has jurisdiction. Having heard at length on this question, Sri Ravi Prakash for the Petitioners-accused and the complainant-Respondent in person. I am of the opinion, for the reasons to be presently stated, that the Special Court for Economic Offences at Bangalore, where the complaint is instituted, has no jurisdiction, and that the complaint needs to be returned to the complainant for presentation to the proper Court. In view of this, the other aspects, namely, whether there was sufficient

ground to proceed, etc., are not gone into.

4. Section 621(1) of the Act permits taking of cognizance of any offence against the Act (particularly in respect of offences concerned herein) on a complaint in writing of a share holder of the Company. Respondent- complainant is admittedly a share holder of the Company.

Section 622 of the Act provides that no Court inferior to that of Presidency Magistrate or a Magistrate of the First Class shall try any offence against the Act. The complaint, as I already stated, is instituted in a Court of Magistrate of the First Class.

Section 177 Code of Criminal Procedure provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 4(1) Code of Criminal Procedure provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure. Sub-section (2) of Section 4 Code of Criminal Procedure provides that all offences under any other law also shall be so investigated into, inquired into, tried, and otherwise dealt with, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. While Section 621(1) of the Act i.e., the Companies Act, can be said to specifically deal with the locus standi of the person who complains against, while Section 622 of the said Act provides for the Magistrate of a particular class to try any offence against the Act, and, therefore, to that extent the aspects concerning the competency of a person to complain against and the class of Magistrate who tries such a case, are specifically dealt with by the other law i.e., the Companies Act, and, therefore, on those aspects, what is contained in the Code of Criminal Procedure may not be applicable in view of Section 4(2) Code of Criminal Procedure same cannot, however, be said in respect of Section 177 Code of Criminal Procedure because, so far as the ordinary place of inquiry and trial is concerned, with which the said Section 177 Code of Criminal Procedure deals, there is no separate mode or provision in the Companies Act providing otherwise. The result is that Section 177 Code of Criminal Procedure would very much apply, and, in that view of the matter, every offence shall ordinarily have to be inquired into and tried by a Court within whose local jurisdiction it was committed. The question, therefore, that arises in this case is as to whether the two offences concerned, namely Section 207 and Section 205A(8) of the Act, have been committed even according to the case of the complainant, within the jurisdiction of the Special Court for Economic Offences at Bangalore.

5. So far as the offence u/s 205A(8) of the Act is concerned, an offence thereunder is committed if the Company does not open a Special Account as required by Sub-section (1) of Section 205A of the Act within seven days from the date of expiry of the period of 42 days concerned therein. Opening of the account is to be done by the Company in course of its affairs at its registered

office at Hazira in Surat District, Gujarat State. So far as the said opening of the account is concerned, there is no role to be played by the Respondent-complainant i.e., share holder residing at Bangalore. It is entirely to be done by the Company. Therefore, if there is failure on the part of the Company to so open the account, such failure is at Hazira in Surat District. None of the other provisions on the aspect of jurisdiction of the Court contained in Chapter XIII of the Code of Criminal Procedure are applicable to the present situation. It needs to be remembered that while Section 177 Code of Criminal Procedure speaks of ordinary place of inquiry and trial, the other provisions in Chapter XIII, wherein the said Section 177 occurs, deals with several other contingencies as dealt with by Sections 178, 179, 180, 181, 182, 183 etc. Without going into detail as to what the said provisions specify, all that I would say is that so far as the offence punishable u/s 205A(8) of the Act is concerned, it relates exclusively to the Company''s failure to open a Special Account as required under Sub-section (1) of Section 205A, and, with the act of opening of the special account, it is only the Company at its registered office that is concerned but not any body else living elsewhere, even if they have concern with the Company, either as share holder or otherwise. In that view of the matter, it is only the Court of the JMFC, within whose jurisdiction the registered office of the Company situate, namely, Hazira in Surat District, that will have the jurisdiction and not the Court at Bangalore.

6. Coming to the other offence, namely, one punishable u/s 207 of the Act is concerned, failure on the part of the Company alleged herein is non-payment of the dividend within 42 days. Section 205(5)(b) of the Act enables the dividend payable in cash to be paid by cheque or warrant sent through post directed to the registered address of the share holder entitled to the payment of the dividend. Section 207 itself enables the Company to pay the declared dividend either in cash or by way of posting the warrant in respect thereof within 42 days from the date of declaration to any share holder entitled to the payment of the dividend. The Company has chosen to pay dividend to the Respondent-complainant by way of posting the warrant to the Bangalore address. The offence relates to the same not having been done within 42 days. The question is, whether because of the fact that the complainant is residing at Bangalore and that the warrant is posted to his address at Bangalore, the offence can also be said to have been committed at Bangalore or whether the offence u/s 207 is complete the moment there is failure on the part of the Company to pay the declared dividend either in cash or to post the warrant within 42 days, in which event, the Company can be said to have committed the said completed offence only at Hazira in Surat District and not at Bangalore. In my opinion, the emphasis that the penal provision, namely Section 207 of the Act, places upon is on the Company''s failure to pay dividend in cash to the shareholder concerned with 42 days or the Company''s failure to post the warrant in respect thereof within 42 days from the date of declaration. The specific case of the complainant herein is that the Company failed to pay the declared dividend in cash to him within 42 days and also failed to post warrant to his address within 42 days. On

the expiry of 42nd day, therefore, even as per the allegations, the offence u/s 207 of the Act stood committed by the Company. This was by the Company at Hazira in Surat District. The offence stood committed and completed on the expiry of 42nd day at Hazira in Surat District on the Company''s failure to pay in cash or to post warrant within 42 days. What the Company did subsequently, namely, whether it posted the warrant on the 43rd day or whether the posting of the warrant was done at Hazira or at Madras through some other agency, is of no consequence so far as the question as to when and where the offence was committed. The offence was committed on the failure to pay dividend in cash or to post warrant, and that the offence was committed immediately on the expiry of 42nd day, and that was done at Hazira in Surat District. If that were to be so, it is the Court concerned within whose jurisdiction the registered office of the Company at Hazira is situated that will have jurisdiction, and not the Court at Bangalore.

7. The above view that I have taken is supported by 2 decisions of the Supreme Court, namely in H.P. Gupta Vs. Hiralal, and in H.V. Jayaram v. Industrial Credit and Investment Corporation of India Limited and Ors. [2000 (1) KLJ 196 (SC)].

Sri H.V. Jayaram, Respondent-complainant in person, urged that the decision of the Supreme Court in H.P. Gupta Vs. Hiralal, needs to be distinguished on certain grounds. Duly considering all that the espondent- respondent-complainant has submitted in person, I am of the opinion that the decision is not distinguishable but is very much applicable to the facts of the present case also.

8. While before the learned Magistrate, the Company and five others, namely the Managing Director, Whole Time Directors and one Company Secretary were arrayed as accused against whom process is now directed to be issued by the learned Magistrate, before this Court, however, two of the said Whole Time Directors are not there. Nevertheless, since the complaint is now being directed to be returned to the complainant for presentation to the proper Court, the fact that the said two other persons have not challenged the order would not affect the decision that has been reached above, but that order with regard to them also could be revised herein under suo motu revisional jurisdiction.

9. Petition is therefore allowed. The Special Court for Economic Offences at Bangalore is held not competent to take cognizance of the offences concerned in CC No. 165 of 1998 on its file. Learned Magistrate, therefore, is directed to return the complaint u/s 201 Code of Criminal Procedure for presentation to proper Court with an endorsement to that effect. Since the only question dealt with herein is of jurisdiction, needless to say, the parties are at liberty to agitate their respective cases on merits before the jurisdictional Magistrate.

