
(1996) 11 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 682 of 1996

Federal Bank Ltd. and Another

APPELLANT

Vs

Smt. Sarala Devi Rathi

RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Companies Act, 1956 — Section 113, 621

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1997) 88 CompCas 323

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

Advocate : Aparajita Kama, for Anant Kasliwal, for the Appellant; P.K. Khetan, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Kochhar, J.—The facts giving rise to this petition u/s 482 of the Code of Criminal Procedure, 1973 ("the Code"), are as under ;

2. The respondent, Smt. Sarala Devi Rathi, had purchased 100 shares of petitioner No. 1-bank and had forwarded them to petitioner No. 1, by registered post with acknowledgment due on August 23, 1994. The said shares were received by petitioner No. 1-bank, on August 30, 1994, but were not sent back to the respondent, after doing the needful long after the expiry of the period of two months and thereupon, the respondent filed a complaint u/s 113 of the Companies Act, 1956 ("the Act"), in the court of the learned Judicial Magistrate (Economic Offences), Jaipur, impleading petitioner No. 1-bank, petitioner No. 2, Shri P.C. Chako, as the managing director of petitioner No. 1-bank, and four other directors of petitioner No. 1-bank. The learned Judicial Magistrate recorded the statement of the respondent and on the basis of the abovesaid inquiry, came to the conclusion that there was a prima facie case against petitioners Nos. 1 and 2 and summoned them vide the impugned order dated March 11, 1996. Feeling aggrieved, the petitioners have approached this court by filing this petition.

3. On receipt of notice of the petition, Shri Padam Kumar Khetan has appeared for the respondent.

4. I have heard learned counsel for the parties and have also perused the impugned order.

5. The first contention, raised by learned counsel for the petitioners, is that according to Section 621 of the Act, no court can take cognizance of any offence under the Act, except on a complaint in writing of the Registrar, of a shareholder of the company, or of a person authorised by the Central Government in that behalf and that the shares having not been transferred in the name of the respondent, the respondent did not become a shareholder within the meaning of Section 621 of the Act and as such, no cognizance could be taken on the complaint filed by her.

6. According to the allegations, the respondent had purchased the shares by paying the price thereof and had sent them by registered post, for being transferred in her name in the records of petitioner No. 1-bank. Section 113 of the Act, casts a duty on the petitioners, to transfer those shares and to deliver them to the respondent within a period of two months from the date of receipt thereof and in case of default, the company and any officer of the company, who is in default, has to be punished with fine, which may extend to five hundred rupees for every day during which the default continues. The respondent having purchased the shares by paying the price therefore, had become the owner thereof and no interest in the shares had been left with the person in whose name the shares stood earlier in the record of the petitioners. If the interpretation, sought to be given by learned counsel for the petitioners, on Section 621 of the Act, is accepted, that would defeat the purposes of the provision and would enable the company to avoid its liability, as the person, after selling the share, will have no interest, whatsoever, in coming forward and filing the complaint, alleging the non-transfer of the share in favour of the purchaser. I have, therefore, no hesitation in rejecting this contention of learned counsel for the petitioners.

7. It has next been contended that Shri P.C. Chako is not the managing director of petitioner No. 1-bank and, as such, the learned judicial Magistrate erred in taking cognizance against him.

8. In the complaint as well as in the statement made in support thereof, the respondent has described petitioner No. 2 as the managing director of petitioner No. 1-bank. There was no reason for the learned Judicial Magistrate, not to have believed the allegations in this regard, mentioned in the complaint, specially when, they were supported in the statement, made by the respondent u/s 200 of the Code, and at the stage of issuing summonses, the learned Judicial Magistrate had to go on the evidence before him and having summoned petitioner No. 2, cannot be said to have committed any error.

9. No other point has been raised before me.

10. Finding this petition to be without any force, I dismiss it. It stands disposed of accordingly.