(1970) 04 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 564 of 1968

Gian Chand and Another APPELLANT

Vs

Amar Nath RESPONDENT

Date of Decision : 03-04-1970

Acts Referred:

Companies Act, 1956 — Section 446
Criminal Procedure Code, 1898 (CrPC) — Section 195

Citation : (1970) 40 CompCas 1158 : (1972) 2 ILR (P&H) 7 : (1970) 72 PLR 626

Hon'ble Judges : Gujral, J

Bench : Single Bench

Advocate : M.L. Nanda, for the Appellant; S.C. Kapila, for the Respondent

Judgement

Gujral, J.—This is a revision petition against the order of the Sessions Judge, Hoshiarpur, dated 2nd March, 1968, upholding the order of the Judicial Magistrate, First Class, Hoshiarpur, dated 1st February, 1967.

2. The facts giving rise to this revision petition are that Amar Nath, respondent, filed a complaint against the petitioners under Sections 406, 418, 420, 467 and 471 of the Indian Penal Code and Sections 628 and 629 of the Companies Act which came up for disposal before the Judicial Magistrate, First Class, Hoshiarpur. After the preliminary evidence the two accused, Gian Chand and Dewan Chand, were summoned and when they appeared they took an objection that the complaint against them could not proceed and be quashed. This application was dismissed by the Judicial Magistrate and their revision petition before the Sessions Judge, Hoshiarpur, also failed. Being aggrieved the accused have come up in revision to this court.

3. Before setting out the grounds on which it is sought that the proceedings be quashed, it is necessary to give in brief the complaint of the complainant against the two petitioners. In the complaint it is stated that the petitioners had floated a company under the name and style of Alliance Finance Ltd. with the object of dishonestly depriving people of their money. The company had its office in Hall

Bazar, Amritsar, and Gian Chand was its managing director while Dewan Chand had been acting in various capacities such as manager, managing agent, secretary, treasurer and employee of the company. It is further stated that both the accused approached the complainant and with a view to fraudulently and dishonestly cause wrongful gain to themselves deceitfully induced the complainant to purchase one thousand shares of the value of rupees ten each knowing and having reason to believe that the Alliance Finance Ltd. was a bogus concern. It is added that in December, 1957, or January, 1958, the accused misrepresented facts to the complainant in the presence of Chhajju Mal Aggarwal and Piare Lal, son of Amar Chand Bahal, residents of Hoshiarpur, that Alliance Finance Ltd. was a highly profitable concern and was paying high dividends to its shareholders and in the presence of these persons the complainant purchased shares worth rupees ten thousand as a result of the inducement offered by the accused. It is stated that a cheque for Rs. 750 was issued in the name of Alliance Finance Ltd. and was given to the two accused at Hoshiarpur. Subsequently, the complainant issued two more cheques for Rs. 5,000 and Rs. 4,250 and gave these to the accused at Hoshiarpur. Besides these, some other cheques were issued and given to the accused and a total amount of Rs. 26,275 was paid to the accused. It is stated that the accused after getting the cheques cashed misappropriated the amounts and that when the complainant grew suspicious of the business dealings of the respondents and asked them to refund the money the accused issued two cheques for Rs. 16,274 on the Co-operative Bank Ltd., Amritsar. It is averred that post-dated cheques were fraudulently issued by the accused who knew that the company did not possess the amount and there was no possibility of the acquisition of this amount by the company by the due dates. It is further stated that subsequently the two accused forged a receipt showing that the complainant had received Rs. 16,275 from the Alliance Finance Ltd. and that the accused tried to use the forged receipt as genuine before the official liquidator appointed by the Punjab High Court in proceedings under Sections 397 and 398 of the Companies Act. It is further maintained that the accused prepared false records, false reports of the meetings of the directors, false balance-sheets and issued false certificates and made false representations regarding the affairs of the company and had thereby committed offences of cheating criminal breach of trust, forgery and fabrication of false documents, etc. It was, therefore, prayed that the accused be punished under Sections 406, 418, 420, 467 and 471 of the Indian Penal Code and Sections 628 and 629 of the Companies Act.

4. On behalf of the petitioners two main arguments have been raised before me. It is firstly contended that in view of the provisions of Section 446 of the Companies Act no proceedings could be taken against the directors and employees of the company as a winding-up order had been passed against the company and the company had been dissolved on 24th November, 1967. This argument is wholly without merit. Section 446 of the Companies Act only bars proceedings against the company where a winding-up order has been made or

the official liquidator has been appointed as provisional liquidator except by leave of the court. This provision does not bar criminal proceedings against the employees of the company for cheating or other offences. Where criminal proceedings for cheating are not against the company but against the manager or directors of the company, leave of the court is not necessary as the proceedings cannot be said to be against the company. The company cannot be charged with cheating not having the metis rea requisite for the offence of cheating.