
(1994) 05 RAJ CK 0026

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 251 of 1994

Herdillia Unimers Ltd.

APPELLANT

Vs

Arun Bansal

RESPONDENT

Date of Decision : 10-05-1994

Acts Referred:

Companies Act, 1956 — Section 113, 545, 61, 621, 63

Citation : (1999) 96 CompCas 521

Hon'ble Judges : Y.R. Meena, J

Bench : Single Bench

Advocate : Paras Kuhad and Mahendra Singh, for the Appellant; B.C. Jain, for the Respondent

Final Decision : Allowed

Judgement

Y.R. Meena, J.—By this petition it is prayed that Criminal Complaint No. 59 of 1993 as also the proceedings taken thereon by the trial court Special Court of Judicial Magistrate (Economic Offences), Rajasthan, Jaipur, be quashed and set aside.

2. The petitioner-company, Herdillia Unimers Ltd., for the purpose of increasing its capital came out with a public issue of shares and debentures in the year 1992. The said public issue was to commence on June 1, 1992, and scheduled to close on June 11, 1992. The public issue having been oversubscribed it was duly closed on June 4, 1992, being the earliest scheduled date of closing. Under the terms and conditions of the aforesaid allotment, any person could apply for shares and/or debentures. Every applicant was required to pay a sum of Rs. 10 per equity share and a sum of Rs. 200 per debenture, as the case may be.

3. On the closure of the aforesaid public issue a return was filed by the petitioner before the Securities and Exchange Board of India, a statutory body, giving out details regarding the applicants who were given allotments of shares/debentures as also those applicants whose deposit money was refunded. The applications for

allotments of the aforesaid shares/debentures were to be processed, examined and considered at the aforesaid office of the petitioner-company at Bombay. The decision with respect to allotment of the shares/debentures was also taken at Bombay. In the event of allotment of shares/debentures, certificates in this regard were sent by the petitioner from its Bombay office, and in cases of non-allotment thereof the money was refunded by the petitioner-company from its Bombay office.

4. The respondent, Arun Bansal, has also applied for allotment of shares/debentures to him and to his wife, Vimlesh Bansal. But no allotment of share or debenture was made and Rs. 3,000 were sent to Arun Bansal, vide refund order No. 192412, further Rs. 3,000 were sent to Vimlesh Bansal, vide refund order No. 192414.

5. Subsequently, on reconciliation of its accounts by the petitioner-company with the bankers, i.e., American Express Bank Ltd., it was found that the aforesaid refund orders which were sent to the complainant and his wife have remained unencashed. Therefore, the petitioner-company sent demand draft No. 161212, dated February 5, 1994, for a sum of Rs. 3,675 drawn on Bank of India in favour of the complainant, and another demand draft No. 161213, dated February 5, 1994, for a sum of Rs. 3,675 drawn on Bank of India in favour of Vimlesh Bansal was sent. This time, the demand drafts were sent by registered post, The demand drafts were sent along with the principal money and interest thereon till February 5, 1994, therefore, the amount of Rs. 3,675 each was sent to complainants Arun Bansal and his wife, Vimlesh Bansal.

6. As the amount was not received in time by the respondent and his wife, the complaint has been filed before the Special Court of Judicial Magistrate (Economic Offences), Jaipur, alleging therein that the petitioner-company has not refunded the money timely and committed the offence under Sections 61, 63, 73 and 113 of the Companies Act, 1956. The trial court has taken cognizance thereof.

7. Being aggrieved by the aforesaid complaint and taking cognizance against the director of the petitioner-company and its officers, this petition u/s 482 of the Criminal Procedure Code has been filed and prayed that the proceedings on the basis of frivolous and vexatious complaint be quashed and set aside.

8. Learned counsel for the petitioner-company, Shri Kuhad, submitted that when the shares or debentures were not allotted to the complainant and his wife, Vimlesh Bansal, then immediately the money was refunded, When it is found that they have not received the money and refund orders have remained unencashed, immediately the demand drafts for the principal amount, as well as, interest thereon till the date of sending the demand draft were sent by registered post. Therefore, no offence has been committed by the petitioner-company. It is further submitted that the complaint of the complainant cannot be entertained in view of the provisions of Section 621 of the Companies Act, 1956.

9. The facts are not in dispute that no share or debenture was allotted to the complainant Arun Bansal or to his wife Vimlesh Bansal, therefore, the amount of Rs. 3,000 each, was returned by way of refund order No. 192412 to the complainant and refund order No. 192414 to Vimlesh Bansal. The refund orders were not encashed and when this fact came to the knowledge of the company on reconciliation of its accounts with the bankers American Express Bank Ltd., then immediately the demand drafts bearing numbers 161212 and 161213 for a sum of Rs. 3,675 each, of the principal amount and interest thereon till February 5, 1994, were sent to the complainant and his wife. The same have been received by the complainant and his wife Vimlesh Bansal. In such circumstances, no offence is made out on the part of the petitioner-company.

10. Learned counsel for the petitioner-company, Shri Kuhad, also submitted that no complaint can be filed for the offence under Sections 73, 73(2)(b) and 113 of the Companies Act, 1956, by a person to whom share/ debenture has not been allotted. He drew my attention to the provisions of Section 621 of the Companies Act, 1956. Section 621 of the Companies Act, reads as under :

"621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government--(1) No court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted u/s 545), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf."

11. A plain reading of Section 621 provides that no court shall take cognizance of any offence, other than an offence with respect to which proceedings are initiated u/s 545, except on the complaint in writing of the Registrar, shareholder of the company or of a person authorised by the Central Government in that behalf.

12. Learned counsel for the complainant, Shri Jain, submitted that once a person applies for allotment of share of a company and no information is received by him, in this regard then it should be deemed that he is a shareholder.

13. I do not agree with the proposition of Shri Jain when the share/debenture has not been allotted to the respondent and his wife and the money has been refunded then there is no question of treating them as shareholders, as such they are not competent to file the complaint in any court and no court shall take cognizance on such complaint. Further, admittedly, the alleged offence, on the facts of this case is not covered in the category of offences enumerated u/s 545 of the Companies Act.

14. Considering the facts of the case that the complaint has been filed just to harass the petitioner-company and is a frivolous complaint, the same has no force. Even on a specific query whether under any law or any section of the Companies Act the complainant is competent to file the complaint, when he is

not a shareholder and when there is no dispute regarding payment of the money by the company, counsel for the complainant failed to point out any provision whereunder such complaint can be entertained. If such proceedings are allowed to continue, then it will be an abuse of the process of the court.

15. In such circumstances and in view of the provisions of Section 621 of the Companies Act, 1956, the proceeding in Case No. 59 of 1993, Arun Bansal v. Herdillia Unimers Ltd., before the Special Court of Judicial Magistrate (Economic Offences) Rajasthan, Jaipur, is quashed.

16. Consequently, this petition is allowed.