
(2012) 11 AP CK 0085

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 35 of 2011

Inchem Inc.

APPELLANT

Vs

Mr. Y.T. Raja Chowdhury and Another

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Companies Act, 1956 — Section 113, 113(2), 53

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 203, 397, 401

Citation : (2013) 1 ALD(Cri) 421 : (2013) 2 ALT(Cri) 97

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; V.S. Raju for the Respondent No. 1, for the Respondent

Judgement

B. Seshasayana Reddy

1. This Criminal Revision Case is directed against the order dated 13-07-2010 passed in S.R. No. 1938 of 2010 on the file of the Special Judge for Economic Offences, at Hyderabad, whereby and whereunder, the learned Special Judge dismissed the complaint u/s 203 Cr.P.C. Petitioner is a company incorporated under the laws of United States of America in the State of New York having it's registered office at 30, Puritan Avenue, Forest Hills, New York-11375. Doctors Organic Chemicals Limited ("2nd respondent company") is a company incorporated under the Companies Act, 1956, having it's registered office at Venkatarayapuram, Tanuku, West Godavari District. The 1st respondent is the Managing Director of the 2nd respondent company. The petitioner company invested Rs. 5.68 Crores as equity in the 2nd respondent company. For the amounts invested by the petitioner company, shares came to be allotted in the board meeting of the 2nd respondent company on 23rd September 1999. The petitioner company also lent Rs. 65,45,000/- to the 2nd respondent company. However, the 2nd respondent company has not delivered the shares allotted to the petitioner company despite repeated demands made by it. Ultimately, the

2nd respondent-company became a sick company and it came under the purview of Board for Industrial and Financial Reconstruction ("BIFR") and Industrial Development Bank of India ("IDBI") was appointed as an operating agency. After considering various avenues for bringing the 2nd respondent company back to functional, the assets and liabilities of the 2nd respondent company came to be taken over by Wanbury Limited ("3rd respondent company"). Respondent No. 4 is the Director and respondent No. 5 is the Company Secretary of the 3rd respondent company. 3. The petitioner filed a complaint alleging that transfer of assets and liabilities of the 2nd respondent company to the 3rd respondent company is without it's knowledge and that failure to deliver the share certificates is an offence punishable under the provisions of the Companies Act. Various omissions and commissions have been pointed out by the petitioner in the complaint filed before the Special Judge for Economic Offences, Hyderabad. The learned Special Judge recorded the sworn statement of Dr. Swamy Dukkupati (P.W.1). After going through the sworn statement and contents of the complaint, the learned Special Judge came to the conclusion that the court of Special Judge for Economic Offences, at Hyderabad, has no jurisdiction to entertain the complaint and thereby, proceeded to dismiss the complaint u/s 203 Cr.P.C., by order dated 13-07-2010. For better appreciation, I may refer the relevant portion of the order dated 13-07-2010 and it is thus:-

According to the complainant, the loss was caused only due to the mismanagement of A.1. Anyhow the documentary evidence placed by complainant goes to show that A.2 company was merged with A.3 company from 1.4.2007. The cut off date fixed is September 30th 2005. The modified rehabilitation scheme in BIFR Case No. 196/99 is available in the records (document No. 46 of page 450). The words as mentioned in Para 32 of the complaint are not found under this scheme. As per the said modified scheme A.3 Company accepted to exchange share ratio with A.2 company in the ratio of 1:6 (6 shares of A.2 company are equivalent to 1 share of A.3 company). Evidently A.2 company was not in existence from April, 2007. First of all it is not known as to why the complainant kept quite without taking any action when A.2 company failed to deliver their share certificates within the stipulated time. There was no scope or possibility for A.2 company to comply the demand of complainant after April, 2007. Admittedly P.W.1 filed a civil suit against A.1 and A.2 in the year 2006 for recovery of their amount. There is no scope to punish A.2 for the alleged offences at present. I am of the view that the period of limitation starts after merger of A.2 company with A.3. There is no documentary evidence on the side of Complainant to show that they demanded A.3 to A.5 to deliver the share certificates for the alleged shares purchased by them from the year 1993 to 1996. It is also highly doubtful whether A.3 company is liable for the liabilities of A.2 Company when the cut off date is fixed from 2005, 30th September. Admittedly, A.3 company was registered in Maharashtra State. A.4 and A.5 are also residing in Mumbai. The complainant transferred the amounts from U.S.A. to Andhra Pradesh. In other words, they did not come to Andhra Pradesh to

purchase the shares in A.2 company. Hence I am of the opinion that this Court has no jurisdiction to entertain this complaint. A.3 company has to work as per the directions given by BIFR when the scheme is still in process. In other words, A.3 has no right to issue any share certificates as per the demand made by the complainant.

For the reasons stated above and after considering the statement of P.W.1 and other documentary evidence, I am of the opinion that there is no sufficient ground for proceeding against the accused.

3. Heard Sri C. Padmanabha Reddy, learned senior counsel appearing for the petitioner and Sri V.S. Raju, learned counsel appearing for the 1st respondent.

4. It is contended by the learned senior counsel that it is the 1st respondent who persuaded the petitioner company to invest a sum of Rs. 5.68 Crores apart from lending an amount of Rs. 65,45,000/- to the 2nd respondent company with a promise of allotting shares and that the 2nd respondent company having allotted the shares failed to deliver the share certificates to the petitioner company and thereby, respondents 1 and 2 rendered themselves liable for punishment under the provisions of the Companies Act. It is also contended by him that the sworn statement of PW.1 is explicit that it is A-1 who cheated the petitioner company and made the petitioner company to part with Rs. 5.68 Crores towards equity and Rs. 65,45,000/- as loan. Learned senior counsel took me to the sworn statement of P.W.1-Dr. Swamy Dukkupati. A further contention has been advanced by the learned senior counsel that transfer of assets and liabilities of the 2nd respondent company to the 3rd respondent company is without notice to the petitioner company and even otherwise, since the 3rd respondent company has taken over the assets and liabilities, it is under an obligation to deliver the shares allotted to the petitioner company.

5. Learned counsel appearing for the 1st respondent company submits that the Court of the Special Judge for Economic Offences at Hyderabad has no jurisdiction to entertain the complaint since the third respondent company which has taken over the assets and liabilities of the 2nd respondent company situates at Mumbai which is beyond the territorial jurisdiction of the Court of Special Judge for Economic Offences at Hyderabad. In support of his contentions, reliance has been placed on the judgment of Supreme Court in *Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.*, *H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others*, and the judgment of our High Court in *Zee Telefilms Ltd. and Others Vs. State of A.P. and Another*,). He would further submit that the petitioner company unsuccessfully challenged the orders passed by BIFR by filing an appeal before the appellate authority and also by moving this Court invoking jurisdiction under Article 226 of the Constitution of India and being unsuccessful in both the proceedings, it resorted to file a complaint against the respondents making unfounded allegations and therefore, the trial Court is justified in dismissing the complaint and the order passed by the trial Court is not liable to be interfered by this Court in exercise of power

under Sections 397 and 401 Cr.P.C. Learned counsel placed on record copy of the order passed in Writ Petition No. 6314 of 2003, dated 13-09-2012.

6. As on this day, the assets and liabilities of the 2nd respondent company have been taken over by the 3rd respondent company and for all purposes, the 2nd respondent company stood dissolved. The petitioner company has to workout its remedies against the 3rd respondent company. Even if shares are to be allotted, it is the third respondent company, which has to act upon it. As held by our High Court in Zee Tele Films Ltd.'s case (3rd supra), cause of action for failure to deliver share certificates or documents within the prescribed time, as required u/s 113 of the Companies Act, would arise where the registered office of the company is situated. For better appreciation, I may refer the relevant portion of the judgment in Zee Tele Films Ltd.'s case (3rd supra) and it is thus:-

Therefore, the question that falls for consideration is as to whether the complainant-second respondent had filed the complaint in the proper court and whether the learned Special Judge for Economic Offences at Hyderabad has jurisdiction to entertain the complaint and proceed further in the matter.

In my considered opinion, the question raised in this petition is not *res integra*. It is clearly covered by an authoritative pronouncement of the apex court in H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, It was also a case where the complainant lodged criminal cases before the Special Court for Economic Offences in Karnataka at Bangalore on the allegation that the respondent companies therein had committed offences punishable u/s 113(2) of the Companies Act. The complainant in the said case is a practicing advocate. It was his case that he was a permanent resident of Bangalore and letters requesting the company to transfer the shares and to send memorandum, articles of association, balance-sheets etc., were sent from Bangalore to the registered offices of the companies and, therefore, the cause of action also arose at Bangalore. The Karnataka High Court arrived at the conclusion that under the provisions of section 53 of the Companies Act two modes are prescribed for serving the documents, one to serve personally and the other by post. As the documents were sent to the respondent by post, as required by him, the cause of action would arise only where the head office is situated. The court accordingly directed the learned Magistrate to return the complaint for presentation before the proper court with an endorsement to that effect.....

7. In view of the settled legal position, the complaint filed by the petitioner company in the Court of Special Judge for Economic Offences, at Hyderabad against the 3rd respondent company, which has a registered office at Mumbai, is not maintainable. Therefore, I do not see any illegality or irregularity in the order impugned in the revision warranting interference by this Court in exercise of powers under Sections 397 and 401 Cr.P.C. The Criminal Revision Case fails and accordingly, the same is hereby dismissed.