
(2011) 08 UK CK 0111

In the Uttarakhand High Court

Case No : Restoration Application No. 532 of 2011 in Criminal Miscellaneous
Application No. 817 of 2009

Jaspal Singh

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Companies Act, 1956 — Section 234, 628
Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 379, 420, 468, 471, 506

Citation : (2011) 2 UD 193

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J.—This petition was dismissed for want of prosecution on 7.7.2011. In view of the reasons stated in the accompanying affidavit and in the interest of justice, restoration application is allowed. Order dated 7.7.2011 passed by this Court is hereby recalled. The petition is restored to its original number.

2. Heard learned Counsel for the parties on the merits of the case and perused the materials available on record.

3. By way of this Criminal Miscellaneous Application, prayer has been made to quash the order of cognizance dated 26.8.2009 passed by the Chief Judicial Magistrate, Nainital in Criminal Complaint Case No. 2117/2009 titled as Registrar of Companies v. Jaspal Singh.

4. Having heard the learned Counsel of the either sides, it transpires that there happened to be a private limited company named as M/s Himalayan Petro Products and Allied Works having its registered office at Lamba Chaur, Haldwani, District Nainital. It was incorporated on 25.2.1985 under the Companies Act,

1956 (for short, the Act). The applicant Petitioner Jaspal Singh happened to be the Director of the said company, who resigned on 10.9.1992 from the directorship of the same.

5. It has been argued on behalf of the Registrar of Companies that after passing of the considerable period of more than a decade, when the price of the land grew up manifold, then Jaspal Singh in order to grab the directorship of the company manipulated certain papers and in that chain of forgery, he filed Form No. 2 dated 23.5.2007, Form No. 23 dated 1.1.1993 and also the Form No. 32 dated 1.1.2004 after putting his signatures on the said forms, claiming himself to be the Director of the company. These papers were filed in the office of the Registrar of Companies. In these papers, the applicant Jaspal Singh strived to show that he resumed the directorship of the company on dated 10.10.1992 on the basis of his re-appointment. It is pertinent to observe here that there is a gap of one month between the date of his resignation i.e. on 10.9.1992 and the date of his alleged re-appointment i.e. on 10.10.1992. In fact, one Abid Hussain Khan was appointed the Director. When the fact that Jaspal Singh has filed the aforesaid forms in the office of the Registrar of Companies mentioning wrong dates, then a complaint was filed on 19.12.2008 complaining the above act of Jaspal Singh. The Registrar of Companies asked an explanation from Jaspal Singh on 16.1.2009, which was replied by him on 8.2.2009. This explanation was found unsatisfactory. So notice was given to him u/s 234 of the Companies Act on 6.3.2009. This notice was not responded to by the applicant. The Registrar of Companies rendered further opportunity on 21.5.2009 to the applicant Mr. Singh to respond to the said notice. That also went in vain. So. the Registrar of Companies filed a complaint u/s 234 of the Act, which is said to be still pending in the court of the Chief Judicial Magistrate for trial. For the default of Section 628 of the Act, another complaint was filed, which has been sought to be quashed by filing this petition.

6. The learned Counsel for the applicant argued that if the Registrar of Companies was not satisfied on account of non-compliance of the requirements under the Act on the part of the Jaspal Singh, then the proper course would have been to file the complaint before the Company Law Board, and not a complaint to the court of Magistrate. This contention is not acceptable because in a judgment rendered by the Hon''ble Apex Court in case of M. Viswanathan v. S.K. Tiles & Potteries Private Limited and Ors. (2008) 16 SCC 390, it has been held by the Hon''ble Apex Court the allegations relating to creation of a false agreement purporting to terminate the original agreements and pilferages of records relating to a private limited company, then these issues were not adjudicable solely by the civil court or the company law board. Hence, the criminal complaint filed alleging the offence of Section 379, 468, 471, 420, 506 Indian Penal Code, 1860 should not have been quashed by the High Court in its jurisdiction u/s 482 Code of Criminal Procedure.

7. The learned Counsel for the applicant has drawn the attention of this Court

towards the various facts regarding "No Dues Certificate" dated 8.2.2001 issued by the Uttar Pradesh Financial Corporation and the acceptance by the Registrar of Companies regarding the re-appointment of the directorship of Jaspal Singh on 29.8.2001 as well as the letter of the UPFC to Registrar of Companies dated 9.2.2009. But the relevancy of these facts are to be judged during the course of trial on the said complaint dated 26.8.2009, which has been sought to be quashed.

8. It has also been argued on behalf of the applicant that the order of cognizance is very cursory in nature and does not disclose as to under what Section, the cognizance has been taken. On this score also this contention of the learned Counsel is not acceptable because the complaint has been filed not by a private individual but by the Registrar of Companies in his official capacity, which in its title itself discloses that this complaint is being submitted for the offence of Section 628 of the Companies Act and the prayer has been made at the end of the complaint to summon Jaspal Singh for the offence of Section 628 of the Act and punish him according to law for the defaults as have been enumerated in the sundry paragraphs of the complaint. So, merely this technical lacuna in the impugned order of cognizance is not sufficient to strike it down.

9. The next contention of the learned Counsel is that in the last prayer of the complaint, it has been urged that the delay, if any, in filing the same may kindly be condoned in the interest of justice u/s 5 of the Limitation Act. The learned Counsel has drawn attention of this Court that the complainant himself was not sure whether this complaint was barred by time limitation or not. In any case, the delay could not have been condoned without rendering an opportunity to the accused.

10. Rebutting the aforesaid contention, learned Counsel on behalf of the Registrar of Companies has drawn attention of this Court that the cause of action arose firstly on 19.12.2008, when the present Director of the company Abid Hussain Khan filed a complaint to the Registrar of Companies informing him regarding the fraud and forgery which has been allegedly committed by Jaspal Singh. Another complaint was filed on 26.8.2009 for the offence of Section 628 of the Act and this offence attracts punishment of two years nay with the fine. Where the punishment of two years has been prescribed, then u/s 468 Code of Criminal Procedure, the time limitation to file the complaint is three years. So this way, the complaint is well within time. Hence, No. notice was needed to be issued to Jaspal Singh for condonation of delay because there was No. delay at all.

11. Furthermore, the Hon"ble Apex Court in case of Mahesh Chaudhary v. State of Rajasthan and Anr., (2009) 2 SCC (Cri) 332, has held that for exercise of powers u/s 482 Code of Criminal Procedure, the High Court is not to embark upon the appreciation of entire evidence and facts of the case, but to consider only the material on record as a whole and find out that if the allegations made in the FIR or the complaint petition fulfill the ingredients of the offences alleged

against the accused.

12. In the instant case, this Court is of the view that the contents, as alleged in the complaint petition filed by the Registrar of Companies against the applicant Jaspal Singh, prima facie, disclose the offence which if taken true on their face value may lead the trial to the result of conviction.

13. In view of the facts and circumstances of the case and the legal proposition (supra), this Court is not inclined to interfere with the order of cognizance. This petition is devoid of merit and is liable to be dismissed. Petition is dismissed accordingly.

14. Let a copy of this order be sent to the court concerned enabling it to further proceed with the trial.