

(2000) 04 AP CK 0096

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2062 of 1999

K. Thyagaraj

APPELLANT

Vs

Reserve Bank of India

RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Reserve Bank of India Act, 1934 — Section 58B, 58C

Citation : (2000) 1 ALD(Cri) 759 : (2001) 107 CompCas 479

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Milind G. Gokhale, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Dismissed

Judgement

Rao, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 ("the Act") seeks quashing of the proceedings in C.C. No. 1832 of 1998 on the file of the XXIII Metropolitan Magistrate, City Civil Courts, Hyderabad, in which the petitioners are said to have committed various offences u/s 58B of the Reserve Bank of India Act, 1934. Inasmuch as the offences are said to have been committed by A-1 company, the other accused are prosecuted for the said offences in view of Section 58C of the RBI Act.

2. The principal ground on which the learned counsel for the petitioners, Sri Milind Gokhle, seeks quashing of these proceedings is that the learned magistrate, according to the learned counsel for the petitioners, has not applied his mind before taking cognizance of the offences in question. In support of his contention, he cites a judgment of the Supreme Court in the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, , in which the Supreme Court held that the court should be circumspect and judicious in exercising discretion and take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of a private complainant as vendetta to harass the persons needlessly.

3. This argument is based on the order of the learned magistrate passed for taking cognizance of the offences in this case reads as follows:

"Taken on file u/s 58B of the RBI Act."

4. The contention is that this cryptic order itself is sufficiently indicative of the fact that the learned magistrate has not applied his mind before taking cognizance of the case. It is further pointed out that Section 58B pertains to penalties under various sub-sections and each of the sub-sections carves out an offence. It is contended that the very fact that the learned magistrate has merely mentioned that he has taken cognizance of the offence u/s 58B goes to indicate that he has not applied his mind. In this connection, the learned counsel for the petitioner cites an authority in the case of Delhi Cloth and General Mills Co. Ltd. v. State of H.P. [1980] Cri. LJ 163 in which it has been held that the magistrate u/s 204 of the CPC Act does not enjoy unrestricted power to summon a person at his whim, fancy or caprice simply because a complaint has been filed against him.

5. It is true that Section 204 does not require the magistrate to pass a detailed order supported by and quoting from the material in the complaint justifying taking of cognizance of offence against the accused but it is desirable that the magistrate gives some indication in his order that he has looked into the material and that the order passed by him is based on material furnished by the complainant for taking cognizance of the offence. In this case, the order in question as stated above is very cryptic and does not give any indication that the learned magistrate has applied his mind. It is true that Section 58B provides for penalties and various sub-sections therein create distinct offences. To that extent, the order of the learned magistrate is quite unsatisfactory inasmuch as it does not give any indication of the magistrate having applied his mind with reference to the facts of the case. But, this cannot be considered conclusive of the fact that the magistrate has not applied his mind at all. This is particularly so when the complaint in this case has elaborately described and listed the acts constituting various offences u/s 58B. It may be mentioned that in the judgment of the Supreme Court cited by the learned counsel, on facts, it was discovered that there was no material to proceed against the accused. In this case, on a perusal of the complaint, it is not possible to hold that there is no material to take cognizance of the offences against the accused. Under these circumstances, the mere fact that the order does not expressly refer to the material placed by the complainant in respect of constitution of offences does not justify quashing the cognizance taken by the learned magistrate in view of the fact that the material placed before the court justifies taking cognizance of the offence.

6. The next ground urged by the learned counsel for the petitioners is that in this case A-1 is the company against whom the offences are alleged. A-2 is the managing director of the company, A-3 is the chairman of the company and A-4 to A-18 are the directors of the company. u/s 58C, where a person committing a contravention or default referred to in Section 58B is a company, every person who, at the time the contravention or default was committed, was in charge of

and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly.

7. The contention of the learned counsel for the petitioners is that except the managing director and chairman, it is difficult to conceive that the 16 other accused who are merely the directors can be proceeded against by virtue of the provision of Section 58C. It is true that it appears somewhat improbable that besides the managing director and chairman, a large number of such other directors could really be held to be in charge of and responsible to the company for the conduct of the business of the company. But, it certainly is a question of fact. In a given case, directors other than the managing director or executive director, etc., may, on the facts and circumstances of a case, be held to be liable by virtue of the provision in Section 58C. In some cases, it may not be so. It may also be mentioned that in such cases, there appears to be a tendency to rope in as many directors as possible as accused. It is for the trial court to decide about their liability on the basis of the material produced during the trial, and if a large number of directors not in charge of and not responsible to the company for the conduct of the business of the company are wantonly implicated in the alleged offence committed by the company, it is for the trial court to deal with such false complaints in the manner as provided in the CPC. But, where assertions are made in the complaint that the accused who are the directors of the company are in charge of and are responsible to the company for the conduct of the business of the company within the meaning of Section 58C, this court u/s 482 of the Act would not step in to quash the proceedings against the directors merely on the ground that the assertion of the complainant that such a large number of directors are in charge of and are responsible to the company is improbable.

8. In para 11 of the complaint, there is a specific assertion that the accused concerned are in charge of and responsible to the company for the conduct of the business of the company. In the teeth of such assertion, it may not be possible to quash the proceedings merely on the ground of the alleged improbability of such assertions being true. In these circumstances this petition is dismissed.