(2013) 03 DEL CK 0209

In the Delhi High Court

Case No : Criminal M.C. 6260 of 2006

Krishna Kumar APPELLANT

Vs

Registrar of Companies RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Companies Act, 1956 — Section 62, 628, 63
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2013) 03 DEL CK 0209

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Sanjeev Sachdeva, with Mr. Kaustabh Shukla and Ms. Swati Pant, for the Appellant; Baldev Malik with Mr. Arjun Malik, for the Respondent

Judgement

G.P. Mittal, J.—By virtue of these Petitions u/s 482 of the Code of Criminal Procedure ("Code"), the three Petitioners (Krishna Kumar, Subhash Chandra Gupta and Dharmendra Kr. Lila) seek quashing of the complaint u/s 63 read with Section 628 of the Companies Act, 1956 (Act of 1956) filed against them by the Registrar of Companies (ROC) on the premise that they being signatory to the prospectus dated 28.04.1994 of the company M/s. Hariparwat Merryland & Resorts Ltd. authorised the issuing of the prospectus which contained untrue statements. It is urged that the Petitioners being the advocate, chartered accountant or other expert had no business interest in the company. The only contention raised at the time of hearing the present Petitions is that the averments in para 2 of the complaint that they were signatories to the prospectus are factually incorrect and, therefore, the learned Additional Chief Metropolitan Magistrate (ACMM) was misled into taking cognizance against them. On the other hand, the learned counsel for the Respondent (ROC) urges that although the prospectus deposited with the ROC was not signed by the Petitioners, but the prospectus which was in force and in circulation at the time the public issue was open and which was deposited with the Delhi Stock Exchange was duly signed by all the directors including the three Petitioners and, therefore, at this stage this Court acting under the powers u/s 482 of the Code could not make any inquiry whether the Petitioners authorised the issue of prospectus or not as this matter has to be gone into only during the course of the trial.

2. Section 62 of the Act of 1956 deals with the civil liability for making mis-statements in prospectus whereas Section 63 of the Act of 1956 deals with criminal liability for making mis-statements in prospectus. Section 62 of the Act of 1956 is much wider in application and, in addition to every person who has authorised the issue of prospectus also makes the persons falling in clauses (a) to (c) of sub-Section (1) responsible for civil liability. Whereas Section 63 of the Act of 1956 makes every person who authorised the issue of prospectus to be criminally liable for any mis-statement therein.

3. The certified copy of the prospectus which has been obtained from Delhi Stock Exchange Association Ltd. shows that the three Petitioners were the directors and signatories of the prospectus. Thus, it cannot be said that the learned ACMM while taking cognizance and issuing the process was misled by the averments made in para 2 of the complaint or that the averments were false. It has to be borne in mind that at the stage of issuing the process, the Magistrate is not required to record detailed reasons. Moreover, it is very well settled that inherent powers u/s 482 of the Code though very wide have to be invoked sparingly and with circumspection only (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) otherwise to secure the ends of justice. In Satish Mehra v. State (NCT of Delhi) & Anr., (Criminal Appeal No. 1834/2012) decided on 22.11.2012, the Supreme Court held that inherent powers of the High Court to quash an FIR or a criminal complaint can be invoked where the allegations made in the complaint even if admitted do not disclose any offence. The relevant part of the report in Satish Mehra is extracted hereunder:

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed....

4. At this stage, the prospectus deposited with the Delhi Stock Exchange Association Ltd. has to be presumed to be meant for the public at large which was signed by the Petitioners. Thus, the order dated 07.06.2002 taking

cognizance of the offence under Sections 63 and 628 of the Act of 1956 against the Petitioners cannot be faulted.

5. The observations made above were necessary for disposal of the instant Petition and shall not be taken as expression of any opinion on merits of the case.

6. The contention with regard to the bar of limitation was not raised at this stage.

7. In view of above discussions, the Petitions have to fail; the same are accordingly dismissed. Pending Applications stand disposed of.

