

(1997) 01 AP CK 0024

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 5871 and 5874 of 1995

Mishra Dhathu Nigam Ltd.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-01-1997

Acts Referred:

Companies Act, 1956 — Section 292, 49
Criminal Procedure Code, 1973 (CrPC) — Section 468

Citation : (1998) 92 CompCas 730

Hon'ble Judges : S. Dasaradharama Reddy, J

Bench : Single Bench

Judgement

S. Dasaradharama Reddy, J.

1. These are petitions filed by the petitioner-Company, a Government of India undertaking, for quashing the proceedings in S.T.C. Nos. 11 to 14 of 1995, on the file of the Special Judge for Economic Offences, Hyderabad, seeking prosecution of the company for the following offences launched under the Companies Act (for short "the Act") :

Section under	Punishment	No.	which complaint	prescribed	Case	Offence
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Failure to comply	Section 49(9)	Fine up to	with section	49(1)(a)	Rs. 5,000	of
the Act	STC 12	of 1995	Violation of	section	Section 629A	Fine up to
article	Rs. 500	85(XII)	of the articles	of association	STC 13	of 1995
Violation of	section	do. do.	292(1)(d)	of the Act	STC 14	of 1995
Violation of	section	do. do.	292(5)	-----	-----	-----

2. The averments in the petitions are as follows :

The Joint Director of Inspection in the office of the Department of Company Affairs, Ministry of Law, Justice and Company Affairs, Government of India (for short referred to as "the Department"), issued notice of inspection on August 19,

1994, u/s 209A of the Act calling for certain particulars to which the petitioner gave a reply on September 16, 1994, furnishing all the particulars required. On May 3, 1995, the Registrar of Companies issued a show-cause notice alleging that in the meeting of the board of directors held on July 20, 1989, the managing director/director (finance) was authorised to deal with the surplus funds without specifying the total amounts up to which the funds may be invested and without indicating the nature of the investment, thus violating section 292(3) of the Act. It was also alleged that the company made investment in non-banking financial institutions as against the authorisation of the board of directors for investment in short-term deposits in public sector undertakings, financial institutions, Can Bank Mutual Funds, etc., thus violating section 292(1)(d) of the Act. It was also alleged that deposits in SBI Capital Markets Ltd. amounting to Rs. 735 lakhs and Rs. 1,965 lakhs in the years 1990-91 and 1991-92 respectively and of Rs. 310.55 lakhs in ANZ Grindlays Bank being in the nature of portfolio management scheme were not kept in the name of the company and there was no physical delivery of documents contravening section 49(1)(a) of the Act. It was also alleged that the funds of the company were invested without approval of the President of India as required by article 85(XII) of the articles of the company, thus violating section 292. The notice refers to offences for failure to comply with section 49(7) and section 211 which are not relevant for the purpose of these petitions. The company replied on May 29, 1995, denying the allegations and stating that the amounts were deposited as short term deposits for reasonable interest and cannot be termed as investments in the nature of portfolio management scheme, contemplated u/s 292(3) of the Act. It was also stated that the deposits were authorised by the resolution of the board of directors passed on July 20, 1989, and that there is no provision in the Act to treat the short term deposits as investments. Evidently, not satisfied with the explanation of the petitioner, the Registrar of Companies has launched prosecution as stated above. The petitioner contends that even if the allegations in the complaints are taken as true, they do not constitute the offences alleged and that in any event, the complaints are barred by limitation u/s 468(2)(a) of the Criminal Procedure Code, 1973 (for short "the Crl. P.C.").

3. The Registrar of Companies has filed a counter contending that section 292 of the Act does not distinguish short-term deposits and long-term investments and the resolution passed by the board of directors on July 20, 1989, authorised the deployment of funds in short-term deposits only in public sector undertakings, financial institutions, Can Bank Mutual Funds, etc., and not investment in any non-banking financial institutions such as SBI Capital Markets Ltd., and ANZ Grindlays Bank, which is a foreign bank. The counter reiterates the allegations made in the notice. Regarding the limitation, it is contended that the Registrar of Companies had knowledge of the offence on March 30, 1995, when he received the communication dated March 29, 1995, from the Department and hence the complaints are within limitation of six months as per the provisions of section 468(2)(a) read with section 469(1)(b) of the Criminal Procedure Code, 1973.

4. It may be noticed that in the complaints, only the company is shown as accused and the directors are not impleaded, evidently in view of the stay order obtained by them in Company Application No. 170 of 1995, dated September 7, 1995, in C.P. No. 47 of 1995, filed u/s 633(2) of the Act.

5. The first ground urged by Mr. S. Ravi, learned counsel for the petitioner, is that the complaints are barred by limitation since they were filed on September 20, 1995, beyond six months from the date of knowledge of the offence, viz., October 14, 1991, and October 19, 1992, the dates when the petitioner has filed balance-sheets before the Registrar of Companies for the years 1990-91 and 1991-92, respectively. Alternatively, it is submitted that the limitation must be computed from September 19, 1994, the date on which the Department in New Delhi, must have received the reply dated September 16, 1994, given by the petitioner giving the particulars of the deployment of funds and even if that date is taken, the complaints are barred by limitation. On the other hand, Mr. Ramesh appearing for the Central Government contended that mere receipt of balance-sheets does not amount to knowledge of the commission of offence and that it was only on March 30, 1995, the date when the Registrar received the communication dated March 29, 1995, from the Department, that he can be said to have knowledge of the commission of the offence and that the knowledge of the Department does not necessarily become the knowledge of the Registrar.

6. It is submitted by both the sides that as the offences are punishable with fine only, the limitation for prosecution u/s 468(2)(a) of the Criminal Procedure Code, 1973, is six months. u/s 468(1), no court shall take cognizance of the offence of the category specified in sub-section (2) after the expiry of the period of limitation.

7. Regarding the first contention that the date of knowledge of the Registrar is the date when the balance-sheets were filed by the company for 1990-91 and 1991-92 i.e., October 14, 1991, and October 19, 1992, respectively, Mr. Ravi relied on the decision of Sri V. Rajagopala Reddy J. in ITC Agro-tech Ltd. and Others Vs. Registrar of Companies and Another, . But a close reading of the judgment does not support the contention of Mr. Ravi. In that case, for the years ending March 31, 1991, and March 31, 1992, the company filed its balance-sheets with the Registrar of Companies on August 21, 1991, and in August, 1992, respectively. After the Deputy Director of Inspection conducted an inspection of the books of the company in March, 1993, a show-cause notice dated April 27, 1993, was issued alleging that the company had contravened the provisions of section 370(1) of the Act since it has made intercorporate deposits in certain companies in excess of the limits prescribed. The company replied on May 24, 1993, denying the offence. By notice dated July 5, 1994, the Registrar of Companies required the company to show cause against prosecution for violation of section 370(1) of the Act, and thereafter the complaint was filed on September 26, 1994. Allowing the petition filed to quash the complaint, the learned judge held that notice dated April 27, 1993, has to be treated as the

date on which the offence has come to the knowledge of the Registrar and from which date the limitation starts running and as the complaint was filed beyond one year, it was barred by limitation.

8. The learned judge observed as follows (page 174) :

"It is seen from the above that the petitioners have admittedly filed balance-sheets before the complainant on August 21, 1991, and August 19, 1992, respectively, with regard to the two relevant financial years. The first respondent being an authority enjoined under the Act to see that the provisions of the Act are properly followed by the companies, is expected to scrutinize the accounts, with the assistance of his competent officers, that are filed before him and find out the irregularities committed by the company, at least from the date of the filing of the balance-sheets. The filing of balance-sheets is a legal requirement and not a mere formality. It is also admitted that an inspection has been made by the inspection wing on March 10, 1993, and on detection of non-compliance with section 370(1) of the Act, a notice dated April 27, 1993, has been issued and the reply has been received by the first respondent on May 25, 1993. At least from the date of receipt of the reply, the knowledge of the commission of offence shall be presumed, if not from the date of notice. Knowledge is an inferential fact from the facts established, depending upon circumstances of each case. On coming to know of the violation of section 370(1) of the Act, by the petitioners, the inspection wing issued the show-cause notice dated April 27, 1993. This date should be treated as the "first day on which such offence comes to the knowledge", as mentioned in clause (b) of sub-section (1) of section 469 of the Code. From that day, the limitation started running. Therefore, as per the admitted events, the complaint is barred by limitation having been filed beyond one year after the complainant had knowledge of the offence."

9. Though the learned judge has made a passing observation that the Registrar of Companies is expected to scrutinise the accounts with the assistance of his competent officers and find out irregularities committed by the company, at least from the date of filing of balance-sheets which is a legal requirement and not a mere formality, the learned judge has not rested his conclusion treating the date of filing of balance-sheet as the date of knowledge of the Registrar. In fact, the learned judge categorically stated that the date of issue of notice by the Registrar after inspection is the date on which the Registrar is deemed to have knowledge. No doubt, the learned judge referred to the decision of the Madras High Court in *Asst. Registrar of Companies v. H. C. Kothari* [1992] 75 Comp Cas 688 , where the Madras High Court held that the Registrar of Companies is deemed to have knowledge of the contents of the balance-sheet, which constitute any particular offence, on the date when they were filed in his office. Though the learned judge in *ITC Agro-tech Ltd. and Others Vs. Registrar of Companies and Another*, agreed with this decision, he has not based his conclusion on this reasoning. Hence, I am of the opinion that there is no necessity to refer the case to the Division Bench. Mere filing of the balance-

sheets with voluminous annexures does not necessarily mean that the offence can be detected by the Registrar immediately. As there are a number of limited companies, it is humanly impossible for the Registrar to closely scrutinise each and every balance-sheet the moment it is filed and to find out whether any offence has been committed by a particular company. It is only after close scrutiny, which is done as in the case of inspection, that any offence committed by the company can be detected. Moreover, whether the particular deployment of funds is in the nature of investment or deposit cannot be detected by a mere look at the balance-sheets with its annexures and can be detected only after due inspection and close Scrutiny. Thus, I respectfully disagree with the decision of the Madras High Court in *Asst. Registrar of Companies v. H. C. Kothari* [1992] 75 Comp Cas 688. Accordingly, the first contentions of Mr. S. Ravi is rejected.

10. The next contention of Mr. Ravi is that in any event, the Registrar is deemed to have knowledge of commission of the alleged offence on September 19, 1994, the date when the Department must have received reply given by the petitioner in response to the notice issued by it on August 19, 1994. The date of receipt of this reply is not available from the record. But in the normal course, the reply dated September 16, 1994, would have reached the Department in the Delhi office on September 19, 1994. If this contention is accepted, the limitation has expired by March 19, 1995, and the question of exclusion of the period of notice of prosecution u/s 470(3) of the Criminal Procedure Code, 1973, does not arise since limitation expired even by the date of issue of the prosecution notice which was on May 3, 1995. Mr. Ravi submits that the Registrar is part of the Company Law Department and hence knowledge of the department is deemed to be the knowledge of the Registrar also. In the alternative, he submitted that the Registrar acts as agent of the Department and as the prosecution is deemed to be on behalf of the Department, the knowledge of the Department has to be taken into account. He also submitted that if the interpretation sought to be placed by the Registrar has to be accepted, the Department can choose its own date to send its communication to the Registrar of Companies and thus can defeat the object underlying section 468(2)(a) of the Criminal Procedure Code.

11. Mr. Ramesh on the other hand relied on the decision of the Supreme Court in *United Bank of India v. Kananbala Devi* [1987] 62 Comp Cas 705, where it has held that notice to one branch of a bank cannot be treated as notice to all its branches. In that case, a customer died and one of the branches of the bank had notice of the death of the customer. Another branch had earlier filed suit against the customer and eight years thereafter that bank filed application before the High Court for impleading the legal representatives of the customer and for setting aside abatement on the ground that it had no knowledge of the death of the customer. The argument of the bank was that in the days when banking business has expanded by leaps and bounds with branches spread over large areas, it would not be possible for a particular branch to know of the death of one of its customers if that branch had not been informed of the death, and in the absence of highly technical modern methods of computerised information to

all the branches about their customers and their details, no branch of a bank can be presumed to know whether a particular customer is alive or not unless the bank is given necessary information. Accepting the contention of the bank, the Supreme Court held that the submission that all the branches of a bank should be imputed with constructive knowledge of the death of a customer simply because one of the branches had been informed of it, would result in adverse consequences and would defeat action by banks for recovery of dues and would work great loss to banks and would harm public interest. According, the Supreme Court condoned the delay and set aside the abatement. I fail to see how this decision helps the respondent. u/s 469 of the Criminal Procedure Code, 1973, the period of limitation commences from the date of the offence or where the commission of the offence was not known to the person aggrieved by the offence, the first date on which such offence comes to the knowledge of such person. In this case, the person aggrieved by the offence is the Department which acts through the Registrar of Companies and which ordered inspection. Thus, the decision cited by Mr. Ramesh is distinguishable since one of the branches of a bank cannot be said to be an agent of another branch. Further, the decision of the Supreme Court was in the context of condoning the delay in setting aside the abatement and in bringing legal representatives on record in the suit filed by the bank for recovery of dues whereas we are concerned with the concept of limitation for launching prosecution and the observations of the Supreme Court in *State of Punjab Vs. Sarwan Singh*, , are apposite (headnote) :

"The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution whether by the State or on a private complaint must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

12. Mr. Ramesh further relied on *Bhanumathi (P.) v. Smt. Premalatha* [1979] Crl. LJ 257, where it was held that if the delay is properly explained, the court can take cognizance of the offence even after the expiry of the period of limitation, giving reasons for condonation of the delay. But this case is distinguishable as no reason is mentioned for the delay. In fact, the plea of the Department is that there was no delay and the complaints are within limitation.

13. Thus, the Registrar of Companies, who is part of the Department is deemed to have knowledge of the offences on the date when the Department had knowledge. Alternatively, as the Registrar is the agent of the Department which launched prosecution through its agent, the knowledge of the principal has to be taken into account. Accordingly, the contention of Mr. Ravi has to be upheld and

if the date of receipt of the reply given by the company to the Department (September 19, 1994) is taken as knowledge of the offence, the limitation expires by March 19, 1995, and complaints which are filed on September 28, 1995, will be barred by limitation.

14. As the complaints are held to be barred by limitation, the next contention of Mr. Ravi that even if the complaints are taken as true, the offences alleged are not made out, need not be gone into.

15. In the result, the criminal petitions are allowed.