
(1997) 10 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 818 of 1995

Mohan P. Wag and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Companies Act, 1956 — Section 63

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482

Citation : (1998) 94 CompCas 507

Hon'ble Judges : M.G. Mukherji, C.J

Bench : Single Bench

Advocate : R.K. Yadav and H.P. Singh, for the Appellant; P.K. Khetan, for the Respondent

Final Decision : Dismissed

Judgement

M.G. Mukherji, C.J.—The petitioners are the directors of Larsen and Toubro Limited incorporated under the Indian Companies Act, 1913. They came out with a public issue of 2,06,66,664 -- 12.5 per cent, fully convertible secured debentures of Rs. 300 each and invited the general public to subscribe in their public issue, vide their prospectus dated September 5, 1989. The salient features of the issue are as under :

- (a) The debentures are fully secured convertible.
- (b) Each debenture is automatically convertible into five shares of face value of Rs. 10. The balance amount of the debentures shall be adjusted in premium account.
- (c) The shareholders of Reliance Industries Ltd., L and T Ltd. and R.P. L. are entitled for applying in a separate quota of preferential offer reserved for such shareholders.
- (d) All applicants in this category will be allotted debentures but the number of debentures to be allotted would depend upon availability and as may be decided

by the board of directors in consultation with the stock exchange at Bombay.

2. Respondent No. 2 is a shareholder of Reliance Industries Ltd. On an invitation of offer being sent to her by the said company L and T, she in terms of the prospectus applied for allotment of ten debentures and a sum of Rs. 750 was paid to the accused petitioners. As she had a number of folios in Reliance Industries Ltd., she offered for allotment of debentures by filing two separate applications and thus she applied for allotment of twenty debentures and paid application money of Rs. 1,500. The company under the provisions of Companies Act, 1956, was duty bound to deliver her debenture certificates within three months from the date of allotment. But the company did not bother to send her the allotted debentures for reasons best known to the accused persons. She wrote more than twenty letters and requested the company to deliver her debenture certificates. As per the acknowledgment slip delivered by the post office, it is manifestly clear that her requests were received by the company but they did not choose to reply to her again for reasons best known to the accused persons. She had no choice but to file a consumer complaint before the learned District Forum, Jaipur. The forum served notice upon the company along with the copy of the complaint. The company, however, did not choose to reply before the forum. The forum had, under these circumstances, no option but to pass an ex parte order against the company for effecting refund of the application money to her. This time the company was prompt enough and instead of sending her the allotted debentures and the interest on the debentures due to her, delivered two demand drafts of Rs. 1,523 each, payable by Bank of Baroda, Jaipur, as per order of the consumer forum. The moment she received the demand drafts after February 9, 1995, she was shocked to know that the accused company had acted against the terms of the prospectus issued by itself, namely "all applicants in this category will be allotted debentures". Thus, she filed a complaint before the learned Special Judge, Economic Offences, Rajasthan, Jaipur, and along with her complaint she deposited the two demand drafts delivered by the accused petitioners to her in the court itself and a complaint was made to the effect that the company and its directors, the present petitioners, acted against their own prospectus and thus made a wrong statement in their prospectus that they would allot debentures to each applicant who would apply in the preferential quota. The court after recording her statements on oath, was pleased to take cognizance against the accused company and its directors for the offence covered by Section 63 of the Companies Act, 1956. After receiving the summons of the court, the learned advocate of the accused appeared before the court and an application for permanent exemption regarding appearance was filed which was not objected to by the respondents and thereafter they are enjoying the immunity from attending the court. An application to recall the order of the learned trial court was also submitted by the accused as regards taking cognizance. After arguments the court was pleased to dismiss the application on the basis of a judgment of the Supreme Court in N. Parthasarathy Vs. Controller of Capital Issues and Another, and the accused petitioners with the sole object to delay the

trial, filed the present revisional application before this court. The petitioners contended that the impugned order dated April 20, 1995, passed by the Special Judge, Economic Offences, Rajasthan, Jaipur, by which the court passed an order taking cognizance, is barred by the law of limitation. The complainant filed her complaint on March 15, 1995, while as per the prospectus of the company the terms of payment was as under :

- (i) On application Rs. 75 per debenture ;
- (ii) On allotment Rs. 75 per debenture ;
- (iii) On first call Rs. 75 per debenture ; and
- (iv) On final call Rs. 75 per debenture.

4. It was submitted by the petitioners that after allotment of shares the first call money was payable by April 30, 1990, and the final call money was payable by September 30, 1990. The fact that respondent No. 2 did not get her shares had already been within her knowledge because the aforesaid dates were already given in the prospectus and by that date the time had already passed away. When the company sent back the amount then the complainant-respondent No. 2 got the knowledge that she had not been allotted shares, is an incredible argument. If the said date is taken to be the date of knowledge, apparently the complaint is within limitation. In the memo of complaint, respondent No. 2 did not say anywhere as to when the company sent her money back and on that day she got the knowledge that the company had not allotted shares to her and hence from that date of getting such knowledge the complaint is within the period of limitation. The accused petitioners submitted that the stand taken by the complainant's lawyer that it was within her knowledge from the date she actually received the money, is clearly an afterthought. It was further submitted by the petitioners that it was clearly mentioned in the prospectus itself under the heading "Debenture certificates" that "in case the company issues letter of allotment, the relative debenture certificate will be delivered within three months from the date of allotment or within such period of time (not exceeding nine months) as may be allowed by the Company Law Board". Further, under the heading "Disposal of applications and application money" it was given out that the time when such applications were to be rejected or allotments were to be made was within ten weeks from the date of closing of the subscription list in accordance with the provisions of Section 73 of the Companies Act, 1956. It was further submitted by the accused petitioners that the complainant now submits that she got the knowledge of non-allotment when she received her amount back after the decision of her complaint by the District Forum. It is submitted that this argument cannot be accepted because the subscription closed on October 9, 1989, and the maximum period could be nine months after lapse of ten weeks from October 9, 1989, which comes approximately in the month of September 1990, but she filed her complaint in the year 1995. Hence, the limitation period had already been crossed and hence the order taking cognizance is barred by

limitation. Referring to the provisions of Section 63 of the Companies Act, 1956, it was submitted by the accused petitioners that in the prospectus issued by the company on September 5, 1984, no untrue statement was given or published, Preferential debentures were allotted to the applicants but unfortunately the complainant could not get her debentures only either by mistake or because of huge number of applications or because of the reason that the processing of applications was done by the registrar to the issue, Reliance Consultancy Services Ltd., which later on ceased to be the company's registrars. However, it appears that at the time of processing the large volume of applications, the complainant's application seems to have been missing and, therefore, the allotment of debentures was not made to her. Since, the application was missing the company had to wait for the claim from the applicant for refund or allotment of debentures and as soon after words as the company received the copy of the judgment of the District Forum, the company complying with the same immediately sent the refund of application money as prayed for by the complainant. It was further submitted that if the complainant did not get her debentures only because of this reason, it could not be said that the company gave a false or untrue statement punishable u/s 63 of the Companies Act. The court below wrongly interpreted the provisions and passed the impugned order by way of taking cognizance and they prayed for quashing of the same.

5. The respondents, however, contended that the provisions of Chapter 36 of the Criminal Procedure Code, regarding limitation was not applicable by the virtue of the provisions of the Economic Offences (Inapplicability of Limitation) Act, 1974, being Act No. 12 of 1974. According to respondent No. 2 even otherwise the question of limitation is not applicable in this matter on the basis of Section 469(b) of the Criminal Procedure Code, 1973. Section 469(b) of the Criminal Procedure Code, 1973, is as follows :

"where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier".

6. Respondent No. 2 contended that she knows that the accused petitioners never intended to obey their own prospectus only from the fact that the accused petitioners acted against their own prospectus and instead of delivering her the allotted debenture certificates, delivered her the demand drafts of the application money with interest. Thus, the fact was disclosed to her on receipt of the demand drafts dated February 9, 1995 only.

7. As regards the question of want of territorial jurisdiction of the present court, raised by the accused petitioners, it was contended by the complainant respondent that she applied for allotment of debentures of accused company at Jaipur, believing that the said company will follow the prospectus issued by itself. The application money was collected by the accused company at Jaipur itself and the accused persons were duty bound to deliver her the debentures at Jaipur only. She applied on the basis of the prospectus issued by the accused company

and delivered at her residential address and thus, according to her the cause of action arose at Jaipur only. The Supreme Court, while delivering the judgment in the matter of *K. Satwant Singh Vs. The State of Punjab*, was pleased to hold that misrepresentation made at Simla where the accused paid the money at Lahore at his request and there was mere posting of the cheques at Kolhapur and in such a situation it could not be considered that delivery of the cheques were made to the accused at Kolhapur. No part of the offence of cheating was committed outside India, as was reported in the aforesaid decision. In another case, where the accused was residing at Karachi and by way of telephone and through quite a number of letters he was able to convince the respondents for making of payment for supply of rice to be delivered by the accused at Bombay, but ultimately the accused never supplied the rice to respondents nor his money was refunded and a criminal case was filed against the accused and the learned trial court found that the accused was guilty of offence covered by Section 420 of the Indian Penal Code, 1860. The Supreme Court ultimately was pleased to pass a detailed order on the subject and as per the reported decision in *Mobarik Ali Ahmed Vs. The State of Bombay*, observed as follows :

"These representations were made to the complainant at Bombay, notwithstanding that the appellant was making the representations from Karachi ..."

8. The decision is quite clear that where the representation was made through the trunk/telephone, the statement of appellant at the Karachi end of the telephone becomes a representation to the complainant only when it reaches cognizance of the complainant at the Bombay end, and this aspect has not been disputed. In the present case, though the registered office of the company is situated at Bombay and the accused persons are residing at Bombay and the disputed prospectus was published and printed at Bombay, but the said document was delivered at Jaipur and an offer was invited on the basis of this prospectus at Jaipur. The complainant respondent applied and paid money to the bankers of the accused at Jaipur for allotment of debentures at Jaipur on the basis of the prospectus delivered to her at Jaipur and the debentures were required to be delivered to her at Jaipur as per the terms of the prospectus. Thus, the entire cause of action in this case arose at Jaipur and as per Sections 179 and 181(4) of the Criminal Procedure Code, 1973, the trial of the offence of misrepresentation should be taken at the court of Jaipur only and in no other court. Respondent No. 2 wanted to draw my attention to the fact that the learned trial court of the Special Judge, Economic Offences, has territorial jurisdiction in respect of entire Rajasthan. As was held in *State of Rajasthan and Others Vs. Swaika Properties and Another*, this court has territorial jurisdiction to try the like offence. In the said case the Supreme Court was pleased to hold that the dispute of such a nature can be dealt with under the provisions of the CPC or Criminal Procedure Code, but not in accordance with the provisions of Section 10 of the Companies Act, 1956.

9. In another matter regarding the Companies Act, where there was a dispute of forfeiture of shares by the accused company, the criminal prosecution was launched against the company and its director in the court of the learned Judicial Magistrate (Economic Offences), Rajasthan, Jaipur. After rejection of the application u/s 482 of the Criminal Procedure Code, 1973, by this High Court, the matter was taken to the Supreme Court by the company on the point of territorial jurisdiction by virtue of the provisions of Section 10 of the Companies Act, 1956, and an additional prayer was made before the Supreme Court that the prosecution must be transferred to the court where the registered office of the accused company is situated. The Supreme Court delivered judgment by rejecting the application filed by the accused company and was pleased to hold that the Magistrate's court at Jaipur had territorial jurisdiction to prosecute the accused company and its directors for the offences regarding Companies Act. This judgment of the Supreme Court is in *Vatsa Industries Ltd., Bombay Vs. Shankerlal Saraf and Others*, This type of dispute was taken up by this High Court in the matter of *Poonamchand Kothari v. Rajasthan Tube Manufacturing Co. Ltd.* [1996] 87 Comp Cas 842 (Raj), where Hon"ble Mr. Justice V. K. Singhal was pleased to hold that the provisions of Section 10 are not applicable between the company and the shareholder regarding the individual rights of a shareholder. Another dispute of similar type was decided by Hon"ble Mr. Justice M. A. A. Khan, in respect of two applications of *Ranbaxy Laboratories Ltd.* The said judgment is in *Ranbaxy Laboratory Ltd. v. Smt. Indra Kala* [1997] 88 Comp Cas 348 (Raj)). The complainant-respondent No. 2 thus, contended that the revisional application as filed by the petitioners is liable to be dismissed and the trial court should be directed to dispose of the matter as early as possible since the accused petitioners were already successful in delaying the matter for more than two years by virtue of the continuance of the present proceedings u/s 482 of the Criminal Procedure Code, 1973.

10. From an entire conspectus of the complaint it is not very clear as to whether the prospectus issued after the commencement of the Act includes any untrue statement and as such the accused persons who authorised the issue of the prospectus can be taken to be guilty of an offence punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both. If the accused persons, however, prove that the statement was immaterial or that they have reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true, they can evade criminal liability for the mis-statements so occurring in the prospectus.

11. In *Lalitha J. Rai Vs. Aithappa Rai*, in a case for quashing of the complaint which in the facts of the case was u/s 73 of the Companies Act, 1956, at the initial stage, where the complaint was quashed by the High Court on the ground that the accused was not an officer in default and the complainant had no locus standi to file the complaint, it was observed by the Supreme Court in the said case that the High Court was not justified in quashing the complaint.

12. As was held by a learned single judge of our court in *Ranbaxy Laboratory Ltd. v. Smt. Indra Kala* [1997] 88 Comp Cas 348(SC), the powers of the court u/s 482 of the Criminal Procedure Code, 1973, are quite limited and extraordinary and should be exercised with great care and caution in the rarest of rare and exceptional cases only to prevent the abuse of the process of the court or otherwise to secure the ends of justice. If there was sufficient material for the magistrate's action as in the reported decision, the averments made in the complaint and statements recorded under Sections 200 and 202 of the Criminal Procedure Code, 1973, and a number of documents filed at that stage clearly disclosed that the respondent had purchased 200 shares of the company from its shareholders, and sent the same to the petitioner company for registration of the transfer in her name but the petitioner-company for one reason or the other, had failed to do the needful. Such evidence prima facie disclosed the commission of an offence punishable u/s 113 of the Companies Act, 1956.

13. It was observed in this case that taking cognizance of an offence at the initial stage is altogether different from cancelling the order of taking such cognizance at a subsequent stage. At the later stage, the magistrate may consider the case from the angle of the accused who, after putting in appearance before the court may bring such facts to the notice of the court as may justify the cancellation of the order of taking cognizance of the case by him. Section 204 of the Criminal Procedure Code, 1973, gives such powers to the magistrate and it is, therefore, always proper for an accused to put up his grievance against an order summoning him as an accused before the magistrate in the first instance. It was observed that in such circumstances the accused should not rush to the High Court.

14. Regard being had to the entire fact situation of the case, I am of the considered view that no case for quashing of the proceedings pending against the accused u/s 63 of the Companies Act, 1956, has been made out. The question of limitation would be considered at the time of the trial itself. Since the question of consideration of limitation would involve the question of taking of evidence, I would leave the matter at the discretion of the trial court at the appropriate stage.

15. In the result, the revisional application u/s 482 of the Criminal Procedure Code, 1973, stands rejected.