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In the Delhi High Court

Case No : Writ Petition (Criminal) No. 65 of 2010 and Criminal M.A. No. 581 of 2010

Morgan Tectronics Ltd. APPELLANT

Vs

CBI RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2011) 1 BC 108 : (2011) 1 ILR Delhi 29

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Vijay Aggarwal, for the Appellant; Suchiti Chandra, for Vikas Pahwa, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By the present petition, the petitioner has assailed an order dated 12th August, 2008 passed by learned Special Judge, CBI, whereby the learned Special Judge framed charges against the petitioner company charging the company u/s 420, 468, 471 IPC read with Section 120-B IPC. The only contention raised by the petitioner before this Court is that a company being a juristic person cannot have mens rea necessary for committing offence of criminal conspiracy as required u/s 120-B IPC. It was contended that criminal conspiracy was a personal act and company being a non living person and only a juristic person cannot have the requisite mens rea. Reliance was placed by the petitioner on Kalpnath Rai v. State AIR 1998 SC 201 and Standard Chartered Bank and Others etc. Vs. Directorate of Enforcement and Others etc., and other similar cases.

2. This issue was raised before the Trial Court as well and the Trial Court has dealt with this issue at length. In the present case it would be relevant to note that initially the banker of this company was Indian Bank and this company was enjoying various facilities and limits there. The Indian Bank refused to extend

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further credits to this company on the ground of RBI restrictions. Thereafter the company switched over to Punjab & Sind Bank and it falsified its accounts and presented the same before Punjab & Sind Bank in order to obtain various credit limits & other facilities from this bank. The company showed lesser liabilities and concealed the facts regarding true liabilities. Due to this concealment of the facts, the company and its officials induced the Punjab & Sind Bank to sanction credit facilities to the tune of Rs. 618.51 lacs. Ultimately the company did not pay the amount and cheated the bank of more than Rs. 6.00 crores resulting into registration of this case.

3. No doubt, the company is a juristic person but the company has its own personality and it acts through its Board of Directors. Action of Board of Directors is considered the action of the company. If Board of Directors, in order to benefit the company, does something then such an act is to be considered as the act of the company. If the argument that a company can have no guilty mind is accepted, then the next logical thing is that a company can have no mind at all. If the argument of the counsel is accepted, the very existence of the companies will have to be negated. Board of Directors of a company is considered its mind and acting arms. Where for the benefit of company Board of Directors decides to create false documents, falsify the balance sheet; it is an act of the company as well, as a legal person, apart from the act of individuals involved in the act. For every act, whether civil or criminal thought and action, both are necessary. If company can enter into contracts & perform other legal obligations; it can also be party to criminal acts. Several Laws hold companies responsible for offences committed by it through its Board of Directors. If the company can have a right to do things through its Board of Directors, it can have necessary mens rea also through its Board of Directors.

4. In The Assistant Commissioner, Assessment-II, Bangalore and Others Vs. Velliappa Textiles Ltd. and Others, , the Supreme Court held that it was permissible to prosecute a company for offences that require mens rea or knowledge as an essential element for the reason that the acts and state of mind of the officer or agent of a company, who functions as the directing mind and will of the body corporate and controls its functions, shall, in law, be considered to be the acts and state of mind of the company.

5. Where a company produced falsified accounts to the bank and obtained benefit from the bank on the basis of falsified accounts and induced the bank to part with huge amount of funds, I consider that a company can be prosecuted for the offence committed by it and mens rea can be fastened on the company, if it is an essential element of the crime, on the ground that mens rea was present in the officers of the company who were acting as mind of the company.

6. The other argument raised by the petitioner was that since the sentence prescribed for the offence u/s 420, 468 and 471 IPC included offence of imprisonment and company could not be incorporated, therefore, company cannot be prosecuted. The Supreme Court in Velliappa Textiles (Supra) had

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observed that since company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of compensation/fine which is also a prescribed punishment. The observations of Supreme Court are as under:

If the custodial sentence is the only punishment prescribed for the offence, this plea is acceptable, but when the custodial sentence and fine are the prescribed mode of punishment, the court can impose the sentence of fine on a company which is found guilty as the sentence of imprisonment is impossible to be carried out. It is an acceptable legal maxim that law does not compel a man to do that which cannot possibly be performed impotentia excusat legem. (para 61)

As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants'' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the Legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences. (Para 62)

...but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such discretion is to be read into the Section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the life, liberty and property of the citizens. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.

7. In view of my above discussion, I find that this petition is not maintainable and is hereby dismissed.

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