**(1994) 08 MAD CK 0094**

**In the Madras High Court**

**Case No :** Criminal M.P. No. 5956 of 1985

M.R. Pratap — APPELLANT

Vs

Assistant Registrar of Companies — RESPONDENT

**Date of Decision :** 19-08-1994

**Acts Referred:**

Companies Act, 1956 — Section 209, 211
Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation :** (1995) 1 LW(Cri) 130

**Hon'ble Judges :** Pratap Singh, J

**Bench :** Single Bench

**Advocate :** N.C. Raghavachari, for the Appellant; K. Ilias Ali, Additional Central Standing Counsel, for the Respondent

## Judgement

Pratap Singh, J.—The accused in C.C. 2228/82 on the file of Court of Economic Offences No. II, Egmore, Madras has filed this petition u/s 482 Code of Criminal Procedure praying to call for the records in the above case and quash the same as against him.

2. Short facts are:

The Respondent has filed the complaint against the Petitioner and nine others, arraying them as accused 1 to 10 u/s 628 of the Companies Act, 1956 read with Sections 209 and 211 of the Companies Act. The allegations in the complaint are briefly as follows:

Rayala Corporation Private Limited was incorporated on 4.11.1948 under the Indian Companies Act. Accused 1 is the Managing Director, Accused 2 to 9 are the Directors and accused 10 is the Secretary of the Company, during the relevant time. The affairs of the company was investigated u/s 237(b) of the Companies Act, 1956 by the officers authorised by the Central Government. After investigation, the Inspectors submitted a report to the Government. From the report of the Inspectors dated 28.1.80 and from the copies of the balance sheet for financial year ended 31.3.65 and balance sheets filed by the company, it was found that certain amounts, which were received from the distributors and the rent collecting agents of the company were kept outside the books. The accused, as officers of the company failed to take steps to record those receipts and payments, as required u/s 209(1) of the Companies Act, 1956. Those instances are given. The various receipts and payments have not been accounted in the respective years for the said reason. The balance sheet does not show a true and fair view of the account, as required u/s 211 of the Companies Act, l956. The accused have knowledge that the amounts were received from the distributors and rent collecting agents of the company. The accused have appropriated most of the funds kept outside the books and signed the balance sheet as on 31.3.65 onwards. They have given a false statement in the balance sheet, as on 31.3.65 and the subsequent balance sheets, knowing well that they do not reflect the funds kept outside the books, attracting Section 628 of the Companies Act read with 209 and 211 of the said Act. A show-cause notice was issued on 17.5.82. The accused have not given any valid explanation in their replies. Hence the complaint.

3. Mr. N.C. Raghavachari, the learned Senior Counsel appearing for the Petitioner, would submit that the complaint is clearly barred by time. He would submit that the date of complaint was 12.11.82 that it was taken cognizance of by the court on 22.11.82 that for the offences under Sections 211 and 209 of the Companies Act, the sentence is six months, that the complaint is in respect of balance sheet for the period ending with 31.3.65 and there is no allegation in the complaint that the complainant came to know of the alleged offence only on 28.1.80 and while so, this complaint is clearly barred by time. Regarding the offence punishable u/s 628 of the Companies Act also he would submit that it is also barred by time. As per Section 468, Code of Criminal Procedure the period of limitation is one year, if the offence is punishable with imprisonment for a term not exceeding one year and three years, if the offence is punishable with imprisonment for a term exceeding one year not exceeding three years, and so he would submit that the complaint is barred by time. I have heard Mr. Ilias Ali, the learned Counsel appearing for the Respondent, on the above aspects, I have carefully considered the submissions of the learned Counsels.

4. In Kathamuthu v. Balammal (1985 L.W. (Crl) 252) it was held that no court shall take cognizance of offence, after expiry of the period of limitation and Section 468 Code of Criminal Procedure clearly bars every court from taking cognizance of the categories of offences in respect of which the periods of limitation are prescribed under Sub-section (2) of that section, after the expiry of such periods of limitation. The bar u/s 468, Code of Criminal Procedure is subject to the provisions contained in Section 473, Code of Criminal Procedure Here, the question of resorting to Section 473 does not arise, in as such as that was not sought for before the filing of the complaint. The only question that falls for consideration is whether on the allegations made in the complaint, the complaint is filed within time. The offences alleged are in respect of the balance sheet, as

on 31.3.65 and the subsequent balance sheets. The instances enumerated in para 5 on the complaint, relating to non-accounting of the receipts and payments in the books of accounts, are in respect of the period 1964-65 and 1965-66. As has been rightly pointed out by Mr. N.C. Raghavachari in the complaint, nowhere there is any allegation that the complaint came to know of the offences at any later point of time, within the period of limitation. It is merely stated in para 10 of the complaint that the complaint is filed within the period of limitation and the limitation does not arise.

5. Mr. N.C. Raghavachari, would submit that the Deputy Director of Inspection, first inspected the record book, balance sheet profit and loss account on 21st December 1967 and in those reports, the slips mentioned in the complaint are referred to. He would further submit that the Company Law Board directed investigation by order dated 5.4.68 and the Inspectors inspected all the records from the year 1965 till 1967, but had submitted the report on 28.1.1980. In this complaint, the order of Company Law Board u/s 237(b) of the Companies Act and the report of the Inspectors dated 28.1.80 are referred to. Thus, there are documents, which are mentioned in the complaint itself. From the above, he would submit that Central Government was aware of the receipts and slips referred to in para 5 and 6 of the Complaint, even prior to 1968 during inspection by the Inspectors in 1968, 1969, 1970 and 1971. He would rightly point out that from the above, it can be seen that the Central Government was aware of these slips referred to in the complaint. This submission is well founded. These facts have been specifically stated in the additional grounds filed on 6.7.92. Mr. Ilias Ali, would submit that knowledge of slips would not amount to knowledge of the offence committed. The slips and receipts are the premises, on which the offence is said to have been committed. So, I do not accept this submission made by Mr. Ilias Ali. In view of the above, I accept the submission made by Mr. N.C. Raghavachari that this complaint is barred by time. Taking that view of the matter, the complaint is liable to be quashed.

6. In the result, the petition is allowed and all further proceedings in C.C.2228/82 on the file of the Court of Economic Offence II, Egmore, Madras, as against the Petitioner, shall stand quashed.