

(1999) 01 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No's. 27294 to 27299 of 1993 and 13241 to 13259 of 1998

M/s. Orr Cee Electronics Limited, Mysore and Others

APPELLANT

Vs

Judicial Magistrate First Class (II Court), Mysore and Others

RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 482

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14 (1-A), 14 A

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 14, 16, 22

Citation : (1999) 1 ALT(Cri) 608 : (1999) 3 KarLJ 82 : (2000) 1 LLJ 843

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri S.N. Murthy, for the Appellant; Smt. Rosa Paramel, Government Pleader and Sri Harikrishna S. Holla, for the Respondent

Judgement

1. These writ petitions call in question the validity of prosecution proceedings instituted before the Judicial Magistrate First Class at Mysore in C.C. Nos. 2008 of 1992 to 2017 of 1992 and 2124 of 1992 to 2137 of 1992 and 552 of 1993 for commission of offences punishable under Sections 14(1-A) and 14-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Mr. Murthy, Counsel appearing for the petitioners-company made a two fold submission in support of the petitions. Firstly, he contended that the institution and continuance of the prosecution proceedings, was barred by the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. He urged that the prosecution proceedings launched against the petitioners were proceedings in the nature of execution and distress of the properties of an industrial company, which had been declared to be a sick company within the meaning of the Act by an order passed by BIFR. Section 22 of the Act aforementioned inter alia provides that no proceedings for winding up of the industrial company or for the execution, distress or the like against any

properties of the industrial company or for the appointment of a receiver in respect thereof or for recovery of any money or enforcement of any security against the industrial company or for any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with except with the consent of the Board or the Appellate Authority as the case may be, in cases, where an inquiry u/s 16 is pending or a scheme referred to u/s 17 under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, anything contained in the Companies Act, 1956 or any other law or the memorandum and articles of the association of the company notwithstanding. The question then is whether prosecution proceedings launched against a company for offences committed by it can also be said to be forbidden within the meaning of Section 22 supra. A closer reading of the provision however would show that it is not all kinds of proceedings initiated against a company, in respect of which an enquiry is pending or a scheme is under preparation, consideration or implementation, but only proceedings of the kind described in the provision. These proceedings must in order to fall within the mischief of Section 22 be proceedings in the nature of winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for appointment of a receiver in respect thereof. Prosecution proceedings do not answer the description set out in Section 22 of proceedings which are forbidden. They are not in the nature of winding up of proceedings nor can such proceedings be said to be proceedings for execution or distress of the properties of the industrial company or for appointment of a receiver in respect thereof. Such proceedings are also not meant for recovery of any money or for enforcement of any security against the industrial company or for any guarantee in respect of any loan or advance granted to it. In the absence of a specific bar contained in Section 22 forbidding prosecution for offences already committed by the company or its officers, it is difficult to extend the prohibition contained in Section 22 to prosecutions validly launched against it. I have therefore no difficulty in repelling the first limb of the argument advanced on behalf of the petitioners.

2. The alternative submission advanced on behalf of the petitioners was that, not all the petitioners were responsible for the affairs of the company, so as to render them liable for prosecution u/s 14(1-A) and 14-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It was urged that only those, who were at the time of commission of the offences in charge of or responsible for the conduct of the business of the company could be deemed to be guilty of the offence alleged against them or liable to be proceeded against and punished. Reliance was placed by Mr. Murthy upon a decision of the Supreme Court in *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, .

3. Section 14-A of the Act aforementioned deals with offences committed by companies and inter alia provides that if the person committing an offence under the said Act or the Scheme framed thereunder, is a company, then every person, who at the time the offence is committed was in charge of and was responsible

to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to sub-section (1) to Section 14-A entitles the person concerned to prove that the offence was committed without his knowledge or when he had exercised due diligence to prevent the commission of the same. There is therefore no gainsaid that insofar as companies are concerned, a prosecution can be launched only against such of the officers as were responsible to the company for the conduct of its business. Whether or not the petitioners were responsible to the company for the conduct of its business is however a pure question of fact to be determined at the trial. The petitioners have not produced a copy of the complaint to demonstrate that there were no allegations in the same suggesting that they were responsible to the company for the conduct of its business. It is fairly well-settled that a Court exercising writ jurisdiction under Article 226 or those u/s 482 of the Cr. P.C. can interfere with ongoing prosecution proceedings or investigation only in cases where the complaint or the FIR, which constitutes the basis of such proceedings does not at the face of it disclose the commission of an offence or where there is some legal bar to the initiation or continuance of such proceedings. The least that the petitioners were therefore required to do was to produce copies of the complaint in order to demonstrate that the same did not disclose the commission of any offence within the meaning of Section 14(1-A) read with section 14-A of the Act aforementioned, in that there were no allegations made against the petitioners to the effect that they were in charge of and were responsible to the company for the conduct of its business. The challenge to the proceedings must therefore fail on that ground alone.

4. It was lastly contended by Counsel appearing for the petitioners that since the company had been now ordered to be wound up, the prosecution proceedings could not go on. The argument in substance was that once a winding up order is passed, any offence committed by the company must stand obliterated. I see no substance in that submission either, for in my opinion, there is no juristic principle supporting the submission nor was any cited by Mr. Murthy, Counsel appearing for the petitioners. The winding up order may be relevant for purposes of liquidating the liabilities of the company and disposal of the available assets for purposes of paying all those, who have a claim to make, but it is difficult to see how an offence already committed could be said to get obliterated just because a winding up order has been made. The fact that the company is no longer able to meet the demand the non-payment of which constitutes the basis of the offence alleged against it is, in my opinion, besides the point. Whether or not the supervening circumstances, which have resulted in the liquidation of the company should weigh with the Magistrate in the matter of imposing a lesser punishment is something that I do not wish to pronounce upon. It shall indeed be open to the company including the petitioners herein to cite all such reasons and circumstances to call for a lenient view in the matter, but leniency in the quantum of punishment must be understood to be distinctly different from the

maintainability of such proceedings.

5. In the result, there is no merit in these writ petitions, which fail and are hereby dismissed, but in the circumstances without any orders as to costs.