

(2003) 02 MAD CK 0014

In the Madras High Court

Case No : Criminal Original Petition No's. 1121 and 1458 of 2001 and Criminal M.P. No's. 432, 433 and 531 of 2001

N.A.R. Nagarajan, S.P. Arjuna Raja and Smt. Thangamani
Thangavelu

APPELLANT

Vs

Additional Registrar of Companies

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 116 CompCas 543

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : B. Sriramulu for A.K. Mylsamy, for the Appellant; T.S. Sivagnanam, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—Both the above criminal original petitions have been filed u/s 482 of the Code of Criminal Procedure praying to call for

the records respectively in C.C. Nos. 133 and 132 of 1989 on the file of the Court of Judicial Magistrate No. VII, Tiruchirapalli and quash the

proceedings therein so far as the petitioners are concerned.

2. The petitioners, in the similar petitions filed in both the cases, would submit that they were the Directors of Rama Sayee Agro Industries Limited,

a company registered under the provisions of the Companies Act, and the respondent initiated the legal proceedings against the company and all

the Directors including the petitioners u/s 58A of the Companies Act and Rule 3(a) of the Companies (Acceptance of Deposit) Rules, 1975; that

the said complaints have been filed by the respondent on 22.2.1984 in the Court of Judicial Magistrate No. VII, Tiruchirapalli and on petitions filed

by the petitioners, this Court quashed the proceedings against one of the accused and remitted the cases for trial to be held in accordance with law

and on account of lethargic prosecution, the Court below has only granted adjournments so far and the complainant, throughout the year 2000, did

not care about the cases nor appeared before the Court and in spite of the petitioners having requested the court to dismiss the complaints for non-

prosecution, the learned Magistrate did not do so but only adjourned the cases from time to time for no reason assigned.

3. The petitioners would further submit that the failure on the part of the respondent to prosecute the complaints filed by them is nothing but abuse

of process of Court and in fact, the said Rama Sayee Agro Industries Limited itself had been wound-up by the order of this Court dated

21.12.1994 in compliance with Rules 3(a) and 11 of the Companies (Acceptance of Deposits) Rules, 1975; that the entire amounts due to the

depositors have been repaid by the petitioners out of their own funds, after the disposal of the quash proceedings and there is no amount due as

such to the deposit holders of the company in liquidation; that the failure to repay the fixed deposits during the relevant period to the deposit

holders was only due to business loss incurred by the company due to the vagary of economic situation; that the petitioners did not accept any

fresh deposits; that after the filing of the complaint, they have repaid the entire amount due to the deposit holders; that the proceeding initiated by

the Official Liquidator u/s 446 of the Companies Act has been unnecessarily dragged-on. For all such reasons, the petitioners would pray for the

reliefs extracted supra.

4. No counter even would be filed on the part of the respondent explaining their stand and therefore this Court is left with no choice but to pass

orders based on the pleadings of the petitions, having regard to the materials placed on record and upon hearing the learned counsel for both.

5. During arguments, the learned counsel appearing on behalf of the petitioners would submit that these are the very long pending cases, which

were instituted as early as in the year 1984 and in fact, the company itself has been wound-up in the year 1994, in spite of which the Directors

took steps to repay the entire amount due to the depositors.

6. The learned counsel for the petitioners would cite a judgment of the

Honourable Apex Court, dated 1.5.1996, delivered in ""COMMON

CAUSE"" A REGISTERED SOCIETY THROUGH ITS DIRECTOR vs. UNION OF INDIA AND OTHERS reported in AIR 1996 SC 1619

wherein the Honourable Apex Court gave `certain directions in respect of cases pending in criminal courts for long period in view of the fact that

the very pendency of criminal proceedings for long periods by itself operates as an engine of oppression" and would rely on para No. 2(e) of the

order, which is as follows:

Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to one

year with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the Criminal Courts

shall discharge or acquit the accused, as the case may be, and close such cases.

The above said judgment was clarified by the Honourable Apex Court by its subsequent order in the same case, dated 28.11.1996, reported in

1997 Crl.L.J.195 wherein the Honourable Apex Court has clarified that:

The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgment shall not apply to cases wherein

such pendency of the criminal proceedings is wholly or partly attributable- to the dilatory tactics adopted by the concerned accused or on account

of any other action of the accused which results in prolonging the trial. In other words, it should be shown that the criminal proceedings have

remained pending for the requisite period mentioned in the aforesaid clauses of paragraph 2 despite full cooperation by the concerned accused to

get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is

caused on account of such accused getting stay of criminal proceedings from higher Courts. Accused concerned are not entitled to earn any

discharge or acquittal as per paragraphs 2(a) to 2(f) of our judgment if it is demonstrated that the accused concerned seek to take advantage of

their own wrong or any other action of their own resulting in protraction of trials against them.

7. Submitting the above judgments, the learned counsel for the petitioners would submit that the punishment contemplated for the offence u/s 58A

of the Companies Act is only one year and according to the judgment of the

Honourable Apex Court, if the pendency is for more than one year in such cases, the accused are entitled to be discharged and further more, the delay in conducting the trial in the cases in hand is attributable only to the respondent and hence even on this ground, as per the clarification order passed by the Honourable Apex Court also, the petitioners are entitled to the benefit of the said judgment of the Honourable Apex Court and would pray to allow both the above criminal original petitions and quash the proceedings against the petitioners.

8. On the contrary, the learned Additional Central Government Standing Counsel would submit that in the said judgment relied on by the learned counsel for the petitioners, the Honourable Apex Court, in para No. 4, made it clear that the directions made therein `shall not apply to cases or offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute ... (k) any other type of offences against the State", and since the cases in hand are pertaining to misappropriation of public funds and the defacto-complainant itself being the State, the benefits of the said judgment could not be extended to the petitioners and would pray to dismiss both the above criminal original petitions.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known from both the above criminal original petitions is that the respondent initiated the proceedings against the petitioners for an offence punishable u/s 58A of the Companies Act and Rule 3(a) of the Companies (Acceptance of Deposit) Rules, 1975 in the year 1984, which came to be taken on file respectively in C.C.Nos.132 and 133 of 1989 on the file by the Court of Judicial Magistrate No. VII, Tiruchirapalli and for one reason or other, the trial in the said cases has not even been commenced till date. However, it is an admitted case on the part of the petitioners that in the beginning, they initiated proceedings before this Court for quash, which has been done against one of the accused further directing the lower Court to commence the trial and to render early decision. However, according to the petitioners, in spite of the non-cooperation of the complainant, the trial Court, without dismissing the cases for non-prosecution, has been granting only adjournments so far and

therefore ultimately the petitioners, who are the accused in both the above proceedings pending before the Court of Judicial Magistrate No. VII,

Tiruchirapalli, have come forward to file the above criminal original petitions praying to quash the same.

10. Needless to mention that - as held by the Honourable Apex Court and many High Courts in the past - long pending prosecutions are nothing

but persecutions and it is disgraceful to note that in these two cases, the Court has not even commenced the trial.

11. On the part of the petitioners, they would allege that there was no appearance at all consecutively for many hearings on the part of the

complainant, but regardless of such failure to prosecute the cases registered by them, the trial Court has not passed any orders giving the relief for

the petitioners either discharging them under the relevant provisions of the Code of Criminal Procedure or doing anything constructive but only

granting adjournments all these years as a result of which, ultimately, the petitioners have come forward to initiate the above proceedings u/s 482 of

the Code of Criminal Procedure.

12. Both the counsel appearing for and against would only show the norms prescribed by the Honourable Apex Court for the trial Courts

regarding the discharge or acquittal without throwing more light on the subject and this Court is at a loss to understand as to why the trial Court has

not made any decision nor conducted the trial.

13. The 'Common Cause' judgment reported in AIR 1996 SC 1619 since being rendered by the Honourable Apex Court, deriving the authority

as enshrined under Article 21 of the Constitution of India, in order to streamline cases of such nature pending before the criminal Courts wherein

either the accused is indefinitely kept in jail in the name of prosecution thus depriving his personal liberty or even in other cases wherein he is being

persecuted indefinitely in the name of trial either without commencing the trial at all or having commenced endlessly keeping the same as a pending

case and the Honourable Apex Court with the general honest thought and common good of all those who are stranded without a way out has

rendered the said 'common cause' judgment and the said judgment has no nexus or relevance in the context of the High Court exercising its

inherent jurisdiction u/s 482 of the Code of Criminal Procedure under which the

High Court has to exercise its jurisdiction in its own assessment of the nature of the case, the period of pendency, the reason for such pendency to occur and to make out its own judgment depending upon the circumstances of the case and therefore citing the 'Common Cause' judgment rendered by the Honourable Apex Court by either side is not going to help this Court in any manner to decide the case in hand.

14. So far as those cases which fall under the categories enumerated in the 'common cause' judgment delivered by the Honourable Apex Court are concerned, there is no need on the part of the accused to file an application u/s 482 of the Code of Criminal Procedure and the criminal courts, since bound by the said judgment itself, have to act in accordance with the directions of the said judgment and only since the case in hand could not squarely brought under the purview of the said judgment of the Honourable Apex Court, the merits of this petition has to be decided in application of the parameters that the High Court is empowered to u/s 482 of the Code of Criminal Procedure and based on the proposition of law pronounced by the upper forums particularly that of the Honourable Apex Court and the various benches of the High Courts.

15. Be that as it may. Now, the point before this Court is 'whether the proceedings initiated by the respondent in C.C. Nos. 132 and 133 of 1989 on the file of the Court of Judicial Magistrate No. VII, Tiruchirapalli should be quashed, as it is prayed for on the part of the petitioners, or should they be allowed to continue as it has been permitted to lie over for the last 18 years for some reason or other?"

16. Whatever be the reason assigned on the part of the petitioners, the respondent and the trial Court, needless to mention keeping the said proceedings on the file of the trial Court all these years, without even taking the least step to conduct the trial and the trial Court never bothering about conducting the trial granting only adjournments, is a disgrace to the judiciary and it is undesirable to keep both the above cases pending any more. Absolutely no progress has been shown in the trial of both the above cases for all these years and it seems that the respondent is not at all interested in prosecuting the case since the respondent has not produced even a single witness before the trial Court so far thus helping the lower Court to commence the trial. In the above circumstances, the only irresistible

conclusion that could be arrived at in both the above criminal original petitions is to quash both the above proceedings as it is prayed for on the part of the petitioners.

In result,

(i) both the above criminal original petitions are allowed.

(ii) The proceedings in C.C. Nos. 132 and 133 of 1989 on the file of the Court of Judicial Magistrate No. VII, Tiruchirapalli are hereby quashed

in so far as the petitioners are concerned.

Consequently, CrI. M.P. Nos. 432, 433 and 531 of 2001 are closed.