

(1999) 07 DEL CK 0050

In the Delhi High Court

Case No : Criminal M. (M) No. 76 of 1993

Nestle India Ltd. (M/s.) and others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Companies Act, 1956 — Section 113

Criminal Procedure Code, 1973 (CrPC) — Section 468, 469(1), 482

Citation : (1999) 5 AD 9 : (2000) 101 CompCas 263 : (1999) 81 DLT 283 :
(1999) 50 DRJ 846 : (1999) ILR Delhi 386

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : Mr. Suman K. Khaitan, Mr. Vikas Dhawan and Mr. Ajay Bhargava, for the Appellant; Mr. U. Hazarika, for the Respondent

Judgement

J.B. Goel, J.—The three petitioners have been summoned by the learned Addl. Chief Metropolitan Magistrate (ACMM) in a complaint filed by respondent No. 2 for an offence u/s 113 of the Companies Act (for short the Act). In this petition u/s 482 of the Criminal Procedure Code (for short "the Code"), they are seeking quashing of the said complaint and the summoning order. The petitioner No. 1 is a company, petitioners No. 2 and 3 are its Managing Director and the Company Secretary respectively.

2. M/s. Food Specialities Limited who was incorporated on 28.3.1959 changed the name of the present petitioner No. 1 which was registered on 29.3.1990.

3. Briefly, the facts as alleged in the complaint are that the Asstt. Registrar of Companies (Delhi & Haryana) had carried out inspection of the records of the petitioner company on 22/23.7.1992 and found the following irregularities/breaches i.e. delay in registering the shares/debentures and remitting to the transferee.

(a) 10,000 (wrongly mentioned as 1,10,000) shares lodged on 7.8.1990 were

dispatched on 9.10.1990 - a/c UTI

(b) 12 Non-convertible debentures lodged on 30.11.1990 dispatched on 20.2.1991-a/c VTI- (C) 270 Non-convertible Debentures lodged on 15.11.1990 transferred on 28.10.1991 (date of dispatch not available) - a/c UTI.

4. These are alleged to be offences u/s 113(1) and punishable u/s 113(2) of the said Act. A show cause notice dated 4.8.1992 was served on the petitioners No. 1 and 3. (Petitioners have alleged that a reply dated 10.8.1992 was sent.) The complaint was filed before the ACMM on 5.11.1992 who took cognizance and summoned the petitioners. The petitioners are seeking quashing of the said proceedings. I have heard learned counsel for the parties.

5. First plea is that the complaint is barred by limitation u/s 468 read with Section 469 of the Code, as it has been filed after six months of the offence. Learned counsel for the State has contested this and has contended that the complaint has been filed on behalf of the Registrar of Companies who is competent to institute the prosecution and thus is the aggrieved person within the meaning of Section 469(1)(b) of the Code; this complaint was filed within six months of his knowledge of commission of the offence on 23.7.1992 after inspection of the records of the accused company. This is disputed by the learned counsel for the petitioner who has contended that the complainant Company Prosecutor or the Registrar of Company is not the aggrieved person and the Unit Trust of India being the transferee of the shares and debentures in question is the aggrieved person for the delay, if any, in registering the same and the offence, if any, is committed, was known to the UTI when it was committed; as per allegations made in the complaint the offence about transfer of shares was committed on October, 1990 and in respect of debentures in January, 1991; and the complaint having been filed on 5.11.1992 is beyond six months is time barred and liable to be quashed. He has placed reliance on *Sulochana Vs. State Registrar of Chits (Investigation and Prosecution)*, .

6. The offence alleged is that certain shares and debentures of the petitioner company which were lodged with the accused company for transfer in the name of the UTI were not transferred and/or remitted to UTI after registering the transfer within the period of two months prescribed u/s 113(1) of the Act.

7. Section 113, so far as relevant, reads as under:-

"113 (1) Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debentures stock, and within two months after the application for registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred;

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(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (1) fails to make good the default within ten days after the service of the notice, the (Company Law Board) may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and any such order may provide that all costs of the incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

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8. As this case is about transfer of the shares/debentures, the period for registration of the transfer is two months on receipt of application made according to the procedure laid down u/s 53 of the Act for such transfer. As mentioned in the complaint, shares are alleged to have been lodged on 7.8.1990; 12 non-convertible debentures were lodged on 30.11.1990 and 270 non-convertible debentures were lodge on 15.11.1990. Assuming these as the correct dates when the shares and debentures were actually delivered to the petitioner company, the registration/transfers u/s 113 of the Act should have been made within two months, i.e. by 7.10.1990 in respect of shares and by 31.1.1991 and 15.1.1991 in respect of the debentures. The offence thus would have been committed on the expiry of 7.10.1990, 31.1.1991 and 15.1.1991 and this fact must be known to the owner of the shares, i.e. UTI on that day or at any rate within a reasonable time thereafter. The reasonable time would be the time that would be taken in normal cause of transit either by personal delivery or through the postal agency, which would be couple of days or at the most one week thereafter. The offence is punishable u/s 113(2) of the Act with fine only. The period of limitation for initiating action is six months u/s 468(2)(a) read with Section 469(a) of the Code from the date when offence was committed. Learned counsel for the State obviously is invoking clause (b) of Section 469(1) which provides as under:-

"469 (1). Commencement of the period of limitation - (1) The period of limitation , in relation to an offender, shall commence, -

(a) On the date of the offence; or

(b) 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, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

9. The question is whether the complainant, i.e. the Company Prosecutor or the Registrar of Companies is an "aggrieved person".

10. When an offence is committed against a person the Court could take cognizance of the offence either on a police report or on the complaint of the aggrieved person. In both these cases a complaint could be made within six months of the commission of the offence. Clause (b) of sub-section (1) of Section 469 makes a distinction between an aggrieved person and a police officer, obviously the police officer is not an aggrieved person. He is an officer who is enjoined by law to take steps to bring the offender to book. The position of the Company Prosecutor who is the complainant in the present case is akin to that of a police officer. If a police officer is not the "aggrieved person", the Registrar of Companies would also not be an aggrieved person. An aggrieved person would be one who is directly affected by the acts of commission or commission of another person. In this case the UTI who as transferee of the shares and debentures had made application for the registration of transfer in their name is the aggrieved person if its shares etc. were not registered and transferred in its name within time and not the Registrar of the Companies.

11. Similar question came for consideration before the Madras High Court in the case of Sulochana (supra) relied on behalf of the petitioners. In that case, the petitioner was conducting chit funds, one of the subscribers reported to the Registrar of chits (Investigation and Prosecution), Madras (for short the Registrar) on March 27, 1976 that the petitioner had not paid the chit amount due to her. During investigation, the Registrar found that the petitioner had conducted the chit without registration of the bye-laws and without obtaining a certificate of commencement of business, which was in contravention of Section 3 and 7 of the Tamil Nadu Chit Funds Act, 1961 punishable u/s 56 (1) of that Act. Consequently, the Registrar filed a complaint on June 9, 1976 before the Metropolitan Magistrate, Madras for that offence. The question before the learned Judge was whether the Registrar could be termed as a "person aggrieved" by the offence alleged to have been committed by the petitioner. After referring to the relevant scheme of the Code and the case law, it was held that the Registrar could not be said to be a "person aggrieved" by the offences so as to claim the benefit of extended limitation provided u/s 469(1)(b) and (c) of the Code; The Registrar had come forward with the complaint in performance of his official duty and not on account of any grievance felt or sustained by him personally in the contraventions committed by the petitioner. Complaints preferred in discharge of one's official duty are vastly different in character and nature from complaint preferred by persons aggrieved by commission of the offences and they distinctly fall in two different categories and the former is not to be confused with the latter. It was accordingly held that the words "person aggrieved by the offence" occurring in Section 469(1)(b) of the code should be given a limited or restricted coverage which would be one who is personally and directly affected by an offence and not to any member of the public or even an officer who is charged with the duty of enforcing prohibitory regulations under the Statute. With respect

I agree with this legal position.

12. It may also be mentioned that u/s 469(1)(b) the period of limitation will start from the earliest date of knowledge either by the aggrieved person or the police officer. And as the UTI is the only aggrieved person or in any case also the aggrieved person, the period would start when it got knowledge. Its knowledge dates back when the offence was committed. the result is that the complaint having been filed after a lapse of over two years in respect of shares and after almost about two years in respect of debentures is time barred.

13. The principles governing scope of the power of the High Court for quashing a complaint/FIR/prosecution u/s 482 are well established. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, it was held that, inter alia, in the following four categories of cases, complaint could be quashed:-

"(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either in no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects such as, want of sanction, or absence of complaint by legally competent authority and the like."

14. In category (4), a complaint could be quashed if it suffers from fundamental legal defects such as want of sanction, or absence of complaint by legally competent authority and the like. The period of limitation would be one of the circumstances on which a complaint could be quashed.

15. The scope and object of prescribing bar of limitation u/s 468 of the Code has been considered in State of Punjab Vs. Sarwan Singh, wherein it has been observed as under:-

"The object of Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is Therefore, of the utmost importance that any prosecution, whether by the State or a private complaint must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

16. In that case the prosecution against the respondent was barred by limitation. Consequently his conviction and sentence as also the proceedings culminating in the conviction was held to be non est and were quashed. The present proceedings thus being time barred are liable to be quashed. Learned counsel for the petitioner has also contended that even on the merits, no offence has been committed and the prosecution is illegal, and no conviction could be based in the facts and circumstances of the case. He has also contended that the alleged default is too trivial which would not justify the prosecution which if allowed would rather be persecution of the petitioners. In respect of the shares, the learned counsel has contended that the shares had been lodged on 10.8.1990 and not on 7.8.1990. These were registered on 9.10.1990 i.e. within 60 days prescribed u/s 113(1) of the Act. Learned counsel has contended that a show cause notice dated 4.8.1992 was served on petitioners No. 1 to 3 to which a reply dated 10.8.1992 (Annexure "F") was sent wherein it was pointed out that the shares would have been lodged on 10.8.1992 and not as 7.8.1992. In the complaint, though it was alleged that no reply to this show cause notice was received, however, in para 12 of this petition it is alleged that a reply to show cause notice was given by letter dated 10.8.1992 (Copy at Annexure "F") to which there is no specific denial in the counter dated 19.3.1993 filed on behalf of the respondents. Obviously, no efforts were made to verify the correctness of the Explanation given by petitioners. There is also no material placed on record to prima facie show, that the shares were actually lodged on 7.8.1990. Thus it cannot be said with certainty that any default has been committed in registering these shares.

17. As regards transfer of 270 non-convertible debentures, it is alleged in this reply that these debentures were lodged with their Registrar-cum-Transfer Agents on 12.1.1991 as per endorsement made about lodgment and not on 15.11.1990, and that these debentures were transferred on 28.2.1991. Again the correctness of this statement has not been verified and no material has also been placed on record either to rebut this statement or to show that these debentures were actually lodged on 15.11.1990 and not on 12.1.1991. As regards 12 non-convertible debentures which perhaps formed part of bigger lot of 1000 debentures, it is alleged that the letter dated 30.11.1990 from Stock Holding Corporation of India Limited, Bombay, (apparently the agents of UTI), was addressed to SRG Financial and management Consultants Pvt. Ltd., Qutab Road, New Delhi who were not Registrar and Transfer Agents for debentures of the petitioners. This fact also has not been rebutted by any reliable material nor any material has been placed on record to show that these debentures were lodged with the company or its duly authorised agent on 30.11.1990. When before any action is taken a show cause notice is given, it is incumbent on the person giving the show cause notice to consider the reply, if any, submitted thereto. In this case, as already noticed, a reply was given but that has not been considered. Obviously, the complaint was filed without application of mind and without finding out the correctness of the facts alleged in the show cause notice. In the

case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , it has been observed as under:-

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique and where in the opinion of the Court chances of an ultimate conviction are bleak and , Therefore, no useful purpose is likely to be served by allowing the criminal prosecution to continue, the Court may while taking into consideration the special facts of the case also quash the proceeding even though it may be at a preliminary stage."

18. In State of Karnataka Vs. L. Muniswamy and Others, , also it has been held as under:-

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to a conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in Civil and Criminal matters is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution....."

19. The law thus is clear that it is the bound an duty of the Court to interfere in the matter and quash the prosecution at the initial stage if it would either amount to abuse of the process of the Court or otherwise if the ends of justice so requires. In this case the complaint has been filed after about two years of the occurrence. At that late stage possibly some of the relevant evidence may not be available. In the facts and circumstances, in my view, it is a fit and proper case to exercise inherent power to quash the proceedings. Even otherwise, the offence is too trivial and the aggrieved person, that is the UTI, has not thought it proper to make a grievance of the defaults, if any, on the part of the petitioners.

20. In Hindustan Steel Ltd. Vs. State of Orissa, , there was failure to register as a dealer under the Sales Tax Act which could entail penalty. However, it was held that the imposition of penalty will not be always necessary. Penalty will also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of, the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act. In the facts and circumstances, it seems, it would be a futile exercise to pursue the proceedings.

21. For all these reasons this petition is allowed. Complaint filed by respondent

No. 2 against the petitioners for offence u/s 113(2) of the Companies Act and also the order of summoning the petitioners are accordingly hereby quashed.