
(1995) 03 SC CK 0105
In the Supreme Court Of India
Case No : SLP (Crl.) No. 1683 of 1994

P.C. Wadhwa

APPELLANT

Vs

S.C. Bhatia

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Citation : (1995) 8 JT 686 : (1995) 7 SCALE 92 : (1996) 1 SCC 384 : (1995) 6 SCR 530 Supp

Hon'ble Judges : K. S. Paripoornan, J;J. S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. LEAVE granted. Heard.

2. The appellant filed a complaint against respondent S.C. Bhatia alleging the commission of an offence punishable under Section 73 of the Companies Act by the respondent. The respondent S.C. Bhatia made an application under Section 482 of the Code of Criminal Procedure in the High court which has been allowed and the complaint made by the petitioner has been quashed by the impugned order. Hence, this appeal by special leave.

3. The High court has given two reasons for quashing the complaint. One reason given is that the respondent was not an officer in default and therefore cannot be prosecuted for the offence. The appellant referred to Section 5 of the Act which gives the meaning of "officer who is in default" and therein is included the whole-time Director. Respondent S.C. Bhatia is alleged to have been holding the office of whole-time Director. Accordingly, at this stage that ground was not available for quashing the complaint. The other ground on which the High court relies is that the complainant is not one of the persons named in Section 621 of the Act entitled to file the complaint. The contention of the appellant is that-he being the person aggrieved in the present case, he has the locus standi to make such a complaint and moreover a comparison of Sections 621 and 621-A indicates that

Section 621 is not applicable to a complaint of this kind in which the allegation is of the commission of an offence under Section 73 of the Act. In our opinion, on the material present at this stage before the commencement of the trial there was no basis for the High court to take the view that the complaint must be quashed without going to trial for the offence.

4. BOTH these grounds on which reliance is placed on behalf of the respondent involve determination of certain facts, on which we refrain expressing any opinion on the merits. These points would remain available to the respondent for being raised at the trial and if so raised, will be decided at the end of the trial.

5. The impugned order of the High court is set aside. The trial court shall proceed with the trial.

6. APPEAL is allowed as indicated.