
(1983) 07 MAD CK 0013
In the Madras High Court
Case No : Criminal M.P No. 2259 of 1979

P.R. Ramakrishnan and Co.	Vs	APPELLANT
A. Mounagurusami		RESPONDENT

Date of Decision : 07-07-1983

Acts Referred:

Companies Act, 1956 — Section 108A, 308(3)

Citation : (1984) LW(Cri) 148

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : Mr. N.T. Vanamamalai for M/s. G. Krishnan and S. Ashok Kumar, for the Appellant; N. Natarajan for S. Jagadeesan, for the Respondent

Judgement

Natarajan, J.—The Petitioners seek quashing of the proceedings in C.C. 251 of 1979 on the file of the Judicial First Class Magistrate,

Coimbatore. The case arises out of a private complaint filed by the Respondent herein against the Petitioners and a Public Limited Company, to

wit Kadhakrisbna Mills Limited, which has been arrayed as the fifth accused in the case. The complaint has been taken on file under Sections 108-

A, 187-C(2) and 308(3) of the Companies Act.

2. The averments of the Respondent in the complaint filed by him are to the following effect. The complainant is a shareholder in. Radhakrishna

Mills Limited, the fifth accused, and holds 240 equity shares. The Board of Directors of the Mills is composed mainly of two families-one, that of

Sri R. Venkatasami Naidu and his sons and the other, that of the first accused and his three sons, viz, accused 2 to 4. There are only two outsiders

in the Board, viz., one R. Palaniswami Naidu, one A. Narayanaswami Naidu. The fifth accused is therefore, virtually controlled by the two families

mentioned above. However, there appears to be some disputes between the two families and each family is attempting to gain control of the

company. The complainant is not interested in the dispute between the two families, but as a shareholder, he is interested in the proper

management of the affairs of the company. The complainant found that a large number of shares in the fifth accused company had been purchased

in the names of persons who do not actually hold them and that the purchasers were holding the shares benami for the benefit of accused 1 to 4.

The complainant has given a list of the benami shares in the schedule attached to the complaint. The complainant gained intelligence about the

purchase of benami shares by accused 1 to 4 after making an inspection of the relevant records of the company. On making the inspection, the

complainant was shocked to notice that over 32,000 shares had been purchased by accused 1 to 4 within the months of July to September, 1978.

He found many of the transferees to be either clerks or automobile drivers or other employees serving under the effective control of accused 1 to

4. The other benami transferees are obliged to the accused. The holders of the shares do not have the pecuniary capacity to acquire the shares.

Moreover, they would never have invested money in the purchase of shares in the company as they are hopelessly unproductive and there is no

chance of these shares bearing dividends in the near future. As a matter of fact, the shares have been selling at a low price (below par) for quite a

number of years. Accused 1 to 4 of whom the first accused is the head, and the concerns over which they exercise control, already hold 48,842

shares, viz., 19.36 per cent of the total number of equity shares. The break-up figure of the shareholders are as under:

1. First accused 12,510

shares

2. Sent. Rajeswari 3,060 ""

Rami-krishnan (1st

accused"s wife)

3. Second Accused 3,740

4. Third accused 2,050

5. Fourth accused 1,450

6. Smt. D.R. Durgamba 380

and 4th accused

7. The Jeypore Sugars 16,601

Limited

8. Ramakrishna 6,345

Machinery

Corporation Private

Limited

9. R.S. Industrial 1,661

Corporation (P)

Limited

10. Krishna Industrial 2,040

Corporation Ltd.

If the 32,000 odd additional shares acquired benami by accused 1 to 4 are added to the shares already held by their group, the total holdings of

the group headed by the first accused will exceed 25 per cent of the paid-up capital of the company. However, accused 1 to 4 have not obtained

the permission of the Company Law Board u/s 108-B for such acquisition. In order to by-pass the mandate contained in Section 108-A, accused

1 to 4 have acquired the shares benami in the names of third-parties. There is, therefore, a contravention of Section 108-A of the Companies Act.

Moreover, there is also contravention of the provisions of Section 108-C and Section 308 of the Companies Act, because a person having a

beneficiary interest in a class, or classes of shares of a company should declare the same to the Company within thirty days of such acquisition.

Contrary to the provision of law, there has been no such declaration. by accused 1 to 4 to the company. That apart, u/s 303 of the Companies

Act, the Directors of a company have to give notice to the company of their share-holdings in order to enable the Company to comply with the

provisions of Section 307. Accused 1 to 4 have not given the required notice to the company as enjoined by law. The complainant sent a letter to

the company (fifth accused) to re-transfer the shares to the original holders and to give him an assurance that the benami shareholders would not be

allowed to vote in the General Body Meeting held on 30th July, 1978. Since no reply was received, the complainant sent a further letter to the Chairman of the meeting requesting him not to take into consideration the votes of the benami shareholders, but in spite of the request, the shareholders holding shares benami for accused 2 to 4 exercised their votes, against the reappointment of the Auditors and they had thus contravened Section 108 of the Companies Act. The complainant sent such a letter to the Chairman against the benami share-holders, because he was of the view that they may have signed the forms without the requisite mens rea to violate the provisions of the Act. Furthermore, the benami shareholders are helpless persons as they are under the effective control of accused 1 to 4 and cannot therefore raise any protest. Accused 1 to 4 have been collecting proxies from shareholders even long before the Annual General Meeting held on 30th July, 1978 in order to get a majority of the votes for themselves. As a shareholder, the complainant is interested in the fair management of the affairs of the company and it is for that purpose, he is forced to file a complaint against the accused. The complainant has furnished a list of witnesses who are to depose in the case to prove the averments in the complaint. On such averments the complainant has prayed for the case being taken on file and an enquiry held and for the accused being punished for the offences committed by them.

3. As already stated, though contravention of several sections is complained of, the complaint has been taken on file only under Sections 108-A, 137 C (2) and 308 of the Companies Act.

4. The Petitioners seek quashing of the proceedings on the ground that the complaint does not disclose the commission of any offence by them, that the averments in the complaint are vague and indefinite, that the complaint is based on mere surmises and assumptions, that even if the witnesses cited by the complainant give evidence, in support of the complaint, their testimony cannot establish the commission of any offence by the Petitioners, that the complaint is an after thought and has presumably been filed as counterblast to another complaint filed by the Petitioners against other Directors and that if, in such circumstances, the trial is allowed to proceed, it would only open the floodgates of prosecution against the Directors and companies in such a manner as to stifle and thwart all corporate,

business, industrial and mercantile activity, by motivated, dissatisfied or mischievous persons.

5. Arguing the case of the petitioned, Mr. Vanamamalai, learned Counsel referred to various features in the case which, according to him, entitle

the Petitioners to seek quashing of the proceedings. He pointed out that even according to the complaint, the alleged purchase of benami shares

was about ten months prior to the filing- of the complaint and that there had been no whisper till then about the shares having been purchased

benami Counsel stated that if the shares had been purchased benami, the matter would have been known to people in the office as well as in the

share market. He emphasized the fact that while, in the schedule attached to the complaint, the names of 28 alleged benami purchasers of shares

are mentioned, the complainant has cited in the complaint only four of the alleged purchasers, namely Nos. 4, 6, 13 and 14 who have been arrayed

as witness Nos. 7, 4, 5 and 6 in the complaint, and therefore, the alleged purchase of shares by the other 13 persons has to stand only on the ipse

dixit of the complainant. Counsel then argued that even if witnesses 4 to 7 in the complaint are going to get into the box and give evidence

supporting the complaint, it Would only mean that the Petitioner had purchased 1,430 shares, and by the acquisition of those shares, the Petitioners

cannot be accused of having acquired more than 25 percent of the shares in the Company. The further contention in this behalf was that if the

Petitioners are to be held guilty of contravening Section 108-A of the Companies Act-it should be proved that they had acquired more than

14,400 shares in addition to their present holdings, but in this case, the complainant will be able to prove the purchase of only 1,430 shares and the

acquisition of those shares will not take the holdings of the Petitioners to more than 25 per cent of the shares in the company.

6. Another contention put forward by Mr. Vanamamalai was that none of the purchasers of shares had told anyone about their being benamidars

for the Petitioners. The complainant claims to have discovered the purchase of the benami shares by the Petitioners by making an inspection of the

records and registers of the company and therefore, there is reason to think that the persons cited as witnesses in the complaint should have been

subsequently induced to make allegations against the Petitioners so that the

Petitioners" interests will be harmed.

7. On another ground also, Mr. Vanamamalai attacked the complaint. He pointed out that there is no mention in the complaint as to who among the Petitioners had purchased shares benami and, in the absence of a specific averment, the Petitioners cannot be generally charged for having acquired shares benami for themselves. The averment in the complaint that many of the transferees were either clerks or automobile drivers and other employees of the Petitioners and serving under their effective control, ""was disputed by Mr. Vanamamalai and he referred to the fact that only one person is a driver and one person is a clerk in the Coimbatore Institute of Technology and, therefore, it will be wrong to say that all the persons mentioned in the complaint are employees of the Petitioners.

8. Arguing contra, Mr. Natarajan, learned Counsel for the Respondent-complainant, stated that the Magistrate was prima facie satisfied about the averments in the complaint and had therefore taken the case on file and as such, the complainant should be given an opportunity to prove his case and the Petitioner should not be allowed to thwart the proceedings by having the matter quashed without a trial taking place.

9. Before examining the contentions of the parties it would be useful to refer to Sections 108-A, 187-C(2) and 308 of the Companies Act

(hereinafter referred to as the Act), which the Petitioners are alleged to have contravened. Sections 108-A to 108-H were newly introduced by the

Companies (Amendment) Act XLI of 1974. Section 108 -A reads as follows:

Section 108-A. Restriction on the acquisition of shares: (1) Except with the previous approval of the Central Government, no individual) group,

constituent of a group, firm, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire,

whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a,

subsidiary of a Public company, if the total nominal value of the equity share intended to be so acquired exceeds, or would, together with the total

nominal value of any equity share already held in the company by such individual, firm, group, constituent of a group, body, corporate or bodies

corporate under the same management, exceeds twenty five per cent of the paid up equity share capital of such company.

2) Any person who acquires any share in contravention of the provisions of Sub-section (1), shall be punishable with imprisonment for a term

which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

This section was introduced in order to meet the cases of "take-over" bids by groups of companies, as they are apt to adversely affect the interests

of non-controlling share holders, particularly public financial institutions, as they are kept in the dark while secret negotiations are entered into with

those having control of a company. Originally, the recommendation was that the proposed restrictions would apply to companies having a total

paid up capital of not less than Rs. 25 lakhs and private companies which are subsidiaries of such public companies. The proposal was

subsequently modified and the restriction has been made to apply to public limited companies with a share capital of Rs. 20 crores or more.

Consequently, Section 108-H was enacted to govern the application of Sections 108-A, 108-B, 108-C and 108D to such companies to which

the provisions of Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969 apply. In the instant case, though it is not

mentioned in the complaint it has been ascertained from counsel that the fifth accused has been registered under the provisions of Part A of

Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969. Therefore, what needs consideration is whether there has been an

acquisition of shares by the Petitioners in contravention of Section 108-A of the Act.

10. Section 187-C is also a new Section inserted by the Companies (Amendment) Act XLI of 1974. It comprises of seven Sub-sections. Under

Sub-section (1) any person whose name is entered as a shareholder in the register of members of a company, but who does not hold the beneficial

interest in such shares should make a declaration to the company specifying the name and other particulars of the person holding the beneficial

interest in the shares. Sub-section (2) casts a similar duty of making a declaration to the company on the person holding the beneficial interest in the

shares of a company standing registered in the name of other persons. It is this provision which the Petitioners are alleged to have contravened by

reason of their having failed to make a declaration to the company about the holding of benami shares by them. It is then necessary to refer only to

Sub-section (S) for the purpose of this case, which is the penal section, and it lays down that any person contravening Sub-section (1) or Sub-section (2) or Sub-section (3), without any reasonable excuse to do so, is punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

11. Lastly, we have Section 308. This section deals with the duties of a Director in giving notice to the company of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of Section 307. Sub-section (3) is the punishment section and lays down that any person who contravenes Sub-sections (1) and (2) of Section 308 shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

12. It is with reference to these sections, we have to examine the complaint to find out whether a prima facie case exists for the proceedings to go on or whether the complainant's averments are of such a nature that no case at all is made out against the Petitioners and therefore, if the trial proceeds, it will only prove to be an exercise in futility.

13. Examining the first accusation of the complainant that the Petitioners have acquired 32,000 odd shares benami and have thereby swelled up their total holding of shares beyond the 25 per cent limit fixed by Section 108-A, the complainant has not specifically stated the amount of shares acquired by each of the Petitioners and furthermore, who are the benami shareholders for each person. On the other hand, the averment in the complaint is that ""they (benami shareholders) hold it benami for the benefit of accused 1 to 4"". In the very nature of things, the accusation is a loose and vague one. The complaint should set out specifically how much of benami shares have been acquired by each of the Petitioners. Even assuming that there has been acquisition of benami shares, it may well be that not all the four Petitioners have acquired shares and it is only one or two or three of the Petitioners who have acquired the shares. If that be, the case, it automatically follows that such of those Petitioners who have not acquired shares cannot be prosecuted for the purchase of benami shares by the other Petitioners. Mr. Natarajan, learned Counsel for the Respondent-complainant, would say that accused 1 to 4 act as a group. But, the

word "group" has a definite connotation under the Companies

Act. It may be that the first Petitioner is the father and Petitioners 2 to 4 are his sons. But, even so, the question is still open whether they would

constitute a group under the Act. In this context, it is relevant to refer to Section 2 (18-A) which gives the definition of "group". The definition

reads as follows:

Group, means a group of two or more individuals, associations, firms or bodies, corporate, or any combination thereof, which exercises, or is in a

position to exercise, or has the object of exercising control over any body corporate, firm or trust.

There is an Explanation to this definition, which runs as follows:

Explanation:-if any question arises as to whether two or more individuals, associations, firms or bodies corporate, or any combination thereof

constitute or fall within, a "group", the Company Law Board shall, after giving such individuals, associations, firms or bodies, corporate, or any

combination thereof a reasonable opportunity of being heard, decide the same.

Therefore, it is the Company Law Board which can make an authoritative pronouncement whether two or more individuals, associations, etc.,

constitute a group or not under the Act. In this case, there is no averment in the complaint that the Company Law Board has given a finding that

Petitioners 1 to 4 constitute a group. In the absence of such a finding by the Company Law Board, the Court cannot proceed on the assumption

that Petitioners 1 to 4 constitute a group within the meaning of the Act. There is also another aspect of the matter to be taken note of in this

connection. In paragraph 4 of the complaint, reference is made to ten persons as constituting the group of the first Petitioner in the company. While

Petitioners 1 to 4 are enumerated as Nos. 1 and 3 to 5, the second enumerated person is Smt. Rajesvari Ramakrishnan, wife of the first Petitioner.

The sixth enumerated persons are Smt. D.N. Durgambal and the fourth Petitioner. Then Nos. 7 to 10 are certain companies incorporated under

the Act. Therefore, when the complainant says that shares have been acquired by the group of the first Petitioner and then, according to him, the

group of the first Petitioner consists of nine other persons besides him, it becomes incomprehensible how he can attribute the acquisition of shares

only to Petitioners 1 to 4, viz., accused 1 to 4. In such circumstances, there is an

insurmountable feature of uncertainty in the case, the uncertainty being whether the acquisition of benami sharers is by one or more, or all the four Petitioners, or whether the acquisition is also by the other members of the alleged group of the first Petitioner. In view of this uncertainty the Magistrate cannot take cognizance of the case against Petitioners 1 to 4 and it will not be proper to say that in spite of the uncertainty in the case, the trial should proceed against all the Petitioners and if any one or more of them is or are not found to have contravened Section 108-A, he or they can be acquitted after they go through the ordeal of a trial.

14. Then comes the question, whether there is apparent material in the complaint to suggest an inference that the Petitioners have acquired benami shares beyond the permitted limit without conforming to the provisions of Section 108-A. According to the complainant. Accused 1 to 4 of which the first accused is the head and the concerns over which they exercise full control, already hold 48,842 shares, viz., 19.36 per cent of the total equity shares of the fifth accused company"". If that be so, the total number of shares issued should be about 2,52,283. Twenty five per cent of the total shares would come to 63,071. Giving set off to the shares now held, the Petitioners can well acquire additional shares to the tune of 14,229, without offending the provisions of the Act, Though, in the complaint, it is alleged that 32,000 odd shares have been acquired, the complainant has cited only four persons to speak about the acquisition of benami shares in their names. The total number of shares purchased by them, as already mentioned, is only 1,430. Hence, even if they depose in favour of the complainant, the Petitioners cannot be held guilty of having contravened Section 108-A. Mr. Natarajan argued that the witnesses cited in the complaint may not only speak to the purchase of shares in their names, but may speak about the purchase of shares in names of others. But, this contention cannot be countenanced. That is because of the fact that the statute casts an obligation both on the benami shareholder as well as the beneficiary to disclose to the company the purchase and holding of such shares. It would therefore not only be inadvisable but also dangerous for any court to accept the evidence of someone regarding the purchase of shares by third parties benami for another and render any finding, because the holder of the share will be greatly prejudiced by any adverse finding

rendered against him by the Court. In fact, if a person holds a share benami for another and fails to disclose it, he becomes punishable u/s 187-C

(5) for contravention of Section 187-C(l). The punishment is as high a fine which may extend to one thousand rupees for every day during which

the failure continues. Having regard to the serious nature of the offence and the penalty provided for it, it would be highly improper for any Court to

render a finding against anyone that he is holding shares in a company benami for another, on the evidence of some other shareholder or

shareholders. Such being the case, I see considerable force in the contention of Mr. Vanamamalai that even if the four shareholders named by the

complainant come and give evidence against the Petitioners in the case, it would only mean that the Petitioners have acquired 1,430 shares in order

to have beneficial interest in these shares in themselves. When the acquisition of such shares will not carry the total holdings of shares by the

Petitioners beyond the prescribed limit of 25% per cent, it can never be said that there is prima facie evidence that the Petitioners have contravened

Section 108-A of the Act.

15. In the course of arguments, it was urged on behalf of the complainant that drivers and clerks could not have purchased shares by themselves

and it is therefore obvious that they should have purchased the shares benami for the Petitioners. On the other hand, Mr. Vanamamalai argued that

even drivers and clerks of companies are paid well these days and that as such, they would have been able to command funds for purchase of

shares. He also argued that even according to the complainant, there is a scramble between the two families for purchase of shares and in view of

that the share prices had fallen* Therefore, he stated that, taking advantage of the situation, the drivers and clerks could have made speculative

purchases in order to strike a bargain between the two groups and sell the shares to them at an appropriate stage for considerable profit.

Considering this aspect of the matter, I think there is a good deal of force in the contention of Mr. Vanamamalai. The status of the witnesses cited

by the complainant is not such that by one stroke of the pen it can be said that they are not men of means and as such, they would not have

purchased the shares for themselves, but should have only lent their names for purchase of shares by others.

16. Proceeding onwards, on the alleged contraventions of Sections 187C(2) and 308, the contention on behalf of the complainant is that even if an offence u/s 108-A is dot prima facie made out, there can be no answer by the Petitioners to their having purchased shares benami in the names of the four witnesses named in the complaint and their failing to make the declarations and returns under Sections 187-C (2) and 308 of the Act. On the face of it, this contention may look an appealing one. But, if the matter is viewed in a wider perspective, it will be seen that it cannot be accepted. I have already pointed out that u/s 187-C(1) there is an obligation east on the holder of a benami share to make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share. I have further pointed out that under Sub-section (5) the holder of a benami share is also punishable, even as the person holding the beneficial interest in a benami share is punishable for failure to make the necessary declaration to the company about the holding of the benami share. The punishment provided is a fine which may extend to one thousand rupees for every day during which the failure continues. It is in the light of this penal provision, the Contention of the complainant that the witnesses cited by him have purchased shares benami for the Petitioners should be examined. If the witnesses had purchased shares benami, they ought to have made a declaration to the company u/s 187-C(1). If they have failed to do so they are liable for prosecution and punishment under Sub-Section 5. Such being the case, what falls for consideration is whether these witnesses would come and make incriminating statements against themselves and make themselves liable for prosecution u/s 187-C (5). The preponderance of probability is that they would not come and give evidence against themselves in court. Assuming for argument's sake that they would be prepared to give such evidence, (he question would be whether such evidence can be accepted and acted upon, because it would be the evidence of accomplices. The possibility of the witnesses making incriminating statements in the witness-box on the instigation of third parties inimically disposed towards the Petitioners, cannot be ruled out. If these witnesses do come and give evidence against the Petitioners, the question would naturally arise why they had kept quiet for a period of ten months and suddenly took it into their minds to disclose to the complainant and others that they are name-lenders

for the shares acquired by the Petitioners and that they are prepared to give evidence about it in court. The strong possibility is that there should have been sufficient inducement to the witnesses to come and give evidence against the Petitioners and their willingness to give evidence cannot be due to a desire on their part to reveal the truth or to make their conscience free. Over and above these things, there is the fact that there is no material to show that till today the witnesses have made a declaration to the company u/s 187-C (1) stating that they are benami shareholders. The question will be whether these witnesses can be allowed to come and depose something in court when they have failed to make a declaration u/s 187-C(1). I think not, for, if such a course is encouraged, then it would be open to any shareholder to threaten a Director of a company and hold him to ransom by saying that without making a declaration to the company u/s 187-C (1) he will give evidence against the Director in a Court of law and see to it that the Director is punished Sub-sections (1) and (2) of Section 187 Care of such a nature that a Court cannot act on the unilateral statement of either party alone id Court against the other without making a declaration u/s 187-C(1) or (2), for, it will lead to unhealthy practices between the shareholders and Directors of a company.

17. Since Sections 187-C(2) and 308 are clearly connected, it follows that unless irreproachable and incontrovertible materials are available to hold that a prima facie case of a contravention of these two provisions has been made out, the Court will not be justified in taking cognizance of a case and making a raving enquiry at the request of a complainant.

18. For the aforesaid reasons, I am of opinion that the contention of the Petitioners that the complaint does not disclose the commission of any offence, is well-founded. The case suffers from the several infirmities set out above which go to the root of the matter. Consequently, the ratio laid down in *Sharda Prasad v. State of Bihar*¹, can well be applied in this case. The Supreme Court has held in that case that if the allegations in a complaint or charge-sheet do not constitute any offence it is competent to the High Court, exercising its inherent jurisdiction u/s 482, Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence. Therefore, it follows that the proceedings relating to the complaint filed by the Respondent-complainant deserve to be

quashed. In this connection, I may also point out that if there had been a deliberate violation of the provisions of the Act, the Company Law Board would itself have taken action against the Petitioners.

19. In the result, Criminal Miscellaneous Petition No. 2259 of 1979 will stand allowed and the proceedings relating to C.C 251 of 1979 on the file of the Court of the Judicial First Class Magistrate, Coimbatore will stand quashed.