
(2000) 05 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 35903-M of 1999

Rajinder Gupta

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Citation : (2000) 3 RCR(Criminal) 171

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. R.S. Cheema, Sr. Advocate with Mr. Rajiv Trikha, Advocate. Mr. S.K. Sharma, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. The present is a petition under Section 482 Cr.P.C. for quashment of the complaint dated 12.11.1988, under Section 374 of the Companies Act (Annexure P1), order dated 24.9.1999 passed by Chief Judicial Magistrate, Sangrur (Annexure P2) alongwith all subsequent proceedings.

2. Some facts can be noticed in the following manner. A criminal complaint was lodged in the Court of Chief Judicial Magistrate, Sangrur by the Registrar of Companies, against Shri Rajinder Gupta and his coaccused Shri C.S. Dhawan, on the allegations that they have allegedly violated the provisions of Section 372(2) of the Companies Act. M/s Varinder Agro Chemicals Ltd. was incorporated on 8.6.1979 as a Public Limited Company under the Companies Act, 1956. It is alleged by the complainant that its head office is at Barnala, District Sangrur. The authorised share capital of the Company is Rs. 20 crore and paid up capital is Rs. 17,11,40,407/-. Petitioner No. 1 is Managing Director and petitioner No. 2 is the Joint Managing Director of the Company. It is further alleged that M/s Varinder Agro Chemicals Ltd. (hereinafter called the Company) made investment of Rs. 12,07,41,250/ in M/s Abhishek Spinfed Corporation Limited making the invested company a subsidiary without obtaining the prior approval of the central Govt. as required under Section 372(4) of the Companies Act and thereby contravened those provisions. The Company was ordered to be prosecuted for that violation.

3. Notice was issued to the petitioners and both the petitioners appeared in the trial Court. They made an application for the dismissal of the complaint as well as for personal exemption. The learned Chief Judicial Magistrate dismissed the application of the petitioners for the reasons given in paras No. 5 and 6 of the impugned order, which are reproduced as under :

"5. The main plank of the arguments was that Section 372(2) of the Companies Act stands abolished w.e.f. 30.10.1998 and this complaint was filed on 18.11.1998 when the Section was abolished. Reply to this point was given by the Company that the offence was committed during the year 1996 when Section 372(2) was well in existence.

6. I have taken into consideration this point and agree with the submission of learned counsel for the complainant. Section 372(2) of the Companies Act, 1956 was in existence when the alleged offence was committed. The Companies Amendment Act, 1999 came into force w.e.f. 31.10.1998. Accused persons cannot absolve themselves from any liability prior to this date. The defence has further raised other points regarding the date of facts coming to the knowledge of Registrar of Companies, limitation for filing this complaint. I am of the view that the yardsticks for disposal of case on merits is different than that of service of notice of accusation in a summons case. At this stage this Court has to see a prima facie case and incriminating material placed on the file by the complainant. "There is sufficient material on the file that the accused have committed violation of Section 372(4) of the Companies Act naming themselves thereby liable under the punishing clause of Section 374 of the Act. I, therefore, order that both the accused be served notice under Section 374 of the Companies Act."

4. In this manner, the present petition under Section 482 Cr.P.C. has been filed by the petitioner.

5. I have heard Shri R.S. Cheema, Sr. Advocate, appearing on behalf of the petitioners and Shri S.K. Sharma appearing on behalf of respondent and with their assistance have gone through the paper book of this case.

6. In a recent judgment, reported as 2000(2) RCR(Criminal) 484, Hridaya Ranjan Pd. Verma and other v. State of Bihar and another , Hon"ble Supreme Court in para No. 8 of the judgment has observed as follows :

"In the case of State of Haryana and others v. Bhajan Lal and others, 1991(1) RCR(CrL.) 383 : 1992 Supp(1) SCC 335 , this Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines

or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Whether the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose of a cognizable offence, justifying an investigation by police officer under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private personal grudge."

7. In fact the Hon''ble Supreme Court has reiterated which was earlier stated in the famous case of State of Haryana and others v. Bhajan Lal and others, 1991(1) RCR(Cr.) 383 .

8. No doubt the provisions under Section 482 Cr.P.C. can only be applied in rare of the rarest cases but the Hon''ble Supreme Court has laid down certain guidelines also where this power under Section 482 Cr.P.C. given to the Hon''ble High Court can be exercised. Clause (6) of the observations aforesaid made by the Hon''ble Supreme Court would show that there is some scope still with the High Court for invoking the provisions under Section 482 Cr.P.C. when the High Court finds that there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings.

9. In this case, firstly, it may be stated that the provisions of Section 372(4) of the Companies Act, have since been abolished. However, with the abolition of this Section, the alleged offence which has been committed prior to the abolition can still be tried by the court of competent jurisdiction. The alleged offence was committed as back as in the financial year of 1996. The offence was punishable upto fine of Rs. 5,000/-. The Company had been informing the Registrar from time to time about the investment. Though it may not be considered as a prior consent on the part of the Registrar of the Companies. It was in the knowledge of the Registrar that the Company has invested huge amount in lumpsum in Abhishek Spinfab Corporation Limited. As per the provisions under Section 469 of the Code of Criminal Procedure, the complaint could be instituted within six months in terms of Section 468(2)(a) of the Code of Criminal Procedure. Six months will start from the date when the complainant comes to the knowledge of the offence. The intimation was received by the Registrar on 30.4.1997 and again on 2.3.1998. In these circumstances, if the entire concession is granted to the Registrar, the complaint could be instituted on or before 30.10.1997. In the present case the complaint has been instituted on 12.11.1998 which is prima facie barred by limitation.

10. Faced with this difficulty, the learned counsel for the respondent relies upon Section 473 of the Code of Criminal Procedure and submits that irrespective of the fact that complaint has not been filed within six months, still, if the Court is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice, the complaint cannot be thrown on the ground of limitation. The counsel submitted that since the petitioners have committed an economic offence, therefore, they should not be allowed to go scot free.

11. This Court is not in a position to concur with the submission raised by the learned counsel for the respondent because the Registrar gave the sanction for prosecution on 18.6.1998. Thereafter, there was hardly any justification on the part of the respondent authority to delay the matter for a period of more than four and half months. This aspect of the case has not been taken note of by the learned Chief Judicial Magistrate in the impugned order.

12. Resultantly, this petition is hereby allowed and the complaint dated 12.11.1998 under Section 374 of the Companies Act (Annexure P1) and the order dated 24.9.1999 passed by the Chief Judicial Magistrate, Sangrur (Annexure P 2) with all consequential proceedings are hereby quashed and the directions are given to the Chief Judicial Magistrate, Sangrur not to prosecute the petitioners.