(2004) 03 MAD CK 0185

In the Madras High Court

Case No : Criminal Original Petition No''s. 19108 to 19111 of 2002

Ramakrishna Raja APPELLANT

Vs

Registrar of Companies RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:
Companies Act, 1956 — Section 62, 628, 63, 63(1), 68
Criminal Procedure Code, 1973 (CrPC) — Section 468

Citation : (2005) 123 CompCas 319

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : Aravind P. Datar, for K. Ramasamy, for the Appellant; M.T. Arunan, for the Respondent

Judgement

S. Ashok Kumar, J.—These criminal original petitions have been filed against the E.O.C.C. Nos. 603 to 606 of 2002 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai.

2. The brief facts of the case are as follows :

The Registrar of Companies at Chennai, filed complaints against the petitioner herein and four others. In E.O.C.C. No. 603 of 2002, the allegation is that the petitioner has committed an offence punishable u/s 63(1) of the Companies Act for the reason that the company had issued a prospectus dated December 22, 1995, filed with the complainant on December 2, 1995, in respect of a public issue of 14,40,000 equity shares of Rs. 10 each for cash at par aggregating to Rs. 144 lakhs and the company had made a statement in the said prospectus to the effect that it will be implementing projects for investment in bank including bought out deals and future projects in the next three years as issued by the company under the heading "Profitability Projections", but the company did not take any steps to implement the projects referred to in the prospectus and had thus failed to fulfil the promises made by it to the public while offering shares though the prospectus issued to the public and thus committed offence as mentioned above.

3. In E.O.C.C. No. 604 of 2002, the complaint has been made on similar set of facts that the company has committed offence punishable u/s 68 of the Companies Act.

4. In E.O.C.C. No. 605 of 2002, the allegation against the accused is on the same set of facts for committing an offence u/s 628 of the Act, on the ground that the statement made was false and material particulars knowing it to be false or omission of material facts knowing it to be material.

5. In E.O.C.C. No. 606 of 2002, the allegation against the accused is on the same set of facts for offences said to have been committed u/s 62(1) of the Companies Act on the ground that the statement made by the company referred to above was false and the same was made with an intent to defraud the public to whom the shares and debentures were offered.

6. The contentions of learned counsel for the petitioner-fifth accused are threefold, viz., (i) the petitioner has resigned from the directorship of the company on August 12, 1996, (ii) he has issued power of attorney in favour of one A. Gopalakrishnan because he was out of India and he is not responsible for the act done by the agent and (iii) that the complaints were filed beyond the period of limitation.

7. As far as E.O.C.C. Nos. 603, 605 and 606 of 2002 are concerned, the prospectus was issued on February 9, 1996 and the date of knowledge of alleged commission of the offence is December 22, 1995. But all these complaints were filed only on August 6, 2002. The offence alleged against the petitioner in E.O.C.C. No. 603 of 2002 is u/s 63 of the Companies Act, 1956. In E.O.C.C. No. 604 of 2002, the alleged offence is u/s 68 of the Companies Act. In E.O.C.C. No. 605 of 2002, the alleged offence is u/s 628 of the Companies Act. In E.O.C.C. No. 606 of 2002, the alleged offence is u/s 62 of the Companies Act.

8. u/s 63 of the Companies Act, the punishment for the alleged offence is two years or with fine of Rs. 5,000 or with both. For offence u/s 62 of the Companies Act, the punishment is two years and also fine. For offence u/s 628 of the Companies Act, only damages can be ordered u/s 63 of the Companies Act.

9. u/s 468 of the Criminal Procedure Code, for an offence 1 punishable up to three years, the period of limitation is three years from the date of knowledge of the offence. Section 468 reads as follows :

"468. Bar to taking cognizance after lapse of the period of limitation.-(1) Except as otherwise provided elsewhere in this Code, no court shall take cognizance of an offence of the category specified in Sub-section (2) after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only ;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

10. E.O.C.C. Nos. 603, 605 and 606 of 2002 ought to have been filed on or before December 21, 1998, i.e., three years from the date of knowledge of offence to the complainant. But these cases have been filed only on August 6, 2002, nearly seven years after the commission of offences and therefore on this score alone these complaints are liable to be quashed.

11. As far as E.O.C.C. No. 604 of 2002 is concerned, the offence is one u/s 628 of the Companies Act, for which punishment is five years or with fine of Rs. 1,00,000 or with both. As far as this case is concerned, the petitioner has resigned from the directorship on August 12, 1996, as seen from Form No. 32 produced in court. Even on October 30, 1995,. the petitioner-fifth accused has given a power of attorney in favour of one K. Gopalakrishnan for the purpose of signing the prospectus for the public issue in question and the prospectus has been signed only by the said Gopalakrishnan. At page 24 of the prospectus, the name of the petitioner is printed as "signed by directors" with an asterisk mark, that "by his duly constituted attorney Mr. K. Gopalakrishnan" in whose favour the petitioner has executed the power of attorney. The prospectus is dated December 20, 1995, and even nearly 60 days prior to the date of prospectus, the petitioner has given authorisation in favour of the said Gopalakrishnan.

12. The principal cannot be held responsible for every act done by an agent. In fact Gopalakrishnan has signed as power of attorney of the petitioner. In Patangrao Kadam Vs. Prithviraj Sayajirao Yadav Deshmukh and Others, in an election petition, their Lordships of the Supreme Court held that the unlawful act done by an agent would not bind the principal. The relevant portion of the judgment reads thus :

"15. It is the general rule that the act of an agent does not bind his principal unless it is within the authority given to him. An agent is having an authority to do every lawful thing which is necessary to do an act authorised, but in law an agent can neither be authorised to do an unlawful thing/act nor an agent can be permitted to do so. This apart, u/s 40, a candidate at an election may appoint one person other than himself to be his election agent. As per section 45 an election agent is to perform only such functions as are authorised by or under the RPA in connection with the election.

16. If an election agent travels beyond his authority given u/s 45 and commits

an illegal act or an offence, may be electoral or criminal, he cannot pass on his sins to the candidate and escape punishment and consequences on proof of commission of such act/ offence merely on the ground or saying that he is only an election agent of a candidate and it is enough to proceed against the candidate alone."

13. Therefore, the offence if any committed by the agent cannot be passed on to the principal because such vicarious liability under criminal law does not arise between the agent and principal. Further, on March 31, 1996, itself, the petitioner has resigned from the directorship of the company as seen from Form-32 produced in court. Therefore, the complaint filed as against the petitioner-fifth accused in E.O.C.C. Nos. 603 to 606 of 2002, on the file of the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, is not sustainable and hence the charges against the petitioner-fifth accused in the above cases are liable to be quashed and they are accordingly quashed.

14. Fee for counsel for the respondent is fixed at Rs. 4,000 (rupees four thousand only).

