(1996) 12 RAJ CK 0028

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 906 of 1995

Ranbaxy Laboratories Ltd. APPELLANT

Vs

Smt. Indra Kala RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Companies Act, 1956 — Section 113
Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 204, 482

Citation : (1997) 88 CompCas 348

Hon'ble Judges : M.A.A. Khan, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; P.K. Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

M.A.A. Khan, J.—This is a petition u/s 482 of the Criminal Procedure Code, challenging the pendency of Criminal Case No. 78 of 1995 u/s 113 of the Companies Act, 1956 (for short, "the Act"), against the petitioners in the court of the Special Magistrate (Economic Offences), Rajasthan, Jaipur.

2. The petitioner is a limited company incorporated and registered under the Companies Act, 1956 (for short, "the Act"), and has its registered office in Punjab and corporate office at Delhi. On May 7, 1994, the respondent filed a complaint against the petitioner company, its managing director, Sh. Parmindar Singh, and three others in the Special Court of the Judicial Magistrate (Economic Offences), Rajasthan, Jaipur, alleging therein that she had purchased 200 shares of the petitioner company on March 18, 1987, from Smt. Tripat Kaur, Smt. Lilawati and Sh. B. A. Ramchandani (who all were made co-accused but were not summoned as such) through Sh. Ghanshyam Dass Seth, a member of the Delhi Stock Exchange, and had duly sent such shares to the head office of the petitioner company for registration of the transfer in its books, but despite repeated requests, reminders and efforts made by the respondent the petitioner company did not register the transfer of the shares in her name. After examining

the respondent u/s 200, Criminal Procedure Code, and her witness, Sh. Sumit Kala, u/s 202, Criminal Procedure Code, and looking into the documents filed along with the complaint the learned magistrate, vide his impugned order dated September 16, 1995, took cognizance of the offence u/s 113 of the Act and issued process u/s 202, Criminal Procedure Code, against the petitioner and its managing director, Sh. Parmindar Singh, summoning them as accused. The complaint was, however, dismissed u/s 203, Criminal Procedure Code, as against the three others. Aggrieved by such order made by the learned magistrate the petitioner company has filed this petition.

3. Mr. Mahendra Singh, learned counsel for the petitioner company, argued the case, I must put it on record, with much industry and pains and at great length making reference to a number of provisions in the Act and several decisions of this and other courts and also the Supreme Court. I wish I could have dealt with all such arguments but for the equally learned and painstaking arguments of Mr. P. R. Khaitan, learned counsel for the respondent, who vehemently urged that while exercising its limited and extraordinary powers u/s 482, Criminal Procedure Code, at the initial stages of criminal proceedings this court should confine itself to the main issues, namely, whether the impugned order amounts to abuse of the process of court or continuance thereof perpetuates injustice in the facts and circumstances of the case. As it is by now well-settled that powers of this court u/s 482, Criminal Procedure Code, are quite limited and extraordinary and should be exercised with great care and caution in the rarest of rare and Exceptional cases only to prevent the abuse of the process of the court or otherwise to secure the ends of justice, I would, therefore, confine myself to the two. main issues, viz., the existence of a prima facie case for taking cognizance of the offence u/s 113 of the Act and the competency of the court of the Judicial Magistrate to take cognizance of such offence. I, therefore, do not think it necessary to enter into a detailed discussion of the provisions of the Act and the various decisions, relied upon by the parties at this stage of the proceedings.

4. In so far as the existence of a prima facie case to take cognizance of the offence u/s 113 of the Act by the learned Magistrate is concerned, I find sufficient material on his record for his action. The averments made in the complaint and statements recorded under sections 200 and 202, Criminal Procedure Code, and a number of documents filed at that stage clearly disclosed that the respondent had purchased 200 shares of the petitioner company from its shareholders, namely, Smt. Tripat Kaur, Smt. Lilawati and Sri B. A. Ram Chandani and sent the same to the petitioner company for registration of the transfer in her name but the petitioner company, for one reason or the other had failed to do the needful. Such evidence prima facie disclosed the commission of an offence punishable u/s 113 of the Act by the petitioner company. The fact, that the respondent had approached the District Consumer Forum and such forum had granted the desired relief to the respondent but the respondent did not disclose those relevant facts could possibly have a bearing upon respondent''s case but not at the initial stage of taking cognizance by the learned

magistrate of the offence disclosed by the evidence placed before him. Taking cognizance of an offence at the initial stage is altogether different from cancelling the order of taking such cognizance at a subsequent stage. At the further stage, the magistrate is to see whether the averments made in the complaint and the evidence procured in enquiry into such complaint disclose the commission of any offence or not. At the later stage, the magistrate may consider the case from the angle of the accused who, after putting in appearance before the court may bring such facts to the notice of the courts as may justify the cancellation of the order of taking cognizance of the case by him. Section 204, Criminal Procedure Code, gives such powers to the magistrate. It is, therefore, always proper for an accused to put up his grievance against an order summoning him as accused before the magistrate in the first instance. He should not rush up to this court in each and every case as is, day in and day out, being experienced by this court.

5. In view of the above, I hold that the averments made in the complaint and the statements of the witnesses recorded u/s 200/202, Criminal Procedure Code, and the contents of the documents filed at that stage prima facie disclosed the commission of an offence punishable u/s 113 of the Act by the petitioner company and its director/officers/ servants and, therefore, the learned magistrate was fully justified in making the impugned order.

6. Now, coming to the point of jurisdiction of the magistrate, I find that Mr. Mahendra Singh advanced two-fold arguments. In the first place, learned counsel urged that since no part of the cause of action arose to the respondent within the jurisdiction of the Judicial Magistrate at Jaipur or in Rajasthan, he was not competent to take cognizance of an offence u/s 113 of the Act on a complaint filed in Jaipur. In the second place it was submitted that the respondent was not a shareholder of the petitioner as the shares had not been registered as transferred in her name and, therefore, she could not have sued/prosecuted the petitioner-company. In my opinion, both the arguments are misconceived.

7. The competency of an action taken in a particular case is required to be judged in the context of the facts and circumstances of that case. In the instant case, commission of offence u/s 113 of the Act was alleged to have been made by a company which is actively engaged in business. In view of the expediency and interest of its business the petitioner company collects money from the public at large by selling its shares. Transactions of sale and purchase of its shares by members of the public at large, at any time and at any place, are governed by the provisions of the very same statute(s) which govern its constitution, and the functioning of its business. Registration of the transferred shares is amongst the duties of the petitioner company in the course of conducting its business according to the provisions of law applicable to its business. Once the petitioner company and the law applicable to its functioning have permitted the transactions of purchase and sale of its shares throughout the breadth and length of the country for its gain, the interest of the members of the public transacting such business cannot be allowed to be defeated on the

plea that relief to the aggrieved persons can be granted only at the place where the office of the company is located. Such an approach would frustrate the very purpose of the relevant provisions in the Act and in the other allied Acts. The objection raised is overruled.

8. In view of the discussion made hereinabove, I find no force in this petition. It is dismissed as such as the impugned order neither amounts to abuse of the process of the magistrate''s court nor perpetuates injustice. It is, however, made clear that the petitioner would be entitled to raise and argue all such objections (save the objection against the order of taking cognizance of the case u/s 113 of the Act and jurisdiction of the magistrate''s court) as have been raised in this petition at the time of final arguments by the trial court in the case and the trial court would decide such objections on their own merits. The delay caused in the trial of the case is attributed to the accused-petitioner.

