(2000) 04 DEL CK 0031

In the Delhi High Court

Case No : Criminal R. No. 345/99 and Criminal R.No. 346/99

Reserve Bank of India	APPELLANT
Vs	
D.K. Kapur	RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:
Reserve Bank of India Act, 1934 — Section 58

Citation : (2000) 3 CompLJ 414

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. Rajiv Nayyar, Mr. H.S. Parihar and Mr. Pradeep S. Parihar, for the Appellant; Mr. D.C. Mathur and Mr. Gurdeep Singh, for the Respondent

Judgement

M.S.A. Siddiqui, J.

The petitioners has filed two revision petitions against the order dated 27.1.1999 passed by the Metropolitan Magistrate, New Delhi in the complaints filed by the petitioner, declining to issue process against the respondent. I, Therefore, propose to dispose of both the revisions by this common order.

2. The common features in both the revisions, which alone are relevant for dealing with the question involved in these cases, can be culled out from one of them. The petitioner has filed a complaint against the J.V. Finance Ltd. (a company incorporated under the companies Act) and others including the respondent for an offence alleged to have been committed by the company u/s 58-B of the Reserve Bank of India Act, 1934 (for short the ''Act''). The learned Magistrate took cognizance of the offence on the complaint and issued process against the accused persons except the respondent. The learned Magistrate declined to issue the process against the respondent on the ground that no documentary evidence has been produced by the petitioner to show that the respondent "was working in the capacity of Executive Director (Finance) of the Company." Feeling aggrieved, the petitioner has come up in revision before this court.

3. Learned counsel for the petitioner has strenuously urged that the impugned order has not only resulted in manifest injustice meted out to the petitioner but the same is patently illegal, improper and unjustified. In my opinion, the said submission of the learned counsel merits acceptance. The question is: whether process could have been issued by the learned Magistrate on the basis of the averments contained in the complaint? It was unfortunate that the learned Magistrate did not properly look into the averments made in the complaint and the documents produced in support thereof. In this context a reference to Section 58-C of the Act is indispensable. It reads as thus;

"58C. Offences by Companies. _ (1) Where a person committing a contravention or default referred to in Section 58-B is a company, every person who at the time the contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary, or other officer or employee of the company, such director, manger, secretary, other officer on employee shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation 1. - Any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or the principal place of business, as the case may be, in India of the company is situated.

Explanation 2. - For the purpose of this section,-

(a) "a company" means any body corporate and includes a corporation, a non-banking institution, a firm a co-operative society or other association of individuals;

(b) "director", in relation to a firm means a partner of the firm.

4. Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through legal fiction envisaged in the section. They are: (i) the company which committed the offence; (ii) every one who was in charge of and was responsible for the business of the company; (iii) any other person who is Director or a Manager or Secretary or officer or employee of the company, with whose connivance or due to whose neglect the company has committed the offence. The affect of reading Section 58-C is that

the company is the principal offender u/s 58-C and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the respondent (executive director of the company) can also be proceeded against when the company is alleged to be guilty of the offence punishable u/s 58-B of the Act. Relevant paragraphs of the complaint read as thus:-

2. That the Accused No.1 is a Non-Banking Financial Company, having its Registered office at the address mentioned above, conducting the business of a Non-Banking Financial Institution as a loan Company. Accused No. 2 is the Chairman of the Accused No. 1 Company and accused No. 3 is a Director of Accused No. 1 Company. Accused No. 4 is the Executive Director of the Company. Accused No. 5 is also one of the Directors of the Accused No. 1 Company. All the accused No. 2 to 5 have the active involvement in the commission of the offences. u/s 58C of the R.B.I. Act, 1934 the Chairman & Directors of the Accused No. 1 Company who were in charge of & were responsible to, the Accused No. 1 Company for the conduct of its business, at the time of the contravention/Default are also guilty and are liable to be proceeded against and punished accordingly jointly and severally.

"8. That Accused No. 2 to 5 were in charge of and were responsible to the Accused No. 1 company for the conduct of its business at the time of contraventions and defaults. All the accused jointly and severally have contravened the provisions of the Directions contained in the two Notifications issued by the Bank under Chapter IIIB of the Reserve Bank of India Act, 1934, and are guilty of such offences."

5. The petitioner has also produced an audit report in support of the complaint and Para No. 2, 4 of the report reads thus:

"2.4 One of the most intriguing features of the management of the group, was the involvement of the statutory auditors, Shri D.K. Kapoor, in the day to day affairs of the company. Shri D.K. Kapoor was the de-facto Executive Director (Finance) of the group, and known in the organisation by such designation. He was controlling the Finance, Banking and Accounting functions of all the group companies. After Mr. V.K. Sharma, he was the most important man in the group and had direct control over the finances of the group. He was the authorised signatory for the operation of various bank accounts of the companies and almost all the cheques were signed/approved by him. The inspecting officer saw salary sheets of the group employees signed by him with the designation of ED(Finance). He also signed different agreements with the outside parties on behalf of the company, in his capacity as the ED(Finance). Needless to point out that performance of such executive functions in the group, directly conflicted with the functions the statutory auditor, and writing of audit report was only done as a merely statuary obligation which the company has to comply with. As such there was no auditor of the company which checked the financial and accounting accuracy of the group companies, as what was to be supposedly checked was done by the same man.

6. In the instant case a clear averment has been made in the complaint to show that the respondent being the Executive Director of the offending company was in charge and was responsible for the business of the company. In this view of the matter it cannot be said that the averments contained in the complaint do not implicate the respondent. As to what would be the evidence against the respondent is not a matter to be considered at this stage and would have to be proved at the trial. In a recent decision of the Supreme Court in U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, , their lordships considered the decisions in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and M.C.D. Vs. Purshottam Dass, and held that neither of the above said decisions has laid down a legal proposition that directors of an offending company cannot be prosecuted for the offence committed by a company. The averments contained in the complaint read along with the documents produced in support thereof clearly make out a prima facie case for summoning the respondent and the learned Magistrate was absolutely wrong in holding that the allegations made against the respondent were not clear and explicit as to be sufficient for taking cognizance of the offence against him.

7. For the foregoing reasons Therefore, I allow both the revisions, set aside the impugned orders insofar as they purport to dismiss the complaints against the respondent as a result of which the respondent will now be summoned and placed for trial in accordance with law.

