

(1990) 04 PAT CK 0012
In the Patna High Court
Case No : Criminal R. No. 108 of 1986

Rohtas Industries Limited and Others	APPELLANT
Vs	
The State of Bihar and Another	RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

COMPANIES ACT, 1956 — Section 58A
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Electricity Act, 1910 — Section 42
Essential Commodities Act, 1955 — Section 6A, 7
Penal Code, 1860 (IPC) — Section 166, 403, 406, 427, 468

Citation : (1990) 38 BLJR 1315 : (1990) 2 PLJR 307

Hon'ble Judges : B. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B. Prasad, J.—This is an application in revision under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short "the Code"). It is directed against the order dated 21-9-1985 passed by the Chief Judicial Magistrate, Sasaram in Official Suit No. 61 (0) of 1985 by which he had taken cognizance of the offences against the petitioners and others under Sections 58-A(5)(a)(b) and 58-A(6) of the Companies Act, 1956 (in short "the Act") and Rule 3(2)(i) and Rule 3(2)(ii) of the Companies (Acceptance of Deposits) Rules, 1975 (in short "the Rule").

2. It appears that this case was instituted on the basis of a written complaint filed by the Registrar of the Companies (opposite party No. 2). It has been alleged in it that petitioner No. 1 is Rohtas Industries Limited, Dalmianagar Incorporated as a public limited Company in the year 1933 (in short "the company") under the Act petitioners 2 and 3 happened to be the Joint Director and Managing Director respectively of petitioner No. 1 at the relevant time. It has been alleged that as paid up capital and free reserve, the company was having Rs. 1081.95 thousands in deposit. The Company had accumulated balance of loss and balance of other intangible assets of Rs. 1,29,277 thousands

as per its relevant balance sheet as on 31-3-1983. As such in terms of explanation given under Rule 3 the company was already running in minus and was not entitled to accept or receive any deposit covered under Rule 3(2)(ii) of the Rules. It would, however, appear that the company accepted/renewed deposits of Rs. 20,000/- during the period from 1-4-1983 to 31-3-1984. From the return filed on 21-2-1985 it would appear that the company had a balance deposit of only Rs. 15,000/- on 31-3-1984 after the repayment of Rs. 64,000/- deposited during the period from 1-4-1983 to 31-3-1984. According to Rule 3(2)(i) of the Rules, no company was allowed to accept any deposit if the amount of such other deposits of all kinds exceeded 10% of the aggregate of the paid up share capital and free reserve of the Company. Hence, the action of the Company for having accepted/renewed the deposit of Rs. 20,000/- during the period from 1-4-1983 to 31-3-1984 in addition to the deposits amounting to Rs. 71, 57,000/- as outstanding on 1-4-1983 was definitely against the Rule 3(2)(ii) of the Rules. Since as per the balance sheet on 31-3-1983 the aggregate paid up capital and free reserve in terms of the explanation given under Rule 3 was in minus, the company was not entitled to accept/receive any deposit covered under Rule 3(2)(ii) of the said Rules. Therefore, the acceptance/renewal of the deposits amounting to Rs. 20,000/- was clearly in violation of these rules which is punishable. Accordingly, the complaint petition was filed before the learned Chief Judicial Magistrate, Rohtas at Sasaram who was pleased to take cognizance of the offence as mentioned above.

3. In this petition the petitioners have contended that the complaint petition is vague inasmuch as it does not specifically mention the date on which the deposits were renewed/received. It has simply been alleged that this was between the period from 1-4-1983 to 31-3-1984. This shows that the complainant had not properly examined the matter before lodging the complaint. It also shows that the learned Chief Judicial Magistrate had mechanically taken the cognizance of the offence. The deposits were renewed only in the months of April and May, 1983 and not thereafter. As a matter of fact, the balance sheet of the year 1982-83 was made available to the petitioners on 15-11-1983 and therefore the relevant balance sheet for the purpose of renewal/receipt of the deposit in the case of the petitioner Company as available till May 1983 would be the balance sheet of the Financial year, 1981-82 which shows a sum of Rs. 771 lakhs and odd as available reserve and surplus for the calculation of the amount of deposits for which the Company was eligible 35% of the aforesaid sum amounting to Rs. 270 lakhs was therefore available to be reserved by the Company. However, the total deposits including the deposits of Rs. 20,000/- which were outstanding only came to Rs. 90.02 lakhs which was much less than what the company was entitled to get as deposit. The Company, because of its closure and other reasons, suffered heavy loss during the financial year 1982-83, its financial position became bad and the capital reserve went in minus. It was under this circumstance that the balance sheet which was available on 15-11-1983 indicated that the Company could not renew or take any fresh

deposit. Out of the deposit of Rs. 20,000/- which is the subject-matter of the complaint petition a sum of Rs. 17,000/- was paid well within the time and the remaining amount of Rs. 3,000/- would be paid on maturity in the March, 1986. There is no allegation that the Company has failed to pay any deposit.

4. As such even if the facts alleged in the petition of the complaint are assumed to be true, no offence against the petitioners is made out. From the facts and circumstances of this case, it is clear that there is no mens rea. As such the continuance of the proceeding in the facts and circumstances of this case is an abuse of the process of the court and would cause enormous difficulty to the petitioners who have been called upon to stand trial. No specific allegation has been made against petitioners 2 and 3. Under these circumstances, it was prayed that the impugned order be quashed.

5. A counter affidavit has been filed on behalf of the Opposite party No. 2 in which he has stated that the petitioners alongwith others had violated the provisions of Section 58-A(4) of the Act read with Rules 3(2)(i) and Rule 3(2)(ii) of the Rules. The period during which a sum of Rs. 20,00"/-was accepted or renewed is indicated as 1-4-1983 to 31-3-1984 as per the return of the deposit filed by the Company on 31-3-1984 u/s 58-A of the Act read with Rule 10. The balance sheet as on 31-3-1983 was ready on 15-11-1983 and the Company files its return of deposits as on 31-3-1984 on 21-2-1985 Hence, in view of the above mentioned facts the question of relying on the figures mentioned in the balance sheet for the year 1981-82 does not arise. From the return of deposits submitted on 31-3-1984 the Company was holding a balance of deposit of Rs.15,000/-and a sum of Rs. 66,39,000/-as fixed deposit whereas as per Rules 3(2)(i) and 3(2)(ii) of the Rules petitioner No. 1 could not have accepted/renewed/held any deposit on 31-3-1984 on the basis of the balance sheet as on 31-3-1983. From this it could safely be gathered that the petitioners had sufficient mens rea in the matter.

6. A reply to the counter affidavit of Opposite party No. 2 has also been filed. In this reply it ha* been reiterated that since the balance sheet for the year 1982-93 was prepared on 15-11-1983 hence the only balance sheet that was available with the petitioners at the time of making of renewal of the deposits was the balance sheet of the year 1981-82 which justified the acceptance of the deposits. Since the company had renewed the deposit in the month of April and May. 1983 the balance sheet filed on 20-2-1985 for the period ending with 31-3-1984 had no relevancy. No renewal of the deposit was undertaken after 15-11-1983 when the actual position with respect to the balance sheet could be known. The petitioners 2 and 3 are not the persons responsible for the renewal of the deposits and even as per the entire complaint petition no offence whatsoever has been made out against them.

7. Shri Pawan Kumar, learned Counsel appearing on behalf of the petitioners has seriously contended before me that since the allegations made out in the complaint petition do not disclose any offence against the petitioners, the order

taking cognizance of the offence should be quashed. In support of his contention, he has relied upon a number of decisions. He has submitted that he is also evoking the inherent jurisdiction of this Court u/s 482 of the Code for the quashing of the impugned order, though the petition appears to have been filed under Sections 397 and 401 of the Code. He has pointed out that originally the case was instituted as a Criminal Misc. Case u/s 482 of the Code but subsequently it was converted into a Criminal Revision under Sections 397 and 401 of the Code. It was, however, his submission that he is also invoking the jurisdiction of this Court u/s 482 of the Code and that the labelling of the petition as of no consequence since the High Court can always exercise its inherent jurisdiction in a given situation. In support of his contention he has relied on the case of Madhu Limaye Vs. The State of Maharashtra, in which it has been held that the label of the petition filed by an aggrieved party is immaterial and the High Court can examine the matter in an appropriate case under its inherent power.

8. In view of his submissions the important questions that will now arise for consideration would be what is the true scope of the power vested in the High Court u/s 561-A of the old Code corresponding to Section 482 of the New Code. This question has come up for consideration before the Hon"ble Supreme Court as also before this Court from time to time. In the case of Shrishail Nageshi Pare Vs. State of Maharashtra, it has been held with reference to Section 561-A of the Old Code that the inherent jurisdiction of the High Court can be exercised to quash the proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. It has, however, been also held in this decision that ordinarily, criminal proceedings instituted against an accused must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceeding at an interlocutory stage. Mentioning some of the categories of cases in which inherent power to quash a proceeding can and should be exercised, it has been stated that when the allegations made in the F. I. R or complaint petition even when they are taken at their face value and accepted in their entirety do constitute the offence alleged, this power should be exercised.

In this connection a reference may also be made to the Case of Dr. Sharda Prasad Sinha Vs. State of Bihar, . In this case also it has been held that when the allegations set out in the complaint petition or charge sheet do not constitute any offence the High Court in exercise of its power u/s 482 of the Code can quash the order taking cognizance of the offence. In the instant case, however, from the perusal of the complaint petition it would appear that it is not one of those cases in which the allegations set out in the complaint petition do not constitute any offence. In the complaint petition specific allegations have been made constituting the offences mentioned therein from which a prima facie case against the petitioners under the provisions of the Act and Rules has clearly been made out. Hence, these two decisions are hardly of any help to the learned Counsel for the petitioners.

9. The true Scope of Section 482 of the Code had come up for consideration before the Hon''ble Supreme Court in the case of State of Bihar Vs. Murad Ali Khan and Others, . It has been observed that:

It is trite that jurisdiction on u/s 482, Cr. P.C. which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations whether those allegations, set out in the complaint or the charge sheet, do not in law constitute or spell-out any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the court or not.

10. The matter came up for consideration before the Hon''ble Supreme Court in the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, . It has been held that when a prosecution at the initial stage is asked to be quashed in exercise of the powers u/s 482 the test to be applied by the court is as to whether the uncontroverted allegations as made, prima facie established the offence, it is also for the court to take into consideration any special feature in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue.

11. Only recently in the case of Dhanalakshmi Vs. R. Prasanna Kumar and Others, it has been held by the Hon''ble supreme Court that Section 482 of the Code empowers the High Court to exercise its inherent power to prevent the abuse of the process of the Court. However, it has been observed that in a complaint case if the complainant does not disclose any offence or is frivolous, vexatious or oppressive the inherent power can be exercised to quash the proceeding. Further it has been observed that the complaint petition has to be read as a whole. If it appears on a consideration of the allegations in the light of the statement on oath of the complainant that the ingredients of offence are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious in that event, there should be no justification for interference by the High Court.

12. Id view of these authoritative pronouncement by the Hon''ble Supreme Court the law on this point appears to be well-settled that if the allegations made in the complaint petition when taken at their face value and accepted in their entirety do not make out any offence or the allegations are frivolous, vexatious or oppressive this Court in exercise of its power u/s 482 of the Code will not

interfere in the matter.

13. On behalf of the petitioners it has been submitted that the complaint petition is extremely vague since the date of deposits of a sum of Rs. 20,000/-has not been disclosed. It has also not been disclosed when it was learnt that the Company's accounts had gone into minus. Hence, on this ground also it has been submitted that the complaint petition as also the cognizance taken on its basis is liable to be quashed.

14. In this connection, reliance has been placed on the case of Sharda Prasad Sinha (supra) and on the case of Bihar State Electricity Board v. N.K. Tamakhuwala 1986 PLJR 34 (SC). This was a case in which the allegations were made under Sections 166 and 427 of the Indian Penal Code and also u/s 42(B) of the Indian Electricity Act, 1910 in which the complaint did not disclose any particular act or omission constituting the offence of knowingly causing injury or committing mischief by public servant. In this view of the matter, it was held that taking of the cognizance was bad and was liable to be quashed. In the present case, however, the facts are quite different and the complaint petition does disclose the various acts or omissions and commissions constituting the offences alleged, Hence, this decision is also of no help to the learned Counsel for the petitioners,

15. In support of his contention reliance has also been placed on the case of K.N. Goenka v. State of Bihar 1979 BBCJ 833. This is a single Bench decision of this Court in which it was held that if the allegation made in the complaint petition are vague and do not constitute an offence the complaint petition can be quashed in exercise of the powers u/s 482 of the Code. In this case, however, the facts are quite different inasmuch it was nowhere stated in the complaint petition whether the accused was himself present at the spot or was getting the alleged offence committed through his men. Hence, this decision is also not of any help to the learned Counsel for the petitioners. In this decision a reliance was placed on the case of K.C. Jain v. Maheshwar Singh 1970 PLJR 231. Before me also learned Counsel for the petitioner has placed reliance on this case. This is also Single Bench decision of this Court. This was a case of a complaint by a partner against another partner of the firm alleging misappropriation of the firm's money and forging of firms Account by him. In this case cognizance was also taken under Sections 468 and 472 of the Indian Penal Code. It was held that the partners of a firm could not be proceeded against for the alleged offences under these sections. It was further held that the partners could not be proceeded against under Sections 403 and 406 of the Indian Penal Code on the charge of misappropriation of funds of the partnership firms. Also it was held that a criminal proceeding started on a complaint which does not contain any definite accusation amounts of an abuse of the process of the court and in such a situation the High Court could intervene in exercise of its power u/s 261-A of the Old Code.

16. At stated "above, the facts of the present case are quite different. Here,

according to the complaint petition (Annexure-2) the allegation against the petitioners and others was that the Company had accepted/renewed deposits of Rs. 20,000/-during the period from 1-4-1983 to 31-3-1984 at the time when paid up capital and free reserve of the Company was already running in minus and the company was not entitled to accept/receive any deposits covered under Rule 3(2)(ii) of the Rules. As such it has been specifically alleged that this was clearly in violation of the prohibition contained in the Rules mentioned above and was punishable. Further it has been alleged that the petitioners were also liable for punishment u/s 58-A(5)(a)(b) and Section 58-A(6) of the Act.

17. Learned counsel for the petitioners has, however, submitted that in the complaint petition date of deposit of Rs. 20,000 has not been disclosed. Obviously, this could not have been done as papers were with the petitioners. It was only when the return was submitted that it could be learnt that the accounts of the company were running in the minus in the relevant period and therefore the violation of the above mentioned Act and Rules had occurred. However, petitioner No. 1 or its office bearers namely petitioners 2 and 3 were the best persons to say when this deposits of RS.20,000 was accepted especially when balance sheet for the year ending on 31-3-1944 showed that the Company was already in the red. Hence, on this ground it cannot be said that the complaint petition was vague. Thus, I do not find any force in this contention of the learned Counsel for the petitioners. The other defence namely that since the accounts for the year 1982-83 were available with the Company only on 15-11-1983, the deposit was accepted on the basis of the balance sheet for the year 1981-82 cannot be accepted for the simple reason that the petitioners being the Company or the persons incharge of running of the business of the Company could not be expected to be so ignorant as not knowing the actual financial condition of the company. In any view of" the matter, it the Company did not known its actual financial position till 15-11-1983 when the balance sheet was made available to it, it was not proper for the petitioners to have accepted the deposits of Rs. 20,000/-without taking care to ascertain whether they could have done so in terms of the Act and Rules. Hence, this plea of the petitioners cannot be said to be bona fide and cannot be accepted.

18. It has further been contended that since under the facts and circumstances of this case the mens rea of the petitioners cannot be alleged, hence their prosecution is bad in the eyes of law. In this connection, reliance has been placed on the case of Nathulal Vs. State of Madhya Pradesh, equivalent to 1966 Cri LJ 71. This was a case under Essential Commodities Act in which it was held that mens rea is an essential ingrediance for an offence u/s 7 of this Act. It has, however, been observed that a statute may exclude the elements of mens rea, it is however a sound rule of construction which is adopted in England and also accepted in India to construe the provisions which create an offence in continuity with the common law rather than against it, where the statute expressly or by necessary implication excludes mens rea. The question whether the element of guilty mind is excluded from the ingredients of the offence, the mere fact that

the object of the statute is to promote welfare activities or to evict a grave social evil is not by itself decisive. Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may by necessary implication be excluded from a statute. (Emphasis supplied). This was a case in which the accused who was a dealer in foodgrains had applied for the issue of a licence and had also deposited the requisite licence fee. No intimation was given to him that his application also rejected. He purchased foodgrains from time to time and submitted returns to the licensing authority showing grains purchased by him. The Inspector checked the godowns of the accused and found that the accused had stored the foodgrains, without holding any licence, in excess of the quantity permitted. The dealer was prosecuted u/s 7 of the Essential Commodities Act but was acquitted on the ground that he had no guilty mind. This judgment of the trial court was reversed by the High Court. It was held by the Supreme Court that on the facts of the case the conviction of the dealer should be set aside since he was under a bona fide impression that the licence in regard to which he has made an application was issued to him though not actually sent to him. The fact that the licensing authority did not communicate to him the rejection of his application confirmed the dealer's belief and accordingly he stored the food-grains. Hence, it was held that he did not intentionally contravene the provisions of the relevant order or Section 7 of the Act.

19. Also reliance has been placed on the case of *Jai Prakash v. State of Bihar* 1982 PLJR 27. In this case the dealer had 783 tins of Mustard oil stored in his godown out of which he sold one tin for Rs. 200/-@ 12.50 paise per kg where the price fixed was Rs. 10 per kgs. The plea of the dealer was that there was no mens rea as he had sold only one tin against a cash memo in ignorance of the fact that the price of the Mustard oil was fixed at Rs. 10/-by the authority on 30-9-1977 whereas his shop was raided on 6-10-1977. Accordingly in the confiscation proceeding u/s 6-A of the Act the Collector also found that there was no mens rea on the part of the petitioner. It was under this circumstance that his prosecution was quashed, As stated above the facts of the present case are quite different. Even if the contention of the petitioners be accepted that the balance sheet for the year 1982-83 was made available to the Accounts Department only on 15-11-1983 there was no justification for them to act on the balance sheet for the previous year and to accept the deposit of Rs. 20,000/-as alleged. Petitioners 2 and 3 being prudent persons, expected to be aware of the provisions of the Act and the Rules, could not have accepted the deposits of Rs. 20,000/-against the provisions thereof without having the balance sheet for the year 1982-83 in their possession. As a prudent man it could have been expected from them that they would act with due care and attention and not in a manner that would land them in the criminal prosecution. In this connection, observation made in the case of *Nathu Lal* (supra) that:

Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea, may by necessary

implication, be excluded from the statute. The nature of *mens rea* that would be employed in a statute creating offence depends on the object of the Act and the provisions thereof.

20. From the detailed discussions made above, it becomes clear that whether this application may be treated under Sections 397 and 401 of the Code or u/s 482 of the Code, Since the allegations made in the complaint petition clearly make out, *prima facie*, a case for the offences as alleged, the cognizance taken in the case cannot be quashed. It is not one of these cases where the allegations made in the complaint petition, even when they are taken at their face value and accepted in their entirety, do not constitute any offence.

21. Under these circumstances, I do not find any merit in this application. It is accordingly rejected.