**(2015) 03 SC CK 0101**

**In the Supreme Court Of India**

**Case No :** Criminal Appeal Nos. 516-518 of 2010

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| S. Satyanarayana | APPELLANT |
| Vs | |
| Energo Masch Power Engineering and Consulting Pvt. Ltd. and Others | RESPONDENT |

**Date of Decision :** 26-03-2015

**Acts Referred:**
Companies Act, 1956 — Section 193, 425, 426, 427, 428
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420

**Citation :** (2015) 2 ACR 1666 : (2015) 8 AD (SC) 581 : AIR 2015 SC 2166 : (2015) 90 ALLCC 49 : (2015) 2 ALT(Cri) 186 : (2015) 2 BC 348 : (2015) 2 CCR 189 : (2015) 125 CLA 431 : (2015) 190 CompCas 1 : (2015) 3 CompLJ 33 : (2015) CriLJ 2874 : (2015) 3 Crimes 377 : (20

**Hon'ble Judges :** Sharad Arvind Bobde, J.;J.S. Khehar, J.

**Bench :** Division Bench

**Advocate :** Vikas Singh, Senior Advocate, Vivek Singh, Deepika Kalia, Kapish Seth and Lakshmi Raman Singh, for the Appellant; K. Ramamurthi, Sr. Adv., M.A. Chinnasamy, V. Senthil Kumar, Suresh Babu, Ravi Kumar Tomar, R. Venkataraman and V.N. Raghupathy, Advocates for

**Final Decision :** Disposed Of

## Judgement

Sharad Arvind Bobde, J.—These Criminal Appeals are preferred by the complainant against the judgment of the High Court of Judicature of Andhra Pradesh at Hyderabad by which the High Court has in exercise of powers Under Section 482 of the Code of Criminal Procedure (in short Code of Criminal Procedure) quashed the proceedings in CC No. 37 of 2008 on the file of the court of the Special Judge for Economic Offences at Hyderabad insofar as the accused Nos. A4, A5, A6, A9 and A10 are concerned.

2. The complainant i.e. the Appellant herein lodged a private complaint in his capacity as a Promoter Director of Sri Satyanarayana Power Private Ltd. - a company incorporated to generate biomass based power project in the District of

Warangal in the State of Andhra Pradesh (hereinafter referred to as the ''Company''). The complaint was filed in respect of the offences allegedly committed Under Section 628 of the Companies Act, 1956 (in short the ''Companies Act'') and Sections 120B and 420 of the Indian Penal Code (in short the ''Indian Penal Code''). This complaint was filed in the Court of Special Judge for Economic Offences at Hyderabad.

3. The accused Nos. 1, 2 and 3 are Directors of the Company. The accused No. 4 i.e. Energo Masch Power Engineering and Consulting Pvt.. Ltd. is another Company. The accused Nos. 5, 6, 7 and 8 are its Directors. Accused No. 9 is the Manager of M/s. Indian Renewable Energy Development Agency (in short ''IREDA'') a financing agency and is brother-in-law of A5 and A6, and accused No. 10 is a private person, namely Mrs. Sudha Ramani who is said to have been given a fictitious authorization in respect of a Bank account by a resolution of the company.

4. In brief, it was alleged that the accused entered into a criminal conspiracy to cheat the complainant and the Company. Further, accused A1 to A3 made false declaration in regard to record maintained under the provisions of the Companies Act, and filed a false declaration purporting to be an extract of Board Resolution of the Company before Andhra Bank, Sowcarpet Branch, Chennai in order to open a bank account. According to the complainant the signatory to the Board Resolution was not even a Director in the Company on the date the bank account was opened. A series of events alleged in the complaint show how the complainant was induced to invest in the Company by acquiring land for the Company at a cost of Rs. 20 lakhs and make payment for the front end fee to IREDA which had in collusion with the other accused sanctioned the financial assistance to the Company to the extent of Rs. 11.50 crores subject to the condition that the promoters should invest Rs. 4.98 crores as their contribution towards the total project cost of Rs. 16.48 crores.

5. According to the complainant, accused A9 - the Manager of IREDA, suggested that the company should appoint A4 Company as a contractor representing that the Directors of the said A4 Company i.e. A5 and A6 in reality his brother-in-law, have wide experience in executing such projects. The complainant believed that representation and allowed those persons and Ors. to become Director as a result of which A1 along with his nominee Directors enjoyed a majority on the Board of the Company. Thereafter, in order to obtain the first installment of loan the accused represented that they have spent an amount of Rs. 1,88,21,484/-, to the accused A4 Company as if the amount was invested from the Company''s account maintained in Andhra Bank, Sowcarpet Branch. On such a representation, A9 IREDA released the first installment of loan. The accused again induced A9 to release the second installment of loan of Rs. 2.85 crores without the knowledge of the complainant and without submitting any Board Resolution of the Company. A major amount of the loan was paid to the accused A4 Company, which had not done any substantial work. Though Rs. 145 lakhs

 

from the first installment of loan and Rs. 92 lakhs from the second installment of loan were paid to the A4 Company only a nominal amount of Rs. 30 lakhs was used for work and the rest was swindled. As a part of these transactions the complainant alleged that A1 to A3 had made a false declaration as records in a purported Board Resolution of the Company in order to open a bank account and falsely authorised A10 and thereby made a false declaration amounting to an offence Under Section 628 of the Companies Act. Thus, A10 was falsely authorized to operate the bank account.

6. It will thus be seen from the above that according to the complainant the transactions of all the accused persons in conspiracy with each other amounted to offences Under Sections 120B and 420 of the Indian Penal Code and Section 628 of the Companies Act.

7. Against the complaint, the following accused-namely A4 Company; its Directors A5 and A6; A9 the manager of the IREDA; and A10 the private person approached the High Court Under Section 482 of the Code of Criminal Procedure. The High Court took the view that the Special Judge could not have taken cognizance of the offences Under Sections 120B and 420 of the Indian Penal Code unless he could also try the accused Under Section 621 of the Companies Act. As regards the accused Company A4 and its Directors A5 and A6, the High Court held that no cognizance could be taken against the said accused because the complainant did not belong to any of the categories or persons who were entitled to file a complaint Under Section 621 of the Companies Act1 i.e. to say the complainant was neither (a) the Registrar, (b) a shareholder of the company, or (c) a person authorized in that behalf. Thus, the High Court held that taking of cognizance by the Special Court in so far as accused Nos. A4, A5 and A6 is without jurisdiction. This finding is sought to be supported by the provisions of Section 621(1) of the Companies Act. However, without giving any special reasons as regards accused Nos. A9 and A10 the High Court quashed the taking of cognizance. In fact A9 is the manager of IREDA a financing agency and A10 is a private person and are prima facie not a company or officers of a Company vide Section 621. The High Court has not committed any error in reading Section 621 of the Companies Act and observing an accused cannot be prosecuted Under Section 621 of the Companies Act because the complainant is not a share holder in the accused Company. However, it is obvious from the complaint that there was no allegation that the accused Nos. A4, A5, A6 and A9 have committed an offence Under Section 628 of the Companies Act. Such an allegation of commission of an offence Under Section 628 of the Companies Act was only against the accused A10 (vide para 19 and 20 of the complaint). It may be recalled that the allegation as regards Section 6282 of the Companies Act is said to have been committed by the accused A1 to A3 by making a false declaration with regard to the record that is maintained in accordance with Section 193 of the Companies Act by filing an extract of the Board resolution of the company before the Andhra Bank, Sowcarpet Branch, Chennai in order to open a bank account ''the said Board resolution being a false declaration,'' since a bank

 

account in the said bank was already opened even before A1 had obtained consent of the complainant to open the said account and further since the said Board resolution is signed by Hari Sesha Reddy - A3 who was not even a Director in the company as on the date of the opening of the bank account. The offence alleged against A10 was that she had drawn huge amounts through self cheques in the capacity of the authorized signatory of the company. It is surprising to see that the High Court has quashed the complaint against the accused persons on the ground of legal defects though no allegation containing such defects were made against the said accused persons.

8. As can be seen from the complaint the allegations are that the accused conspired with each other to cheat the complainant and a series of transactions gave rise to offence Under Section 120B read with Section 420 of the Indian Penal Code as also Section 628 of the Companies Act. It is, therefore, clear that if the Special Court has jurisdiction to try offences under both the aforesaid Acts then the trial can certainly continue in respect of the offences which do not require the complainant to belong to the categories specified Under Section 621 of the Companies Act. Thus the trial could certainly continue against those accused under the Indian Penal Code.

9. The High Court completely overlooked the fact that the complaint made allegations against the accused A4, A5, A6, A9 and A10 only in respect of Section 120B and 420 of Indian Penal Code and there was no reason in law to quash a complaint against them on the ground that they were immune from prosecution Under Section 628 of the Companies Act by virtue of Section 621 of that Act.

10. We accordingly set aside the findings of the High Court that taking of cognizance against the accused A4, A5, A6 and A9 is without jurisdiction on the ground that the complaint does not make out a prima facie case for the offences Under Section 628 of the Companies Act, 1956 against the said accused. At this stage, it may be noted that the Special Court is empowered to try the offences under the Companies Act alongwith other Acts by virtue of a notification issued by the erstwhile Government of Andhra Pradesh dated 13.3.1981 which empowers such special Courts to try offences under specified enactments such as The Companies Act, 1956, The Income-tax Act, 1961, The Wealth-tax Act, 1957 etc., which reads as follows:

even if such cases include offences punishable under the Indian Penal Code, 1860 and any other enactments, if such offences form part of the same transaction.

[vide Notification reproduced in Criminal Petition No. 5846 of 2014 The Superintendent of Customs v. Kannur Abdul Kader Mohammed Haneefa reported in 2014 (310) ELT 49 (A.P.)]

11. Thus, even if a number of persons are accused of offences under a special enactment such as ''the Companies Act and as also the Indian Penal Code'' in respect of the same transaction or facts and even if some could not be tried

 

under the special enactment, it is the special court alone which would have jurisdiction to try all the offences based on the same transaction to avoid multiplicity of proceedings. We make this observation because at some stage in the hearing learned Counsels addressed us on this point. We make it clear that in the present case all the accused are liable to be tried by the special court in respect of the offences under the Indian Penal Code as well as the Companies Act as alleged in the complaint.

12. Appeals are allowed in above terms.

13. Heard learned Counsel for the appearing parties.

14. Registry is directed to list the appeals today (26.03.2015) for pronouncement of judgment at 2.00 p.m.

15. Hon''ble Mr. Justice S.A. Bobde pronounced the judgment of the Bench comprising Hon''ble Mr. Justice Jagdish Singh Khehar and His Lordship.

16. For the reasons recorded in the Reportable judgment, which is placed on the file, the appeals are allowed.

1621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government- (1) No court shall take cognizance of any offence against this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf: Provided that nothing in this Sub-section shall apply to a prosecution by a company of any of its officers. [Provided further that the Court may take cognizance of offence relating to issue and transfer of securities and nonpayment of dividend on a complaint in writing by a person authorized by the Securities Exchange Board of India]. (1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, (5 of 1898) where the complainant Under Sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.] (2) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (Sections 425 to 560) or in any other provision of this Act relating to the winding up of companies. (3) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of Sub-section (1). 2628. Penalty for false statements.- If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement- (a) which is false in any material particular, knowing it to be false; or (b) which omits any material fact knowing it to be material, he shall, save as otherwise expressly provided in this Act, be punish-able with imprisonment for a term which may extend to two years, and shall also be liable to fine.

 