(2002) 08 MP CK 0097

In the Madhya Pradesh High Court

Case No : M.Cr.C. No. 1675 of 2002 (G)

S.K. Pharmaceuticals Ltd. and Another APPELLANT

Vs

Ved Prakash Gupta RESPONDENT

Date of Decision : 25-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22A

Citation : (2002) 2 MPJR 515

Hon'ble Judges : P.C. Agarwal, J

Bench : Single Bench

Advocate : R.K. Goyal, for the Appellant; Momin Ali Shah, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Agarwal, J.

By the impugned order dated 11.9.2001, Judicial Magistrate First Class, Gwalior, in his Criminal Case No. 679/2001 (Vedprakash Gupta vs. S. K. Pharmaceuticals Ltd.) on complaint of Vedprakash Gupta, the respondent, registered on offence under S. 138 of the Negotiable Instruments Act (to be called as Act only). The magistrate first issued a notice and on petitioner''s remaining absent despite service of notice, he issued coerceive process. Ultimately non-bailable warrant was also issued.

In this petition under S. 482 of the Code of Criminal Procedure (Code for short), the petitioners have sought quashment of the proceedings first on the ground that the Board for Industrial and Financial Reconstruction (BIFR for short) has declared the petitioner-Company a sick company and under S. 22-A of Sick Industrial Companies (Special Provisions) Act, 1985, has directed not to dispose of its assets; secondly, that against registration of a criminal case under S. 406 of the Indian Penal Code, another Misc. Cri. Case No. 3838/2001 has been filed, which is pending with a direction of stay of further proceedings of that case; and thirdly, Baroda Court has issued a stay order against enforcement of the agreement dated 28.3.1998.

The Hon. Apex Court in Kusum Ingots and Alloys Ltd., etc. Vs. Pennar Peterson Securities Ltd. and Others, and BSI Ltd. and Another, etc. Vs. Gift Holdings Pvt. Ltd. and Another, etc., has held that merely because a Company is declared a sick unit, prosecution under Ss. 138, 141 and 142 of the Negotiable Instruments Act and protanto for any other offence is not barred. A. P. High Court in B. Mohan Krishnan v. Union of India : VI 1995 (2) Crimes 795, has held that no permission of the B.I.F.R. is necessary. The only condition when a prosecution can be barred, can well be understood from the following passage in the Kusum Ingots & Alloys Ltd. (cited Supra) at page 755 of SSC:-

19. The question that remains to be considered is whether Section 22-A of SICA affects a criminal case for an offence u/s 138 NI Act In the said section provision is made enabling the Board to make an order in writing to direct the sick industrial company not to dispose of, except with the consent of The Board, any of its assets -- (a) during the period of preparation or consideration of the scheme u/s 18; and (b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of Section 20 and upto commencement of the proceedings relating to the winding up before the High Court concerned. This exercise of the power by the Board is conditioned by the prescription that the Board is of the opinion that such a direction is necessary in the interest of the sick industrial company or its creditors or shareholders or in the public interest. In a case in which BIFR has submitted its report declaring a company as "sick" and has also issued a direction u/s 22-A restraining the company or its directors not to dispose of any of its assets except with consent of the Board then the contention raised on behalf of the appellants that a criminal case for the alleged offence u/s 138 NI Act cannot be instituted during the period in which the restraint order passed by BIFR remains operative cannot be rejected outright. Whether the contention can be accepted or not will depend on the facts and circumstances of the case. Take for instance, before the date on which the cheque was drawn or before expiry of the statutory period of 15 days alter notice, a restraint order of BIFR u/s 22-A was passed against the Company then it cannot be said that the offence u/s 138 NI Act was completed.

In such a case it may reasonably be said that the dishonouring of the cheque by the bank and failure to make payment of the amount by the Company and/or its Directors is for reasons beyond the control of the accused. It may also be contended that the amount claimed by the complainant is not recoverable Tram the assets of the company in view of the ban order passed by BIFR. In such circumstances, it would be unjust and unfair and against the intent and purpose of the statute to hold that the Directors should be compelled to face trial in a criminal case.

The Hon''ble Apex Court has further held at page 756 that:-

20......It will be open to the appellants to place relevant materials in this regard before the learned Magistrate before whom the cases are pending and the learned Magistrate will examine the matter keeping in mind the discussions made in this judgment.

It is well settled that no factual question can be raised before this Court in a petition under S. 482 of the Code. No additional material can be produced, which was not produced earlier before the Court below. The petitioners should raise the objection before the trial Magistrate, who shall decide the same in accordance with the direction of the Hon''ble Apex Court and of this Court after perusal of the material produced by the petitioners.

It is not worthy that Misc. Cri. CAse No. 3838/2001 has been disposed of today with a similar direction. Stay order, if any, granted by Baroda Court, has not been produced before this Court. The petitioners, if so advised, would produce such stay order before the Magistrate and obtain his orders on the same.

With these directions, the petition is dismissed. Parties shall remain present before the trial Magistrate on 9.9.2002.

