
(2005) 03 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (Criminal) 1163 of 2003 and Crl M 995 of 2003

S.P. Gupta and Others

APPELLANT

Vs

The State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 157, 196A(2), 197
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 424
Prevention of Corruption Act, 1988 — Section 6

Citation : (2006) 132 CompCas 402 : (2005) 119 DLT 214 : (2005) 61 SCL 121

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : N.K. Kaul and Anil Sharma, for the Appellant; Mukta Gupta, for R-1, D.C. Mathur Mohit Mathur and V.S. Panwar for R-2, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Dwivedi, J.—The moot point for consideration in this writ petition is whether recourse to investigation in the affairs of company u/s 235 to 242 of the Company Act is the only way to launch prosecution in respect of alleged/suspected commission of cognizable offences under IPC by the office bearers of the company or the police can investigate such allegations of its own or under orders of Court, if approached by the aggrieved person/shareholder.

2. Through this petition u/s 482 Cr.PC read with Article 226/227 of the Constitution of India, the petitioners seek quashing of FIR bearing No. 99/2002, PS Connaught Place, New Delhi u/s 406/409/420/424/467/467/477A read with Section 120B IPC. The said FIR was registered in pursuance of order dated 19.2.2002 passed by learned Metropolitan Magistrate, New Delhi on a criminal complaint filed by the respondent against the petitioners who are Chairman-cum-Managing Director, Director, Chartered Accountants and Finance Controller respectively of M/s. Sunair Hotels Limited. It was alleged in the complaint that in

or around December, 1994, petitioner nos 1 to 3 approached respondent company and requested it to subscribe to the equity share capital of M/s. Sun Air Hotels Limited to the tune of 25% equity share capital amounting to 70 lac equity shares @ Rs.10/- per share aggregating to Rs.7 crores. Induced by the assurances of the accused, the complainant company made payment of Rs.7 crores for the allotment of shares M/s. Sunair Hotels Limited, which in turn allotted and issued 70 lac shares to the respondent company. Apart from that 25,94,824 fully paid up equity shares of Rs.10 each aggregating to 2,59,84,240/1 were also issued to the respondent company. Thus at the time of filing of complaint, respondent company was holding 95,94,824 fully paid up equity shares of M/s. Sunair Hotels Limited. Besides, on the request of petitioners no. 1 to 3, the respondent company also provided interest bearing security deposit of Rs.8 crores, on the premise that its deposit was safe and the same would help in the early completion of the Hotel Project. After taking huge money from the respondent company, M/s. Sunari Hotels Limited also approached the financial institutions and banks for loan for the construction of hotel M/s. Sunari Hotels Limited thus raised a sum of Rs.42 crores as term loans from the financial institutions and bank i.e. Industrial Development Bank of India (Rs.10.5 crores). Tourism Financial Corporation of India (Rs. 21 crores) and Oriental Bank of Commerce (Rs.10.5 crores). It was alleged in the complaint that petitioners had fraudulently and illegally got allotted and issued equity shares worth Rs.21 crores of M/s. Sunair Hotels Limited, in the name of themselves, relatives and family members without having contributed any cash, for which the complainant has lodged a complaint with the Deputy Commissioner of Police (Crimes and Railway) and a case was registered vide FIR No. 90/2000 with the Police Station Connaught Place, New Delhi under Sections 406/409/420/424/467/467/477A read with Section 120B IPC. On further inquiry the complainant company came to know that the petitioners have manipulated the accounts of M/s Sunair Hotels Limited by making false documents, fabricating valuable securities and have used the said forged and fabricated documents and the books of accounts of M/s Sunair Hotels Limited with a view to illegally siphon off the funds of M/s Sunair Hotels Limited, borrowed by it from various agencies for the construction of the hotel. The funds illegally siphoned off from M/s Sunair Hotels Limited were later on dishonestly used/utilized by the accused for subscribing to the additional share capital worth Rs.10.75 cores in M/s. Sunair Hotels Limited through bogus benami companies. The money received by these benami companies from M/s. Sunair Hotels Limited were allegedly shown to have been paid further on to various sub-contractors. When inquiries were made from the sub-contractors it was revealed that they had never carried out any construction work for M/s. Sunair Hotels Limited. In fact many of the so-called/ alleged sub-contractors were employees of the petitioners or Sunair Hotels Limited and were earning meager salaries. In para 15 of the complaint, the respondent gave details of certain companies namely M/s. Bansal Estate Private Limited, M/s. Isha Metal Pvt. Limited, M/s. Atul Constructions and Finvest Private Limited. It was alleged that huge amounts were shown to have been paid to

these companies which were controlled by either of the petitioners. Various instances of bogus expenditure shown in the books of accounts of M/s. Sunair Hotels Limited were also given in para 16 of the complaint. It was alleged that modus operandi adopted by the accused was that during the construction of the hotel project, the accused persons misappropriated the funds of M/s. Sunair Hotels Limited by creating false documents, fabricating valuable securities and falsifying the books of accounts of M/s. Sunair Hotels Limited. Other instances of alleged misdeeds of the petitioner were also given in paras 18, 19 and 20 of the complaint.

3. On receipt of this complaint, learned Metropolitan Magistrate passed the following order dated 19.2.2002

19.02.2002

Present: AR of complaint with counsel.

Heard. File perused. The material on record contains allegation of breach of trust, forgery falsification of account, etc. against the respondents. SHO Police Station, Connaught Place, is directed to investigate the matter u/s 156 Cr.PC in accordance with the law and submit his report by 27.3.2002. Copy of the order, complaint and the annexed documents be sent to the SHO, complainant counsel to file the same today itself.

MM/ND

19/2/2002

4. On the basis of said order, FIR No. 99/2002 was registered under sections 409/411/424467/477A read with 120B IPC. During investigation, the police has submitted status reports from time to time. A perusal of status reports indicates that police has found some substance in the allegations regarding bogus entries showing payments to some companies and sub-contractors. It may be that after investigation is over, the police may file challan or final report for closure of the case depending upon the nature of the evidence they gather during investigation but at this stage, it appears that allegations made in the complaint regarding these alleged bogus payments and falsification of accounts are not entirely groundless.

5. Shri N.K. Kaul, learned senior counsel appearing for the petitioner vehemently contended that the respondent has already approached Company Law Board and vide order dated 13.6.2001, the Company Law Board rejected the application filed under sections 397/398 of the Company Act filed by the respondent. Therefore, a parallel investigation by police into the same allegation is not permissible. A perusal of the said order dated 13.6.2001 passed by the Company Law Board shows that it deals mainly with the allegation of fraudulent allotment of shares amongst petitioners without actual payment of money. The Company Law Board was of the view that no fraud appears to have been committed in the said allotment. The criminal complaint filed in the Court of the learned

Metropolitan Magistrate was not confined to alleged fraudulent allotment of shares by the petitioners. The alleged fraudulent allotment of shares by the petitioners among themselves was subject matter of earlier FIR being No. 90/2000 registered at P.S Connaught Place, New Delhi. The present FIR No. 99/2002 was registered at P.S Connaught place, New Delhi, mainly on the allegations regarding siphoning off the company's funds by the petitioners by making bogus entries in the account books in the name of benami companies who in turn made payment to fictitious sub-contractors. Thus subject matter of the criminal complaint on the basis of which present FIR has been registered is different from that of application under Sections 397/398 filed by the respondent before the Company Law Board, although to some extent it maybe overlapping.

6. Learned counsel for the petitioner next contended that Sections 235 to 242 of "The Companies Act 1956" (for short the "Act") provide a complete machinery for investigation into the affairs of the company and resultant prosecution u/s 242 of the Act. Therefore resort to police investigation under the provisions of Cr.P.C is impliedly barred and as such the FIR is liable to be quashed. Reference was made to the decision of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein it was held that FIR is liable to be quashed if the Act provides efficacious redress for the grievance of the parties. In para 107, apex court has observed as under:-

107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroversial allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. According to the learned counsel for the petitioner, the case in hand falls in the category (6) above. The Company Act under sections 235 to 242 thereof provides efficacious redress regarding investigation into the affairs of the company and the present FIR is, Therefore, liable to be quashed. In the very next paragraph, Supreme Court cautioned the High Courts while dealing with the question of quashing of FIR in the following words :-

108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

8. Reliance was also placed on the decision of the apex Court in the case of Rohtas Industries Limited v. S.D. Aggarwal and Anr.-1969 SC 707, wherein it was held that investigations under Sections 235 to 242 of the Act is a serious matter. Such investigation should not be ordered routinely. Reliance was also placed on a later decision of the Supreme court in the case of Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others, . In that case, facts were that there was some dispute between MD of the appellant company and his son-in-law who was a former Director of the company and also a M.P. At the instance of son-in-law eight shareholders of the company filed a company petition under Sections 397 and 398 of the Act before the Company Law Board on the ground of oppression of minority shareholders and mis-management of the affairs of the company. The Company Law Board declined to grant interim order therein. Thereafter, son-in-law filed another company petition under Sections 397/398 of the Act on the similar ground. Again third company petition was filed for the appointment of the Administrator. During the pendency of the proceedings, one of the shareholders filed a writ petition under Article 226 of the

Constitution of India alleging financial mismanagement of the company and misappropriation of funds before Andhra Pradesh High Court praying for mandamus directing Union of India to forthwith prosecute the appellant in accordance with law. It was alleged that there was misappropriation of the funds of the appellant and (CBI) inquiry was also prayed for. Writ petition was dismissed by the learned single Judge of the Andhra Pradesh High Court but in appeal, the Division Bench of the Andhra Pradesh reversed the order of the single Judge and issued a direction to the Central Government to make its own verification of the allegations in the writ petition thus indirectly ordering an inquiry into the affairs of the company bypassing the detailed provisions with in-built safeguards under the Act. In these circumstances, the apex court followed the observation made in the case of Rohtas Industries Ltd., (supra) and observed that the allegations basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. Its shareholding was very closely held. The fact that the company had borrowed moneys from public institutions, is no ground for not availing of the statutory remedies provided under the Act before the appropriate statutory forums which are designed for this very purpose. In para 9 of the judgment, the apex court has observed as under:-

The power, Therefore, to appoint an Inspector to investigate the affairs of a company has to be exercised by the Central Government after a proper preliminary scrutiny by the Registrar or by the Company law Board as the case maybe. It cannot be instituted simply on the basis of allegations made by one shareholder. u/s 237, there is a further power given to the Central Government to appoint Inspectors to investigate the affairs of a company if the company, by a special resolution, or the Court, by order declares that such investigation is necessary. Similarly, this may be done if in the opinion of the company Law Board there are circumstances suggesting that the business of the company is being conducted with the intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in the manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose. The Company Law Board may also come to a conclusion that there are circumstances suggesting that the persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect. In these circumstances, on the basis of the opinion so framed by the Company Law Board, the Central Government nor the Company Law Board has been moved by the first respondent in accordance with law for this purpose. In the case of Rohtas Industries v. S.D. Agarwal, this Court examined the nature of the power conferred on the Central Government u/s 235 as well as Section 237(b) and held that the scheme of these sections makes it clear that unless proper grounds exist for investigation of the affairs of a company, such investigation will not be lightly

undertaken. An investigation may seriously damage a company and should not be ordered without proper material gathered in the manner provided in the Companies Act. The power of investigation has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore, the standard that is prescribed u/s 237(b) is not the standard required of an ordinary citizen but that of an expert.

9. Having given my thoughtful consideration to submissions made by learned counsel for the parties, in the light of material on record and the case law cited at the bar, I am of the view that the observation of the apex court in the case of Ram Das (*supra*) cannot be read to mean that police investigation into suspected commission of cognizable offence in relation to the affairs of the company is ruled out in view of Sections 235 to 242 of the Act. It is important to note that the Supreme Court has repeatedly observed in the said judgment (para 6 and 10) that main grievance of the respondent in the writ petition relates to the mismanagement of the affairs of the appellant company and then taking into consideration Sections 235 to 242 of the Act, Supreme Court proceeded to hold that these sections adequately take care of such type of situations. u/s 235 of the Act, investigation can be ordered if report has been made by the Registrar under Sections 234(6) and 234(7). Further under sub-section 2 of Section 235, CLB (now Tribunal) will also order investigation if (a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one tenth of the total voting power therein, and (b) in the case of a company having no share capital, an application has been received from not less than one fifth of the persons on the company's register of members. In that case, there was no compliance of provisions of Section 235. Under the circumstances, Supreme Court felt that ordering an investigation at the instance of single share holder is uncalled for. If there are general allegations regarding mismanagement of the affairs of the company or oppression of the minority shareholders, the aggrieved party shall approach Registrar/CLB/Government to take proper steps u/s 235 onwards of the Act. In such cases, Government is not supposed to order investigation as a matter of routine (*Rohtas Industries Ltd., supra*).

10. In the present case, the scenario is different. The FIR has already been registered and the investigation/ prosecution has already been launched. The nature and scope of investigation to be conducted u/s 235 to 242 of the Act is vastly different from the nature and scope of the investigation to be conducted by the police. An investigation under Sections 235 to 242 of the Act is not an investigation of a criminal case. The purpose of investigation under the provisions of the Company Act is only to streamline the working of the company. Such investigations may reveal violation of rules and regulations by the office bearers or even commission of technical offences which are punishable under the Company Act for which investigation under Cr.PC maybe uncalled for. But if such

investigations reveal the commission of offences under IPC. Section 242 of the Act enacts an enabling provision under which the Government can also launch prosecution. *M. Vaidyanathan Vs. The Sub-Divisional Magistrate, Erode and Others*, . On the other hand, an investigation by the police officer is launched on receipt of an information of the commission of a cognizable offence. u/s 157 of Cr. PC it is obligatory on the part of police officer to launch investigation if he suspects commission of cognizable offence or if the commission of such an offence is brought to his notice. Even if there is no specific report and police officer has only a suspicion, may be on the basis of an anonymous complaint, he is duty bound to investigate the same. Every citizen has constitutional rights to approach police and the Court when commission of cognizable offence is suspected. Various High Courts and the apex court have taken consistent view that the provisions of Sections 235 to 242 of the Company Act do not have the effect of abrogating or repealing the provisions of Cr. PC which deal with the powers of the police officer to investigate report about the commission of the cognizable offence. In support of his contention Sh. Dinesh Mathur, learned Sr. Counsel for respondent and Ms. Mukta Gupta, learned counsel for State referred to *B.N. Bajoria v. Union of India* 1971 1 Del 715. *M. Vaidyanathan Vs. The Sub-Divisional Magistrate, Erode and Others*, ; *Indian Express (Madurai) Pvt. Ltd. and Ors v. Chief Presidency Magistrate and Ors- Comp Cas 44* and *Radhey Shyam Khemka and Another Vs. State of Bihar*, . A Division Bench of this court in the case of *B.M. Bajoria v. Union of India and Ors*. Reported in 1971 1 Del 715, had expressly repelled the argument that the only way to prosecute an office bearer of the company in respect of some act of embezzlement or misappropriation of funds concerning the affairs of the company is to direct investigation into the affairs of the company u/s 235 of the Act. While dealing with this argument, the Division Bench at page 723 has observed as under:-

An investigation into the affairs of a company is ordered in a variety of circumstances which have been mentioned in section 235 and 237 of the Companies Act., In cases covered by section 237(a) the Government is bound to appoint one or more competent persons as inspectors to investigate the affairs of a company. As against that, if a case is governed by clause (b) of section 237 or in case it is governed by section 235, the Government has a discretion in the matter. An investigation into the affairs of a company under the above provisions of law from the point of view of general reputation of a company is a very serious matter. It can result in a number of consequences viz., prosecution vide section 242, winding up of the company or an order under sections 397 or 398 of the Act vide section 243 or initiation of proceedings by the Central Government in the name of the company for recovery of damages or property vide section 244 of the Act. It is also manifest that investigation is ordered into the affairs of a company when there is some aspect of those affairs regarding which the Government is not in possession of full facts and the circumstances exist as are referred to in sections 235 or 237 of the Act. In such an event, the Government orders probe into those aspects to apprise itself of the correct facts. It is only

after that probe, when further facts come to the notice of the Government, that the Government has to decide about the next step i.e., whether it should drop the matter or proceed in any of the ways mentioned in sections 242 to 244 of the Act. There is, however, nothing in section 237 which makes it imperative for the Government to order investigation into the affairs of the company when the Government does not consider the necessity of further probe and is already in possession of facts which, in its opinion, show the commission of an offence by an officer of the company or other person in respect of the assets of the company. There is, in such an event, no legal bar to the officer of the Company Law Board or other Government officer concerned making a report to the police. A report to the police in the very nature of things is directed against one or more than one individuals. Although the records of the company may have to be examined and produced during the course of police investigation or in evidence during the course of prosecution following that investigation, so far as the existence and continued functioning of the company are concerned, they would not be affected by such investigation or prosecution of the individuals.

11. Again at page 724, the Division Bench has observed as under: -

"We are not impressed by the argument advanced on behalf of the petitioner that section 242 alone prescribes mode of launching prosecution against officers of the company and other individuals who appear to have been guilty of embezzlement and other acts of malfeasance in respect of the assets of a company. There is neither an express provision nor any other provision which by necessary implication warrants this conclusion. There are some provisions of the Companies Act like sections 621, 624, 624A and 624B wherein the words used are "Notwithstanding any contained in the Code of Criminal Procedure", thus indicating that those provisions would have an overriding effect. There is, however, nothing in section 242 or other provisions of the Companies Act to point to the conclusion that no prosecution can be launched or no report can be made to the police in respect of an alleged act of embezzlement or malfeasance by an individual connected with the company without recourse to an investigation under sections 235 or 237 of the Act. In the case of *M. Vaidyanathan Vs. The Sub-Divisional Magistrate, Erode and Others*, , question arose whether the provisions of section 630 of the Companies Act constituted a bar to the exercise of the jurisdiction vested in a police officer under sections 154, 156 and 157 of the Code of Criminal Procedure. The question was answered in the negative by Rajagopalan, J. The above decision was affirmed on appeal by a Division Bench of Madras High Court (Rajamannar, CJ and Panchapakesa, J.) In *Re: M. Vaidyanathan*, .

12. The Division Bench further observed at page 726 as under :-

The matter can also be looked at from another angle. Any one who has information of the commission of a cognizable offence can make a report about the commission of such offence to the police. The police after registration of the case on the basis of that report in accordance with Section 154 of the Code of

Criminal Procedure can investigate the matter. If the investigation reveals that such an offence has been committed the police has to put in challan in Court, where after the trial of the case would commence in the criminal Court. There are certain offences wherein the police cannot put in challan without observing some formality such as obtaining consent in cases covered by section 196A(2) of the Code of Criminal Procedure or requisite sanction in cases covered by sanction 197 of the Code or section 6 of the Prevention of Corruption Act. There is, however, no provision of law, at least none has been cited at the bar which makes it imperative to obtain such consent or sanction or to go through other formality before the police can put in challan for a cognizable offence relating to the assets of a company. The plain effect of the acceptance of the submission made on behalf of the petitioner would be to place a procedural restriction on the prosecution of officers of a company or other individuals in respect of offence relating to the assets of a company. It is in our opinion not permission to read such a restriction in the Statute when none exists. Reference has been made by Mr. Tarkunde to the report of a Committee which preceded the enactment of the Companies Act. The petitioner in our opinion cannot derive much assistance from the report of that Committee in the matter of the construction of the provisions of the Companies Act. Even in respect of the statement of objects and reasons for introducing a particular piece of legislation the Court can refer to the statement only for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislature aimed at. The statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. (See in this connection S.C. Prashar and Anr. v. Vasantsen Dwarkadass and Ors., AIR 1963 SC 1956 (6). A report of a Committee can obviously not stand on a higher footing than the statement of Objects and Reasons.

13. In view of my discussion above, settled proposition of law emerges is that if there is a specific information about the suspected commission of a cognizable offence under Indian Penal Code, may be in connection with the affairs of the company, anybody can approach the police which then is obliged to carry out the investigation. Every citizen has a constitution right to approach police officer or the Court for the investigation into the commission of the cognizable offence (2nd Vol. X Page 525). In the present case, FIR was lodged under the Court orders which has not been challenged in any proceedings. While considering the question of quashing of the FIR in a writ petition or in a petition filed u/s 482 Cr.PC, the Court is not supposed to minutely examine the veracity/truthfulness of the evidence or the probative value thereof. (M. Narayandas v. State of Karnataka and Ors.-JT 2003 (Supp1) SC 412. It cannot be said at this stage that the allegation in the complaint even if taken on their face value do not make out an offence. In the case of Radhey Shyam Khemka and Another Vs. State of Bihar, Supreme Court repelled the contention that the police investigation in the alleged/suspected cognizable offence is barred in view of the provision of

Company Act. In that case, the appellants who were Directors of the company had issued prospectus inviting public subscriptions of 42,000 equity shares and 3,000 preference shares. It was given out by the appellants to the investors that application was being made to the Calcutta Stock Exchange for enlisting the shares of the company for official quotation. Such application which was made on behalf of the company was rejected by the stock exchange. In spite of the rejection the share money collected from different investors was held by the appellants and none of the shareholders were either informed or were repaid. On that basis, CBI registered a case and filed challan u/s 409 IPC. The appellant sought quashing of the FIR on the ground that there are adequate provisions in the Act which can take care of the alleged offences and, Therefore, a launching of the prosecution without taking recourse to the provisions of the Act amounted to abuse of the process of Court. The apex Court observed that in a situation like this where FIR has been registered and charge sheet has been filed, quashing of the prosecution pending against the appellant only on the ground that it was open to the applicants to take recourse to the provisions of the Act cannot be accepted. It would be open to the trial court to examine whether on the basis of material produced on behalf of the prosecution it is established that the appellant had issued the prospectus inviting applications in respect of shares of the company aforesaid with a dishonest intention or having received the money from the applicants they had dishonestly retained or misappropriated the same. That exercise cannot be performed either by the High Court or by the Apex Court.

14. In the case of State of West Bengal Vs. Narayan K. Patodia, , the Supreme Court observed that availability of an alternative investigation, per se, cannot be a ground to quash FIR. In the case of Surendra Nath Sarkar and Others Vs. Kali Pada Das, , it was held that private complaint in respect of offence committed in the affairs of the company is not barred either under the Act or under the CR.PC. There is no warrant for the preposition that a single shareholder cannot lodge a criminal complaint or police report in respect of commission of the cognizable offence in connection with the affairs of the company.

15. As observed earlier, in the present case, FIR has been registered under orders of the Court which order has not been challenged so far. The investigation is still in progress and at this stage, it is not possible to say that the allegations are totally groundless or on the face of it they do not make out any offence under IPC. The provisions of Sections 235 to 242 of the Act do not create any bar against an investigation by police officer if cognizable offence punishable under IPC are suspected to have been committed in connection with the affairs of the company.

16. In the result, this writ petition fails and is hereby dismissed.