
(2014) 09 DEL CK 0366

In the Delhi High Court

Case No : Crl. Rev. P. 137/2009 and Crl. M.A. No. 18878/2010

Srg Infotech Ltd. and Others

APPELLANT

Vs

Securities and Exchange Board of India

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2), 468(2)(b), 469, 470, 473
Negotiable Instruments Act, 1881 (NI) — Section 138
Securities and Exchange Board of India Act, 1992 — Section 11(3), 24, 27

Citation : (2015) 5 AD 224 : (2015) 217 DLT 771

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Chandra Shekhar, Adv., Mohit Mathur, Ashish Virmani, Kritika Khanojia, Danish Chowdhary, Varun Tankha and Pankaj Verma, Advocate for the Appellant; Pinky Anand, ASG and Ashish Aggarwal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Petitioner no.1 is the company M/s. SRG Infotech Limited. Petitioner no.3 (G.L. Sharma), petitioner no.4 (Sandeep Bansal) along with petitioner no.1 are aggrieved by the order dated 08.4.2004 passed by the Additional Chief Metropolitan Magistrate (ACMM).

2. The ACMM vide the said order, on a complaint filed by the Securities Exchange Board of India (SEBI) had summoned the petitioners. Apart from the present petitioners, Ashok Aggarwal (arrayed as petitioner no.2) had also been summoned. He has since expired. No steps were taken to bring on record his legal representatives. Proceedings qua petitioner no.2 stand abated.

3. The present complaint had been filed by the SEBI for violation of Regulation 6(d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Related to Securities Market) Regulations, 1995 and Section 11(3) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) read with Section 24 and Section 27 of the

said Act. This complaint was originally filed in the Court of ACMM who had passed the impugned order. A revision petition had been filed before the Sessions Judge. During the pendency of that revision petition by virtue of the judgment dated 11.1.2008 of the High Court delivered in W.P.(C) 18093/2006 M/s. Churuwale Exports Pvt. Ltd. Vs. High Court of Delhi the original offence became triable by the Sessions Judge. Accordingly on 07.3.2009 the Additional Sessions Judge before whom the revision petition was pending transferred this matter to the High Court.

4. Arguments have been addressed separately by the petitioners.

5. On behalf of the petitioners no.3 and 4, at the outset, it has been pointed out that the cognizance order (impugned order) suffers from a legal bar, the bar of limitation is a hurdle. Submission being that (as per the un-amended Act) the offence for which the complaint was filed was punishable with imprisonment up to 1 year and in terms of Section 468(2)(b) of the Cr.P.C. the period of limitation for taking cognizance of such an offence is one year. It is pointed out that even as per the averments made in the complaint the SEBI was aware of the offence purported to have been committed by the petitioners on 04.01.2000; limitation for taking cognizance of such an offence expired on 04.01.2001; impugned order passed on 08.4.2004 taking cognizance of an offence which had taken place on 04.01.2000 suffers from the vice of limitation. It is pointed out that u/s 469 of the Cr.P.C. the period of limitation has to commence from the date of the offence and in the alternate where the commission of the offence first comes to the knowledge of such a person; submission being reiterated that in this case admittedly knowledge about the offence was known to the Board on 04.01.2000 and cognizance having been taken four years later i.e. on 08.4.2004 is clearly time barred. For this proposition reliance upon State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others, and Prashant Goel Vs. State and Another . The respondent has also not claimed exclusion of time under any of the categories u/s 470 of the Cr.P.C.; their case even otherwise does not fall under that category. Further submission being that extension of period of limitation in certain cases may be granted u/s 473 of the Cr.P.C. but even in that category of cases if the Court is to extend the period of limitation it is only after a hearing has been granted to the non-applicant; submission being based on the principle of audi alterem partem that no order can be passed against a party, which prejudicially affects his rights, without notice to him. For this proposition reliance has been placed upon State of Punjab Vs. Sarwan Singh, , 28 (1985) DLT Vinod Kumar Jain Vs. Registrar of Companies, Delhi & Haryana, State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others, as also Fortune Stones Ltd. and Others Vs. Registrar of Companies, NCT of Delhi, . On merits, it is pointed out that a vicarious liability is sought to be fastened on petitioner nos.3 and 4. The complaint does not disclose the specific role of petitioner nos. 3 and 4 and in the absence of which they could not have been summoned. A mere bald statement by the complainant that the petitioner was in charge of the day to day affairs of the company and was responsible for its conduct or affairs would not by itself be

sufficient to summon the petitioner. To support this proposition, reliance has been placed upon *N.K. Wahi Vs. Shekhar Singh and Others*, , *Central Bank of India Vs. Asian Global Ltd. and Others*, . and *Sham Sunder and Others Vs. State of Haryana*, .

6. On behalf of the petitioner no.1 separate submissions have been made. It is pointed out that unless and until the mandatory hurdle of limitation is crossed by the complainant, the summoning order is bad. Learned counsel for the petitioner no.1 while adopting the arguments of the co-petitioners has placed reliance upon the same judgment i.e. *Fortune Stones Ltd. (supra)* as also another judgment *Vinod Kumar Jain (supra)* to support his submission that where cognizance is taken of an offence beyond the period of limitation the complaint is liable to be quashed.

7. Arguments have been refuted. The learned ASG has drawn attention of the Court to the provisions of the said Act including Section 26 and Section 30. Submission being that under Regulation 7 the Board has the power to order investigation. Under Regulation 10, the Investigating Officer has to submit a report to the Board. Attention has also been drawn to the averments made in the complaint wherein it has been stated that the Board had approved the report of investigation ordered by it on 09.10.2003; it was this date which is relevant to bring the complaint within limitation. Learned ASG points out that as a matter of abundant precaution even before the Sessions Judge and also before this Court the Board has filed an application u/s 473 of the Cr.P.C. and if the Court deems fit, the prayer made in that application seeking condonation of delay in filing the complaint be allowed. Submission being that this is an alternate argument however the foremost submission being that the complaint was within limitation. Attention has also been drawn to the CrI.M.A. No.18878/2010 which was an application filed by the respondent-SEBI (part of the record of this case) wherein a date-wise chart has been appended detailing various dates after January, 2000 wherein fresh complaints had been received by the Board from various sources against petitioner no.1 and that these complaints had lastly been forwarded on 27.5.2002 by the Ministry of Finance to the SEBI; SEBI had reminded the investigating agency to submit its investigation report on 03.7.2003 which was finally submitted and approved by the Board on 09.10.2003. On merits also a prima facie case is made out for summoning.

8. In reply to the last but one argument learned counsel for the petitioners points out that these dates which have now been appended in this application do not form a part of the original complaint and the question of limitation has to be decided de hors this application and based only on the averments contained in the complaint.

9. This Court is in agreement with this submission of the learned counsel for the petitioners. There is no doubt that it is only the averments made in the complaint and the documents annexed along with which have to be taken into account to decide as to whether the complaint was prima facie within the period of limitation

or not.

10. Section 26 of the said Act reads herein as under:

"26.Cognizance of offences by courts- (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Court of Sessions shall try any offence punishable under this Act."

11. It clearly stipulates that no court shall take cognizance of any offence punishable under this Act except on a complaint made by the Board.

12. u/s 30 of the Act, the Board by a notification may make regulations which are consistent with this Act.

13. Regulation 7 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Related to Securities Market) Regulations, 1995 reads as under:

7.(1)The Board may, suo-moto or upon information received by it, cause an investigation to be made in respect of the conduct and affairs of any person buying, selling or otherwise dealing in securities, by an investigating officer whom the Board considers fit.

Provided that no such investigation shall be made except for the purposes specified in sub-regulation 92).

(2) The purposes referred to in sub-regulation (1) are the following namely-

(a) to ascertain whether there are any circumstances which would render any person guilty of having contravened any of these regulations or any directions issued thereunder;

(b) to investigate into any complaint of any contravention of the regulation, received from any investor, intermediary or any other person;"

14. Sub Section (2) states that the Board may cause an investigation to be made into the conduct and affairs of any person dealing in securities by Investigating Officer whom the Board considers fit to ascertain whether there are circumstances which would render any person guilty of having contravened any regulations as also to investigate into any complaint of any contravention (of any regulations) by any persons.

15. Regulation 9 casts a duty upon such a person to produce records.

16. Under Regulation 10, the Investigating Officer shall upon completion of the investigation after taking into account all relevant facts and submissions made by the persons concerned, submit a report to the Board.

17. The wholesome reading of these Regulations thus clearly specify that the

Board has the power to order an investigation; this is a preliminary investigation carried out by the Board after giving notice to the suspected person and this is for the purpose of ascertaining whether any prima facie case of guilt is made out against such a person. It does not necessarily mean that the investigation must end into finding of guilt. It can also be the converse. It is only after the investigation is complete and the report has been submitted to the Board that a complaint can be filed u/s 26 of the Said Act and it is the Board alone which can file a complaint. In the case at hand, para 21 of the complaint specifically states that the Board had approved the investigation report on 09.10.2003. Thus the competency of the Board to file the complaint u/s 26 of the said Act arose only on 09.10.2003.

18. There is no reason to disbelieve this averment which has been made in the complaint at this initial stage. The submission of the learned counsel for the petitioner that there is no explanation as to why the Board remained silent during the intervening period i.e. between 04.01.2000 up to 09.10.2003, cannot be answered at this stage. It is a matter of trial. The averments contained in the Crl.M.A. No.18878/2010 also cannot be examined at this stage. At the time of taking cognizance the Court has to look into only the averments made in the complaint. Apart from the specific averments made in the complaint, Annexure "C" appended along with the complaint is the report of investigation dated 10.8.2000 which discloses that during the course of investigation the Board had noted several discrepancies in the Share Transfer Record of the petitioner no.1. They were informed to Sharwan Mangla, Senior Manager of the company. During the visit of this Senior Manager on 09.10.2000 additional discrepancies were noted in respect of distribution schedule submitted by the company to the Stock Exchanges and the SEBI. These were also pointed out. It was agreed that a detailed letter would be sent to petitioner no.1 pointing out these discrepancies noted in the share transfer record/distribution schedule and their explanation would be sought. There was a rider that a questionnaire will be sent to the company to be answered by it. Thus at this stage it cannot be said that even prima facie there was no explanation given by the Board in this intervening gap.

19. The Supreme Court in *Udai Shankar Awasthi Vs. State of U.P. and Another*, while reiterating the proposition that a criminal offence is considered as a wrong against the State and the society as a whole, even though it is committed against an individual, inter alia in the context of delay in launching of a criminal prosecution noted herein as under:

"The question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision, however, the same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in light of the gravity of the charge in question.

20. In *Oriental Bank of Commerce Vs. Delhi Development Authority and Another*, the Court while dealing with the question of limitation had inter alia noted as

under:

" I am, therefore, of the view that both the DDA and the public servant who files the complaint will be considered complainants. Assuming that the Delhi Development Authority is the sole complainant and thus, a person aggrieved, and that it has to act through its officers authorized by it, can the knowledge of the inspecting officer be imputed to the DDA? It cannot be, because until the matter comes to the notice of the proper person who is authorized to file a complaint, it cannot be said that the knowledge of the inspecting officers is the knowledge of the DDA. To that extent, I am in respectful agreement with Prithvi Raj J in *Gurmeet Kaur (Supra)*. It will be a matter of inquiry into facts as to when the authority which sanctioned the prosecution came to acquire the knowledge of the offence. Such an enquiry cannot be undertaken over here."

21. The Division Bench of this court in *Municipal Corporation of Delhi Vs. Sunil Sabharwal*, had observed as follows:

"The Municipal Corporation of Delhi is not a natural person and thus, unless and until the factum of commission of offence comes to the notice of an officer who is entitled to act as a complainant on behalf of Municipal Corporation of Delhi."

22. Thus it was only after the investigation report had been submitted to the Board and approved that the Board was authorized to file a complaint. Counting the period of one year as stipulated u/s 468(2) of the Cr.P.C. w.e.f. 09.10.2003, the impugned order dated 08.4.2004 taking cognizance of the offence on the present complaint is not time barred. The question of limitation is accordingly answered in favour of the respondent.

23 The judgments relied upon by the learned counsel for the petitioners on this score are distinct on their own facts. They do not apply.

24. The second submission of the learned counsel for the petitioner that there is no specific role attributed to the present petitioners is also negated. Petitioner no.1 is the company of whom admittedly petitioner nos.3 and 4 are directors. Para 5 specifically states that accused no.1 is a company incorporated under the Indian Companies Act of whom the three petitioners before this Court are the persons in-charge and responsible for the conduct of its affairs. They, admittedly, are the working directors of the company. It is also not the case of the petitioners that they were not the directors of the company during the period when the alleged offence was committed.

25. The judgments relied upon by the learned counsel for the petitioners are inapplicable being distinct on their own facts. In *N.K. Wahi (supra)* the Court while dealing with a complaint u/s 138 of Negotiable Instruments Act, 1881 had emphasized that the liability would lie only on those persons who at that time of the commission of offence were in-charge and responsible to the company for the conduct of the business of the company and that merely by virtue of being a director of the company it would not make such person liable. The ratio of this

judgment is in fact against the submission made by the learned counsel for the petitioner. The complaint categorically discloses that petitioner nos.3 and 4 were in-charge and responsible to the company for conduct of its day to day business. The subsequent judgment of Central Bank of India (supra) and Sham Sunder (supra) are also inapplicable. They merely laid down the settled proposition that vicarious liability cannot be fastened upon a partner of a firm unless it is shown that the said partner was actively involved in the business of the firm. The second argument is also negated.

26. There is no merit in the revision petition. Dismissed.