

(2013) 08 DEL CK 0162

In the Delhi High Court

Case No : Criminal M.C. No. 6620 of 2006

Sudhir Gupta

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Companies Act, 1956 — Section 77

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473, 482

Securities and Exchange Board of India Act, 1992 — Section 11(3), 19, 4, 4(3), 4(a)

Citation : (2014) 121 CLA 437 : (2013) 204 DLT 249 : (2014) 126 SCL 43

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Sanjeev Rajpal and Mr. Abhishek Mohan Sinha, in CrI.M.C. No. 6620/2006, CrI.M.C. No. 7487/2006 and CrI.M.C. No. 159/2007, for the Appellant; Neeraj Malhotra and Ms. Prithu Garg, Advocates SEBI in CrI.M.C. No. 6620/2006, CrI.M.C. No. 7487/2006 and CrI.M.C. No. 159/2007, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Since in the above-captioned three petitions, quashing of Criminal Complaint Case No. 152/2000 titled "Securities & Exchange Board of India v. M/s. Ideal Hotels & Industries Ltd. & Anr." and summoning order of 29th March, 2000 is sought on identical grounds, therefore, with the consent of learned counsel for the parties, these three petitions were heard together and are being disposed of by this common judgment. Petitioners-Sudhir Gupta and Prakash Gupta are the Directors of M/s. Ideal Hotels & Industries Limited whereas petitioner-Sudhir Gupta is the Director of M/s. Fidelity Finvest Pvt. Ltd. Petitioners claim parity with their co-accused-Vinod Kumar and Pankaj Goyal, who have been discharged by Sessions Court vide order of 24th July, 2002. The three grounds upon which quashing of the complaint in question and summoning order is sought by petitioners are as under: -

(i) Whether or not the complaint is liable to be quashed qua the Petitioner on the

ground of delay in filing the complaint?

(ii) Whether or not the Chairman, SEBI could have authorized the concerned SEBI official to file the complaint on behalf of SEBI without there being Delegation of Powers in favour of the Chairman by the SEBI Board to this effect?

(iii) Whether or not a "personal hearing" is mandatorily required to be given by a statutory authority for the purpose of dispensing with the requirement of following the principles of natural justice?

2. The factual background is as under: -

SEBI received a complaint dated 27.6.96 from one Mr. Vijay Miglani alleging that on the instructions of M/s. Ideal Hotels and Industries Ltd. some broker purchased its shares and huge deliveries were kept outstanding in the grey market. An anonymous complaint was also received in October, 1996 alleging price rigging and insider trading in the script. After the investigation it was revealed that the price and script of Accused No. 1 moved from a low of Rs. 11.25 to 23.25 within 3 days and then got reduced to Rs. 17 after 1 month. The traded volume of the script was unusually high during 30.1.96 to 29.2.96 with daily turnover of 1,00,000 shares on many days in Delhi Stock Exchange.

3. After the inquiries, it was revealed that the following entities have made the bulk of purchases of Ideal shares during this period: -

a. M/s. Dali fashions Pvt. Ltd. the accused No. 7 had made net purchase of 4,24,7000 shares of accused no. 1 company (IIHL).

b. M/s. Bhagyaduay Investments Pvt. Ltd. the accused No. 5, had made net purchase of 60,600 shares of IIHL.

c. M/s. Fourays Constructions Pvt. Ltd. the accused No. 6 had made net purchase of 91,600 shares of IIHL.

d. M/s. AD data Products, the accused No. 9 had made net purchases of 1, 33,500 shares of IIHL.

e. M/s. PKP Consultants Pvt. Ltd. the accused No. 8 had made net purchases of 2, 41,600 shares of IIHL.

f. M/s. Fidelity Pvt. Ltd the accused No. 4 had made net purchases of 50,000 shares of IIHL.

4. SEBI issued summons u/s 11(3) of SEBI Act, 1992 to the accused No. 5, 6, 7 and 9 on 9.3.99 calling for details for dealing in shares of IIHL. The reply of accused No. 16 revealed that the accused No. 4 to 9 had made the purchase of the shares of IIHL accused No. 1 at the Delhi Stock Exchange which also constituted a substantial portion of the equity of accused No. 1. The purchase disclosed by accused No. 4 to 9 was substantially higher than the purchase as deduced by SEBI. On 25.6.96 summons were also issued to accused No. 10 and he gave the statement that the accused No. 4 to 9 were directly or indirectly the

group of companies of IIHL. And day to day affair is being looked by accused No. 16. On the perusal of balance sheet of the IIHL for year ended 31.3.96, it was revealed that there was an corresponding increase in "advance recoverable in cash or kind" to the extent of approx. Rs. 4.25 Cr. during the year to accused No. 3 to 9 company. On the investigation carried on by SEBI it was revealed that IIHL has not only mis-utilised the proceeds of its public issue but also utilized its funds for buying back its own shares in contravention of the provisions of Section. 77 of companies act. In utter violation of the Section 4(a) & 4(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, the accused No. 1 to 23 acting through accused No. 10, 11 and 16 have been instrumental in artificially raising with price of IIHL immediately after it was listed in DSE. AS per the inquiry of SEBI no intimation of acquiring more than 5% have been received by DSE under the regulation 6(1), 8(1) and 10(1) of SEBI (Substantial Acquisition of shares and Takeovers) regulations 1994.

5. The relevant provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, which are required to be noticed are Section 4(a) and 4(e), which read as under: -

Prohibition against Market Manipulation

4. No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

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(e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities.

6. Upon hearing both the sides and on perusal of the complaint (Annexure-B) and summoning order (Annexure-A), the decisions cited, it becomes evident that at the threshold of these proceedings, petitioners cannot claim parity with their co-accused-Vinod Kumar and Pankaj Goyal, who have been discharged by the Sessions Court vide order of 24th July, 2002 (Annexure-C) as the import of afore-reproduced Regulations were not considered by the Sessions Court while discharging them. It would suffice to say that petitioners' claim of parity is required to be considered in detail after the evidence comes on record regarding the role played by each of the 23 accused persons in the complaint (Annexure-B). In any case, at this initial stage, it cannot be said that there are no averments against petitioners in the complaint (Annexure-B) and so, prosecution of petitioners cannot be halted at the initial stage.

7. On the question of limitation, what emerges from complaint (Annexure-B) is

as under: -

SEBI had received a complaint on 27.06.1996 from one Vijay Miglani alleging that on the instructions of M/s. Ideal Hotels & Industries Ltd., some Delhi/ Bombay based brokers purchased its shares and huge deliveries were kept outstanding in the grey market. As per Respondent No. 2, an anonymous complaint was also received in October, 1996 alleging price rigging and insider trading in the script. Preliminary inquiries were then made by SEBI into the whole affair and thereafter, investigation was ordered into the affairs of the said company on 02.02.1999. It is stated in the complaint that the preliminary inquiries were made so as to ensure that the Complaint were not bogus or frivolous and were not made at the behest on interested persons or business competitors.

8. The stand of respondent-Complainant is that from January, 1996 upto March, 1996 the offence in question took place and in June, 1996, proposed accused were summoned and much time was consumed in making of the enquiries and conducting of the investigation on the complaint in question by respondent No. 2. On behalf of respondent No. 2, it is asserted that the detailed inquiry and the investigation had commenced from November, 1996 and concluded with filing of the complaint (Annexure-B) in March, 2000.

9. The investigation conducted to unearth the depth of economic offences, which relates to complicated transaction involving multiple conniving offenders, usually takes time. In economic offences like the instant one, recourse to Section 473 of Cr.P.C. is generally taken. The pertinent observations of Apex Court in Sukhdev Raj v. State of Punjab on limitation aspect are as under: -

In the appeal before the High Court the only question raised was that though occurrence took place on 31-5-1974 challan was filed on 29-8-1977, therefore, no cognizance could have been taken in view of Section 468 CrPC. The High Court has considered this aspect and after referring to Section 473 CrPC held that in the facts and circumstances of the case the court can take cognizance if the delay has been properly explained or that it is necessary to do so in the interest of justice. In any event in this case an application was filed for condoning the delay and also explaining the delay at a later stage. According to the learned counsel for the appellant such an application was filed only after almost at the time of conclusion of trial and before judgment was delivered. It may be noted Section 473 CrPC does not in any clear terms lay down that the application should be filed at the time of filing a challan itself. The words "so to do in the interest of justice" are wide enough and the court accepted the explanation. Therefore, there are no merits in this appeal. The appeal is accordingly dismissed.

10. During the course of hearing, it was maintained on behalf of respondent No. 2 that delay, if any, ought not to be condoned at this initial stage as respondent-Complainant can still move an application u/s 473 of Cr.P.C. to seek extension of

period of limitation. The decisions in Sablok Clinic Vs. The State of Delhi, ; Vipin Kalra and Another Vs. State, ; Lokesh Tokas and Another Vs. State, ; Ramesh Chandra Sinha and Others Vs. State of Bihar and Others, ; Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, ; Municipal Corporation of Delhi Vs. Jagdish Lal and Another, ; Municipal Corporation of Delhi Vs. Amrit Lal, ; Municipal Corporation of Delhi Vs. Dhani Ram and Another, ; Siri Chand Gupta v. Santosh Kumari & Anr. rendered in CrI. M.C. No. 5113/2005; Ajoy Kumar Ghose Vs. State of Jharkhand and Another, ; K.T.M.S. Mohd. and another Vs. Union of India, relied upon by petitioners" counsel on the limitation aspect are of no avail to the case of petitioners as in the aforesaid decisions, Section 473 of Cr.P.C. was not pressed into service. Therefore, question of limitation is left open to be considered at trial. If any application u/s 473 of Cr.P.C. is preferred by respondent-Complainant during the course of trial, it be decided in accordance with the law.

11. Whether Chairman, SEBI, can authorize a SEBI official to file complaint on behalf of SEBI without there being any specific delegation in favour of Chairman of SEBI, is a question which is raised by petitioners and it can be answered in the light of Sub-sections 2 & 3 of Section 4 of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act"), which reads as under:-

Management of the Board.

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(2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

(3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.

12. A plain reading of the aforesaid provisions makes it evident that the Chairman, SEBI, exercises the powers of general superintendence, directions and management, which impliedly includes the power to initiate prosecution against offenders for which no specific delegation in favour of Chairman, SEBI is required. Such a view can be prima facie taken in the absence of any particular provision in the aforesaid Act specifically mandating the Board to authorize the Chairman or any other member to file the complaint to initiate prosecution of the offenders. Thus, it can be reasonably said that Chairman, SEBI by virtue of Section 4(3) of the Act is empowered to initiate criminal prosecution of the offender and for doing so, Chairman, SEBI does not require any authorization from the Board u/s 19 of the Act. To take a contrary view would apparently render Section 4(3) of the Act redundant.

13. At the initial stage of these proceedings, Section 19 of the Act relating to

delegation of powers by general or special order has to be harmoniously read with Section 4 of the Act and the larger question of their being substantial compliance of the aforesaid provisions is required to be considered at trial after the evidence is led and not at the threshold of these proceedings by invoking the inherent powers of this Court u/s 482 of Cr.P.C. The principle of harmonious and purposive construction of statutes has been considered by the Apex Court in *Sultana Begum Vs. Prem Chand Jain*, and *State of Himachal Pradesh and Others Vs. Surinder Singh Banolta*,

14. The requirement of providing personal hearing in each and every case has been considered by the Apex Court in a recent decision of *Patel Engineering Limited Vs. Union of India (UOI)* and *Another*, . Pertinent observations made in *Patel Engineering (supra)* are as under: -

Coming to the submission that R-2 ought to have given an oral hearing before the impugned order was taken, we agree with the conclusion of the High Court that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the State. This Court in *Union of India and another Vs. M/s. Jesus Sales Corporation*, held so even in the context of a quasi-judicial decision. We cannot, therefore, take a different opinion in the context of a commercial decision of State. The petitioner was given a reasonable opportunity to explain its case before the impugned decision was taken.

15. In light of the aforesaid legal position, this Court is of the considered view that since show-cause notices were issued to petitioners-accused persons, therefore, violation of principles of natural justice on account of not providing personal hearing to petitioners-accused persons cannot possibly vitiate these proceedings because petitioners had never sought personal hearing while responding to the show-cause notices issued to them. In the considered view of this Court, there is no justification whatsoever to quash the Criminal Complaint (Annexure-B) and the summoning order (Annexure-A). Resultantly, these three petitions are dismissed while refraining to comment on the merits lest it may prejudice petitioners at trial.