
(2010) 05 PAT CK 0082

In the Patna High Court

Case No : Cr. Misc. Petition No. 2696 of 2009

Sunil Dutt Mishra and another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0082

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—Heard.

This petition has been filed by the two petitioners, who have been arrayed as accused in Complaint Case No. 1213(C). The complaint petition was filed by the Union of India through the Registrar of Companies, Bihar and Jharkhand, alleging that inspite of the show cause notice to the Company and its Directors and accused Nos. 2 to 8 failed to file the annual returns as obligated u/s 159 of the Companies Act, 1956 and as such committed an offence punishable u/s 162(1) of the Companies Act, 1956. It was alleged that they were the "officers in default" and, as such, they were liable for not filing the return as was required to be filed u/s 159 of the Companies Act.

2. The ground, which has been urged before me, is that section 5 of the companies Act defines the officer, who is in default and that provision does not include a Director who has not been assigned with any responsibility by the board of Directors. It was contended by citing a very long line of decisions like Ravindra Narayan and others v. Registrar of Companies, Rajasthan 1994 (81) CC 925 (Raj.), H. Nanjundiah v. V Govindan, Registrar of Companies, Maharashtra and another 1986 (59) CC 356 (Bom.), V.M. Thorns v. Registrar of Companies 1980 (50) CC 247 (Ker), P.C. Wadhwa v. S.C. Bhatia (1995) Suppl (4) SCC 244, and finally in G.L. Gupta v. D.N. Mehta and another AIR 1971 SC 2126, that by virtue of the definition of the term "officer in default" and in the light of the admitted fact that the petitioners were not the principal Officers of the Company and as such were not the officers in default the very prosecution of the two

Petitioners was not maintainable. It was further contended that there was an instruction issued by the Company Law Board in the light of 1994 (81) CC 925 (Raj.) by which it has been directed that no prosecution shall be filed against the Directors or managerial personnel, such as, the Managing Director if no managerial responsibility has been thrust upon any of them. The Copy of Circular No. 6/94 F. No. 3/41/03-CL. V dated 24th June, 1994 has been annexed to the supplementary affidavit filed by the petitioners.

3. Learned Counsel appearing for the Union of India attempted to resist. The prayer by submitting that the two Petitioners were fully covered by the definition of "Officer in default" and as such they are rightly sought to be prosecuted.

4. Order of summoning of the accused may be quashed on some considerations which were indicated in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, That decision laid down four conditions under which prosecution by virtue of an order of summoning of the accused may be quashed. While laying down the propositions the Supreme Court was of the view that the statements made in the complaint petition have to be treated as true on their face value and thereafter it has to be seen by the Court exercising powers either of the revision or that u/s 482 of the Cr PC as to whether any of the conditions could be applicable to the facts of that case., It is also well known proposition of law that a prosecution could also be quashed if admitted facts, indicate that no offence was made out or there was patent absurdity or inherent improbability which afflicts the accusation or there was lack of jurisdiction or the very prosecution was barred by any law in force. These are the propositions which one may find in a number of cases including one which is of cited and as the case of Bhajan Lal, reported in State of Haryana and others v. Bhajanlal and others AIR 1992 SC 604.

5. In the light of the above settled position of law, I have perused the complaint petition. I find that the second paragraph of the complaint petition reads as follows:--

"That the company Accused No. 1 may be summoned to be represented by accused No. 2 who is the Principal Officer and Director of the Company at his address given above."

On perusal of the above paragraph what may be found is that it had been specifically stated by the Complainant, Union of India, that accused No. 1, i.e., the Company may be, summoned which is being represented by accused No. 2 who is the "Principal Officer and Director of the Company at his address given above". Thus, there could not be any dispute on account of the very statement made by the Union of India that accused No. 2 could be the Principal Officer who could be said to be in default in non-filing of the return of time, because the definition of "Principal Officer in default" as contained in section 5 of the Companies Act, 1956 indicates that if the Managing Director or Managing Directors or any person in accordance with whose directions or instructions the Board of Directors of the Company is accustomed to act, then he could be only

officer who is said to be the officer in default. In the light of the submission made by the Union of India in paragraph 4, accused No. 2 is the Principal Officer which indicates that he was the only officer whose flat was running as regards the affairs of the Company. There is no statement made nor any materials appear produced on record by the Union of India as to how the present set of Petitioners could be obliged with particular responsibility as the Principal Officer as per the decision of the Board of Directors. In light of the above, I find the prosecution of the two Petitioners was in complete breach of the law and as such, an abuse of the process of the Court. The order summoning the petitioners passed on 10.8.2006 is quashed.

The petition is allowed.