

(2001) 01 KAR CK 0035

In the Karnataka High Court

Case No : Criminal Petition No. 1757 of 1998

The Karnataka Bank Limited, Head Office, Kodialabail and
Another

APPELLANT

Vs

B. Suresh

RESPONDENT

Date of Decision : 08-01-2001

Acts Referred:

Companies Act, 1956 — Section 39 (2), 53
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2001) CriLJ 1430 : (2001) ILR (Kar) 1657 : (2002) 1 KarLJ 316 :
(2001) 1 KCCR 397 : (2001) 3 RCR(Criminal) 83

Hon'ble Judges : K.R. Prasad Rao, J

Bench : Single Bench

Advocate : S.G. Bhagavan, for the Appellant; Hemachandra R. Rai, for the
Respondent

Final Decision : Allowed

Judgement

1. This petition is filed u/s 482 of the Cr. P.C. by the accused on the file of the Special Court for Economic Offences at Bangalore in C.C. No. 232 of 1998 against the order dated 15-5-1998 passed by the learned Magistrate registering the case and ordering for issue of process against them on a receipt of a complaint dated 10-11-1997 filed by the respondent and on recording his sworn statement on 15-5-1998.

2. The respondent-complainant filed a private complaint in the Court below for the offences under Sections 39(2), 219(4), 217(2)(a) and 628 of the Companies Act, 1956 (for short, "the Act") alleging that he is a shareholder in the 1st petitioner-company and that by a letter dated 5-5-1997, he requested the 1st petitioner for supply of:-

"(a) entries pertaining to his shares available in the share register;

(b) copy of memorandum or articles of association with up-to-date amendment;

and

(c) balance-sheet including profit and loss account and connected papers to be enclosed to balance-sheet (AGM held in 1995 and 1996) for his use".

In reply to his request, he received a letter dated 13-5-1997 on 24-5-1997 furnishing therewith the copies of memorandum and balance sheet for 1995 and 1996 and incomplete details of entries in the share register. He further alleged that he sent two letters on 26-5-1997 requesting the 1st appellant to furnish him the following particulars.-

"(a) complete entries in the share register, such as date of acquiring the shares, mode of acquisition, name and address etc.,

(b) statement of particulars as required u/s 217(2-A) of the Companies Act, 1956, and also the names and date of appointment of persons holding the post of Secretary, Company Secretary and/or Assistant Company Secretary".

The respondent has stated that the first petitioner supplied the aforesaid particulars along with its letter dated 6-6-1997 which he received on 17-6-1997. He further alleged that by not supplying the memorandum or articles of association and balance-sheet within 7 days from the date of receipt of the requisition by the Bank, the petitioners have committed the offences under Sections 39(2) and 219(4) of the Companies Act. By not furnishing the complete entries standing against the name and folio number of the complainant, the petitioners-accused also committed the offence u/s 217(2-A) of the Act. By not furnishing the material facts knowing it to be material and that they are obliged to furnish the complete entries found in the share register and furnish all particulars under various sections of the Act, the petitioners have also committed an offence u/s 628 of the Act.

3. The learned Magistrate has taken cognizance of the said offences and after recording the sworn statement of the complainant, has passed the impugned order registering a case, ordering for issue of process against the appellants. It is at this stage, the petitioners have approached this Court seeking for quashing the proceedings by filing this petition u/s 482 of the Cr. P.C.

4. Learned Counsel for the petitioners, Sri S.G. Bhagavan raised the following contentions.-

(a) Court below has no jurisdiction to entertain the complaint since the alleged offences have not taken place within its jurisdictional limits, namely, Bangalore Urban and Rural areas of the said Court.

(b) Since the registered office of the 1st accused-company is situated in Mangalore and the cause of action arose only at Mangalore, the place of the head office from where the documents sought for by the respondent-complainant are to be furnished, only the Magistrate Court situated at Mangalore has jurisdiction to entertain the complaint.

(c) Since the offences alleged are petty offences, the learned Magistrate has not followed the procedure prescribed for issue of summons to the accused.

(d) Since the documents sought for by the respondent have been furnished to him, no prima facie case is made out to try the petitioners for the offences under Sections 39(2), 219(4), 217(2-A) and 628 of the Companies Act.

5. I shall now first deal with the question as to whether the Court below has got jurisdiction to entertain the present complaint. In para 11 of the complaint, the complainant alleged that since he resides in Bangalore, the Court below has jurisdiction to entertain the complaint and initiate proceedings in accordance with the provisions of Section 621 of the Act. But on a perusal of the provisions of Section 621 of the Act, it is found that the said section makes it clear that the offences under the Act to be cognizable only on complaint by Registrar, shareholder or Government. The said provision does not relate to the jurisdiction of the Court to entertain the complaint. It is pointed out by the learned Counsel for the petitioners that the relevant provision conferring the jurisdiction on the Court under the Act is Section 53 of the Act. Section 53 of the Act is the provision relating to service of documents on members by company. Section 53 of the Act reads as under:-

"(1) A document may be served by a company on any member thereof either personally, or by sending it by post to him to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him.

(2) Where a document is sent by post,

(a) service thereof shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, provided that where a member has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgment due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

(b) such service shall be deemed to have been effect,

(i) in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted, and

(ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A document advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly served on the day on which the advertisement appears, on every member of the company who has no registered address in India and has not supplied to the company an address within India for the giving of notices to him.

(4) A document may be served by the company on the joint-holders of a share by serving it on the joint-holder named first in the register in respect of the share.

(5) A document may be served by the company on the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by serving the document in any manner in which it might have been served if the death or insolvency had not occurred".

Thus, the above provision makes it clear that the cause of action arises for non-compliance with the said provision at the place where the registered office of the company is situated from where the documents are to be sent and the Court which has jurisdiction for entertaining a complaint for non-supply of the documents is the Court within the jurisdiction limits of which the registered office of the company is situated. This position is made clear by the Supreme Court in the decision in H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, In para 7 at page 581, it is held as follows.-

"Section 113 inter alia, requires that within three months after the allotment of any share and within two months after the application for the registration of the transfer of any such shares, every company shall deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares allotted or transferred. Sub-section (2) provides punishment if default is made in complying with Sub-section (1). Reading Sections 113 and 53 together, share certificates are to be delivered in accordance with the procedure laid down in Section 53. A document is to be served either personally or by sending it by post at registered address within India. Sub-section (2) specifically mentions that where a document is sent by post, such service thereof shall be deemed to be effected by properly addressing, pre-paying and posting the letter containing the document. Hence, once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence, the cause of action for default of not sending the share certificates within stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted".

In para 8, it is further observed as follows:

". . . . when the company posts the dividend warrant at the registered address of the shareholder, the post office becomes the agent of the shareholder and the loss of a dividend warrant during the transit thereafter is at the risk of the shareholder. The Court further held that the place where the dividend warrant

would be posted is the place where the company has its registered office and the offence u/s 207 of the Act would also occur at the place where the failure to discharge that obligation arises, namely, the failure to post the dividend warrant within 42 days...".

(emphasis supplied)

In the instant case, since the registered office of the 1st petitioner-company is situated at Mangalore, the cause of action arose at Mangalore from where the document sought for by the respondent ought to have been furnished which according to the complainant have not been furnished within 7 days. So, the jurisdictional Magistrate Court situated at Mangalore alone has got the jurisdiction to entertain a complaint for the alleged offences mentioned in the complaint for not posting the documents required from Mangalore where the registered head office of the 1st petitioner-company is situated. It is also pointed out by the learned Counsel for the petitioner that according to the Government notification dated 1-9-1992 issued constituting the Special Court for economic offences it has jurisdiction to try offences which took place within the limits of Bangalore District including the Metropolitan Area of the City of Bangalore under the twelve Central Acts referred in the said notification including the Companies Act, 1956. Thus, it is clear that the Court below at Bangalore has no jurisdiction to entertain the complaint in respect of the offences which took place within the jurisdictional limits at Mangalore. In view of the said conclusion, I find it unnecessary to go into the merits of other contentions urged by the learned Counsel for the petitioners.

6. For the above reasons, I find that the Court below has no jurisdiction to entertain the present complaint.

7. This petition is, therefore, allowed and the Court below is directed to return the complaint for presentation to proper Court i.e., for presentation to the jurisdictional Magistrate Court in Mangalore. All other contentions urged by the petitioners are left open.