(1998) 01 MAD CK 0096

In the Madras High Court

Case No : Criminal O.P.No. 16002 of 1997 and Criminal M.P.Nos.6188 and 6189 of 1997

Thomas George — APPELLANT

Vs

Air Asiatic Limited — RESPONDENT

Date of Decision : 22-01-1998

Acts Referred:
Companies Act, 1956 — Section 629A, 630
Criminal Procedure Code, 1973 (CrPC) — Section 205, 91

Citation : (1998) 1 LW(Cri) 301

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Dulip Singh, for the Appellant; C. Jose Ukkur and Anitha Thomas, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Mr. Thomas George, the Petitioner herein has filed this application before this Court seeking to call for the records in C.C. No. 7633 of 1994 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the said proceedings.

2. The matrix of the facts leading to the moving of this application is given hereunder:

The complainant Company, the Respondent herein was incorporated in January, 1990.

The Founder Chairman is Dr. K.C.G. Verghese, the pioneer of the above Company, the Private Air Transport. The Petitioner, the accused was the Vice-Chairman of the Board and Director of the complainant/Company.

3. In the year 1991, the Petitioner complained to the Company Law Board in C.P. No.9 of the 1991 accusing the Board under the Chairmanship of Dr. K.C.G. Verghese of oppression and mismanagement.

4. After enquiry, the Company Law Board, by its order dated 20.1.1992 directed the Founder Chairman to hand over the management along with all the records to the Petitioner herein or to any of his representative.

5. In pursuance of this order, or receipt of a letter dated 31.1.1992 from one Rangarajan, an Advocate, stating that he was authorised to receive the records of the Company on behalf of the Petitioner, the accused, Dr. K.C.G. Verghese had made the entire records available in the office premises for his easy removal. On the same day, the room was locked by the said Rangarajan and key was kept with him.

6. On 22.2.1992 Mr. Rangarajan removed the records. Thereafter, the said Rangarajan handed over the key to the Petitioner for the room in which the books and records were kept locked. The said records and other things were removed on 26.2.1992. After taking charge, the Board Meeting was conducted on 22.2.1992 at Madras in the presence of the Petitioner Thomas George, who was the Chairman of the Board.

7. When the order was passed on 20.1.1992 the Company Law Board imposed a condition on the Petitioner that he should revive the Company within a certain period. However, the said order was not complied with by the Petitioner. Consequently, the Company Law Board dismissed C.P. No. 9 of 1991 by the order dated 7.6.1994.

8. On 2.7.1994, on behalf of the complainant, a letter was written to the accused calling upon him to return all the records and properties of the company. There was no response. So, on 27.7.1994 the complainant again mote to the accused through another letter reminding the earlier letter. Even in spite of the receipt of the letter, the Petitioner did not comply with the demand.

9. Then, on 20.9.1994 the complainant wrote another letter to Mr. Rangarajan, Advocate, who was the representative of the accused and who had actually received the properties to arrange for the return of the records and other things to the complainant.

10. In his immediate reply dated 20.9.1994 Mr. Rangarajan informed the complainant that he had handed over all the properties to the accused, that the same had been confirmed by the resolution of the then Board of Directors and that it is only Thomas George, the accused, who is responsible to return the properties.

11. Having failed in his attempt, the complainant filed a complaint on 17.11.1994 for the offence u/s 630 of the Companies Act for wrongfully withholding the properties of the Company and not delivering it back to the complainant, in pursuance of the order of the Company Law Board dated 7.6.1994 ant! for the offence u/s 629-A of the Companies Act for not having revived the Company by violating the condition imposed upon the Petitioner by the Company Law Board.

12. The learned Chief Metropolitan Magistrate took the case on file in C.C. No.

7633 of 1994 after recording sworn statement for the offences under Sections 629-A and 630 of the Companies Act by the order dated 1.11.1994 and the summons was issued to the Petitioner.

13. On 7.9.1995, the Petitioner filed an application before the lower Court in M.P. No. 2087 of 1995 u/s 205 Code of Criminal Procedure praying for dispensing with the personal attendance of the Petitioner/accused on every hearing and to accept the special vakalat and to permit him to be represented by his counsel.

14. After hearing both the parties, by the order dated 16.10.1995, the learned Chief Metropolitan Magistrate allowed the petition by dispensing with his personal attendance on the future hearing dates and permitting him to be represented through his counsel on special vakalat with a condition that the Petitioner should make himself available before the trial Court as and when his personal attendance is required by it.

15. On 11.3.1996 the complainant, the Respondent herein filed an application in M.P. No. 464 of 1996 in the above complaint u/s 91 Code of Criminal Procedure requesting to direct the Company Law Board to produce all the material documents relating to C.P. No. 9 of 1991.

16. The above application was dismissed on 21.6.1996 mainly on the ground that the complainant did not specifically mention in the petition as to what are all the relevant documents required by him from the Company Law Board for the purpose of this case and there was also no valid reason given by him to call for those documents connected with C.P. No. 9/91. However, this order has not been challenged by the complainant.

17. At this stage, by the application dated 13.11.1997 the Petitioner herein has filed this application for quashing the said proceedings on the following grounds:

(1) The complainant, the Respondent herein filed the petition before the trial Court u/s 91 Code of Criminal Procedure praying the Court to direct the Company Law Board to produce all the material documents relating to C.P. No. 9/91 which was rightly rejected on the ground that no specific mention of documents was mentioned in the above petition. This clearly establishes that the documents and other properties of the Company are not in the possession of the Petitioner and the same are in the custody of the Company Law Board. Therefore, the averment in the complaint stating that the Petitioner is wrongfully withholding the properties of the Company is false.

(2) Even as per the complaint, in pursuance of the order of the Company Law Board dated 20.1.1992 the properties and other records were handed over to Mr. Rangarajan, an Advocate, the nominee of the Petitioner. The said Rangarajan has handed over the key only to the Petitioner. Therefore, Mr. Rangarajan alone is responsible.

(3) The complainant has not disclosed the list of documents in the complaint and as such, cognizance ought not to have been taken for the above referred

offences.

18. The counsel for the Petitioner, on the strength of the decision in Balchand, C. v. The Devashola (Nilgiri) Tea Estate Company Ltd. (1972 L.W. (Crl.) 268) , submitted that in view of the absence of the averment constituting the offences alleged, the proceedings are liable to be quashed.

19. Per contra, the counsel for the Respondent, on the strength of the counter filed on behalf of the Respondent, contended that there are averments in the complaint warranting the trial Court to take cognizance of the offences referred to above.

20. It is relevant to note that the Company Law Board directed Mr. Verghese, the Founder Chairman of the Company by the order dated 20.1.1992 in C.P.No. 9/91 to hand over the properties and records of the Company to the Petitioner. The letters dated 31.1.1992 written by the nominee of the Petitioner, Mr. Rangarajan, Advocate and the voucher issued by the said Rangarajan on 26.2.1992 and the resolution dated 22.2.1992 which was sent by the said Rangarajan would make it clear that the Petitioner has taken over the management of the Company and all the records entrusted to the said Rangarajan have been handed over to the Petitioner. Therefore, to say that no details have been mentioned with reference to the details of the records to be delivered back to the Company may not be sound.

21. In fact, though the opportunity was given as per the order dated 20.1.1992 by the Company Law Board asking the Petitioner to revive the functioning of the Company, the Petitioner did not avail of the said opportunity and had not taken any steps for the revival of the Company. In such circumstance, by the order dated 7.6.1994 the Company Law Board in C.P. No. 9/91 dismissed the said petition holding that despite the fact that the documents were handed over by Mr. Verghese to the Petitioner with the sole aim for the revival of the Company, the Petitioner had given up his revival endeavour and that he had not availed himself of the ultimate relief that could be thought of in a petition by way of entrustment of the management to him, after removing the existing management against which acts of oppression and mismanagement had been complained of.

22. In the said order, the Company Law Board gave a specific direction while dismissing the said petition, which is as follows:

"Petitioner No. 1 (Thomas George) who was appointed by us as the Chairman will within a period of two months, hand over all the properties of the company both movable and immovable which are in his charge and also render full accounts of the company during his tenure as Chairman to the new Board."

23. The reading of the letters dated 2.7.1994 and 27.7.1994 would also go to show that a request was made on behalf of the complainant to return the properties and the accounts of the Company, in pursuance of the order dated

7.6.1994. Both these letters were received by the Petitioner with acknowledgement due.

24. The counsel for the complainant wrote another letter on 20.9.1994 to the nominee of the Petitioner reminding the orders of the Company Law Board dated 7.6.1994. According to the complaint, Mr. Rangarajan, Advocate, who received the letter, in turn, informed the complainant that he already handed over all the properties to the accused and the accused alone was responsible for the return of the properties. Therefore, I do not see any ground in the second and third grounds raised in this quashing application as referred above.

25. The counsel for the Petitioner would strongly rely upon the first point by stressing that the very fact that the Petitioner filed an application u/s 91 Code of Criminal Procedure requesting the lower Court to send for the documents from the Company Law Board would itself show that the Petitioner is not in possession of the properties and the account books of the Company.

26. This point also, in my view, does not merit acceptance. In the Petitioner u/s 91 of Code of Criminal Procedure the prayer of the complainant is to direct the Company Law Board to produce the material documents relating to C.P. No. 9 of 1991. It does not refer about the Company''s records which are in the possession of the Petitioner.

27. According to the counsel for the Respondent, the said application was filed to summon the records in C.P. No. 9 of 1991, since the inventory list which is available in C.P. No. 9 of 1991 would show that the details of the properties and the accounts that were handed over to the Petitioner''s nominee, in compliance with the earlier order of the Board.

28. Even in the said petition u/s 91 Code of Criminal Procedure it is mentioned as follows:

"The complainant has filed this prosecution against the accused for the above offences as he has not handed over all the documents in his possession. Some of the relevant documents regarding C.P.9/91 are in the possession of the C.L.B."

29. The above averments contained in paragraph 3 of the said petition would make it clear that the properties and the account books of the Company which are subject matter are not the documents which were sought to be summoned from the Company Law Board through the application filed u/s 91 Code of Criminal Procedure

30. Therefore, the averments contained in the complaint regarding the non-return of the properties and wrongfully withholding the said properties, which were taken possession by the Petitioner on 26.2.1992 would certainly attract the offence u/s 630 of the Companies Act. Hence, in my considered opinion, the complaint is valid with reference to Section 630 of the Companies Act.

31. The dismissal of the application u/s 91 Code of Criminal Procedure will not

have any bearing with reference to the merits of the case. Even during the course of trial, if the complainant relies upon the inventory list, which was filed in C.P. No. 9 of 1991, he could very well file such an application again for summoning the documents, viz., inventory list or the complainant herein could very well apply for the copy of the inventory list from the Company Law Board and the same may be marked during the course of trial. As such, the complainant has made out a prima facie case for the offence u/s 630 of the Companies Act.

32. However, I must point out that the offence u/s 629-A of the Companies Act, in my view, is not made out in this case. The averments as regards Section 629-A of the Companies Act is non-revival of the Company, despite the order of the Company Law Board. As per the complaint, the said condition was imposed on 20.1.1992 directing Mr. Verghese to hand over the properties and account books to the Petitioner and asking the Petitioner to revive the company giving certain time limit.

33. Since sufficient interest had not been shown, the application in C.P. No. 9 of 1991 was dismissed by the Company Law Board on 7.6.1994 restoring the original position, thereby directing the Petitioner to hand over the properties of the Company to the complainant within two months.

34. Therefore, the act of non-revival on the part of the Petitioner has resulted in the dismissal of his application in C.P. No. 9 of 1991. As such, the non-revival by violating the condition imposed by the Company Law Board is a separate transaction, which cannot be linked with the offence u/s 630 of the Companies Act for having wrongfully withheld the properties of the Company by not delivering them back to the Company in pursuance of the order passed on 7.6.1994.

35. Once the order passed on 7.6.1994 directing the Petitioner to hand over the properties of the Company to the complainant, the earlier transaction of non-revival of the Company would automatically get effaced. Therefore, the complainant could proceed with the accusation only with reference to the offence u/s 630 of the Companies Act on the strength of the non-compliance of the order of the Company Law Board dated 7.6.1994.

36. In other words, the complainant cannot prosecute for the non- compliance of the condition imposed by the order dated 20.1.1992, since the said interim order has been subsequently cancelled by the Company Law Board on 7.6.1994. Therefore, the proceeding as against the Petitioner with reference to the offence u/s 629-A of the Companies Act is liable to be quashed and accordingly, the same is quashed.

37. However, as pointed out earlier, the prosecution is valid with reference to the offence u/s 630 of the Companies Act. So, the trial Court, on receipt of this order, would go on with the trial in respect of the offence u/s 630 of the Companies Act and dispose of the matter as expeditiously as possible.

38. With the above observation, the petition for quashing is partly allowed and no separate orders are necessary in Crl. M.P. Nos. 6188 and 6189 of 1997.

