(2005) 06 KL CK 0059

In the High Court Of Kerala

Case No : Criminal M.C. No. 4113 of 2002

Thomas Philip APPELLANT

Vs

Asst. Registrar RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Companies Act, 1956 — Section 372, 374, 628
Company Regulations, 1956 — Regulation 17
Criminal Procedure Code, 1973 (CrPC) — Section 468(2), 469, 469(1), 482

Citation : (2006) 131 CompCas 842 : (2005) CriLJ 3204 : (2005) 3 ILR (Ker) 132 : (2005) 3 KLT 387 : (2005) 4 RCR(Criminal) 557 : (2006) 71 SCL 344

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : T.R. Ramachandran Nair, C.K. Karunakaran and C.E. Unnikrishnan, for the Appellant; John Varghese and P.S. Sreedharan Pillai, S.C.G.S.C.''s, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—This application is filed by the petitioners, who are accused Nos. 1 to 3, in a criminal prosecution u/s 628 of the Companies Act initiated against them by the first respondent. They pray that the prosecution may be quashed invoking the powers u/s 482 Cr.P.C.

2. The petitioners are Directors of a company. To put it in a nut shell, the principal allegation against them u/s 628 of the Companies Act is that there were fictitious entries in the books of accounts and the balance sheet for the period 1995-96. The balance sheet relates to the period ending 31.3.1996. According to the petitioners - and there is no dispute on that aspect --. the balance sheet was filed before the Registrar on 24.12.1996. The Registrar/his subordinate officials had allegedly held an inspection during the year 1999 (19.2.1999, it is clarified in the counter statement filed). When such inspection report was forwarded to the Regional Director, Madras, the Directorate observed the fictitious entries in the books of accounts and the balance sheet. It is accordingly after complying with

the requisite formalities that the complaint was filed in the year 2001 (24.10.2001 to be specific).

3. The petitioners have raised various contentions. I am not adverting to the contention that the entries are not fictitious and false as the said disputed question cannot be attempted to be resolved while exercising the jurisdiction u/s 482 Cr.P.C. The learned counsel for the petitioners contends that the prosecution is bound to fail and is liable to be quashed by invoking the powers u/s 482 Cr.P.C. for the short reason that the complaint is belated and barred by the provisions relating to limitation in Chapter XXXVI of Cr.P.C., for short the Code. An offence punishable u/s 628 of the Companies Act is punishable with imprisonment for a period which may extend to two years and fine. u/s 468(2)(c) of the Code, three years is the period of limitation. If the date of filing of the balance sheet before the Registrar (24.12.1996) is reckoned as the date on which the period of limitation starts running, then admittedly the complaint filed only on 24.10.2001 is barred by limitation. If instead, the date on which the complainant had knowledge of the commission of the offences (in 1999) were taken into account, the complaint would admittedly be saved and will not be barred by limitation.

4. Section 469 of the Code deals with commencement of the period of limitation. The period of limitation under Clause (a) starts running on the date of the offence. But Clause (b) stipulates that where the commission of the offence was not known to the person aggrieved by the offence or any police officer, the first day on which such offence comes to the knowledge of such person or to the police officer, whichever is earlier, shall be the date of commencement.

5. The allegation relates to entries in the balance sheet. If this Court can take the view that the Registrar must be imputed with knowledge of the offence as soon as he receives the balance sheet, the prosecution will be barred by limitation. But can that be done? This is the question. Two decisions of the Madras and Andhra Pradesh High Courts have been brought to my notice. They are:

1. Asst. Registrar of Companies v. H.C. Kothari and Ors. (1992) 75 Comp. Cas 688 (Mad) and

2. Mishra Dhathu Nigam Ltd. Vs. State, .

6. While the Madras High Court appears to have taken the view that the date of filing of the balance sheet can be assumed to be the date on which the Registrar comes to know of the offence, the Andhra Pradesh High Court has taken the view that it would be too much to draw such an inference. Merely because a balance sheet is filed before the Registrar, it cannot lightly be assumed that the Registrar had on the date of filing itself come to know of the offence which may eventually be revealed from such balance sheet.

7. There may be patent and latent offences revealed from the balance sheet. At least so far as latent offences are concerned, I am in agreement with the Andhra

Pradesh High Court, which took the view that merely because a balance sheet comes into the hands of the Registrar it cannot be assumed that the Registrar had come to know of all the offences revealed on a vetting of the balance sheet. Such a proposition cannot be too widely stated. It would depend on the facts and circumstances of each case. The Madras High Court in the decision referred above was dealing with a prosecution u/s 374 for violation of Section 372 of the Companies Act. It is possible on the facts of that case to hold that an alert perusal of the balance sheet must have immediately revealed the offences and hence the Registrar could have been imputed with knowledge of the commission of the offence as soon as the balance sheet was received. But that cannot obviously be the case in the case covered by the decision of the Andhra Pradesh High Court or the one relating to fictitious entries alleged against the petitioners herein.

8. The learned counsel for the petitioners relies on Regulation 17 of the Companies Regulations framed in 1956 to contend that the Registrar on receipt of a document, like the balance sheet in the instant case shall examine or cause to be examined every document received in his office, which is required or authorised by or under the Act to be registered, recorded or filed. Clause (2) or Regulation 17 further stipulates that if there be any defect or incompleteness, such documents must be returned within a period of 15 days.

9. The learned counsel for the petitioners further relies on circular No.5 of 1991 dt.26.2.1991 issued by the Ministry to contend that there is an obligation that all such documents filed have to be taken on record within a period of 10 days of the date of filing of such document. With the help of these two provisions the counsel contends that the Registrar is bound to receive the same and record it. Counsel further contends that such recording would operate as constructive notice of the contents of the document to all concerned.

10. I have no quarrel with the stipulations in Reg. 17 or the stipulations in the Circular. But in order to agree that the period of limitation has started running as stipulated u/s 469(1)(b) of the Code, it must certainly be shown that the commission of the offence was known to the person aggrieved. An offence like the one alleged in this case - fictitious entries in the balance sheet - cannot be said to have come to the notice of the Registrar actually or constructively on the date when the balance sheet was delivered at his office as to hold that the period of limitation has started running u/s 469(1)(b). The balance sheet and the annexures, as rightly observed by the Andhra Pradesh High Court in the decision referred above, are usually voluminous and the receipt of the balance sheet or even a cursory perusal of the balance sheet cannot and may not bring to the knowledge of the Registrar and his officials information about the commission of the offence. Detailed consideration and application of mind appears to be necessary and the law appears to have alertly taken note of this contingency when it stipulated that the period of limitation u/s 469 will start running only when commission of the offence is known to the person aggrieved.

11. The contention that if such an interpretation were placed on Section 469(1)(b) the complainants will be able to assert that the offence came to their knowledge only on a later point of time that suits them is disturbing. But the contra interpretation may result in graver injustice and prejudice. In an appropriate case the indictee will be able to contend and establish that the complainant did have actual knowledge or at least constructive knowledge about the offence and the period of limitation had started running from that day. That option will secure the interests of prevention of misuse of the provisions of Section 469(1) (b). The Legislature advisedly has chosen to stipulate that in a case where the person aggrieved did not have knowledge of the commission of offence, not the date of offence but the date of knowledge of the offence alone must be reckoned as the date of commencement of limitation.

12. In this view of the matter, I am unable to agree, with the materials presently available, that this complaint is barred by limitation. I may hasten to observe that I have not intended to place any fetter on the right of the accused to raise all contentions, including the contention that the Registrar had known about the commission of the offence or must be attributed with constructive knowledge of the commission of the offence u/s 469(1)(b) of the Act on the date of filing of the complaint or on any later date as to start the clock of limitation. Mere receipt of the balance sheet will not set that clock ticking.

13. This Crl.M.C. is, in these circumstances, dismissed with the above observations.

