

(2007) 06 KAR CK 0001

In the Karnataka High Court

Case No : Criminal Petition No"s. 1930, 1931 to 1933, 3566, 4637, 4938 to 4941 and 3540 etc. etc. of 2006

V.G. Sreeram and etc.

APPELLANT

Vs

Smt. Indumati B. Chandachal and Others

RESPONDENT

Date of Decision : 28-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 405, 418, 420

Citation : (2007) CriLJ 3809 : (2007) 6 KarLJ 63

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : C.H. Jadhav, P. Prasanna Kumar, S.K. Venkata Reddy and K.A. Ariga, for the Appellant; Umesh R. Malimath and H.C. Siddagangaiah, Govt. Pleader, for the Respondent

Judgement

V. Jagannathan, J.—The facts giving rise to all these petitions being one and the same and as the grounds urged by the petitioners also involve common question of facts and law, with the consent of the learned Counsel for the parties, all these petitions are heard on merits finally and being disposed of by this common order. As such, the question of considering the I. As. filed for vacating stay in all these cases does not arise inasmuch as the petitions are being disposed of on merits.

2. The facts common to all these petitions briefly stated are to the effect that the Karnataka Financial Services Ltd. a registered company having its registered office at Bangalore, which company is accused No. 1 in the private complaint filed before the learned Magistrate made offer to "the public in, respect of secured Redeemable Non-convertible Bonds, and-having been attracted by the high rate of interest offered, the respondents herein who are the complainants before the trial Court, deposited various amounts as mentioned in their respective complaints and were issued bonds. When the bonds got matured, the respective complainants requested the above said first accused-company to refund to them the amount along with interest. The first accused company did

not return the bond amount in spite of the bond period having been completed and therefore, the respective complainants filed the private complaint before the trial Court u/s 200 of the Cr.P.C.

3. It was contended in the complaint filed that the accused mentioned in the complaint were responsible for non-payment of the bond amount and the accused persons had misrepresented the facts inasmuch as although the accused persons were aware of the fact that the first accused-company had filed application for registration With the Reserve Bank of India and the said request came to be rejected and although the Reserve Bank of India had directed the first accused-company to inform the people who had put in their hard earned money and also to take necessary steps to refund the amount deposited by the respective investors who are the complainants in all these cases, the accused persons failed to do so. But on the other hand, the first accused company and the other accused persons continued to receive deposits from the complainants and thus, all the accused persons are liable for being punished under Sections 405, 418, 420 of the I.P.C. and under Sections 58-A(2)(5) & (6) and Section 68 of the Companies Act, 1956. The complaint allegations are almost identical in all these cases, Excepting the amount invested by the respective complainants being different sums as could be seen from the particulars furnished in the respective complaints.

4. After recording statements of respective complainants and taking into account the documents produced at that stage, learned Magistrate came to the conclusion that the complainants in each of the cases have made out a prima facie case for the Court to take cognizance of the alleged offences and accordingly the Court directed, to register the complaint and ordered issue of summons to the accused persons. It is this order of the learned Magistrate taking cognizance and directing issue of summons to the accused persons that is called in question in all these petitions.

5. The petitioner in Cri. P. Nos. 1930/ 06,1931/06, 1932/06, 1935/06 and 1933/ 06 is V.G. Sreeram the Trustee of the first accused-company. The petitioner in Cri. P. Nos. 3538 3539, 3540, 3542, 3543 and 3544 of 2006 is A. Aravind Rao, one of the directors of the first accused-company. The petitioner herein in Cri. P. Nos. 4938, 4939, 4940, 4941, 4958 and 4637 of 2006 is one Sadashiva Rao, the Chairman of the first accused-company. The accused persons before the learned Magistrate in the private complaints filed by the respective complainants are the Karnataka Finance Services Ltd.-A1, Rajaram Khandige, Executive Director-A2, Sadashiva Rao, Chairman-A3 and the Directors of the company viz., Anant Bhat-A4, K. T. Vijayakrishna-A5, K. Narayan Bhatt-A6, Aravind Rao-A7, V.G. Sreeram-A8 and Ravi Kumar Shantaveerayya Hanagodimath, Branch Manager-A9, It has to be mentioned here that insofar as Cri. p. Nos. 3538/06 and 4938/06 are concerned, among the accused persons mentioned as above V.G. Sreeram is left out. But in all other cases, the said Sreeram also finds place as accused No. 8 in the complaint. The brief description, therefore makes it clear that the petitioners

before this Court are the Chairman Sadashiva Rao, Director Aravind Rao and the Trustee V.G. Sreeram. As far as the respondents before this Court are concerned, the respective complainants have been shown as second respondents in Cri. P. Nos. 4938, 4939, 4637, 4940, 4941, 4958/2006 and 3566/2006. In other cases, the complainants are the respondents herein.

6. I have heard the learned Counsel Sri S.A. Venkat Reddy for the petitioner-Aravind Rao and learned Counsel Sri Ariga appearing for the petitioner Sadashiva Rao and Sri C. H Jadhav learned counsel appearing for V.G. Sreenam and also Sri Umesh R. Malimath learned Counsel for the respective respondents. as well as the learned State Public Prosecutor Sri H.C. Siddagangaiah for the State.

7. The submission of learned Counsel Sri S.K. Venkat Reddy is that as far as the petitioner. Aravind Rao is concerned he is one of the Directors of the Company and he has no role to play and he was not in charge of the company and further, the complaint does not indicate the specific role played by this petitioner either in the offer made by the company with regard to deposits made by the investors or in the non-payment of the maturity amount to the respective complainants. The role of each of the directors; is not mentioned, in the complaint and therefore, the complaint is very bald in nature and does not make out any offence against the Director, Aravind Rao and as such, when the complaint itself is a defective one and there being no specific allegations made nor any offence made but against this petitioner, the proceeding against this petitioner is liable to be quashed. In this connection, it was also submitted that, this, petitioner Aravind Rao resigned from the Board of Directors on 20-9-2002 and his letter of resignation has been produced at Annexure-B. Apart from the complaint, this petitioner has also filed suit in O.S. No. 7966/2003 and his prayer for declaring him as having ceased to be the Director of the first accused-company came to be allowed by the trial Court by its order dated 29-1-2004, Taking this into account, if we look at the date of maturity of the bonds, it becomes clear that on the date of maturity of the bond, this petitioner was no more a Director of the first accused-company and as such, he cannot be held responsible for non-payment of the amount invested by the respective complainants.

8. Learned Counsel also placed reliance on several decisions of the Apex Court and this Court, in support of his contention that the Director of the company cannot be prosecuted, where no specific allegations are made against the Director in the private complaint filed. It was also submitted that merely because a person happened to be a Director of the company, he does not automatically become liable for prosecution, unless it is shown that the Director had specific role to play in the affairs of the company. Referring to Section 58-A of the Companies Act, it was further submitted that there is no violation of the provisions of the said section on the part of the petitioner who was the Director of the company and referring to Section 633 of the Companies Act, it was submitted that this Court has power to hold that the Director has not committed any of the alleged offences. The decisions on which the learned Counsel placed

reliance are as follows:

- (i) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another,
- (ii) State of Haryana Vs. Brij Lal Mittal and Others,
- (iii) Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others,
- (iv) Dr. C.R. Bhansali Vs. K. Ramesh and another,
- (v) Cri. P. No. 5169/2005; Cri. P. No. 4034/2004; Cri. P. No. 3234/2004.

9. Learned Counsel Sri Ariga for the petitioner Sadashiva Rao who was the Chairman of the Board of Directors of the Company submitted that the offences alleged against this petitioner, under the Companies Act do not get attracted and referring to a decision reported in (1983) 54 Comp Cas 197, it was submitted that when there is no material placed to show that the petitioner herein had either knowledge or participated in the affairs of the company, the said person cannot be prosecuted u/s 633 of the Companies Act which confers upon the Court the exceptional power to excuse a petitioner from prosecution for and the liability of an act which has, under the Companies Act, penal consequences. Another decision referred to in this connection reported in 59 Com Cas 356 which decision is to the effect that when the petitioner being a Director of the company, but had not taken part in any act of borrowing or in resolution for borrowing in excess of limits, and when there was no act on the part of the said Director wilfully having been authorised or permitted someone to borrow monies in excess of the limits, the said Director could not be said to be an officer in default.

10. Learned Counsel placed reliance on a recent decision of the Apex Court reported in AIR 2007 SCW 1880 : AIR 2007 Kar 247 to contend that when there is no material to show that the director of the company had a role to play, he cannot- be made liable u/s 141 of the Negotiable Instruments Act.

11. Another decision referred to by the learned Counsel for the petitioner Sanjay G. Revankar Vs. State, and this decision is to the effect that all the Directors of the Company cannot be proceeded with unless there is some specific averment in the complaint about their being responsible for the day to day affairs.

12. Learned Counsel Sri C. i4. Jadhav for petitioner-V.G. Sreeram, the Trustee of the company submitted that this petitioner also had no role to play in the entire transaction of investment or non-payment of the maturity amount. It was also submitted that this petitioner had retired in the year 2002 and reference was made to the Trust agreement to contend that there has to be a resolution of not less than 3/4th of the bond holders to hold a meeting and a complaint cannot be filed in the manner as fled in the instant case and as such, the allegations in the complaint taken on its face value does not make out commission of the alleged offences under Sections 415, 418 and 470 of the I.P.C. as this petitioner had resigned much earlier to the date of maturity of the bond and as he was not responsible for the day-to-day affairs of the company and further the dispute

being a dispute of civil nature, the trial Court could not have taken cognizance and issued the process against this petitioner. In other words, learned Counsel reiterated the contentions put forward by the learned Counsel Sri S.K. Venkata Reddy and the learned Counsel Sri A. N. Ariga for the other petitioner.

13. Repelling the above contentions, Sri. Umesh Malimath for the respective complainants contended that all the petitioners herein who were the accused before the trial Court had a role to play and in whatever capacity they were connected with the company in question, they had the knowledge of the affairs of the company and this is very evident from the letter of offer made by the company itself and under the caption Board of Directors, the names of these petitioners find a place either as Chairman or as Directors and therefore, these petitioners are liable for being prosecuted because it is so mentioned in the offer letter which is produced at page 19 marked as Ex. P-2 before the Magistrate and thus, the company was managed on day-to-day basis by the Executive Directors, and the Board of Directors. Referring to the above, as the said fact being mentioned in the offer letter, it is contended that the petitioners herein are responsible for the default committed in not refunding the maturity amount to the respective complainants. It is also submitted by him that the complainants had made investment basing on the fact that Aravind Rao, is one of the Directors of the Company had good reputation. The directors also owe a duty to the investors in ensuring that their hard earned money is paid back to them upon the bond amount getting matured. It is also submitted that as the complainants had deposited their long savings in the form of bond taken out by them and as all the Directors were fully aware of the affairs of the company and more importantly as they were also aware of the fact that RBI had refused to register the first accused-company and had even directed the company to take necessary steps to refund the money to the investors, the very act of the first accused-company and the other Directors of the company in continuing to accept the deposits even after the RBI's refusal itself is sufficient proof of the fact that the accused persons had misrepresented and misguided the investors and as such, the offences alleged against the accused persons are made out. It is also submitted by the learned Counsel that by offering a very high rate of interest the accused persons lured investors by not refunding the amount on maturity. The accused persons therefore, had cheated the investors and the cognizance taken by the learned Magistrate does not call for any interference. Insofar as the power of this Court u/s 482 of Cr.P.C. is concerned, learned Counsel Sri Umesh R. Malimath placed reliance on the decision of the Apex Court reported in Hareram Satpathy Vs. Tikaram Agarwala and Others, : J.P. Sharma Vs. Vinod Kumar Jain and Others, : Rajesh K. Gupta Vs. Ram Gopal Agarwala and Others, He also referred to the decision, reported in Dr. A. Ebenezer Vs. Smt. M. Mary, to contend that the company had failed to keep up the promise of paying high interest on the amount deposited and thus, caused great loss to the investors. It is thus contended that all the offences alleged under the Companies Act are also made out, by the respective complainants as could be seen from the complaint

allegations.

14. Having thus, heard the averments made by the learned Counsel for the respective parties, the only point for consideration is, whether the trial Court was justified in taking cognizance and directing process to be issued to accused Nos. 1 to 9.

15. The facts insofar as the respective complainants having deposited their amounts with the first accused company and further fact that the respective bonds had attained maturity and despite that fact, the company did not refund the matured amount to the respective complainants, are not in dispute. It is also not in dispute that the Reserve Bank of India had rejected the request of the first accused company for being registered with the RBI and this is clear from the 12th Annual Report for the year 2001-2002 and Clause 17 in particular makes a mention of the RBI having refused to Grant of Certificate of Registration to the first accused company on 23-8-2002. Now the question is as to whether all the accused persons are liable for prosecution in respect of the offences alleged against them in the complaint. The petitioners before this Court are the Chairman Sadashiva Rao, Director Aravind Rao and Trustee V.G. Sreeram. As far as these three persons are concerned, a perusal of the complaint discloses that it was A1 who made the offer of placement of bonds and assured that the bonds will carry interest at 12% for 12 months and 13% for 17 months and it was A1 and A2 through A9 got the bonds released and as per the complaint it was. A1. who had issued several letters promising refund of the amount through its Executive Director-A2 and Chairman A3. It is also mentioned that the application filed by Accused No. 1 company u/s 45-IA of the Reserve Bank of India Act came to be rejected and A1 was directed by the RBI to bring this fact to notice of investors and RBI had directed the said A1 to take necessary steps to refund the amount to the investors forthwith. It is also mentioned in the complaint that A9 the Branch Manager of the company approached the complainant with attractive scheme of interest and induced the complainants to invest and part with their money in the bonds and that A1 was also aware of the company being not authorised to collect deposits or investment as non-banking financial company and that A1 was also aware of it having been ceased to be a non-banking financial company the moment RBI had refused to register the company.

16. As far as the role of other accused persons is concerned the Complaint mentions that A2 to A7 knew that they would not be in a position to refund the amount of maturity to the complainants and it is also stated that A9 with the collusion of A2 to A7 wilfully misrepresented the facts and induced the company and invest in the scheme.

17. As far as the prosecution of the Directors of the Company is concerned, it is necessary to keep in view the position in law as laid down by the Courts in various cases.

18. In the case of N.K. Wahi v. Shekhar Singh and Ors. AIR 2007 SCW 1880 :

AIR 2007 Kar 247 dealing with the case under the Negotiable Instruments Act, 1881, the Apex Court has held that where it was found on facts that the Director had resigned from the Directorship of the Company before the date of the cheque being issued and before depositing of the cheque by the drawee and where there was no averment in the complaint as to, how and in what manner the Director was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning, the question of proceeding with against the said Director therefore, will not arise and consequently the Court quashed the proceedings as against the Director of the Company in the said case. This Court in the case of Sanjay G. Revankar Vs. State, has observed that unless there is specific averment in the complaint about the Director of the Company being responsible for day-to-day affairs, the Director therefore cannot be proceeded with. The Court also: observed that where the complaint did not make any specific averment about the role of each of the Directors except baldly stating in the complaint that the Directors of the Company are also responsible for day-to-day affairs of the firm or company, the question of the Directors being proceeded with the case will not arise.

19. In the decision reported in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, the Apex Court has held that by merely being Director of the Company, that itself is not sufficient to make that person liable u/s 141 of the Negotiable Instruments Act and the Director of the company cannot be deemed to be incharge of and responsible to the Company for conduct of its business. In the decision reported in the case of State of Haryana Vs. Brij Lal Mittal and Others, the Apex Court has held that as there is no allegation to indicate even prima facie that the Directors of the Company were in charge of the Company and also responsible to the Company for the conduct of its business, the prosecution against them is liable to be quashed.

20. Having regard to the above settled position in law as regards the Directors of the Company is concerned, in the case on hand a perusal of the complaint averments does not make any specific allegation against the petitioner-Directors herein and it is not stated anywhere in the complaint that petitioners herein who are the Directors were actually responsible for the day-to-day affairs of the Company or for that matter in What manner the petitioners-Directors are accountable to the Company insofar as the complaint allegations are concerted. Therefore, in the case before us as the complaint is bereft of the details of the specific role assigned to each of the Directors of the Company and in the absence of there being any averment to show in what manner are the Directors before this Court are responsible for the day-to-day affairs of the company, a mere allegation in the complaint that A-2 to A-7 being Directors are also responsible for the default committed by the Company, will not be sufficient to take the view that the petitioner Directors have committed the alleged offences. In coming to this conclusion, I have kept in view the law laid down by the Apex Court in the aforementioned case and also the other case referred to above. As far as the decision referred to by the learned Counsel for the respondent is concerned the

said decision reported in S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, lays down the proposition that complaint could not be quashed on the ground that there was no material to show that at the time of the offence, the petitioner Directors were responsible or in charge of the Company's business. The said decision in my considered view is not applicable to the case on hand, because as stated in the petition itself, the Director Aravind Rao resigned from the Company and the act of resignation took place much before the deposits matured and therefore on the date of request made by the respective complainant for refund of their amount, the said Director Aravind Rao ceased to be the Director of the Company and this is also evident from the order passed by the Civil Court in O.S. No. 7966/2003. Therefore, it cannot be said that for i non-payment of the maturity amount this petitioner is responsible because: he had ceased to be the Director much before the said date had occurred. Similarly is the case with the petitioner Sadashiva Rao who is said to have resigned much before the deposit amount had matured and therefore the question that these two petitioners and petitioner V.G. Sreeram being responsible for non-payment of the deposit amount will not arise.

21. As far as the scope of this Court u/s 482, Cr. P.C. is concerned no doubt as rightly contended by the learned Counsel for the respondent a detailed examination is not called for and complaint will have to be taken as a whole without addition or subtraction and having regard to the above proposition of law, I have carefully gone through the entire, complaint averments and taking them as a whole still it is not possible to take the view from a reading of the entire complaint on its face value that the: Directors herein are in any way responsible for the day-to-day affairs of the Company and no such specific averment is made in the complaint that these two petitioners Aravind Rao and Sadashiva Rao, had any specific role to play in the entire transaction and in the absence of such averment being made mere omnibus statement that these petitioners being Directors are also responsible for default committed by the Company, therefore cannot be accepted. As far as the scope of Section 482 of the Cr. P.C. is concerned the Apex Court in their recent decision in Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another, has laid down the following proposition of law after referring to the various decisions touching on the point rendered by the Apex Court earlier. The said observations are as under:

Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse, of the process of Court, and " (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction- No legislative enactment dealing with procedure can provide for all cases that

may possibly arise. The Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts.

While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist.

In exercise of the powers the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed* it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even; if the allegations are accepted in toto. It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.

The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

22. Having regard to the above position in law as stated by the Apex Court, in the case on hand, it cannot be said that the complaint taken on the whole makes out a case against the petitioners Directors namely Sadashiva Rao and Aravind Rao and so also V.G. Sreeram. However, the same cannot be said about the first accused company, second accused two Directors and accused No. 9, the Branch Manager and therefore, I am of the view that the trial Court was in error in issuing process against the petitioners herein. As far as the other accused persons mentioned above namely A-1, A-2 and A-9 are concerned, as there is

specific averment in the complaint that the company was fully aware of its application being rejected by the RBI for being registered with the RBI and despite that company had proceeded to issue the bonds. As A-1, A-2 and A-9 being the persons responsible for the day-to-day affairs of the Company as could be seen from the very role played by them as mentioned in the complaint itself, a case is made out for proceeding against these three persons.

23. As far as the contentions urged by the learned Counsel Sri. Umesh R. Malimath, that this Court cannot take into consideration, the fact that the Directors Arvind Rao and Sadashiva Rao having resigned from the Company because these were not brought to the attention of the trial Court, and this Court therefore cannot take that into consideration is (sic) concerned, although in the petition filed before this Court the above said Director Arvind Rao and Sadashiva Rao have stated specifically in their petition that they resigned from the Company much before the maturity of the bond amount, though this is one of the factors taken into consideration by this Court, the main ground upon which this Court has arrived at the conclusion that they cannot be proceeded is that in the entire complaint no specific allegations have been made out against these two petitioners and the kind of role played by them or as to whether they were actually managing the affairs of the Company on day-to-day basis and therefore, in the absence of such specific averment made in the complaint, the law laid down by the Apex Court in the aforesaid decision in AIR 2007 SCW 1880 : AIR 2007 Kar 247, becomes applicable and as such I do not find any merit in the submission of the learned Counsel for the respondents in this regard.

In the result, I pass the following order.

ORDER

The petitions filed are allowed and the proceedings initiated against these petitioners pursuant to various private complaints filed by the respective complainants herein are quashed. As this Court has taken the view that the cognizance taken against A-1, A-2 and A-9 is in accordance with law, as far as the said accused persons are concerned the proceedings initiated against them shall continue. As the other accused persons i.e., A-4, A-5, A-6 and A-7 are not before this Court, I refrain from making any observation against them. All the petitions stand disposed of accordingly.