
(2003) 03 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 124 of 2002

Vijay Kumar Gupta

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Companies Act, 1956 — Section 146(4), 5, 628

Citation : (2004) 50 SCL 171 : (2003) 3 ShimLC 149

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Ankush Sood, N.D. Sharma, for the Respondent

Judgement

1. This revision-petition under Sections 397 and 401 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been preferred by the petitioners-accused (hereafter referred to as "the petitioners") against the order dated 25-5-2002 passed by the learned Additional Chief Judicial Magistrate, Shimla in Criminal Case No. 403/99 whereby notice of accusation u/s 146/628 of the Companies Act has been ordered to be put to the petitioners.

2. Brief facts leading to the presentation of this petition are that the complainant/respondent No. 1 (hereafter referred to as the complainant) filed a complaint against the petitioners and respondents 2 and 3 under Sections 146 and 628 of the Companies Act, 1956. The case of the complainant as made out in the complaint is that as per the particulars filed with the office of the complainant-respondent No. 2 is a Company incorporated under the Companies Act having its registered office at Wood Land House, New Land Estate, Circular Road, Shimla and respondent No. 3 is its Managing Director and the petitioners are the Directors. It is statutory obligation of the Company and its Directors to inform the complainant about the situation of its registered office and any change therein by filing Form No. 18 in the office of the complainant. As per the said form filed by the respondent-Company on 10-7-1991, the situation of its office is

given as "Wood Land House, New Land Estate, Circular road, Shimla". However, on an inspection undertaken by the Assistant Registrar of Companies, it was found that at the address so given, there was no registered office of the respondent-Company. Therefore, the Company and its Directors have contravened Section 146 of the said Act and rendered themselves liable for punishment u/s 146(4) of the said Act and they are further liable for being punished for the commission of an offence u/s 628 of the said Act for giving the aforesaid false information in Form 18. On the basis of the said complaint, the learned Chief Judicial Magistrate, Shimla took cognizance and summoned the petitioners and respondents 2 and 3 and after hearing the parties passed the impugned order and put accusations to the petitioners and respondent No. 3.

3. Being aggrieved, the petitioners have preferred the present petition on the grounds that they are not the "officers in default", therefore, the impugned order directing putting of accusations to them and consequential proceedings as also the complaint filed by the complainant are liable to be quashed.

4. I have heard the learned counsel for the petitioners, the learned Additional Central Government Standing Counsel for the complainant and the learned counsel for the respondent Nos. 2 and 3 and have also perused the records.

5. The first accusation against the petitioners is that along with respondents 2 and 3, they violated the provisions of Section 146 of the Companies Act, Section 146 of the said Act reads as under ;

"146. Registered office of company.--(1) A company shall, as from the day on which it begins to carry on business, or as from the (thirtieth) day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of every change therein shall be given within (thirty) days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same :

Provided that except on the authority of a special resolution passed by the Company, the registered office of the company shall not be removed-

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act, or where it may be situated later by virtue of a special resolution passed by the Company; and

(b) in the case of any other company outside the local limits of any city, town or village where such office is first situated, or where it may be situated later by virtue of a special resolution passed by the Company.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation

imposed by Sub-section (2).

(4) If default is made in complying with the requirements of this section, and company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues."

6. A bare perusal of the aforesaid section makes it clear that a company must have a registered office and must give a notice of the situation of the registered office and of every change therein to the Registrar of Companies within 30 days after the date of the incorporation of the Company or after the date of the change in the situation of its office. In the event of default in complying the aforesaid requirements, every officer of the company who is in default shall be liable for punishment under subsection (4) supra. Thus, the liability for prosecution and punishment is that of the officer of the company who is in default.

7. Section 5 of the Companies Act defines the "Officer who is in default" and reads as follows :

"5. Meaning of "officer who is in default".--For the purpose of any provisions in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :

- (a) the managing director or managing directors;
- (b) the whole time director or whole time directors;
- (c) the manager;
- (d) the secretary;
- (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;
- (f) any person charged by the Board with the responsibility of complying with that provision:

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified all the directors:

Provided that where the Board exercises any power under Clause (f) or Clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form."

8. It is clear on a bare reading of the aforesaid definition of "officer who is in default" that the Managing Director(s), if any, whole time directors, if any, manager, if any, secretary, if any, any person in accordance with whose directions or instructions, the Board of Directors of the company are accustomed to act, any person charged by the Board with the responsibility of complying with the provisions of the Act with his consent, are primarily the officers in default. However, if the company does not have any of the aforesaid officers, any director or directors, who may be specified by the Board or in the absence of any Director having been so specified, all the Directors of the Company, shall be the officers in default. Therefore, all the Directors of the Company will be officers in default within the meaning of Section 5 of the Act only when there is no Managing Director, whole time Director, Manager, Secretary, a person, charged by the Board with the responsibility of complying with the provisions of the Act and the Director/Directors specified by the Board under Clause (g) of Section 5.

9. In the case in hand, it is admitted case of the complainant, as per the contents of para 2 of the complaint, that respondent No. 3 is the Managing Director of respondent No. 2-Company. If so, it is respondent No. 3 who is an officer in default and liable for prosecution along with respondent No. 2 for breach of the provisions of Section 146 of the Companies Act. Other Directors, viz., the petitioners having not been alleged to be the officers in default within the meaning of Section 5 of the Companies Act, their prosecution u/s 146 of the Companies Act is unwarranted and illegal.

10. The other accusation against the petitioners and respondents 2 and 3 is regarding filing of a false information punishable u/s 628 of the Companies Act. Section 628 of the said Act reads as follows :

"Section 628. Penalty for false statements.--If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement-

(a) which is false in any material, particular, knowing it to be false; or

(b) which omits any material fact, knowing it to be material;

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine."

11. Evidently, under the aforesaid provisions, the liability is of the person who makes a statement which is false in any material particulars knowing it to be false or omits to state any material facts knowingly.

12. In the case in hand, the case of the complainant is that wrong information has been furnished to the office of the Registrar vide Form 18 dated 13-7-1991 (Annexure 1). A perusal of Annexure 1 prima facie reveals that this form has been furnished by Vijay Kumar Gupta, petitioner No. 1. In case the information furnished vide Annexure P-1 is false evidently, this information has been

furnished by petitioner No. 1, therefore, he being the person giving false information/statement about the situation of the head office of the Company-respondent No. (sic) is liable to be proceeded against u/s 628 of the Companies Act. It is not the case of the complainant that the petitioners 3 and 4 are in any manner connected with the filing of the alleged false Form 18. Therefore, prosecution of petitioners 2 to 4 u/s 628 of the Companies Act is unwarranted and illegal.

13. In view of the above findings, the impugned order insofar it directs putting of accusations under Sections 146 and 628 of the Companies Act to petitioners 2 to 4 and accusations u/s 146 to petitioner-Vijay Kumar is concerned, it is liable to be set aside and the consequential proceedings against them are liable to be quashed.

14. As a result, this petition is partly allowed and the impugned order is set aside to the extent it holds petitioner No. 1 liable to be prosecuted u/s 146 and petitioners 2 to 4 under Sections 146 and 628 of the Companies Act and the consequential proceedings against them are accordingly quashed.

15. Parties, other than petitioners 2 to 4, through their learned counsel are directed to appear before the trial court on 18-3-2003.

Petition partly allowed.