
(2006) 10 AP CK 0081
In the Andhra Pradesh High Court
Case No : Criminal Petition No. 4293 of 2001

Vinod Baid

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-10-2006

Acts Referred:

Companies Act, 1956 — Section 113, 113(1), 113(2), 133, 150
Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2), 469(1), 472, 482

Citation : (2007) 1 ALD(Cri) 613 : (2007) 139 CompCas 324 : (2007) 78 SCL 313

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : Milind G. Gokhale, for the Appellant;

Judgement

Ramesh Ranganathan, J.—Seeking to have the proceedings in STC No. 146 of 2001, on the file of the Special Judge for Economic Offences, Nampally, Hyderabad, quashed, this criminal petition is filed by the 3rd accused. The complaint, in STC No. 146 of 2001, was filed by the Registrar of Companies, A.P., Hyderabad on 21-8-2001, u/s 113(2) of the Companies Act, for contravention of the provisions of Section 113(1) of the Companies Act.

2. The 1st accused in STC No. 146 of 2001, is a Public Limited Company and accused 2 to 5 are its Directors and are officers in default during the relevant period when the offence was committed. It is alleged, in the complaint filed in STC No. 146 of 2001, that the office of the complainant had received letter dated 1-8-2000, along with certain investor complaints, from the Department of Company Affairs, New Delhi. It was thereupon noticed that the company had failed to comply with the provisions of Section 113(1) of the Companies Act, 1956 in effecting transfer, in favour of the proposed transferees, and in failing to deliver share certificates to them. The names, addresses and other details of the investors, and their security particulars, were furnished in Annexure-A to the complaint. It is alleged that, in accordance with Section 113(1) of the Companies

Act, the accused ought to have effected transfers in favour of the proposed transferees and to have delivered share certificates to them within two months from the date of lodgement of the applications for registration of transfer of such shares, that on receipt of the investor complaint through the Department of Company Affairs, New Delhi, the complainant's office had issued notice to the accused on 25-9-2000 to show-cause as to why criminal proceedings should not be initiated against them, that in response thereto the accused had requested the complainant, vide letter dated 14-10-2000, to grant one month's time to comply with the subject provisions and as the complainant did not receive any sort of information from the accused, a reminder was sent on 19-4-2001 and the said reminder was returned undelivered by the postal authorities with the remarks "refused". It is alleged in the complaint that all the accused had violated the provisions of Section 113(1) and (2) of the Companies Act.

3. Sri Milind Gokhale, learned Counsel for the petitioner, would refer to the date of commencement i.e., 1-1-1995, as noted in STC No. 146 of 2001, to contend that the learned Magistrate ought not to have taken cognizance of the offence since it was beyond the period of limitation prescribed u/s 468 of the Criminal Procedure Code. Learned Counsel would submit that even if 1-8-2000, when the complainant had received the complaint from the Department of Company Affairs, New Delhi, is taken to be the date of knowledge, even then, since the penalty prescribed u/s 113(2) is only fine, the period of limitation is six months and as the complaint was filed only on 21-8-2001, more than one year from the date of knowledge, it is barred by limitation. Learned Counsel would place reliance on *Nestle India Ltd. v. State* [1999] 22 SCL 33 (Delhi); *Registrar of Co. v. Rajshree Sugars & Chemicals Ltd.* [1998] 18 SCL 382 (Mad.); and *Registrar of Co. v. Rajshree Sugars & Chemicals Ltd.* [2000] 25 SCL 510 (SC). Learned Counsel would submit that the offence, u/s 113 of the Companies Act, is not a continuing offence as defined u/s 472 of the Criminal Procedure Code. He would refer to Section 159 of the Companies Act which requires every company to file, before the Registrar of Companies, an annual return as prescribed in Schedule V and to Section 162 of the Companies Act which provides that, if the company fails to comply with the provisions contained in Section 159, the company and every officer of the company, who is in default, shall be punishable with fine which may extend to Rs. 50 for every day during which the default continues. According to the learned counsel, as the provisions of Section 162 of the Companies Act is similar to that of Section 113(2) of the Companies Act, and as the Division Bench of the Calcutta High Court in *National Cotton Mills Ltd. v. Asstt. Registrar of Co.* [1984] 2 Comp. LJ. 272 has held that Section 159 read with Section 162 of the Companies Act was not a continuing offence, Section 113(1) and (2) of the Companies Act must also be held not to be a continuing offence. According to the learned Counsel as, u/s 468, Cr.P.C., no Court can take cognizance of an offence, after expiry of the period of limitation prescribed under Sub-section (2), and as the complaint itself was filed more than one year after the date of knowledge on which date, u/s 469(1)(b), Cr.P.C., the period of

limitation commences, the order of the Court below in taking cognizance of the offence was liable to be quashed.

4. Before examining the aforesaid contentions, it is necessary to refer to Sections 113 159 and 162 of the Companies Act and Sections 468 469 and 472 of the Criminal Procedure Code which read as under:

Companies Act:

113. Limitation of time for issue of certificates. - (1) Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred:

Provided that Central Government may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks allotted or transferred shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods.

The expression "transfer" for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with Sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of Sub-section (1), fails to make good the default within ten days after the service of the notice, the Central Government may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(4) Notwithstanding anything contained in Sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

159. Annual return to be made by company having a share capital - (1) Every company having a share capital shall, within sixty days from the day on which

each of the annual general meeting referred to in Section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding-

(a) its registered office,

(b) the register of its members,

** ** (d) its shares and debentures,

(e) its indebtedness,

(f) its members and debenture holders, past and present, and

(g) its directors, managing directors, managers and secretaries, past and present:

Provided that if any of the five immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

Explanation. - Any reference in this section or in Section 160 or Section 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.

(2) The said return shall be in the Form set out in Part II of Schedule V or as near thereto as circumstances admit and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, the company shall file with the return a statement specifying the reasons for not holding the annual general meeting:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.

162. Penalty and Interpretation. - (1) If a company fails to comply with any of the provisions contained in Section 159, Section 160 or Section 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(2) For the purposes of this section and Section 159, Section 160 and Section

161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act,

Criminal Procedure Code:

468. Bar to taking cognizance after lapse of the period of limitation. - (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation. - (1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

472. Continuing offence. - In the case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

5. In *Nestle India Ltd. v. State* [1999] 22 SCL 33 (Delhi), the summons issued by the Additional Chief Metropolitan Magistrate, pursuant to a complaint filed by the respondent for an offence u/s 113 of the Companies Act, was sought to be quashed in proceedings u/s 482, Cr.P.C. The contention raised by the petitioners, before the Delhi High Court, was that the complaint was barred by limitation u/s 468 read with Section 469, Cr.P.C. as it had been filed beyond six months after

the offence had been committed. The Delhi High Court observed:

As this case is about transfer of shares/debentures, the period for registration of the transfer is two months on receipt of application made according to the procedure laid down u/s 53 of the Act for such transfer. As mentioned in the complaints, shares are alleged to have been lodged on 7-8-1990; 12 non-convertible debentures were lodged on 30-11-1990 and 270 non-convertible debentures were lodged on 15-11-1990. Assuming these as the correct dates when the shares and debentures were actually delivered to the petitioner company, the registration/transfers u/s 113 should have been made within two months, i.e., by 7-10-1990 in respect of shares and by 31-1-1991 and 15-1-1991 in respect of the debentures. The offence thus would have been committed on the expiry of 7-10-1990, 31-1-1991 and 15-1-1991 and the fact must be known to the owner of the shares, i.e., UTI on that day or at any rate within a reasonable time thereafter. The reasonable time would be the time that would be taken in normal course of transit either by personal delivery or through the postal agency, which would be couple of days or at the most, one week thereafter. The offence is punishable u/s 113(2) with fine only. The period of limitation for initiating action is six months u/s 468(2)(a) read with Section 469(a) of the Code from the date when offence was committed....

6. In *Rajshree Sugars & Chemicals Ltd.*'s case (supra), the Registrar of Companies had filed a Criminal Revision, against the order passed in CrI. M.P. 2007 of 1992 in C.C. 371 of 1992, dated 30-3-1993, whereby the complaint was dismissed as time barred. The Madras High Court, after referring to Sub-clause (3) of Section 133 of the Companies Act, observed:

11. A reading of the above said section makes it clear that on the application of the person entitled to have the certificates or the debentures delivered to him within the prescribed time alone, an order directing the company and any officer of the company shall be made to make good the default within such time as may be specified by the Registrar of Companies. It was pointed out that no prejudice or loss was caused to the Company Law Board and since the shareholder had sent an application, the complaint filed is incompetent and also barred by time. It is true that in the above rulings, the interest of public at large was given the main consideration and, therefore, it was held the Registrar of Companies gained knowledge only from the date of inspection, the date of the receipt of the chemical report and the complaint was held to be in time. In the present case, admittedly, no application has been sent by any of the shareholders that by the delay, he was put to difficulty or any loss was caused to him. The explanation that there is no adequate machinery to conduct periodical inspection, in my opinion, does not appear to be a convincing answer to excuse the delay in filing of the complaint, especially when the Registrar of Companies cannot be the aggrieved party u/s 113 [of the Companies Act]....

7. Against the order of the Madras High Court, when the matter was carried in appeal the Apex Court, in *Registrar of Co. v. Rajshree Sugar & Chemicals Ltd.*

[2000] 25 SCL 510 observed:

6. In this case, the complaint filed by the appellant was u/s 113(2). It was alleged in the complaint that the company was sent share transfer certificates along with applications for transfer in two batches, 23-11-1990 and 18-12-1990. The first batch of applications for transfer was received by the company on 11-12-1990, approved on 29-3-1991 and despatched on 6-4-1991. The second batch of applications was received on 26-12-1990, approved by the company on 3-4-1991 and despatched on 16-4-1991. Apparently, Section 113(1) was not complied with. This came to the knowledge of the appellant only on 20-7-1992 when the appellant inspected the books of account of the company u/s 209A(1) (i) of the Act. The complaint was filed by the appellant on 20-8-1992 before the Chief Judicial Magistrate, Coimbatore.

** ** 8. It is unnecessary to decide whether the offence u/s 113 of the Companies Act is a continuing one u/s 472 of the Cr. PC on the facts of this case. Even if the offences were a continuing one, the offence, if any, continued up to the date when the deliveries were in fact effected u/s 113, viz., on 6-4-1991 and 16-4-1991. As the offence of delayed delivery is punishable with a fine, the time to initiate proceedings u/s 468 of the Code would expire at the latest in October, 1991. The appellant, in fact, filed the complaint almost a year later.

[Emphasis supplied]

8. From a reading of the complaint, it is clear that the complainant had received letter dated 1-8-2000 from the Department of Company Affairs whereas the complaint u/s 113 of the Companies Act was filed more than one year later on 21-8-2001 and cognizance was taken thereafter. Since the period of limitation, u/s 468(2)(a), Cr.P.C, is six months, and as the complaint itself was filed more than one year after the date of knowledge, no cognizance could have been taken of the offence since it is barred by limitation.

9. The question which then arises for consideration is as to whether the offence, u/s 113 of the Companies Act, is a continuing offence, in which event u/s 472, Cr.P.C. a fresh period of limitation will begin to run at every moment of the time during which the offence continues and the bar u/s 468, Cr.P.C. would not apply.

10. Section 159 of the Companies Act relates to preparation and filing of annual returns, containing the particulars specified in Part I of Schedule V, with the Registrar of Companies within the time specified thereunder. Failure to comply with the provisions u/s 159 attracts penalty u/s 162 of the Companies Act and, under Sub-section (1) thereunder, every officer of the company who is in default shall be punishable with fine which may extend to Rs. 50 for every day during which default continues. It is necessary to note that Section 162(1) of the Companies Act, insofar as it provides that every officer in default shall be punishable with fine for every day during which the default continues, is similar to Section 113(2) of the Companies Act. The distinction is in the quantum of fine. While the fine prescribed u/s 162(1) is Rs. 50 for every day of default, the fine

prescribed u/s 113(2) is Rs. 500 for every day during which the default continues. The question, as to whether the offence u/s 159 read with Section 162(1) of the Companies Act was a continuing offence or not, came up for consideration in National Cotton Mills Ltd's case (supra) and the Division Bench of the Calcutta High Court observed:

...The case of State of Bihar Vs. Deokaran Nenshi and Another, seems to be more to the point. That was a case under the Mines Act. Section 66 of the Act provides that any person omitting inter alia, to furnish any return in the prescribed form or manner within the prescribed time shall be punishable with fine which may extend to Rs. one thousand. Section 79 lays down that no court shall take cognizance of any offence under this Act unless a complaint has been made within 6 months from the date on which an offence is alleged to have been committed. The Explanation to the section provides that if an offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. In that case, the complaint was filed more than 6 months after the default. The question that fell for consideration was whether the offence was a continuing one or not so that the Explanation to Section 79 might be invoked. It was observed that continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It was held that the offence was complete on the owner failing to furnish the annual return by the date prescribed. Continued disobedience or noncompliance was not made an offence under the regulation under which the prosecution was started. In that view of the matter, the complaint was found to be time barred....

...On a careful review of the legal position, it is difficult for us to agree with the view expressed by a learned Single Judge in the above case. As pointed out by the Supreme Court in order to constitute a continuing offence, it must arise "out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with". Section 150 of the Companies Act does not impose any liability which so continues. The offence on the breach thereof is complete with the failure to furnish the return in the manner or within the time stipulated such an offence is committed once and for all as and when one commits the default. That provision does not contemplate that the obligation to submit such returns continues from day to day until the return is actually submitted nor does it provide that continuance of business without filing of such returns is prohibited so that non-fulfilment of a continuing obligation or continuing of business without filing of such returns becomes a continuing offence. When Section 162 of the Companies Act prescribed the penalty of fine "which may extend to fifty rupees for every day during which the default continues", it merely prescribed the measure of penalty such a prescription being made with the object of enforcing strict compliance with the requirement of Section 159 under the threat of enhanced penalty and getting relief from such penalty on enhancing scale by early submission of returns even after the default is a continuous one. It cannot

be said that the offence is repeated or committed from day to day after the initial default. It is only where the offence is committed from day to day or repeated for day to day that it can be called a continuing offence. There being no express provision in Section 126 in that behalf as there are in Sections 234, 598 etc. of the Companies Act, it will not be proper to hold that the offence u/s 162 is a continuing offence. When the statute itself provides for continuance of offence irrespective of initial default in some other offences, it would not be correct to say that the latter class of cases also would be continuing offences....

[Emphasis supplied]

11. u/s 113(1) of the Companies Act, every company shall, within three months after the allotment of shares, debentures, stocks etc. and within two months after an application for registration of the transfer of any such shares, debentures, stocks etc. is made, deliver the certificate of such shares, debentures, stocks allotted or transferred. The time limit prescribed u/s 113(1) is for delivery of the certificates and it is within three months after the allotment and within two months after an application for registration of transfer is made. The liability u/s 113(1) does not continue until the rule, or its requirement, is obeyed or complied with. The offence, on the breach of Section 113(1), is complete once and for all on the failure to deliver the shares, debentures and stocks within the time stipulated. There is no continuing obligation even after expiry of the time limit. Section 113(2), which prescribes the penalty, is with the object of enforcing strict compliance with the requirement of Section 113(1) under the threat of continuous penalty. The offence u/s 113(1) is not repeated or committed day to day after the initial default and cannot, therefore, be said to be a continuing offence attracting the provisions of Section 472 of the Code of Criminal Procedure.

12. Since the penalty prescribed, for violation of Section 113(1) of the Companies Act, is fine of Rs. 500 for each day during which the default continues, even if the period of limitation is calculated from the date of knowledge u/s 469(1)(h) of the Code of Criminal Procedure, cognizance could not have been taken beyond six months in view of the bar in taking cognizance u/s 468(2)(a), Cr.P.C. In the case on hand, since the complaint itself was filed more than one year after the date of knowledge, no cognizance can be taken of the offence u/s 113(1) of the Companies Act. Proceedings in S.T.C. No. 146 of 2001, on the file of the Special Judge for Economic Offences, Nampally, Hyderabad, for the offence u/s 113(1), read with Section 113(2) of the Companies Act is quashed. The criminal petition is allowed.

13. This Court acknowledges the valuable assistance rendered by Sri O. Kailashnath Reddy, learned amicus curiae.