(2000) 07 AP CK 0090

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1866 of 2000

Zee Telefilms Ltd. and Others — APPELLANT

Vs

State of A.P. and Another — RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:
Companies Act, 1956 — Section 113, 53

Citation : (2000) 2 ALD(Cri) 351 : (2000) 39 CLA 173 : (2002) 110 CompCas 884

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Ch. Dhanamjaya, for the Appellant; Public Prosecutor and Narayan Laxman Rao, (For Respondent No. 2), for the Respondent

Judgement

B. Sudershan Reddy, J.—This is a petition filed u/s 482 of the Code of Criminal Procedure to quash the proceedings in S.T.C.No.7 of 2000 pending on the file of the learned Special Judge for Economic Offences, Hyderabad. The petitioners herein are the accused in the said case.

2. The second respondent herein filed a complaint before the learned Special Judge against the petitioners herein for the offence punishable u/s 113 of the Companies Act, 1956 (for short ''the Act''). It may be necessary to briefly notice the relevant facts before adverting to the question as to whether the petitioners are entitled for any relief in this petition.

3. The parties herein shall be referred to as arrayed in the complaint.

4. A1 is a Public Limited Company having its registered office at Mumbai; A2 is the Chairman of A1 Company; A3 is the Managing Director, A4 to A6 are the Directors and A7 is the Company Secretary of A1 Company. It is the case of the complainant that he had purchased hundred shares of M/s.Zee Telefilms Limited on 24-7-1996 bearing distinctive numbers vide Certificate No.164197. The said shares were purchased by the complainant on the National Stock Exchange

Limited through M/s.Quest Fin Sec Markets Limited situated at Hyderabad. The complainant sent the said shares to the Registered Office of A1 Company on 7-9-1996 for effecting the transfer of the said shares in his name. It is averred that the accused did not deliver the said shares duly transferring in his name. The complainant having waited for about eight months sent a reminder to the Company on 23-5-1997 requesting to deliver the said shares to the complainant duly transferring the same in his name. In spite of the reminder, the accused failed to deliver the shares to the complainant duly transferring the same in his name. The complainant sent another reminder dated 7-8-1997 requesting the accused to deliver his shares. But, there was no response.

5. It is the case of the complainant that it is mandatory and obligatory on the part of the accused to deliver the shares to the complainant within two months and its non-compliance without any valid reason is an offence punishable u/s 113 of the Act. The complainant got issued a legal notice dated 13-12-1999 through his counsel and sent the legal notice to all the accused persons on 18-12-1999 by registered post with acknowledgement due. The accused were put on notice to deliver the shares to the complainant within the stipulated time as prescribed in the notice. The accused failed to deliver the shares to the complainant. It is under those circumstances, the complainant filed the complaint before the learned Special Judge.

6. It is clearly alleged that A2 is the Chairman of A1 Company and being its Chairman he is the key person playing most important role of planning and operations of A1 Company and participates in day-to-day affairs and management of the company. The other accused are also alleged to be responsible for the conduct of the operations and administration of A1 company, and therefore, all of them are in charge and responsible to A1 company for the conduct of its business. In the circumstances, they are also liable to be prosecuted and punished, is the case of the complainant. This in substance is the complaint.

7. The accused in this petition deny all the allegations and averments made against them in the complaint. This aspect need not detain us any further since it would not be possible for this court to record any findings whatsoever with regard to the truth or otherwise of the allegations made in the complaint against the accused.

8. In this petition, Sri Ch.Dhanamjaya, learned counsel for the accused-petitioners submits that the complainant-second respondent admittedly purchased shares of the Company at Hyderabad, but the Registered Office of the Company is situated at Mumbai and the complaint if any at all could have been filed where the Registered Office of the company is located and not before the learned Special Judge for Economic Offices at Hyderabad. To be precise, it is contended that the learned Judge for Economic Offences at Hyderabad has no jurisdiction to entertain the complaint.

9. Therefore, the question that falls for consideration is as to whether the complainant-second respondent had filed the complaint in proper court and whether the learned Special Judge for Economic Offences at Hyderabad has jurisdiction to entertain the complaint and proceed further in the matter.

10. In my considered opinion, the question raised in this petition is not res integra. It is clearly covered by an authoritative pronouncement of the Apex Court in H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, . It was also a case where the complainant lodged criminal cases before the Special Court for Economic Offences in Karnataka at Bangalore on the allegation that the respondent Companies therein had committed offences punishable u/s 113 of the Companies Act. The complainant in the said case is a practicing Advocate. It was his case that he was a permanent resident of Bangalore and letters requesting the Company to transfer the shares and to send memorandum, articles of association, balance sheets etc., were sent from Bangalore to the registered offices of the companies and, therefore, the cause of action also arose at Bangalore. The Karnataka High Court arrived at the conclusion that under the provisions of Section 53 of the Companies Act two modes are prescribed for serving the documents, one to serve personally and the other by post. As the documents were sent to the respondent by post, as required by him, the cause of action would arise only where the head office is situated. The court accordingly directed the learned Magistrate to return the complaint for presentation before the proper court with an endorsement to that effect. The said decision was challenged in the Supreme Court. The Supreme Court after elaborate consideration of the matter held:

"Section 113, inter alia, requires that within three months after the allotment of any shares and within two months after the application for the registration of the transfer of any such shares, every company shall deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares allotted or transferred. Sub-section (2) provides punishment if default is made in complying with sub-section (1). Reading Sections 113 and 53 together, share certificates are to be delivered in accordance with the procedure laid down in Section 53. A document is to be served either personally or by sending it by post at a registered address within India. Sub-section (2) specifically mentions that where a document is sent by post, such service thereof shall be deemed to be effected by properly addressing, prepaying and posting the letter containing the document. Hence, once there is a statutory mode of delivering the document by post and deeming provision of such delivery, the place where such posting is done is the place of performance of statutory duty and the same stands discharged as soon as the document is posted. Hence the cause of action for default of not sending the share certificates within the stipulated time would arise at the place where the registered office of the company is situated as from that place the share certificates can be posted and are usually posted. If the addressee is available at the same locality where the registered office of the company is situated, it is reasonable to think that service of documents may be effected by personally delivering to him. But if the addressee is residing at a distant place it is unreasonable to expect the company to depute somebody to travel up to that distance to personally deliver it to him. The only usual mode which any company would then adopt is to send it to him by post. For such default, as contemplated u/s 113, there is no question of any cause of action arising at the place where the complainant was to receive postal delivery. What is punishable under sub-section (2) of Section 113 is non-delivery, in accordance with the provision laid down u/s 53, of the certificates of shares within the prescribed time. So, if the documents are posted within the stipulated time, there would be compliance of Section 113 and that there would not be any offence."

The Supreme Court accordingly held that the cause of action would arise at the place where the Registered Office of the Company is situated in case of an offence punishable u/s 113 of the Act. The Supreme Court held that the cause of action for failure to deliver the shares and certificates or documents within the prescribed time would arise where the Registered Office of the Company is situated. Thus, the question that arises for consideration is squarely covered by the decision of the Supreme Court.

11. Mere fact that the complainant-second respondent purchased the shares of A1 Company at Hyderabad is of no consequence. May be, the complainant-second respondent ordinarily resides at Hyderabad and notices were sent from Hyderabad requiring the accused-petitioners to send share certificates duly transferring the same in the name of the complainant-second respondent. But, admittedly the Registered Office of A1 Company is situated in Mumbai.

12. Following the above judgment of the Supreme Court, it is held that the learned Special Judge for Economic Offences at Hyderabad has no jurisdiction to entertain the complaint.

13. In this petition, the accused-petitioners have also raised a plea with regard to limitation. Having regard to the facts and circumstances of the case and since the question relating to limitation is mixed question of fact and law, the learned counsel for the accused-petitioners submits that the plea relating to the complaint being barred by limitation may be kept open for adjudication by the trial court. There cannot be any objection whatsoever to accept the submission made by the learned counsel for the accused-petitioners. In the circumstances, no opinion is expressed by this court on the question of limitation. The question is left open.

14. This petition is accordingly disposed of directing the learned Special Judge for Economic Offences at Hyderabad to return the complaint to the complainant-second respondent for presentation before the proper court with an endorsement on the said complaint to that effect. It shall be open to the complainant-second respondent to present the complaint before the competent court of jurisdiction to try the complaint in accordance with law.

