

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.M.C. 138/2005

% Date of Decision : 25.05.2009

DR. L.B. SINGH ...PETITIONERS
Through: Mr. Abhay K. Das, Mr. Prem Kr. Jha,
Advocates

Versus

REGISTRAR OF COMPANIES NCT OF DELHI & HARYANA & ANR.
...RESPONDENTS
Through: Mr. Dalip Mehra, Mr. Rajiv Ranjan
Mishra, advs.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

: **MOOL CHAND GARG, J.(ORAL)**

1. The present petitioner is for quashing of compalint (C.C. No.461/2002 dated 07.05.2002)). The ROC/Respondent has filed the said complaint under Section 63 & 628 of Companies Act, 1956 alleging mis-statement/wrong statement in prospectus dated 18.04.1995 (of M/s Cilson Finance & Investment Ltd.) against its directors/signatories. The prospectus was for public issue of 10,00,000 equity shares of Rs.10/- each. This has been admitted by the respondent (U/para 2 & 3) of complaint in page No.22F of petition) that the company had filed prospectus dated 18.04.1995 with the office of respondent and the prospectus was also got registered by respondent before raising public issue. Thus, the respondent was fully aware about the factum of said prospectus from very inception, i.e.,

18.04.1995. However, impugned complaint was filed by the respondent on 07.05.2002, i.e., after 7 years while limitation period prescribed u/s 468(2)(c) is 3 years as maximum penalty prescribed for violation of Section 63 & 628 of Companies Act is of two years imprisonment.

2. The defence for filing delayed complaint has been given in para 6 of the complaint (page 22H of petition) that sanction/permission is required from Department of Company Affairs (hereinafter referred to as 'DCA') for filing the impugned complaint and the permission was given vide letter dated 03.03.2002. The respondent in their reply to petition under para 8(c) says that there is no delay in filing the complaint under Sections 468, 469, 470, 471, 472 of Cr.P.C. and says that offence came to their knowledge when they got sanction letter dated 03.03.2002 from DCA.

3. The identical issue of limitation, sanction from DCA, delayed complaint filed by respondent and identical defence given by Registrar of Companies has recently been settled by this Court in Crl.M.C.1777/2005 titled as Sunair Hotels Ltd. Vs. ROC vide order dated 18.03.2009.

4. In that case also, the complaint said to have been filed within the period of limitation if it is counted from the date when they received sanction from DCA and therefore, they were entitled to seek condonation of delay of period which had been taken by the DCA in granting prior permission. The respondent relied upon Section 470 Cr.P.C. (Exclusion of time in certain cases), however, the explanation attached to sub Section 3 to Section 470 Cr.P.C. states that "In

computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of order of the sanction of Government or other authority shall both be excluded.

5. However, in the complaint filed by respondent, it has nowhere been stated that as to when the application for seeking sanction for prosecution of petitioner was lodged before the DCA though it has been stated that the sanction/permission was given vide letter dt. 13.03.2002 under para 6 of complaint. In the complaint there is also no averment to justify the delay which has been caused in filing the complaint. In the summoning/cognizance order dated 07.05.2002 of learned ACMM also, there is no mention about moving of any such application by the respondent.

6. It is stated that the complaint filed by the respondent is clearly barred by limitation inasmuch as for the purpose of computing the time required for obtaining the sanction of the Government, it was necessary for the respondent to have specified the date on which the application was made for obtaining sanction/permission for computing the period of limitation because as per Explanation, only that period which could have been excluded was the time required for obtaining the sanction of the Government or any authority can only be excluded, if an application is filed after a period of 3 years then the question of exclusion does not arise. The identical issue of limitation has also been decided in CrI.M.C.23/2005 titled as Rajiv Kumar Vs. ROC vide order dated 05.05.2009 where the complaint filed under Section 628 of

Companies Act, 1956 by ROC was quashed.

7. It is submitted that the punishment for making a mis-statement in a prospectus is punishable under Section 63 of the Companies Act which provides punishment of two years. The said Section for the sake of reference is reproduced hereunder:

63. Criminal liability for misstatements in prospectus:-

(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ¹[fifty thousand rupees], or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given--

(a) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or

(b) the consent required by sub-section (3) of section 60.

8. Section 628 of the Companies Act which is the other provision for which the petitioners are sought to be prosecuted also provided punishment of two years only. The said provision also reads as under:

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.

9. It is submitted by the petitioners that for any offence punishable for up to two years the period of limitation is only three years as per the provisions of Section 468 of the Cr.P.C. As such the complaint which has been filed after seven years of the filing of the prospectus is barred by limitation.

10. The issue raised by the petitioner in this petition is no more res integra in view of the judgment passed by this Court in Crl.M.C.1777/2005 titled as Sunair Hotels Ltd. and Anr. Vs. The Registrar of Companies and Anr. decided on 18.03.2009 as well as in Crl.M.C.23/2005 titled as Rajiv Kumar & Ors. Vs. ROC & Anr. Decided on 05.05.2009 wherein this Court has observed:

6. Section 374 of the Companies Act reads as under:

374 - Penalty for contravention of section 372 or 373:- If default is made in complying with the provisions of¹[section 372 [excluding sub-sections (6) and (7)] or section 373], every officer of the company who is in default shall be punishable with fine which may extend to²[fifty thousand rupees.

7. Similarly, it will also be appropriate to take note of Section 468 of Cr.P.C.

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.

¹[(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.]

It was further held:

8. In view of the aforesaid it is apparent that the limitation to take cognizance of the offence alleged to have been committed by the petitioner expired long ago before the filing of the complaint which has been filed sometimes in 2004.

9. The only explanation given by the respondents to justify the delay is that the sanction for lodging the prosecution against the petitioner company was required to have obtained prior to the filing of this complaint which was received from the Department of Company Affairs, Shastri Bhawan, New Delhi. They have also relied upon the provisions of Section 470(3) of the Code of Criminal Procedure and submits that in the circumstances, the period taken by them in obtaining the prior sanction which they say has to be excluded from the period of limitation as provided under Section 468 of the Cr.P.C. Since the sanction was received only on 13.04.2004 and, therefore, filing of the complaint within 6 months thereafter is justified and brings the complaint within limitation.

10. Coming to the judgments which have been relied upon by the petitioner I find that in the case of Vinod Kumar Jain (supra) it has been held:

(4) The petitioner appeared in the trial Court in obedience to the process issued to him but he has challenged the legality and validity of the summoning order through this petition.

(5) The learned counsel for the petitioner has at the outset assailed the cognizance of the complaint by the learned Additional Chief Metropolitan Magistrate on the ground that the complaint was hopelessly barred by time on the date it was presented and the learned Magistrate could not take cognizance of the same without first condoning the delay as envisaged in Section [473](#) of the Code and that too after notice to the petitioner. Hence, the impugned order, according to him, is vocative of principles of natural justice. Moreover, it betrays total non-application of judicial mind with regard to the facts spelt out by the respondent-complainant in the application made by him under Section [473](#) of the Code for condensation of delay. As pointed out by him, the cryptic order" and find prima facie grounds to proceed against the accused under Section [473](#) Criminal Procedure Code", does not disclose whether the learned Additional Chief Metropolitan Magistrate condoned the delay and if so, on what ground.

(6) SUB-SECTION (1) of Section [468](#) of the

Code lays down that except as otherwise provided elsewhere in the Code, no court shall take cognizance of an offence of the category specified in Sub-section (2) thereof after the expiry of the period of limitation prescribed in clauses (a), (b) & (c) of the Sub-section. Obviously the bar of limitation operates before the court takes cognizance of an offence. Under clause (a). Sub-section (2) of Section [468](#), the period of limitation is six months if the offence is punishable with fine only as is admittedly the position in the instant case. Section [469](#) of the Code prescribes the terminus a quo for the commencement of period of limitation. It is the date of the offence or where the commission of the offence was not known to the person aggrieved by the offence, the first day on which such offence comes to the knowledge of such person whichever is earlier. In the instant case, the contention of the respondent-complainant is that he came to know of the commission of offence on 24th January 1981 when he perused the report of the Inspecting Officer Shri O.P. Chadha. Obviously, therefore, the complaint was hopelessly barred by time on the date of its institution.

(7) Section [473](#) of the Code, however, provides that notwithstanding anything contained in the foregoing provisions the court may take cognizance of an offence after the expiry of period of limitation provided therefore if it is satisfied on the facts and in the circumstances of the case that (i) the delay has been properly explained; or that (ii) it is necessary so to do in the interests of justice.

(8) It is thus manifest that if a complaint is prima facie barred by time when it is filed, it becomes necessary for the prosecuting agency to explain the delay and seek condensation of the same. Unless the delay is condoned the court cannot take cognizance of the complaint. In other words, the Magistrate has to apply his mind to the question of limitation at the pre-cognizance stage and satisfy himself that delay has been properly explained or that it is necessary to condone the delay in the interests of justice. The Magistrate cannot hasten to issue the process without first recording his satisfaction that the delay was satisfactorily explained to him or that he was of the view that the condensation of delay was in the interests of justice. It is highly doubtful that the court can condone the delay and thus extend limitation subsequent to the taking of cognizance of the offence. Of course, the condensation of delay may be implied from the act of the Magistrate in taking cognizance after the expiry of the period of limitation and proceeding with the

case but the order must be clear and categorical in this respect. He has no power or authority to condone the delay provisionally or ex facie as has been seemingly done in the instant case.

(9) In *State of Punjab v. Sarwan Singh*, AIR 1981 SC1054, the accused Sarwan Singh was convicted of an offence under Section [406](#), Indian Penal Code, by the trial Court. However, on appeal having been preferred by him, the High Court set aside his conviction and acquitted him mainly on the ground that the prosecution launched against him was clearly barred by limitation under sections [468](#) & [469](#) of the Code. The State went in appeal by special leave to the Supreme Court but the same was dismissed with the following observations which are very pertinent to notice:.

"The object of Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article [21](#) of the Constitution. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

(10) Obviously an accused person acquires a valuable right the moment his prosecution is barred by limitation. Hence, that right cannot be taken away except in accordance with the provisions of law. It is, therefore, imperative for the court taking cognizance of the offence to apply its judicial mind as to whether the prosecution has satisfactorily explained the delay in launching prosecution at the pre-cognizance stage i.e. when the Magistrate applies his mind for the purpose of proceeding under Section [200](#) and the succeeding Sections in Chapter 15 of the Code. Since the discretion vesting in the Magistrate to condone the delay or not has to be judicially exercised, the principles of natural justice require that the accused must be afforded an opportunity before he is called upon to face the prosecution in a time barred matter. As observed by a Division Bench of this Court in *State (Delhi Administration) v. Anil Puri and others* ILR 1979 Delhi 350

11. In the present case, the respondents have submitted that it is only when a balance sheet was filed by the petitioners for the year ending 31.03.2001 that they came to know that the statement made in the prospectus was not correct and accordingly they gave a show cause notice which was given on 21.05.2002 and then they have filed a complaint dated 14.01.2004. It is submitted that the delay had been caused because of obtaining sanction etc. from the department concerned.

12. However, when in the complaint it is not stated as to from which date the limitation starts so as to bring the complaint within limitation nor it is stated as to when they applied for obtaining sanction of the competent authority to file the complaint and when the sanction was granted, it does not lie in the mouth of the respondents to submit that the complaint was within limitation.

13. Accordingly, the petition is allowed and the complaint filed by the respondents is dismissed as barred by limitation. The order of the learned ASJ is also set aside. Bail bond of the petitioner stands discharged.

MOOL CHAND GARG,J

MAY 25, 2009
anb