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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 10th 2010

Date of Order: August 25, 2010

+ CrI. M.C. No.1997/2009

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Manjit Jaju

25.08.2010

...Petitioner

Versus

Registrar of Companies N.C.T. of Delhi & Haryana ...Respondents

Counsels:

Mr. Abhay K. Das & Ms. Shabnam Shalini for petitioner/appellant
Ms. Preeti Dalal for respondent.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By the present petition under Section 482 Cr.P.C the petitioner has sought quashing of criminal complaint no.451 of 2002 and the proceedings emanating therefrom filed by Registrar of Companies against the petitioner for offences under Sections 63 and 628 of Companies Act, 1956 on the ground that the complaint was barred by limitation under Section 468 Cr.P.C.

2. It is submitted that the period of limitation prescribed for filing such complaint was three years from the date of alleged misstatement or false statement in the prospectus and the present complaint was filed after about 7 years. The prospectus was issued by the petitioner on 17th July, 1996 and the complaint was filed on 7th May, 2002.

3. A perusal of Section 468 Cr.P.C would show that the period of limitation for taking cognizance of offence where the punishment prescribed under law for offence was a term of one year imprisonment but not exceeding three years imprisonment, was three years. The starting point of limitation as prescribed under 468 Cr.P.C is either the date of commission of offence or the date of knowledge of commission of offence which ever was later.

4. The plea taken by the petitioner that the period of limitation has to be counted from the date of issuance of prospectus is a baseless plea. The offence under Section 63 of the Companies Act stands committed when prospectus containing untrue statement is issued and offence under Section 468 of the Companies Act is committed if the return, report, balance sheet, prospectus, the statement etc. issued by the company are found to contain untrue statements or false material or such vital material is omitted which has bearing. Both the offences are punishable with imprisonment upto two years and/or with fine. Thus, the period of limitation for both the offences is three years. However, the limitation would start from the date when Registrar of Companies acquired knowledge about false statement. The process of issuing prospectus or filing of balance sheet, statements, certificate cannot be a starting point of limitation as by such an act, the Registrar of Companies would not come to know whether the statement made in the prospectus was a false statement or truthful statement. Unless it is brought to its knowledge by the affected persons or an enquiry is held by Registrar of Companies about the truthfulness, the knowledge that the statement was false cannot be attributed to the Registrar of Companies. When the Registrar of Companies acquired knowledge about the false statement cannot be gone into by this Court under Section 482 Cr.P.C as it involves a probe into the facts. When a complaint is filed before the Court of Magistrate under Section 63 and 628 of the Companies Act, the Court of Magistrate is supposed to take cognizance of the offence on the basis of allegations made in the complaint. Whether the complaint was filed within period of limitation is a matter of evidence.

This Court in *Bhupinder Kaur Singh & Ors v Registrar of Companies* 142(2007) DLT 277 considered this question and observed as under:-

"11. Coming to the question of limitation, again this is a mixed question of law and fact. As mentioned above, falsity/misstatement in the prospectus can be proved by showing that funds were utilized ultimately for some other purpose, which event would happen subsequently and only when this is brought to the notice of the complainant and the complainant gets knowledge thereof that the period of limitation would run. {See "*Rajshree Sugar (supra)*"; *Anita Chadha v.Registrar of Companies*, 96 (1999) *Company Cases* 265; *Thomas Philip v. Asst. Registrar, being Crl.M.C. No. 4113/2002* decided by the High Court of Kerala; *Manganese Ore (India) Ltd. v. Municipal Council through its Chief Officer, Uttarwar*, MANU/MH/0613/2002; and *State of Rajasthan v. Sanjay Kumar and Ors.*, (1998) 5 SCC 82}.

Therefore, at this stage the complaints cannot be thrown out on the ground of limitation and this is the issue which will have to be decided by the trial court after the evidence is led by the parties. Discussion upto this stage would take care of Crl. M.M. No. 3241/2002 which pertains to the criminal complaint No. 698/2002."

5. The learned counsel for the petitioner relied on *L.B. Singh, Dr. v Registrar of Companies NCT of Delhi & Haryana & Anr.* 2009(111) DRJ 204 and *Sonai Hotels & Another v ROC* 2009 109DRJ 545 both given by the same Bench. Both these judgments are *per curium* and in these judgments the decision of this Court in *Bhupinder Kaur Singh (supra)* was not considered at all. With due regard to the Single Judge, under Section 482, the Court cannot enter into an inquiry and cannot decide the disputed questions of facts. Disputed questions of facts can only be decided during trial. The power under Section 482 Cr.P.C is to be exercised very sparingly and only where the trial court had acted in gross illegality. Where the trial

court had not even gone into the issue of limitation and the facts are yet to be proved, this Court cannot go into the issue of limitation, since the limitation is a mixed question of law and facts, and quash the complaint.

6. I, therefore, consider that the judgments relied upon by the counsel for the petitioners are of no help to the petitioner. The petition is hereby dismissed. The petitioner, however, would be at liberty to raise the issue of limitation before the trial court during the trial.

7. The petition stands dismissed.

August 25, 2010
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SHIV NARAYAN DHINGRA, J