

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 16th September, 2011

+ CRL.M.C. 82/2005

PAWAN GOYAL & ORS. Petitioners
Through: Mr.J.S.Bakshi, Advocate.

versus

SEBI & ORS. Respondents
Through: Mr.Nitish Jain, Advocate.

+ CRL.M.C. 132/2005

PAWAN JINDAL & ANR. Petitioners
Through: Mr.J.S.Bakshi, Advocate.

versus

SEBI & ORS. Respondents
Through: Mr.Nitish Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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

PRADEEP NANDRAJOG, J. (Oral)

1. A complaint was filed on behalf of SEBI through its General Manager Mr.Jyoti Jindgar, and taking cognizance of the

same the accused i.e. the company and persons stated to be its directors and in day-to-day control of the affairs of the company were summoned to face trial by the learned Metropolitan Magistrate. It is alleged in the complaint that Section 11 of the SEBI Act casts a duty on SEBI to protect the interest of investors in securities. It was alleged that SEBI noted that many companies were issuing instruments such as agro bonds, plantation bonds etc. which were to be treated as 'Collective Investment Schemes' and thus SEBI framed and notified the 'Securities and Exchange Board of India (Collective Investment Schemes) Regulations 1999' and as per Regulation 68 thereof persons operating Collective Investment Schemes had to register the scheme before the Board and as per Regulation 73 in the failure to do so, the scheme would be wound up with information to the investors and the board and simultaneously the investments would be returned to the investors. It was alleged in the complaint that the last date by which the Collective Investment Schemes had to be got registered was 31.3.2000. Alleging that accused No.1 i.e. M/s.Bright Forests Ltd., neither got registered the Collective Investment Scheme(s) floated by it nor refunded the amounts to the investors, alleging further that the company raised a huge amount, it was prayed that in view of violation of Section 11(b) and 12(1b) of the SEBI Act 1992 read with Articles 5, 68, 73 and 74 of SEBI (Collective Investment Schemes) Regulations 1999, an offence punishable under Section 24 of the SEBI Act was committed. Qua accused No.2 to accused No.11 it was alleged that as Directors of

accused No.1 they were in-charge of and responsible for the acts of accused No.1 and were liable vicariously as per Section 27 of the SEBI Act 1992. It be highlighted that at the relevant time infringement of the Regulations invited imprisonment for a term which may extend to 1 year, which punishment stands enhanced to 10 years with effect from 29.10.2002 when SEBI Act was amended.

2. The complaint was filed on 15.12.2003.

3. The petitioners who were stated to be the Directors of the company and were impleaded as accused have filed the above-captioned petitions.

4. Accused No.7 Pawan Jindal and his wife Sunita Devi i.e. accused No.9 are the petitioners in Crl.M.C. No.132/2005. Pawan Kumar Goel accused No.5, Dharam Pal accused No.6, Kanhaiya Lal accused No.8, Krishan Chand accused No.10 and Sulochana Devi Goel accused No.11 are the petitioners in Crl.M.C. No.82/2005. In the petitions, all of them have stated that they had resigned as Directors of accused No.1 in the years 1994 and 1996 and thus are not liable for default of the company.

5. It may be noted that in the petitions no other ground of challenge has been raised. I highlight that in neither petition has it been stated that the complaint was barred by limitation, in that, compliance with SEBI (Collective Investment Scheme) Regulations 1999 had to be made by 31.3.2000 and that the complaint was filed on 15.12.2003 and that since the offence was punishable with imprisonment up to 1 year, the period of

limitation prescribed as per Cr.P.C. had lapsed. I highlight, that it is not even the grievance in the petitions that the averments made in the complaint do not make out any case against the petitioners assuming that the petitioners are directors of the company.

6. On the plea that the petitioners had resigned, suffice would it be to state that along with the petitions, certified copies of Form-32, prescribed under the Companies Act have not been filed, and thus it would be a matter of trial whether the petitioners ceased to be directors of the company in the year in which they allege to have resigned as directors of the company.

7. Since argument pertaining to whether the complaint was barred by limitation is a legal issue, I have heard arguments.

8. Learned counsel for the petitioner urges that the date by which the Collective Investment Schemes had to be registered with SEBI, as per the complaint, was admittedly 31.3.2000. Counsel urges that in the complaint it has not been pleaded that the wrong committed is a continuing wrong and thus urges that the complaint was barred by limitation. Learned counsel urges that a learned Single Judge of this Court, S.Muralidhar, J., vide judgment dated 30.1.2008, deciding Crl.M.C. No.2145/2006 Virender Kumar Singh & Anr. vs. SEBI held that in the absence of an averment in the complaint that the offence was a continuing wrong, it had to be held that the offence was not a continuing wrong and thus had held that the complaint launched by SEBI for not registering a Collective

Investment Scheme by 31.3.2000 is barred by limitation taking into account that the complaint was filed in the year 2004.

9. Per contra, learned counsel for the respondents cites a contra decision rendered by A.K.Pathak, J. on 25.10.2010, in Crl.M.C. No.969/2010 Samarpan Agro & Livestock Ltd. & Ors. vs. SEBI in which it was held that a Collective Investment Scheme, if not registered by 31.3.2000, would result in an offence which is a continuing offence.

10. Having considered the 2 judgments it needs to be highlighted that the judgment in Virender Kumar Singhs' case (supra) has ignored that the SEBI Regulations on the point, not just mandated that Collective Investment Schemes should be got registered with SEBI but provided the consequences being that if not registered, the schemes have to be abandoned and money repaid to the investors and violation has been made punishable with imprisonment up to 1 year.

11. It would thus be a continuing offence if money was not returned to the depositors upon the Collective Investment Scheme not being registered with SEBI latest by 31.3.2000 and I find that in the complaint in question there is an averment that since the company did not register the scheme by 31.3.2000, on 7.12.2000, SEBI directed the company to refund the money collected under the scheme to the investors within 1 month and report compliance, and despite repeated directions, compliance has not been made.

12. In other words, the wrong continues till the amounts collected are not returned to the depositors.

13. I highlight that the offence stated to have been committed by the company is not that it did not get registered the Collective Investment Scheme by 31.3.2000, for the reason not to have got the scheme registered is not an offence. The offence is upon not getting the scheme registered retaining the amount received from the depositors and not refunding the same to them within the time prescribed.

14. Unfortunately, this aspect of the matter was never brought to the notice of the learned Single Judge who decided Virender Kumar Singh's case (supra). And hence, the decision proceeds as if, by not registering a Collective Investment Scheme by 31.3.2000, the offence got completed. I highlight that the offence is not to have got registered the Collective Investment Scheme. The offence is to continue with the scheme post 31.3.2000 in spite of the scheme not being registered and the deposits not returned to the investors.

15. A.K.Pathak, J. has correctly summarized the legal position in para 7 of his decision as under:-

“7. A conjoint reading of the aforesaid Regulations clearly shows that if a person had been carrying on a collective investment scheme at the time of commencement of the Regulations, it was deemed to be an existing collective investment scheme. Such person was, thus, under a legal obligation to comply with these regulations framed under the Act. As envisaged under the Regulation 68(2) such person had to make an application to the Board in the manner as specified in Regulation 5. If such an application was made, Board was to deal with the same in the manner as provided in the Regulation 68(3). In case any person carrying on the existing collective investment

scheme failed to make such an application to the Board for registration or had been refused a provisional certificate, it was under a legal obligation to wind up the existing collective scheme by following the procedure as laid down in Regulation 73; to refund the payment to the existing investors in terms of Regulation 74 by following the procedure as specified in Regulation 73.”

16. Since no argument has been advanced with respect to the deficiency or otherwise in the complaint pertaining to the vicarious liability of the alleged directors of accused No.1, I am not dealing with the issue but would simply highlight that in para 20 of the complaint it has been averred that as directors of accused No.1, accused No.2 to accused No.11 were the persons in charge of and responsible for the conduct of the business of accused No.1 and thus were liable for the violations committed by accused No.1, as provided by Section 27 of the SEBI Act 1992.

17. The petitions are dismissed.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 16, 2011
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