

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

+ **CRL.M.C. NO. 371/2011**

Reserved on: 09.01.2012
Pronounced on: 19.01.2012

KULDEEP KUMAR KOHLI & ORS. PETITIONERS

Through: Mr. O.P.Gaggar, Advocate

Versus

**THE REGISTRAR OF COMPANIES
FOR DELHI AND HARYANA RESPONDENT**

Through: Mr. Khalid Arshad, Advocate

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. The present petition is preferred by the petitioner under section 482 of the Code of Criminal procedure 1973, for quashing of the complaint lodged by the respondents against the petitioner under section 63 and 628 of the Companies Act, 1956 pending in the Court of Metropolitan Magistrate, Delhi and for quashing of the summoning order dated 13.11.2002.

2. The petitioners were directors of a finance, leasing and investment company named Pariksha Fin-invest-lease Pvt. Ltd having its registered office at B-18, Swami Dayanand Colony, Sarai Rohilla, Delhi-110007 since 27.8.1995. The object of the company was investments, financing, leasing, consultancy services etc. mentioned in the articles and memorandum of association. The said company became a public company and made a public issue of its equity shares in September 1996. In the prospectus issued for the said capital issue, the proposed deployment of the funds was given as leasing, finance and investments etc. The total issue size was Rs. 235 lakhs and the

promoters' own contribution was Rs. 90 lakhs. The company shifted its' registered office to another leased premises at 71/77, Prem Nagar, Janakpuri, Delhi on 22.06.1998.

3. The Delhi Stock Exchange corresponded with the petitioners' company at the old address between August 1998 to March 1999. Due to the letters being returned undelivered, the DSE sent a letter to the residential address of the petitioners on 23.3.1999 warning them of their company being treated as vanishing company. The petitioners received a show cause notice number ROC/Pros/Vanishing/57377/6003 dated 30.4.02 under section 62,63 read with section 68 and section 628 of the Companies Act from the office of the Registrar of Companies. The then Deputy Registrar Mr.J.K. Jolly was appointed to inquire into the affairs of the company. On the above said premises two complaints being case no. 1333/2002 under section 62 and 68 of the Act and case number 1332/2002 under section 63 and 628 of the Act were lodged by Registrar of Companies in the court of MM against the petitioners on 13.11.2002.

4. In the present case i.e. complaint case 1332/2002, it has been alleged that the directors of the company did not utilize the funds from the public issue for the purpose mentioned in the prospectus and in fact the funds were allocated and invested in purposes which were not mentioned in the prospectus, therefore, the company and its directors have made false statements in the prospectus by not disclosing the true purpose of the prospectus.

5. I have heard the learned counsels for the petitioners and the respondent.

6. It is submitted by the learned counsel for the respondent that the funds for leased assets and the purchase of office space have not been used but have been diverted to investments for their own purposes. Therefore, the directors are liable to be prosecuted u/s 63 and 628 of the companies Act, 1956.

Section 63 and section 628 of the companies Act, 1956 are reproduced as under:

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 ²[***] sub-section (3) of section 60.*

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.

7. Per contra it is submitted by the learned counsel for the petitioners that the funds of the company which were generated through public issue were deployed in the objects of the company and the office could not be purchased because the deal failed due to volatility in the property market. It is submitted that the Registrar of Companies did not take into account the report of the Deputy Registrar who had exonerated the petitioners from any criminal liability in his report. It is urged that the petitioners gave the notice of change in address to all the authorities like RBI, DSE and Income Tax Office by filling form 18. Another contention of the petitioners is that they have resigned from the directorship of the company before the filling of the complaint and hence no liability can be fastened on them. Amongst these grounds, the main ground taken up by the petitioners for quashing of the summoning order is that the complaint lodged by the Registrar of Companies is barred by time and is filed after the expiry of the limitation period. It is contended that the prospectus was issued by the company on 10.09.1996 and the impugned complaint no. 1332/2002 was filed on 13.11.2002 which is beyond the limitation period of three years under section 468(2) Cr.P.C.

8. At the outset, it must be mentioned that the petition having been filed after 8 years of passing of the summoning order, is highly belated and the petition finds no mention of any explanation of such a long delay. On this ground alone, it was liable to be dismissed.

9. Before advertng to the other grounds raised by the petitioner, it is important to lay down the rule as affirmed by various judgments regarding the initialization of the period of limitation in such offences. Needless to mention, the maximum punishment prescribed under the two sections of the complaint namely section 63 and 628 of the companies Act is two years. As per section 468(2) the maximum period of limitation for commencement of prosecution of these offences is three years. The point of examination now boils down to the question as to when does the limitation period begins. It is a well settled legal proposition that the period of limitation in any offence commences only upon the receipt of knowledge of breach.

10. Shedding light on this issue, this Court in **Ajay Jain Vs. Registrar of Companies NCT of Delhi and Haryana 2010(119) DRJ 545** has held that the limitation would start only after the filing of the date of balance sheet and not from the date of the issue of prospectus. The relevant part of the judgment reads as under:

“5. As far as limitation aspect is concerned, limitation of offences under Sections 63 and 628 of the Companies Act, 1956 starts from the date of knowledge of making a false statement. The Registrar of Companies learnt about making of false statement after filing of balancesheet in the year 1999-2000, therefore, limitation would start only after the date of filing of balance sheet and not from the date of issuing prospectus and this plea, therefore, is not tenable.”

11. The point was reiterated in **Manjit Jaju Vs. Registrar of Companies, N.C.T. of Delhi and Haryana[2011]101CLA153(Delhi)**,

“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 and 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) CC 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. MANU/SC/0335/1998 : (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.”

12. Thus from the above pronouncements , it can be gauged that the period of limitation in such offences will begin not from the date of filling of prospectus, as urged by the counsel for petitioner, but from the date of filling the balance sheet on which the complaint has been based. In the present case, the Registrar of Companies came to know about the commission of the offences after the filing of balance sheet by the petitioner for the year 1999-2001 and the complaint was filed in the year 2002 which is well within the prescribed limitation period of three years. Hence, the question of the period of limitation is answered in favour of the respondents and there is no ground for quashing of the summoning order on this ground.

13. The contention of the petitioners that they have resigned from the directorship of the company and hence cannot be made liable, does not find any favour as the question that whether they had resigned or not is a question of fact which cannot be gone into by this court and only the trial court, during trial can decide this issue. With regard to the plea taken by the petitioners that the Registrar of Companies have not taken into account the report of the Inquiry Officer before filing the complaint does not hold water as it is the discretion of the Department to rely or not upon the report of its Officer. If it

proceeds to take action against any entity based on incriminating material available, then it cannot be stated as a defense that the Department has not relied upon its internal communication with its Officers or any internal inquiry. These are all triable issues to assess the evidentiary value of the evidence that may be led by the parties.

14. The argument of the petitioners that the fact of change of address was duly notified to all the agencies including RBI, DSE and Income Tax Office, does not have any merit because after the perusal of the record it can be seen that only correspondence made in this regard was to the Registrar of Companies and no other authority. The petitioners cannot shift their liability arising out of their own inaction by stating that there was lack of communication between the various Authorities. The onus of notifying the various agencies about the change of address lied only and only on the petitioners which they have not been able to discharge.

15. Coming to the issue of power of High Court to quash the complaint and summoning order it has been categorically laid down that it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court. The Hon'ble Supreme Court in the case of ***Zandu Pharmaceutical Works Ltd. And Others v. Mohd. Sharaful Haque And Another***(2005)1 SCC 122 held that:

“When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.”

16. From the facts and circumstances of the case it can be seen that a prima facie case has been made out against the petitioners and there is no reason to interfere with the order of the Ld. M.M. It cannot be said that the Magistrate has not viewed the ingredients of the complaint before taking cognizance and has passed a mechanical order.

17. I find no illegality in the impugned order of the trial court. The petition is hereby dismissed.

M.L. MEHTA, J.

JANUARY 19 , 2012

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