

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-7649 of 2015
DECIDED ON: MAY 04, 2016

SWAPANDIP MAHAPTRA & OTHERS

....PETITIONERS

VERSUS

REGISTRAR OF COMPANIES, PUNJAB & CHANDIGARH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Present: Mr. G.S Bedi, Advocate
for the petitioner.

Mr. Piyush Khanna, Advocate, for the respondent.

JASPAL SINGH, J

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'Code') seeking quashing of complaint No. 1356 dated March 25, 2014 (Annexure P-1) as well as summoning order dated April 01, 2014 (Annexure P-2) and orders dated August 22, 2014 (Annexure P-3) and order dated January 28, 2015 (Annexure P-4) along-with all its consequential proceedings emanating therefrom.

Brief facts on the case are that respondent had issued an order dated

28.12.2012 under section 234 (1) of the Companies Act 1956 (hereinafter

referred to as the 'Act') directing the petitioners to furnish information regarding Form No. 10 Debenture Trust Deed dated 19.09.2012 within a period of 10 days from the date of order. Due to non filing of reply notice under section 234 (3-A) of the Act was issued on 21.01.2013. Thereafter, petitioner submitted reply on 06.03.2013. Petitioners filed another reply dated 28.03.2013 in response to the notice issued under section 146, 58-A and 234 (1) of the Act and clarified that petitioners had resigned from the Directorship of the company. Vide order dated 14.03.2013 Regional Director (NR) Ministry of Corporate Affairs sanctioned the launch of prosecution under section 234 (4) of the Act against the petitioners. On the strength of the allegations made in the complaint, petitioners were summoned vide impugned order (Annexure P-2).

Disheartened from the complaint (Annexure P-1) as well as summoning order (Annexure P-2) and subsequent proceedings arising therefrom, petitioners approached this Court.

Challenging the complaint (Annexure P-1) as well as summoning order (Annexure P-2) and impugned orders, learned counsel for the petitioners has contended that the procedure and the manner in which the information is to be sought is mandatory in nature but it has not been followed by the respondent in its letter and spirit. Moreover, launching of prosecution by virtue of complaint in question is violative of provisions contained in Section 468 of the Code and is barred by limitation. He further submits that order under Section 234(3A) was issued by the respondent on January 21, 2013. The sanction of prosecution was issued on March 14, 2013 whereas the complaint was lodged/instituted on March 25, 2014 that is much after the expiry of one year

and cognizance of the complaint was taken vide order dated April 01, 2014 whereby accused were summoned.

The maximum punishment for the present offence(s) is only with fine and cognizance can only be taken within six months whereas the complaint was lodged after a delay of more than one year. As such, the same is barred by limitation, as per provisions contained in Section 468 of the Code.

Per contra, learned State counsel is unable to dispute the afore-said submissions made by learned Senior counsel for the petitioners.

Undeniably the complaint was lodged/instituted on March 25, 2014.

The maximum punishment for the offence(s) complained of is only with fine but the complaint in this case was lodged after a delay of more than a year, which, unhesitatingly can be held to be barred by limitation, as per provisions contained in Section 468 of the Code. Thus, complaint (Annexure P-1) as well as summoning order (Annexure P-2) and impugned orders (Annexure P-3 & P-4) respectively, are liable to be quashed on this score alone.

Accordingly, instant petition is allowed and complaint (Annexure P-1) as well as summoning order (Annexure P-2) and impugned orders (Annexure P-3 and P-4) respectively, are quashed qua petitioners.

MAY 04, 2016
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(JASPAL SINGH)
JUDGE