

THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20759 of 2011

Arising Out of Complaint Case No. 383(C) Year- 2009 District- PATNA

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Bipin Bihari Singh (Managing Director), S/o Late Mahabir Prasad Singh, At + P.O. Babhangama, P.S.- Sarath, District Deoghar, Jharkhand.

.... Petitioner/s

Versus

Union of India through the Registrar of Companies, Bihar and Jharkhand, Office at Maurya Lok Complex, 4th Floor, A-Block, Dak Bungalow Road, Patna-1.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Murari Narayan Chaudhary, Adv.

For the Union of India : None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-11-2017

Heard learned counsel for the petitioner. Despite repeated calls, no body appears on behalf of the Union of India.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing the order dated 19.08.2009 passed by the Presiding Officer of Special Court, Economic Offences, Patna in Complaint Case No. 383(C) of 2009 whereby and whereunder the petitioner and one Bipin Builders Private Limited have been summoned to face trial on the basis of a complaint filed by the Registrar of Companies, Bihar and Jharkhand under Section 220(3) of the Companies Act, 1956 (for short 'the Act').

3. The complainant alleged in the complaint that M/s Bipin Builders Private Limited was registered on 26.05.2006 as a private



limited company under the Act and is having its registered office at village Babhangama, P.S.- Sarath, District- Deoghar. The petitioner is the Principal Director of the said company. According to the provisions of Section 220(3) of the Act the company and its Director are under the statutory obligation to file with the Registrar of Companies three copies of the Balance Sheet and Profit and Loss Accounts in the prescribed form duly placed in the Annual General Meeting within 30 days of the Annual General Meeting of the Company and in case no Annual General Meeting was held, within 30 days of the due date of the Annual General Meeting. The company and its Director defaulted in filing of return for the year 2007-08 within time and, hence, they are liable for prosecution under sub-section (3) of Section 220 of the Act.

4. On the basis of the aforesaid complaint, a case was filed on 29.07.2009 in the court of the Special Judge, Economic Offences, Patna, who took cognizance of the offence on 19.08.2009 and summoned the petitioner to face trial.

5. Assailing the impugned order dated 19.08.2009, learned counsel for the petitioner submitted that the order taking cognizance is barred by limitation. He submitted that sub-section (3) of Section 220 of the Act prescribes that if default is made in complying with the requirements of sub-sections (1) and (2), the company, and every officer of the company shall be liable to the like punishment as is provided by



section 162 for default in complying with the provisions of sections 159, 160 or 161 of the Act. He submitted that Section 162 of the Act prescribes punishment for the offences punishable under Sections 159, 160 or 161 and the maximum punishment prescribed is with fine which may extend to Rs.500/-. Thus, it is submitted that the cognizance could have been taken in the present case within six months from the date of cause of action in terms of Section 468(2)(a) of the Code of Criminal Procedure. However, the impugned order taking cognizance was passed after much delay. He further contended that the impugned order is also bad for the reason that the learned Magistrate before summoning the petitioner and taking cognizance of the offence did not apply his judicial mind to the facts of the case and passed the order by merely filling in the blanks in the pre-printed Form for the purpose.

6. I have heard learned counsel for the petitioner and carefully perused the record.

7. Section 468 of the Cr.P.C., which bars taking cognizance of the offence after lapse of the period of limitation, reads as under :-

“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.

(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.”

8. The submission of the learned counsel for the petitioner that as the provision prescribed under Section 162 of the Act prescribes punishment for the offences punishable under Sections 159, 160 or 161 of the Act and the punishment prescribed is with a fine which may extend to Rs.500/- the limitation to taking cognizance shall be six months is misconceived in view of Section 472 of the Cr.P.C., which prescribes that in case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

9. At this stage, it would be relevant to set out Section 162 of the Act, which prescribes punishment for the offence under Section 159, 160 or 161 of the Act, as under :-

“Sec 162 - Penalty and interpretation.

(1) If a company fails to comply with any of the provisions contained in section 159, 160, or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(2) For the purposes of this section and sections 159,



160, and 161, the expressions “officer” and “director” shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.”

10. It would be manifest from the reading of Section 162 of the Act that it prescribes punishment with a fine which may extend to Rs.500/- for every day during which the default continues. Thus, from the language of the provision, it would be evident that till the time the default continues in respect of filing of Balance Sheet and Profit and Loss Accounts, a fresh period of limitation shall begin to run every moment and the cognizance of the offence would not be saved by limitation.

11. In *Bhagirath Kanoria & Ors. Vs. State of M.P. [AIR 1984 SC 1688]*, the Supreme Court laid down guidelines to determine the question whether a particular offence is a continuing offence. In para 19 of the said judgment, it has been stated that any of the offences whether it is continuing must be determined (i) from the language of the statute which creates that offence, (ii) the nature of the offence and, above all, (c) the purpose which is intended to be achieved by constituting the particular act as an offence.

12. In the matter of *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi [(1986) 157 ITR 330]*, the Supreme Court held as under :-

“The imposition of penalty not confined to the first



default but with reference to the continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. Without sanction of law, no penalty is imposable with reference to the defaulting conduct. The position that penalty is imposable not only for the first default but as long as the default continues and such penalty is to be calculated at a prescribed rate on monthly basis is indicative of the legislative intention in unmistakable terms that as long as the assessee does not comply with the requirements of law, he continues to be guilty of the infraction and exposes himself to the penalty provided by law.”

13. The Patna High Court in its Full Bench decision in the case of *Ram Kripal Prasad & Ors. Vs. State of Bihar & Ors. [AIR 1986 Pat 254]* has also held that the failure of the employers to deposit the contributions in contravention of paragraphs 38 and 76 of the Scheme read with Section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 would be a continuing offence.

14. In view of the ratio laid down by the Supreme Court as also by Full Bench of this Court, I am of the considered opinion that the order taking cognizance of the offence in the present case, which is continuing in nature, was not barred by law of limitation, as argued by the learned counsel for the petitioner.

15. However, the second submission made by the learned counsel for the petitioner that before summoning the petitioner and taking cognizance of the offence, the learned Special Judge did not apply his judicial mind and passed the order mechanically carries force.



A perusal of impugned order dated 19.08.2009 reflect that the same has been passed by filling up name, section, date and the word cognizance in a pre-printed format. Such an order is impermissible in law, as it does not show that there has been any judicial application of mind.

16. By now, it is well settled that taking cognizance of an offence and summoning of accused in a criminal case has serious consequences on the liberty of an accused, as pursuant to such an order, he is required to take bail and face trial in a criminal case. The order of cognizance in a standardized format by only filling up the only perfunctory details buttress an ex facie lack of application of mind in the order of taking cognizance and summoning an accused.

17. In *Fakhruddin Ahmad Vs. State of Uttaranchal and Another*, [(2008) 17 SCC 157], the Supreme Court has held as under :-

“17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.”



18. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others [(1998) 5 SCC 749]*, the Supreme Court held as under :-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

19. Keeping in mind the discussions made hereinabove the impugned order dated 19.08.2009 passed by the learned Presiding Officer, Special Court, Economic Offences, Patna in Complaint Case No. 383(C) of 2009 cannot be sustained. It is set aside accordingly. The matter is remitted to the Special Court for passing appropriate order in accordance with law after applying its mind to the facts stated in the complaint as early as possible, preferably within one month from the date of receipt/production of a copy of the order.



20. The application stands allowed to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20-11-2017
Transmission Date	20-11-2017

