HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.781, 782 and 784 of 2010

COMMON ORDER:

In all the petitions the petitioner/A-5 and respondents are one and the same but the offences alleged to have been committed by the petitioner along with others were under different Sections of the Companies Act, 1956, therefore, the grounds raised in all the three petitions filed under Section 482 of Cr.P.C., are identical. Hence, I find that it is expedient to decide all the three petitions by a common order.

2. Smt.M.V. Jayalakshmi, W/o.M.V. Seshachary is accused No.5 in all C.C.Nos.27, 79 and 80 of 2008, pending on the file of Special Judge for Economic Offences, Andhra Pradesh, Hyderabad, for the offences punishable under Sections 63, 68 and 628 of the Companies Act, 1956 respectively. Hence, the petitioner/A-5 filed these three Criminal Petitions under Section 482 of Cr.P.C., to quash the proceedings in all the above Calendar Cases.

3. The Registrar of Companies, Andhra Pradesh filed the complaints in all the Calendar Cases referred supra for various offences against the petitioner and others.

Sl.No.	Crl.P.	Calendar Case	Section of law (Companies Act, 1956)
1.	*Crl.P.No.781/10*	*C.C.No.27/08*	*Sec.63 of the Act*
2.	*Crl.P.No.782/10*	*C.C.No.79/08*	*Sec.68 of the Act*
3.	*Crl.P.No.784/10*	*C.C.No.80/08*	*Sec.628 of the Act*

4. The petitioner in all the petitions is one of the Directors of A7-company and it was represented by A-2–the Managing Director of the Company. The company entered into a public issue and issued Rs.14,00,000/- equity shares of Rs.10/- each for cash at par by issuing a prospectus, dated 25-08-2000. At the time of issuance of prospectus only Rs.5/- per share was to be paid as share application money. According to the prospectus the proceeds of the public issue was to meet:

a) To fund the cost of proposed project of its software development and to set up infrastructure facilities in related areas.
b) To set up overseas office.
c) To meet a part of the expenses of this issue and
d) To list the shares of the company on the Hyderabad, Banglore and Calcutta.

5. The public issue in the company was also mentioned the risk factors in the prospectus itself. The petitioner/A-5 and five others are the signatories to the prospectus have failed in providing service as mentioned in the prospectus and induced the general public by making reckless statements, which are false, deceptive and misleading. It is also alleged that there was dishonest concealment of fact to induce the public to enter into an agreement for subscribing shares. On coming to know about the said concealment and this false statements etc., in the prospectus, the complainant-1st respondent herein issued a show cause notice, dated

30-01-2008 in all the three cases calling for explanation why action should not be taken against the petitioner/A-5 and five others, who are arrayed as accused in the Calendar Cases, referred supra. But no explanation was offered either by this petitioner or any other accused to the show cause notice, therefore, the 1st respondent alleged to have filed complaint before the Special Court for Economic Offices for the State of Andhra Pradesh at Hyderabad contending that the petitioner/A-5 and five others, who are the signatories to the prospectus went to public issue inviting subscription for allotment of shares with specified objections and the project cost was Rs.530 Lakhs shall be made by the company with the contribution, which is as follows:

Means of Finance: (Rupees in Lakhs)

Equity	Existing	Proposed	Total
Promoters	9.10	298.90	308.00
Employees	-	4.00	4.00
ESOP	-	25.00	25.00
APIDC	-	25.00	25.00
PUBLIC	-	140.00	140.00
Total Equity	9.10	492.90	502.00
Term loan from APIDC	-	28.00	28.00
TOTAL	9.10	520.90	530.00

6. The A.P. Industrial Development Corporation, Hyderabad was the appraising agency, was financing the

proposed expansion to the extent of 10% of the cost of the project by way of term loan of Rs.28 Lakhs and equity participation of Rs.25 Lakhs which would be brought in at least one day before the opening of the issue. The said prospectus was delivered in the office of the Registrar of Complainants on 25-08-2000. From the contents of the said prospectus, it is clear that the signatories to the prospectus, who are also the then Directors of the company at the relevant time and whose names are referred as accused in the complaint have made several promises by way of assurances, emphatic statements and even in the matter of certification which inter-alia includes the following promises/ statements/ certification:

i. *The entire equity raised through public issue will be deployed in the proposed project and the management intents to deploy issue proceeds pending its utilization will be invested in STDR with company's banker.*

ii. *The company is carrying on software training and developing various products in multi media, GIS, CAD/CAM.*

iii. *The company plans to broad base its board by inducting eminent professionals from IT industry as Directors to serve on the Board (Ref.Page-27 of the prospectus).*

iv. *The company proposes to install hardware and software to the tune of Rs.248 Lakhs including the existing hardware worth of Rs.6.08 Lakhs and the details of hardware and software proposed to be acquired are detailed at Page No.28 to 34 of the prospectus.*

v. *The company is yet to place orders worth of Rs.74.80 Lakhs towards Plant & Machinery and the company has* *already identified the suppliers (as detailed under Page 34 and 35 of prospectus).*

vi. *The company proposes to set up marketing office at Maryland U.S.A., to tap US markets, it shall be headed by one of the Directors of the company Mr.Reddy Vijay Kumar, at an estimated cost of Rs.57.4 Lakhs and the benefits of having overseas office are detailed at Page 37 of the prospectus.*

vii. *The company is also in the process of tie-ups with U.S. based companies being channel partners for Indian operations. This is only possible by having an office at USA. The form of investment being made for the overseas office is through equity, which is already taking part of cost of the project and with a note that pending the setting up of the overseas office, the funds would be kept in the bank account as deposits. (Ref.Page No.37 of the prospectus).*

viii. *The company proposed to develop and host their own web site that permits dissemination of information about the company and also enable online access to some of the software products developed by the company etc., (Ref. Page 43 of prospectus).*

ix. *The company is geared to meet the challenge of the international market by opening its overseas office in USA.*

5. *That regarding utilization of issue proceeds the (then) Board of Directors of the company, who were also the Signatories of this prospectus certifies that:*

a. *All monies received out of the issue to the public shall be transferred to a separate bank account other than the bank account referred to in Sect.73(3) of the Companies Act, 1956.*

b. *Details of monies utilized out of the public issue referred to sub item (i) shall be disclosed under an appropriate separate head in the annual report of the company indicating the purpose for which such monies had been utilized and*

c. *Details all un-utilized monies out of the public issue, if any, referred to in sub item (i) shall be disclosed under an appropriate separate head in the Annual Report of the company indicating the form in which such un-utilized monies have been invested.*

Misleading Statements made in the Prospectus with an intention to lure the Public/Investors:

7. It is further contended that in the prospectus a statement made under the head "overseas office i.e., establishment of office at USA" by the company proposed to set up marketing office in Merry land USA to tap US markets it shall be headed by one of the director of the company Mr.Reddy Vijay Kumar (A-1), the total cost was estimated at Rs.57.40 Lakhs and that the details of benefits accruing to the company by having overseas office and that the setting up of overseas office is the extension of M/s.Visie Cybertech Limited (A-7) and is not a subsidiary and that the form of investment being made for the overseas office is through equity which is actually forming part of cost of project – supported with a note that 'pending the setting up of the overseas office, the funds would be kept in the Bank Account as Deposits. (Ref.Page 37)

8. It is also contended by the 1st respondent that the petitioner and other accused did not fulfill the objects and aims mentioned in the prospectus by signatories to the prospectus including the petitioner and other accused 1 to 4 and 6. According to Clause 4 of the objects and issues the

shares have to be listed in the Stock Exchanges at Hyderabad and Ahmadabad. But proposed listing of shares was at Hyderabad (Regional Stock Exchange), Banglore and Calcutta Stock Exchanges, which are false and untrue statement attracting violation of Sections 63, 68 and 628 of the Companies Act, 1956. Similarly, that the petitioner and other accused have made several misleading statements and thereby failed to meet the promises they made in the prospectus dated 25-08-2000. Thus, the petitioner and other accused allegedly committed the offences punishable under Sections 63, 68 and 628 of the Companies Act, 1956.

9. During the pendency of the complaint the complaint was given up against some of the accused except against the petitioner, A1 – Reddy Vijay Kumar and A6 – K.B. Prasad.

10. The present petitions are filed mainly on the ground that the prospectus was issued as early as in the year 2000 but the complaints were filed in the year 2008 for the offences under Sections 63, 68 and 628 of the Companies Act, 1956. The offence under Section 63 of the Companies Act, 1956 is punishable with imprisonment for three years and whereas the offence under Section 68 of the Companies Act, 1956 is punishable with imprisonment which may extent to 5 years with fine or with both. Similarly, offence under Section 628 of the Companies Act, 1956 is also punishable with imprisonment for less than 5 years, therefore, the Court

cannot take cognizance of the offences punishable under Section 63, 68 and 628 of the Companies Act, 1956 after lapse of eight (8) years from the date of issue of prospectus, allegedly, making misstatements and misleading statements. It is further contended that the Managing Director of the company – A2, is alone responsible for the affairs of the company and according to Section 5 of the Companies Act, 1956, A-2 alone is liable to comply with the promises made in the prospectus and non-compliance would not amount to an offence punishable either under Sections 63, 68 and 628 of the Companies Act, 1956 and sought to quash the proceedings in the above Calendar Cases against the 5th accused – petitioner herein.

11. During the hearing learned counsel for the petitioner contended that the complaints are barred by limitation since the offence allegedly took place in the year 2000 but the complaints were filed after eight (8) years i.e., in the year 2008. Since the offences are punishable with imprisonment for a period of three years and less than five years and with fine or with both, learned counsel placed reliance on three judgments of this Court reported in ***2010 (1) ALD (Crl.) 1004 (AP)*** and un-reported common judgment of this Court in ***Crl.P.Nos.7501, 7508 and 7512 of 2015*** so also another un-reported judgment of this Court in ***Crl.P.No.2004 of 2003***, in support of his contention and on the strength of the principles laid down in the above three judgments would

contend that the Special Court for Economic Offences shall not take cognizance of the offence and prayed to quash the proceedings in C.C.Nos.27, 79 and 80 of 2008.

12. Per contra, the Assistant Solicitor General, Sri D. Narayana Reddy would contend that the offences punishable under Sections 63, 68 and 628 of the Companies Act, 1956 are continuing offences and not instantaneous offences, that apart, the complaints were filed within the period of limitation from the date of knowledge about the offence. The limitation starts only from the date of issue of show cause notice and thereby the complaints are in time and within limitation as contemplated under Section 468 (1)(b) of the Cr.P.C., as such, the complaints are maintainable and on this ground the complaints cannot be quashed.

13. Considering the rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1. ***Whether the complaints can be quashed at the threshold based on limitation when the petitioners committed serious offences punishable under Sections 63, 68 and 628 of the Companies Act, 1956 by collecting huge amounts of Rs.530 lakhs from the public by way of public issue?***
2. ***Whether taking cognizance of the offences punishable under Sections 63, 68 and 628 of the Companies Act, 1956 is barred by limitation in view of Section 468 (1)(b) of Cr.P.C., if so whether the***

proceedings in C.C.Nos.27, 79 and 80 of 2008 are liable to be quashed?

14. **POINT No.1**: Undoubtedly, the prospectus was issued on 25-08-2008, duly signed by the petitioner and four other Directors of the company including the Managing Director, making certain statements giving details of future rosy picture of the company but failed to fulfill the promises made in the statements, thereby the statements became mis-statements and false statements and as such, the petitioner is liable for the offence punishable under Sections 63, 68 and 628 of the Companies Act, 1956.

15. The jurisdiction of this Court under Section 482 of Cr.P.C., is limited and this Court can exercise its inherent jurisdiction only to give effect to any orders under this Court or to prevent abuse of process of any of the Court or to secure ends of justice. While exercising jurisdiction under Section 482 of Cr.P.C., the High Court would not ordinarily embark upon a roving enquiry whether the evidence in question is reliable or not on a reasonable apprehension on which acquisition would not be suspended. The ends of justice would be better served if valuable time of the Court is spent on hearing those appeals rather than entertaining petitions under Section 482 of Cr.P.C., inter alia, such complaint filed with same motive in order to circumvent the prescribed procedure or to delay the time which enable to winover the

witnesses or may dishonest in giving evidence, intimately resulting in miscarriage of justice as held in ***Hamida v. Rashid alias Rasheed and others***[1], wherein paragraph No.6 reads as under:

> *"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well-established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. As held by the Privy Council in Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 with regard to Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is a verbatim copy of the said provision) gives no new powers. It only provides that those which the Court already inherently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly*

[1] 2008 (1) SCC 474

conferred by the Code and that no inherent power had survived the passing of the Act.”

16. The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is “***State of Haryana v. Bhajanlal*[2]**”, wherein the Apex Court laid down the following seven guidelines:

> “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

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[2] 1992 Supp.(1) SCC 335

> continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. Earlier to the Judgment in "**State of Haryana v. Bhajanlal"** (referred supra), in "***R.P. Kapur vs. State of Punjab***[3]**"** the Apex Court laid down the following guidelines:

> "(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

18. The same principle was reiterated in "***Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors.***[4]**"** In the said Judgment, the Apex Court categorically held that inherent power can be exercised to prevent abuse of the process of court where the court finds that the ends of justice may be met by quashing the proceedings. Thus, the

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[3] AIR 1960 SC 866
[4] 2011(12) SCC 437

Apex Court held that Section 482 of Cr.P.C., empowers the High Court to exercise its inherent power to prevent abuse of process of Court in proceedings initiated by complaint. Exercise the inherent power to quash the proceedings is call for only in case where the complaint does not disclose any offence, frivolous, efficacious or apprehensive if the allegations set out in the complaint do not constitute the offence of which the situation is taken by the Magistrate it is open for the High Court in exercise of power under Section 482 of Cr.P.C. It is not however necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case ended in conviction or not the complaint has to be read as a whole if it appears on the consideration of the allegation in the light of the statement of other on the complaint that the ingredients of the offence are disclose and there is no material to show that the complaint is a malafide and frivolous. In that view of the matter, there should no justification for interference of the High Court. Keeping in view the principles laid down in the above judgments, this Court has to exercise its inherent power conferred on it by Section 482 of Cr.P.C.

19. The main grievance in all these petitions is that taking cognizance of the offences punishable under Sections 63, 68 and 628 of Companies Act, 1956 is barred by limitation in view of Section 468 of Cr.P.C., since the offence under Section 63 of the Companies Act, 1956 is punishable with

imprisonment for three years and whereas the offence under Section 68 of the Companies Act, 1956 is punishable with imprisonment which may extent to 5 years with fine or with both and similarly, office under Section 628 of the Companies Act, 1956 is also punishable with imprisonment for less than 5 years. In view of specific contention it is apposite to extract Sections 468 and 469 of Cr.P.C., and accordingly extracted hereunder:

Section 468 of Cr.P.C., *deals with power of 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-*
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> *(a) six months, if the offence is punishable with fine only*
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> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
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> *(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.*
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> *(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.*
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> ***Section 469 Cr.P.C.,*** *deals with Commencement of the period of limitation. According to Sub Section (1) The period of limitation, in relation to an offender, shall commence, on the date of the offence; or where the commission of the offence was not known to the person*

aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

20. ***Section 472 of Cr.P.C.,*** deals with commencement of limitation for taking cognizance of the offence in relation to offender for continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

21. In paragraph No.16 of the complaint it is contended that the complaint is within the period of limitation in terms of provisions of Section 468 read with Section 469 (1)(b) of Cr.P.C., 1973, since the violation is still continuing and is a continuing offence in terms of provisions of Cr.P.C., 1973, as the Complainant came to know about the violation on the date of receipt of letter from the office of Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai vide No:1 (105)/99(7) action on cos-IPOs-1988-(1) dated 16-08-2007 which was received by the complainant's office on 28-08-2007. Hence, the date of knowledge is 28-08-2007.

22. Section 469 (1)(b) of Cr.P.C., deals with starting point of limitation from the date when commission of offence came to

the notice of this petition. In the present case the complainant is a Registrar and the Registrar is competent to file a complaint against the petitioner and other accused and the limitation starts from the date of knowledge about the commission of such offence in view of Section 469 (1)(b) of Cr.P.C., till receipt of letter, dated 16-08-2007 addressed by the Regional Director of Southern Region, Ministry of Corporate Affairs, Chennai, the petitioner had no knowledge about commission of offence and the petitioner came to know about the offence only on receipt of such letter, dated 28-08-2007, therefore, the starting point of limitation to take cognizance of offence in relation to an offender starts from the date of knowledge under Section 469 (1)(b) of Cr.P.C., and secondly taking cognizance of the offences punishable under Sections 63, 68 and 628 of Companies Act, 1956.

23. In any view of the matter, whether this Court can quash the proceedings exercising the power under Section 482 Cr.P.C., at the threshold on the point of limitation. The delay in launching Criminal prosecution may be circumstance while arriving at a final decision. However, the same may not itself be a ground for dismissing the complaint at the threshold. More over, the issue of limitation must be examined in the light of the gravity of the charge in question.

24. In case of ***Japani Sahoo v. Chandra Sekhar Mohanty***[5], the Hon'ble Apex Court at paragraph No.14 held as under:

> *"14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well- known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict."*

25. In case of ***Sajjan Kumar v. Central Bureau of Investigation***[6], the Hon'ble Apex Court at paragraph No.37 held as under:

> *"37. Though delay is also a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution, ultimately it depends upon various factors/reasons and materials placed by the prosecution. Though Mr. Lalit heavily relied on paragraph 20 of the decision of this Court in Vakil*

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[5] AIR 2007 SC 2762
[6] (2010) 9 SCC 368

> *Prasad Singh's case (supra), the learned Additional Solicitor General, by drawing our attention to the subsequent paragraphs i.e., 33 21, 23, 24, 27 and 29 pointed out that the principles enunciated in A.R.Antulay's case (supra) are only illustrative and merely because of long delay the case of the prosecution cannot be closed."*

26. In case of ***Noida Entrepreneurs Association v. Noida and others***[7], the Hon'ble Apex Court at paragraph No.18 held as under:

> *"18. Thus, it is evident that question of delay in launching criminal prosecution may be a circumstance to be taken into consideration in arriving at a final decision, but it cannot itself be a ground for dismissing the complaint. More so, the issue of limitation has to be examined in the light of the gravity of the charge."*

27. It is an undisputed fact that the complainant did not file any petition for condonation of delay since the petitioner is claiming that the limitation to take cognizance of an offence in relation to an offender commences from the date of knowledge i.e., receipt of letter, dated 16-08-2007 from the Regional Director of Companies. The Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai on receipt of the same was acknowledged on 28-03-2008 if that is the starting point of limitation the complaints and taking of

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[7] AIR 2011 SC 2112

cognizance of this complaints is not barred by limitation in view of Section 468 (1)(b) of Cr.P.C.

28. Learned counsel for the petitioner would rely on several judgments referred supra in all the three petitions. This Court did not discuss anything about the powers of the Court to quash the proceedings under Section 482 of Cr.P.C., on the ground of limitation. In case of ***Hemendra Prasad Nag Chowdary and others v. Registrar of Companies, A.P., Hyderabad and another***[8], wherein paragraph No.8 reads as under:

> *"8. The offence under Section 68 of the Companies Act is punishable with imprisonment which may extend to five years. Therefore, complaint in C.C.No.8 of 2006 is not barred by limitation because there is no time limit fixed for prosecuting any person for the offence under Section 68 of the Companies Act. In so far as offences under Sections 63 and 628 of the Companies Act are concerned, they are punishable with imprisonment which may extend to two years; and so as per Section 468(2) (c) of the Code of Criminal Procedure, period of limitation for filing complaint for the said offences is only three years. As per Section 469 of the Code of Criminal Procedure, period of limitation commences on the date of offence or where commission of the offences was not known to the person aggrieved by the offences the first date on which such offence comes to knowledge of such person, which ever is earlier. In the cases on hand, the prospectus was published on 14.06.1990 and letter of offer was given on dated 16.05.1992. If any false statement or mis-statement occurred in the*

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[8] 2010 (1) ALD (Crl.) 1004 (AP)

prospects or the letter of offer, then the 1st respondent should have filed complaints in the lower court within three years thereof. Now the first respondent wants to take shelter under Section 469(1)(b) of the Code of Criminal Procedure and also letter dated 12.07.2002 of the Regional Director, Southern Region, Chennai. Until the letter dated 12.07.2002 of the Regional Director, the 1st respondent viz., Registrar of Companies, Hyderabad was sleeping over the matter and it is only after the Regional Director poked, the Registrar of Companies, Hyderabad woke up and filed the complaints in the lower court in August, 2003. Therefore, the 1st respondent wants this Court to recon starting of period of limitation from 12.07.2002. In my considered opinion, the 1st respondent cannot take benefit under Section 169(2)(b) of the Code of Criminal Procedure. Under the Companies Act, every company is bound to submit its balance Sheet along with Directors' Report every year to the Registrar of Companies. It is not the 1st respondent's case that A-10 company and its Directors did not send such balance Sheet along with Directors' report to the Registrar every year. On the other hand, even as per allegations in the complaint contained in para Nos.9 and 10, there is no dispute that in the years 1992 and 1994, A-10 company sent its balance sheets on 30.09.1992 and 31.12.1994 respectively. The 1st respondent should have acted upon those balance sheets and Directors' reports and should have filed the complaints within the period of limitation. Therefore, in my opinion, in-action on the part of Registrar of Companies, Hyderabad in this case debars him from filing the complaints under Sections 63 and 628 of the Companies Act. I find that C.C.Nos.7 of 2006 and 9 of 2006 of the lower court are barred by limitation. The 1st respondent's counsel did not claim any exemption for the Registrar of Companies from *applicability of the period of limitation prescribed under Section 468 of the Code of Criminal Procedure."*

29. Similar view is taken by this Court by another Single Judge in Criminal Petition Nos.7501, 7508 and 7512 of 2015. Paragraph No.7 of the above judgment, dated 30-10-2015 reads as follows:

> *"7. The annual report filed before the Registrar of Companies is with seal of the Registrar companies dated 31.10.2001 and the 1st annual report referring to resignation of the petitioner—A8 as director from the board due to his commitments elsewhere the complaint filed was on 28.08.2007 the public issue was on 29.12.1999. It is not shown the offence under Sections 62 and 628 much less 68 of the Act for continuation of offences but for simply mentioning in the complaint as to how they are continuing offences of public issue published within the time limited subscriptions received from investors in the shares and closed for any facility to commence the cause of action therefrom. To say the offences under Sections 62 and 628 of the Act are barred by limitation as referred supra and coming to Section 68 of the Act there is undisputedly no any complaint from any investor to say any false promise or inducement for subscribing to make the company or its managing director much less any directors to be responsible. In fact so far as the petitioner/ accused No.8 among other directors concerned as pointed out in the quash petition filed by A-2 before another bench of this Court passed on 28.03.2013 covered by reported judgment in* ***Dr.T.H.Chowdary vs. Registrar of Companies and another [(2014) 182 Comp Case 13 (AP)] quashing the proceedings dated 28.03.2013 referring to*** *earlier expressions in* ***Gopi Nair (K) vs***

> ***Ramukutty (K) [(2003) 115 Comp Case 59]***, ***Hemachandra Prasad Nag Chowdary vs. Registrar of Companies [(2010) 158 Comp Civil Assistant Surgeon 21 (AP)], Hindustan Lever Ltd vs. State [(2008) Crl.L.J.608]*** *and in fact as referred supra for no any specific allegations against any of the directors of any responsibility for day-to-day affairs and if so how with the clear details as contemplated by law, which is mandatory to prosecute as held by three judge bench of Apex Court in* ***S.M.S.Pharmaceuticals Ltd., vs Neeta Bhalla [(2005) 127 Comp Case 563 (SC)]***, *proceedings so far as accused No.2 is concerned quashed."*

30. In view of the principles laid down in the above-referred judgments, this Court took a different view with regard to the offence under Section 68 of Companies Act, 1956 and almost contrary to the principles laid down in Hemachandra Prasad Nag Chowdary's case.

31. In any view of the matter, since the limitation cannot be taken as a ground to quash the proceedings at the threshold, the principles laid down in the above judgments needs no consideration in view of the law declared by the Court in ***Japani Sahoo, Sajjan Kumar and Noida Entrepreneurs Association*** cases, therefore, I find that it is not a fit case to quash the proceedings on the sole ground of limitation in view of the law declared by the Hon'ble Apex Court.

32. **Point No.2**: In view my finding on point No.1, this Court need not to examine the starting point of limitation to take

cognizance on an offence in relation to an offender as the limitation cannot be taken as a ground to quash the proceedings in view of the law declared by the Hon'ble Apex Court in the judgments referred supra.

33. Hence, I find no ground to exercise the inherent power to quash the proceedings by applying the principles laid down by "***State of Haryana v. Bhajanlal".*** Consequently, all the petitions are liable to be dismissed.

34. Accordingly, the criminal petitions are dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

April 12th, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.781, 782 and 784 of 2010

April 12th , 2017

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