

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11292 OF 2017

ORDER:

This criminal petition is filed by petitioners/accused Nos.6 to 10 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings against them in C.C.No.75 of 2017 on the file of the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Hyderabad, registered for the offence punishable under Sections 143 (1), 193, 193 (1), 194, 211 (1), 211 (3) (A) to (C), 217 (2AA), 219 r/w, 53, 227, r/w 233, 292, 292 (1), 293 (A), 302 (2), 303 (1), 307, 372 (A) of Companies Act, 1956 (for short "the Act.")

The respondent No.1 – Serious Fraud Investigation Office, Ministry of Corporate Affairs, Government of India, represented by its Assistant Director D.A.Sampath, is the defacto complainant, who filed private complaint before the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Hyderabad for the offence punishable under various Sections referred above alleging that the accused No.1 namely M/s. Hill County Properties Limited was incorporated on 20.05.2005 with Registrar of Companies, Hyderabad as "**Maytas Rajeshwari Development Private Limited**". Later, its name was changed on 28.12.2005 as "**Maytas Hill County Private Limited**", on 20.12.2007 converted its status from Private Limited to Public Limited Company. On 31.12.2007 the same was renamed as "**Maytas Properties Limited**" and again on 15.04.2013 it is renamed as "**Hill County Properties Limited.**" Originally, there were three directors i.e. accused Nos.2 to 4 and accused No.2

resigned to his office as director on 17.01.2009, accused No.3 resigned on 21.01.2008 and accused No.4 resigned on 07.02.2011. Accused No.5 is said to have been appointed as a director on 02.01.2008 and is said to have resigned on 07.02.2011.

The petitioners herein/accused Nos. 6 to 10 are said to have been inducted as directors on 10.08.2011 and 22.01.2011 respectively. That the petitioner No. 4/accused No.9 resigned on 24.12.2011 and petitioner No. 5/accused No. 10 resigned on 10.08.2011.

The Central Government vide its proceedings in Letter No.7/129/2008/CL-II ordered for inspection of books of accused No.1 company. Sri Suryanarayan Dhara was said to have been appointed as inspector. The inspection was said to have been ordered under section 209 (A) of Companies Act, 1956. After due inspection, he submitted his report to Ministry on 03.11.2009 finding 11 violations in Part A (Falling within the powers vested on the Central Government), 13 violations in Part B (Falling within the powers vested on Regional Director) and one violation in Part C (Falling within the powers delegated to Registrar of Companies). On submission of the said report by Sri Suryanarayan Dhara, the Ministry examined the report and decided to conduct de-nova inspection by one N.K.Bhola, Addl. Director SFIO, J.K Jolly, P.C.Nanda Kumar, Dy. Director O/o Regional Director (SER), Hyderabad and issued Letter No. 01/227/2008-CL.II dated 04.07.2011 for de-nova inspection. After joint inspection, a report was submitted, but again another de-nova inspection was ordered by Letter No. 01/227/2008-CL.II dated 28.05.2013 appointing N.Krishnamurthy, Registrar of Companies, A.P, Shahsi Raj Dara

ICLS, Deputy Registrar of Companies, A.P and D.K.Arora, Asst. Director, Serious Fraud Investigation Office. As directed in the letter dated 28.05.2013, they conducted de-nova inspection and submitted their report to the Ministry vide Letter No. SFIO/Insp209/MPL/2013 dated 30.04.2014. The Ministry made certain observations in Letter NO. 01/227/2009-CL-II dated 06.08.2014 and thereafter a report was prepared.

On the basis of inspection report dated 04.02.2015 submitted by Registrar of Companies, Hyderabad, the Ministry through its Letter bearing F.No.05/02/2015/CL.-II dated 24.02.2015 issued necessary instructions and sanction to the complainant to prosecute the accused. The representative of the complainant is said to have been authorised under section 621 (1) of Companies Act, 1956 vide notification dated 06.05.2016 by Ministry of Corporate Affairs vide order No SFIO-1/6/2010-Pros (Vol.1).

It is averred in the complaint that by virtue of orders dated 13.01.2011 passed by the Company Law Board the management of Maytas Properties Limited vested with Infrastructure Leasing and Financial Services Limited Group., (in short IL&FS Group). The said IL & FS said to have acquired 20000 equity shares of Rs.100/- each and that by order dated 13.01.2011 IL&FS was authorised to appoint 4 nominee directors and as such the petitioners herein are appointed as nominee directors. As the management of the accused Company was vested with the IL&FS Group on 13.01.2011 by virtue of order of Company Law Board, new directors were appointed by the IL&FS Group.

In the complaint lodged by the respondent, they narrated certain violations, they are as under:

“(a) Section 372-A:

As per the balance sheet as on 31.03.2008, the accused Company is said to have acquired paid up capital from 11 companies. That in the subsequent balance sheet dated 31.03.2010 a provision was said to be made for permanent diminution of value of investments in respect of 11 companies and one company in Dubai, where investment is made. It is also alleged that during the year 2007-08 the company has invested in 14 companies in which directors are interested directly or indirectly

The company is also said to have issued corporate guarantees, loans and trade investments as per board resolutions dated 31.01.2008, 06.03.2008, 20.05.2008, 02.06.2008, 02.07.2008, 11.08.2008, 27.10.2008. These investments as per balance sheet dated 31.03.2008 were said to be aggregating to Rs.90,25,31,025/-. It is alleged that the same did not disclose the right of ownership, reliability of investment and acquisition of investment as per agreements. In the balance sheet dated 31.03.2009 the Company is said to have admitted violation. Further a loan which was given to M/s. Maytas Infra Limited which was said to be approved by board of directors on 31.01.2008, in which the accused No.2 was said to be a common director.

It is averred that guarantees which were given basing on board resolutions dated 26.03.2008, 24.05.2008, 03.07.2008 and 27.10.2008 are said to be amounting to Rs.228.26 crores. That as per the balance sheet dated 31.03.2007 and as on the date of passing resolution the paid up capital was said to be only Rs.5,00,000/-, which is said to be not matching with the financial status of the company. Therefore, the loans and guarantees extended are said to be beyond the limits prescribed under section 372-A of Companies Act. The balance sheet dated 31.03.2009 also said to have confirmed the said violation.

It is averred that the company has secured loans from various financial institutions amounting to Rs.125 crores as on 31.03.2009 secured by land and buildings at an interest rate between 11% to 15%. However, loans amounting to Rs.375.29 crores were said to given at the rate of 11% which is less than bank lending rate and guarantees amounting to Rs.22.26 crores were said to be given without charging any guarantee commission. This is said to be violation under section 372 (A) (3). It is averred

that since the loans are inter corporate loans the directors are said to be in violation of section 295 of Companies Act, 1956.

(b) Section 211 (3A), (3B), (3C) R/w Rule 7 CAS and section 217 (2AA):

It is averred that as per the balance sheet dated 31.03.2009, the company has not provided interest on CCD (Compulsory Convertible Debentures) of Rs.600 crore amounting to Rs.222.15 crore, which is said to be contrary to Section 211 (3A), (3B), (3C) of companies Act R/w Rule 7 CAS (companies (Accounting Standards) Rules 2009. The company and its directors are also said to have made misstatement and wrong declaration in directors report which is said to be violation of section 217 (2AA) of Companies Act. It is alleged that the statements in relation to the revenue recognition with regard to residential units and the release of units by HMDA would not be for the current year i.e year ending 31.03.2009. That such revenue can only be recognised only after completion of project in all respects. The directors are said to have tried to account the revenues which is not due to the company. By virtue of this the accounts do not reflect the correct financial status of the company.

(c) Section 211 R/w Part II Schedule VI in respect of repairs:

It is averred that in the profit and loss account for years ending 31.03.2007 and 31.03.2008 the amounts spent for repairs and maintenance were shown under one head. That as per part II Schedule VI the same are required to be shown separately. That by virtue of the same the profit and loss account do not disclose the true and fair view of statement of affairs within the meaning of Section 211 of companies Act. Similarly for the years ending 31.03.2009 and 31.03.2010 also the statement with regard to repairs and maintenance were not shown separately.

(d) Section 211 (1), 227 R/w section 233:

Apart from the violations with regard to 2 years preceding to 31.03.2008 with regard to repairs and maintenance shown under one head, it is averred with regard to that the notes forming part of profit and loss account in balance sheet of 31.03.2008. That the allegation that the revenue recognised in relation to residential units sold were not said to be backed by material. On the basis of the above it is alleged that there are violations under section 211 (1) of Companies Act and that the auditors are alleged of violation under section 211 (1) and 233 of Companies Act.

(e) Section 293-A:

It is alleged that the company has given donation Rs. 5 lakhs to CPI (M), which is a political party. This donation was made

within 3 financial years of company's existence as on 31.03.2008. Section 293-A bars such donation, further under section 293 (A) (1) the board has to approve such donation. That the donation cannot also be considered a charity since the provisions of 293 (1) (e) was not complied. That the balance sheet of 31.03.2009 also said to have shown a donation of Rs.3.60 Lakhs. Further it is alleged that no central government approval was obtained which is said to be mandatory under the Act.

(f) Section 307:

It is averred that the company has to keep records with regard to directors shareholding of each director, description, amount of shares, debentures of the company or anybody corporate being subsidiary or holding company. The register that is said to have been produced do not contain such details as prescribed under provisions of Section 307 of the Act.

(g) Section 193 (1), 194 and 292:

It is averred that as per provisions of the section 193 every company is required to maintain minutes of all proceedings of all meetings including board of directors within 30 days of its conclusion, in the manner prescribed. It is alleged that such minute's book was not being maintained after 19.11.2008. Further, alleged that the company has not entered minutes of board meeting held for quarter ending 31.03.2009 and subsequent meeting till date. That it is also alleged that as per balance sheet from 01.04.2008 to 31.03.2009. It is stated that an unsecured loan was taken from one whole-time director Ramu. That it is alleged that there is no board resolution to that effect, which is said to be in violation of section 292 r/w section 193 and 194 which deals with borrowing powers of board. It is further alleged that as per balance sheet dated 31.03.2012 the company said to have disclosed Rs.261.69 crores as inter corporate loans through chain of companies to M/s. Satyam Computers. It is alleged that no provisions were made to write of debts from books of accounts as M/s. Satyam Computers was amalgamated with M/s. Tech Mahindra.

(h) Section 302 (2):

It is averred that as per section 302 (2) the resolution of appointing whole time director shall within 21 days of entering into contract/ varying of contract shall be sent to every member clearly specifying the nature of concern of the director in such contract. The company said to have contravened with the above section.

(i) Section 291 (1) and 193:

It is averred that as per the balance sheet as on 31.03.2009 an amount of Rs.2.81 crores are said to be received as unsecured loan from B.Rama Raju, who is whole time director of the company. The said loan is said to be not backed by board resolution or prior approval of the board exercising borrowing powers as required under the Act. It is stated that as per records an amount of Rs.69.06 crores was received as inter corporate deposit at 18 % interest during the month of October, 2008. The loan said to be not supported by board resolution. The entries were said to be made in register of contracts on 19.08.2010.

(j) Section 303 (1):

It is averred in the complaint that the company is required to maintain various details as required under law. Section 303 requires that of details of directors and if he is also holding any position in any other body corporate etc.,. That further particulars of holding positions in other companies as well. That the balance sheet of 31.03.2008 does not contain the particulars of accused No.2 to 4 about their resignation and appointment etc., that these are violations under section 302 and it falls under contravention of section 302 (1) of the Act.

(k) Section 143 (1):

That it is averred that the company is required to maintain the register of charges with details of the same. However, the company is said to be not maintaining the same. Upon requisition a blank register said to have been produced. That the company's balance sheets of past four years it came to notice that there has been a come to notice that large amounts were taken as secured loans. It is also alleged that the company has not held AGM nor taken permission from concerned authorities in that regard.

(l) Section 219 R/W 53:

It is averred that the company is using computerised balance sheet for each financial year. That this balance sheet was not prepared or sent to shareholders to attend AGM. The dispatch register in this regard was also said to be not maintained.”

On the said complaint, the Special Judge for Economic Offences took cognizance of the offences and issued process to the petitioners.

Aggrieved by the issue of process, the petitioners herein/accused Nos.6 to 10 filed the present petition under Section

482 of Cr.P.C. to the quash the proceedings on the ground that the order of Company Law Board, dated 13.01.2011 prohibited the prosecution of the petitioners, without prior approval of Company Law Board, but no such approval was obtained; on this ground alone the complaint is liable to be quashed against the petitioners herein.

When the respondent No.1 herein filed its investigation report before the National Company Law Tribunal, New Delhi Bench, an application was filed by the petitioners for deletion of their names, and the said application is still pending before National Company Law Board, Hyderabad Bench as it was transferred from New Delhi Bench to Hyderabad Bench and that no order from the National Company Law Board to prosecute the petitioners herein was obtained.

It is also contended that no liability can be fastened to the petitioners herein as all the offences set out in the complaint would attract fine or imprisonment for a period of one year except for the offence punishable under Section 293-A of the Act, which would attract imprisonment for a period of three years. Thus, the limitation as prescribed under Section 468 of Cr.P.C. for all the offences except the offence under Section 293-A of the Act is one year from the date of knowledge. The Limitation for the offence under Section 293-A is three years from the date of knowledge, but the complainant himself states that records of accused No.1 company were verified in the year 2009 itself and there were subsequent inspections at various points of time and the last report was submitted on 04.02.2015, whereas the complaint was filed on 29.11.2016 i.e. beyond the period of limitation prescribed

for various offences except for the offence punishable under Section 293-A even if the date of knowledge is taken to be from the date of last report dated 04.02.2015.

The offence allegedly committed by the petitioners is punishable under Section 293-A of the Act is also barred by limitation as the records were inspected in the year 2009 itself and report was also filed on 03.11.2009, but filed the complaint on 29.11.2016 i.e. almost after 7 years, hence cognizance of such offence is barred by limitation.

The alleged offence punishable under Section 193 (1) of the Act has its foundation in the period prior to the induction of the petitioners as directors, and as such none of the petitioners can be treated as officers in default to be arraigned as accused in the complaint and there is no violation of law of Section 193(1) of the Act, as the final report of 04.02.2015 itself states that there is no violation as "minutes of board meetings and shareholders meetings have been updated".

In relation to the inter corporate deposits from the balance sheet of 31.03.2012, (disclosure of Rs. 261.69 crores as inter corporate loans through chain of companies to M/s. Satyam Computers Services Limited), the Company Law Board, in its order dated 13.01.2011, had stated that the IL&FS Group shall be entitled to recover the inter-corporate deposits provided to Mahindra Satyam Services Limited (formerly Satyam Computer Services Limited). The complaint alleging non writing off of this amount is in direct violation and is in direct contradiction of the orders of Company Law Board dated 13.01.2011, whereby the IL&FS group was granted permission to recover the inter corporate

deposits. Further, the allegation that the inter corporate deposits cannot be recovered as Satyam Computers merged into Tech Mahindra and said deposits have been written off is against the provisions of Companies Act, 1956. It is further alleged that the Tech Mahindra for the past 7 years, has continued to show these amounts in its books of accounts, in suspense account, as "amounts pending investigation".

It is also contended that the petitioners herein cannot be made liable for the offences since the first inspection was conducted during 2007-2009 though the last report is filed on 04.02.2015, which clearly elaborates the fact that the genesis of the inspection was the defaults committed by the earlier promoters and the aftermath of the Satyam episode, starting from the proposed acquisition of Maytas Properties Limited by Satyam Computer Services Limited in 2008. The petitioners herein cannot be made liable for the offences alleged against them as they are nominated as directors by the Company Law Board in a petition filed by the Union of India. It is also contended that every action of the accused company undertaken post January 2011 by the Board of the accused company with the consent of the Government nominee director, who was present in every Board meeting and all the accounts and balance sheets have been adopted by the Board only after due resolutions passed by the Board and the Audit Committee of the accused Company and with the consent of the Government nominee director. All the alleged violations and cause thereof have occurred when the petitioners were nowhere in the picture, as such the petitioners cannot be proceeded for the acts of the past promoters.

Learned K.Lakshman, Assistant Solicitor General supported the case of the prosecution in all respects and contended that the limitation starts from the date when it was detected not from the date of knowledge.

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

“(1) Whether taking cognizance of the offences under Sections 143 (1), 193, 193 (1), 194, 211 (1), 211 (3) (A) to (C), 217 (2AA), 219 r/w, 53, 227, r/w 233, 292, 292 (1), 293 (A), 302 (2), 303 (1), 307, 372 (A) of Companies Act, 1956 is barred by limitation?

(2) Whether the direction issued by the Company Law Board in C.P.No.04 of 2009 debars the respondent No.1 from prosecuting the petitioners without prior approval of the Company Law Board?

(3) Whether the petitioners are liable for prosecution for violations for the period prior to their induction as directors?

(4) Whether proceedings in C.C.No.75 of 2017 on the file of the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Hyderabad are liable to be quashed?

P O I N T Nos.1 to 4:

Before deciding the rival contentions raised by the learned counsel for the petitioners and the learned Assistant Solicitor General before this Court, I would like to discuss about the scope of Section 482 of Cr.P.C.

Section 482 of Cr.P.C. deals with inherent powers of High Court, it reads as follows:

482. Saving of inherent power of High Court- Nothing in this 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 this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In view of the powers vested with this Court by Section 482 of Cr.P.C., it is apposite to advert to the law laid down by the Apex Court to exercise power to quash F.I.R. or any other proceedings.

In “**R.P. Kapur v. State of Punjab**¹”, the Apex Court laid down the following principles:

- (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;
- (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;
- (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
- (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.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis

¹ AIR 1960 SC 866

of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/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 as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar²”***

In ***“State of Haryana v. Bhajan Lal³”*** the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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

² AIR 1990 SC 494

³ 1992 Supp (1) SCC 335

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.

(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 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.

(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.

One of the contentions of the petitioners is that while deciding application filed under Section 482 of Cr.P.C., though scope is limited, the Court cannot look into defence set up by the petitioners, but the undisputed documents and the allegations made in the charge sheet shall be taken into consideration to decide whether *prima facie* case is made out against the petitioners or not in view of the law declared by in “**Umesh Kumar v. State of Andhra Pradesh**”⁴. In the said judgment, the Apex Court is of the

⁴ (2013) 10 SCC 591

view that at the stage of exercising power under Section 482 of Cr.P.C. the High Court could examine the charge sheet, case diary and other material in the charge sheet which by no means can be termed as substantive evidence. However, in exercise of power under Section 482 of Cr.P.C., it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition Under Section 482 Code of Criminal Procedure for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

As discussed above, the prime duty of the Court is to verify the allegations made in the charge sheet and the statements of witnesses recorded by the investigating agency during investigation, the statements produced before the Court, more particularly statements recorded under Section 161 (3) of Cr.P.C. which forms part of the charge-sheet if it is a case instituted on

police report. Though, such statement recorded under Section 161(3) Cr.P.C is not a substantive piece of evidence, it can be used only for limited purpose of contradicting the witness under Indian Evidence Act. However, this Court is competent to deduce its conclusion on the statements recorded under Section 161(3) Cr.P.C during investigation, though not a substantive piece of evidence, here the question of recording such statements does not arise as it is a case of complaint.

The names and designations of the petitioners, their date of admission as a member and resignation, are as under:

Sl. No.	Name of the petitioner and No.	Designation	Date of joining as director	Date of resignation	Alleged violations punishable under Sections
1	Murli Dhar Khattar (A.6)	Director/ Managing Director	10.08.2011		Under Sections 372-A, 211 (3A) (3B), (3C) read with Rule 7 CAS and Section 217 (2AA), Section 211 read with part II schedule VI, Section 211 (1), 227 read with Section 233, Section 293-A, Section 307, Section 302 (2), Section 291 (1) and 193 and Section 303 (1), Section 193 (1), 194 and 292, Section 143 (1) and Section 219 read with 53 of Companies Act, 1956
2	Ramesh Chandra Bawa (A.7)	Director	22.01.2011		
3	Arun Kumar Saha (A.8)	Director	22.01.2011		
4	Vimal Kumar Kaushik (A.9)	Managing Director	22.01.2011	24.12.2011	
5	Ram Chand Karunakaran (A.10)	Director	22.01.2011	10.08.2011	

As per the details shown in the table, the petitioners were not the directors of the company on the relevant date of

commission of offence and they became directors on the dates shown in column No.4 and resigned on the dates shown in column No.5. The petitioners are unconcerned with the affairs of the company, as the petitioner No.1 was appointed as director on 10.08.2011 and the other petitioners were appointed as directors on 22.01.2011 respectively. In such case, for the acts done by the company, prior to their entry as directors and after their resignation, the petitioners are not liable to be prosecuted. No criminal liability can be fastened on the petitioners for the acts or commissions or omissions of the company prior to their admission as directors.

To fasten criminal liability against a director, he must be director of the company directly involving in day to day affairs of the company regularly. But in the present case, the petitioners were not the members of the board of directors by the date of commission of offence i.e. violation of various provisions shown in the table. In such circumstances, no criminal liability can be fastened against the petitioners for the offences punishable under Sections referred supra.

The allegations made in the charge sheet and the final report dated 04.02.2015 submitted by the members of the committee appointed by the Ministry of Corporate affairs disclosed that the petitioners were not the members of board of directors. Even if the report is ignored, which is the basis for filing complaint before the Special Judge for Economic offences, Hyderabad, the allegations made in the complaint are sufficient to establish that the petitioners were not the directors of the company as on the date of alleged violations.

One of the contentions raised before this Court is that all the offences alleged committed by the petitioners would attract fine or imprisonment for a period of one year except for the offence punishable under Section 293-A of the Act, which would attract imprisonment for a period of three years. Thus, the limitation as prescribed under Section 468 of Cr.P.C. for all the offences except the offence under Section 293-A of the Act is one year from the date of knowledge. The Limitation for the offence under Section 293-A is three years from the date of knowledge, but the complainant himself states that records of accused No.1 company were verified in the year 2009 itself and there were subsequent inspections at various points of time and the last report was submitted on 04.02.2015, whereas the complaint was filed on 29.11.2016. Thus, the Special Judge for Economic Offences is incompetent to take cognizance for the offence punishable under Section 293-A also even if the date of knowledge is taken from the date of first report dated 03.11.2009. On the other hand, from the allegations made in the complaint filed before the Court, the offence punishable under Section 293-A of the Companies Act was not made out, as by the date of alleged filing of complaint, the minutes of board meeting and shareholders meeting have been updated as per the final report. As such taking cognizance of the offence punishable under Sections referred supra against the petitioners is barred by limitation.

Admittedly, most of the offences allegedly committed by the petitioners are prior to their appointment as nominee directors in pursuance of the orders of Company Law Board in C.P.No.04 of 2009, and they became directors only in the year 2011 and

continued for short period and resigned to their post as directors. All the offences as discussed above, are punishable with fine or imprisonment for a period of one year except for the offence punishable under Section 293-A of Companies Act. There is no special provision in the Companies Act dealing with limitation for the offences punishable under the Companies Act, 1956. In the absence of specific provision in the Companies Act, 1956, provisions pertaining to limitation in Chapter XXXVI of Cr.P.C. are applicable. Section 468 of Cr.P.C. deals with bar to taking cognizance after lapse of the period of limitation. Sub-Section (2) of Section 468 of Cr.P.C. deals with punishment for various offences and limitation for such offences, is as follows:

“(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.”

Section 469 deals with the commencement of the period of limitation and it reads as follows:

“469. Commencement of the period of limitation—

(1) The period of limitation, in relation to an offence, shall commence,-

(a) on the date of the offence; or

(b) 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

(c) 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.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.”

If Clauses (1) & (2) of Section 469 are read together, the limitation starts from the date of offence that has been committed and computing the said period, the commission has to be excluded.

In “***Surinder Mohan Vikal v. Ascharj Lal Chopra***⁵” the Apex Court while referring to Section 468 and 469 Cr.P.C with regard to commencement of limitation, held that, the respondent can file petition for condonation of delay under Section 470(1) Cr.P.C. But, no such application is filed in the present case. In the facts of the above judgment, the complainant filed a complaint for the offences punishable under Section 500 IPC on 15.03.1972 alleging that a defamatory statement was made and according to the complaint, the offence under Section 500 IPC was committed on 15.03.1972 which was the date of offence within the meaning of Section 469(1)(a) and the period of limitation cannot be calculated for the purpose of the bar provided under Section 468 Cr.P.C. But, as has been stated, the complaint under Section 500 I.P.C. was filed on 11.02.1976, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

⁵ AIR 1978 SUPREME COURT 986

Thus, the complaint filed after expiry of limitation of three years prescribed under Section 468 (2) (c) of the Companies Act is barred by limitation and the Court is not supposed to take cognizance of such offence.

The period of limitation referred in Section 468 of Cr.P.C. can be extended by exercising power under Section 473 of Cr.P.C. But in the present case, the period of limitation was not extended by exercising power under Section 473 of Cr.P.C. On the other hand, none of the offences are continuing offences prescribed under Section 472 of Cr.P.C.

The contention of the learned Assistant Solicitor General cannot be accepted in view of the clear language used in Section 468 of Cr.P.C. as the date of such violation is relevant to decide the period of limitation.

As stated above, except the offence punishable under Section 293-A of the Companies Act, all other offences are punishable with imprisonment less than one year. When the final inspection took place on 04.02.2015, private complaint has to be filed within one year, but the complaint was filed on 29.11.2016 i.e. almost after 9 months after the expiry of limitation prescribed under Section 468 of Cr.P.C. for all the offences except for the offence under Section 293-A of the Companies Act, on this ground alone the proceedings against the petitioners are liable to be quashed except for the offence punishable under Section 293-A of the Companies Act by applying the guidelines laid down by the Apex Court in “**State of Haryana v. Bhajan Lal**” (referred supra).

With regard to the offence punishable under Section 293-A of the Companies Act, as discussed in earlier paragraphs, the alleged offence took place much prior to induction of the petitioners as members of the board of directors. On this ground alone, the proceedings against the petitioners for the offence punishable under Section 293-A of Companies Act are also liable to be quashed.

Yet, another contention raised before this Court is that the Company Law Board in its order dated 13.01.2011 passed in C.P.No.04 of 2009 specifically made it clear that no action against the petitioners can be taken without prior approval of the Company Law Board, but no such approval was obtained, as such the complaint is not maintainable.

As the company was in doldrums, to protect the public interest and interest of the shareholders, the Government i.e. Union of India filed petition before the Company Law Board seeking certain directions. On the application filed by the Government, the petitioners and another Government nominee were appointed as nominee directors of the company and while passing order, the Company Law Board issued a specific direction prohibiting the prosecution of the petitioners and other directors without prior approval of the Company Law Board.

According to Section 401 of the Companies Act, the Central Government may itself apply to the (Tribunal) for an order under Section 397 or 398, or cause an application to be made to the (Tribunal) for such an order by any person authorized by it in this behalf.

Section 402 of the Companies Act deals with powers of Tribunal on application under Section 397 or 398 of the Act. According to clause (g) of Section 402 of the Companies Act, the Tribunal may pass any order prescribed under clause (a) to (g) or any other matter for which in the opinion of the Tribunal it is just and equitable that provision should be made. Therefore, by exercising power under clause (g), the Company Law Board appears to have been issued such direction prohibiting prosecution of the petitioners for any offence except with the prior approval of the Company Law Board. When such prohibition is made in the application made by the Government itself, the respondent ought to have obtained prior approval from the Company Law Board, but in utmost haste, the respondent filed prosecution against the petitioners despite specific prohibition, initiated prosecution against the petitioners. Therefore, in view of prohibition against the prosecution of the petitioners except prior approval of the Company Law Board, the proceedings against the petitioners are liable to be quashed in view of guideline No.6 laid down by the Apex Court in “**State of Haryana v. Bhajan Lal**” (referred supra).

In view of my foregoing discussion, it is clear that the alleged violations have taken place prior to induction of petitioners as nominee directors in pursuance of the order dated 13.01.2011 passed in C.P.No.04 of 2009 by the Company Law Board. Further, the alleged violations are hopelessly barred by limitation in view of Section 468 of Cr.P.C. as there is no specific provision in the Companies Act.

In addition to that, no prior approval was obtained from the Company Law Board to prosecute the petitioners despite specific

prohibition in the orders passed by the Company Law Board on the application made by the Government. Therefore, the proceedings are liable to be quashed.

In view of my discussion in earlier paragraphs, I find that it is a fit case to quash the proceedings against the petitioner. The points are answered accordingly.

In the result, the criminal petition is allowed. The proceedings in C.C.No.75 of 2017 on the file of the Special Judge for Economic Offences – cum – VIII Additional Metropolitan Sessions Judge, Hyderabad, are hereby quashed against the petitioners herein. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

12.10.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

