

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.784 OF 2021(FILING)

Radha Satish Timblo And 3 Ors.

.. Petitioners

Versus

The Union of India, thr. its
Principal Secretary And 3 Ors.

...Respondents

Mr Devidas J. Pangam, Advocate *with Mr Parikshit Sawant, Advocate for the Petitioners.*

Mr Raviraj Chodankar, Deputy Solicitor General of India *for Respondents No.1 and 2.*

**CORAM:
DATED :**

**PRAKASH D. NAIK, J
7th SEPTEMBER, 2023**

P.C.

1. The petitioners have challenged the proceedings initiated by the respondent No.2 for offence under Section 217 of the Companies Act, 1956. The complaint is based on observations reflected in the Audit Report scrutinizing the Balance Sheet of the Company. Pursuant to filing of the complaint, the learned Magistrate has taken cognizance of complaint and issued process.

2. Learned advocate Mr Pangam submitted that the complaint suffers from serious infirmities. The allegations in

the complaint are vague. The complaint is based on observations in the Audit Report. Prior to filing the present complaint, the respondent No.2 had lodged another complaint based on similar allegations. The other complaint was filed against the Company and the Directors. The accused therein pleaded guilty and they were convicted to pay fine of Rs.7,000/- each. The complaint is barred by law of limitation. Punishment provided for violation under Section 217 is imprisonment of 6 months. However, the complaint was filed after a period of 2 years from the date of knowledge of the alleged violation. Reliance is placed on the decision of Calcutta High Court in the case of ***Bithal D. Mundra and Others v/s. Registrar of Companies, West Bengal***¹.

3. Learned counsel for the respondent No.2 submitted that the offence is continuing in nature and Section 468 would not debar filing the complaint. After violation came to the knowledge of the respondents, several approvals and procedure was required to be undertaken including sanction from the Regional Director to initiate proceedings. There is no delay in filing the complaint. Two separate complaints were required to be filed since after lodging the first complaint it was realised that some of the directions were not prosecuted. Reliance is placed in the decision of High Court of Delhi in the case of ***Sanjay Suri & Ors v/s. State & Anr***².

1 2011 SCC OnLine Cal 915

2 2010 167 DLT 123

4. In the light of various issues involved in this petition, I find that arguable questions are raised. Hence, I pass the following Order:-

ORDER

- (i) Rule.
- (ii) Ad-interim relief granted by this Court vide order dated 02.12.2021 shall continue till final disposal of this petition.
- (iii) Hearing of petition is expedited.

(PRAKASH D. NAIK, J.)