

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 134 OF 2006

Securities and Exchange Board of India ...Appellant

vs.

M/s. Baroda Agro Industries Ltd. and Ors. ...Respondents

Ms.Sabiha Ansari, Advocate for the Appellant.

Mr.Priya Rita, Advocate for Respondent No.3.

Mr.Y.Y.Dabke – APP for the Respondent No.7-State.

CORAM : S. M. MODAK, J.

DATE : 28th FEBRUARY, 2023

P. C. :-

1. Heard learned Advocate for the Appellant and learned Advocate for Respondent Nos.2 and 3. Though the office of Respondent No.1-Company is closed down, Respondent No.3 – director has accepted the service for Respondent No.1. Substituted service is effected on Respondent Nos. 4 to 6.

2. Perused the order dated 24th December, 2001 passed by the Court of Additional Chief Metropolitan Magistrate in C.C.No. 450/S/1997. The complaint filed for commission of an offence under

Section 68 of the Companies Act, 1956 [“Companies Act”] was dismissed on account of non appearance of the Complainant.

3. My attention is invited to the provisions of Sections 621(1) and 621(1A) of the Companies Act. The complaint for the offence punishable under the Companies Act can be filed only by certain persons. One of them is a person authorized by Securities and Exchange Board of India. Whereas, Section 621(1A) mentions that the personal attendance of the Complainant is not required. It is required only when it is directed by the Court by written order.

4. The date on which the impugned order came to be passed, the matter was fixed for appearance of the Accused persons and the summons were not served. There was some communication gap in between authorized officer of the Complainant and the learned Advocate. It is mentioned in Para No.15 of the memo of Appeal. The process was issued on 16th July, 1997. It is contended that there is no order passed by the learned Metropolitan Magistrate thereby insisting upon the personal attendance of the authorized officer of the Complainant. In view of that, it is submitted that the order is illegal.

5. There is opposition on behalf of the Respondents for the reason

that there is a delay and negligence on the part of the Appellant at every stage. There was a delay before the trial Court as well as before this Court.

6. Even though the Appeal is of the year 2006, earlier the leave was applied in the year 2002 and it was granted. Whether it was granted after hearing the Respondents or not is immaterial when the leave is granted.

7. For the above reasons, I am of the considered view that the learned Magistrate was not right in dismissing the complaint and the provisions of Section 621(1A) of the Companies Act were not considered. There is no direction thereby insisting upon the person attendance of the authorized officer of the Appellant. Hence, that order deserves to be set aside. With certain directions, following order is passed :-

O R D E R

- (i) Appeal is allowed.
- (ii) Order dated 24th December, 2001 passed by the Additional Chief Metropolitan Magistrate in C.C. No. 45450/S/1997 is set aside.
- (iii) Complaint is restored to the file.
- (iv) The Appellant is directed to take effective steps for securing the presence of the Respondents.

- (v) It is made clear that considering the facts and circumstances, the authorized officer of the Appellant is directed to remain present on each and every date and this be considered as a direction under Section 621(1A) of the Companies Act.
 - (vi) Complainant is directed to appear before the concerned Court (now it is a Special SEBI Court) on 6th March, 2023.
8. In view of the aforesaid observations, Appeal is disposed of.
9. Parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]