



2024:DHC:3522



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28.02.2024

Pronounced on: 03.05.2024

+ CRL.M.C. 888/2022

YOGESH CHANDAR GOYAL & ORS. Petitioners

Through: Mr.Purvesh Buttan, Mr.Prateek
Narwar, Mr.Jaspreet Kaur,
Ms.Antara Chowdhury, Advs.

versus

THE STATE & ANR. Respondents

Through: Mr.Aman Usman, APP.
Mr.Tanmaya Mehta, Mr.Riya
Rathi, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 12.02.2020 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'ASJ') in CrI.Rev.No.169/2019, titled as *Yogesh Chandra Goyal & Ors. v. K.K.Goel & Sons (HUF)*, dismissing the said Revision Petition filed by the petitioners herein.
2. By way of the above Revision Petition, the petitioners had impugned the Order dated 05.01.2019, passed by the learned Additional Chief Metropolitan Magistrate (Special Acts), Central

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District, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case No.11205 of 2017, titled as ***K.K.Goel & Sons HUF v. Sh. Yogesh Chandra Goyal & Ors.***, summoning the petitioners herein for the offence under Sections 185/447/452 of the Companies Act, 2013 (in short, 'Companies Act') read with Section 120B of the Indian Penal Code, 1860 (in short, 'IPC').

The Complaint filed by the Respondent no. 2:

3. The abovementioned complaint has been filed by the respondent no.2 herein, as the complainant no.1, with M/s Himgiri Fincap Ltd., the company in question, as complainant no.2, alleging therein that the respondent no.2 is a shareholder of the complainant no.2 company. It is further alleged that the petitioner no.1 herein was a Whole-Time director of the complainant no.2 company and was in control of the day-to-day affairs and the management of the said company. It is further alleged that the petitioner no.1, along with the petitioner nos.2 and 3 herein, managed the entire sale/purchase of the shares, transactions, management control, and functioning of the company.
4. It is alleged that the petitioner no.3 was appointed as the director of the said company on 16.08.2002.
5. It is alleged that balance sheet has not been prepared for the said company after 31.03.2002, and no Annual General Meeting (AGM) has been called for after 30.09.2002. It is further alleged that as per the balance sheet dated 31.03.2002 of the said

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company, it was having the following stocks/shares and securities:

“6. That since the Company was in the business of share market its stocks and assets were mainly in the form of bonds/shares/securities. The details of the stocks/ shares and securities which Complainant No.2 Company was having as per the last balance sheet dated. 31/03/2002, (Annexure- A2), is given below:

<u>Fixed Assets:</u>	Rs.14.84 Lacs
<u>Assets:</u>	<u>Rs.520.96 Lacs</u>
<u>Total:</u>	Rs.535.80 Lacs
<u>Company's Liability:</u>	Rs.36.08 Lacs
<u>Therefore total:</u>	Rs.535.80
	= Rs. 499.72 Lacs

ASSETS INCLUDES :

CURRENT ASSETS : Rs.361.47
(includes stock of shares and securities of Rs.224.45 lacs.)

LOAN AND ADVANCES: Rs.159.49
(includes loan to a company in which a director is interested of Rs. 65.36).”

6. The respondent no.2, in the complaint, alleged that the petitioner nos.1 and 2, in active connivance with the petitioner no.3, misappropriated the funds/assets/shares/stocks of the said company by illegally transferring them to the petitioner no.4, that



is, M/s Philco Exports Pvt. Ltd., a company controlled by the petitioner nos.1 and 2, with the petitioner no.1 being the Chairman/Managing Director of the same. It is also alleged that the petitioners also shifted the office of the complainant no. 2 company along with all the records, books of accounts, office equipment, computers, furniture and fixtures, minute books, and stocks of the company, to the residence of the petitioner nos.1 and 2.

7. As regards as the allegations for the offence under Section 185 of the Companies Act, the same are contained in paragraphs 13 and 21 of the complaint, and are reproduced herein below:

“13. That under the head of Loans And Advances of Balance Sheet dated 31/03/2002 (Annexure - A2) includes Rs.6536355.35 (Rs. Sixty Five Lacs Thirtv Six Thousand Three Hundred Fifty Five) due from a company (Philco Exports Pvt. Ltd. i.e. Accused No.6) in which Accused No.1, 2 & 3 are also directors. It is pertinent to mention that the Accused No. 1, the whole-time director of Complainant No.2 Company is also the chairman/ director of Accused No.5 Company. In fact Accused No.1 has diverted these funds to Accused No. 6 Company, a company controlled by him and his family, in the form of loan. Such transaction with a company in which a director of the company is director in both the companies, is prohibited under the provisions of Section 185 of the COMPANIES ACT 2013.

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21. That Accused No. 1 and 2 have violated section 185 of the Companies Act by giving loan to companies and concern in which they

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are director. They have diverted/ siphoned the funds of Complainant No.2 Company (as is evident from the Balance sheet of Accused No.6) (Annexure- A4 Colly) to Accused No. 5.”

8. For the purposes of attracting the offence under Section 452 of the Companies Act, the respondent no.2 in the complaint alleges as under:

“16. That with predetermined and premeditated illegal / unlawful and ulterior / vested motives, the Accused No.1, 2 & 4 shifted the registered office of the Company to C-15, Preet Vihar, Delhi, a premises co-owned by him and shifted entire records/ books/assets etc at their own will and are liable to restore the assets of the Company which they are wrongfully withholding, which are as under:

1. Stock of shares securities valued Rs. 224.45 Lacs with all the dividend received thereon up to date.

2. Recovery of loan and advances of Rs. 71.57 lacs with upto date interest.

3. Fixed deposit receipts and bank balances amounted to Rs.63.25 Lacs, should be restored with upto date interest.

4. Deposit with stock exchange worth Rs. 68.34 lacs should be accounted for and interest provided thereon (if any) should be accounted for. (Annexure - A2)”

9. The respondent no.2 in the complaint also makes various other allegations against the petitioners, which, for the purposes of the present petition, are not relevant.



10. The respondent no. 2, in the complaint, states that the petitioners have committed the following offence: -

“43. That the facts and events mentioned in the preceding paragraphs establishes the commission of offences u/s 447, 448, 449, 452 and 185 of the Companies Act 2013. along with offences under section 403, 406, 408, 411 and 414 read with section 120B of IPC and also offences of creating false & forged documents u/s 191, 192, 193 & 196 of IPC by the accused persons and makes it clear that the accused persons are liable / bound to deliver all the stocks of shares & securities, furniture and fixtures and other things to the company and its shareholders under the provisions of the Companies Act, 2013. Thus the accused have not only cheated the Complainant No.2 Company they have also committed and played fraud on the Government, shareholders and creditors of the company.”

Proceedings before the Learned Trial Court and the Learned ASJ:

11. Based on the above complaint, by the Order dated 05.01.2019 passed by the learned Trial Court, the petitioners have been summoned for the offence under Sections 185/447/452 of the Companies Act read with Section 120B of the IPC. By the Impugned Order, as noted hereinabove, the Revision Petition filed by the petitioners against the said Order stands dismissed by the learned ASJ.

Submissions of the Learned Counsel for the Petitioners:

12. The learned counsel for the petitioners submits that as far as the offence under Section 447 of the Companies Act is concerned, in



terms of the second Proviso to Section 212(6) of the Companies Act, cognizance of the said offence can be taken only on a complaint made by the Director, Serious Fraud Investigation Office (in short, 'SFIO') or any officer of the Central Government authorized by a General or Special Order in writing in this behalf by that Government. He submits that the cognizance of the said offence cannot be taken on a private complaint filed under Section 200 of the Cr.P.C. by an alleged shareholder of the Company. In support, he places reliance on:

- a) ***Sivananda Rajaram v. New Shipping Kaisha Ship Management Pvt. Ltd.***, Judgment dated 03.07.2023 of the High Court of Madras in Criminal Original Petition No. 19154 of 2021;
- b) ***Suman Paruchuri v. Jakka Vinod Kumar Reddy & Ors.***, Judgment dated 06.06.2022 of the High Court of State of Telangana in Criminal Petition No(s) 8025 of 2021 and 8024 of 2021; and,
- c) ***Ashish Bhalla v. State & Ors.***, of this Court 2023 SCC OnLine Del 5818.

13. For the offence under Section 185 of the Companies Act, he submits that the offence is alleged to have been committed by the petitioners in the years 2002 to 2008. He submits that even assuming that the petitioners may have committed such an offence, in terms of Section 468(2) of the Cr.P.C., there is a bar on taking cognizance of such an offence after a period of six months. He submits that, therefore, the complaint filed in the



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year 2017 by the respondent no.2 would clearly be barred under Section 468 of the Cr.P.C.

14. He submits that even otherwise, the petitioners are also facing prosecution under Section 295 of the Companies Act, 1956, which is equivalent to Section 185 of the Companies Act, 2013, on a complaint filed by M/s Glory Apartments Pvt. Ltd., a company in which the respondent no. 2 holds substantial interest and controls its day-to-day affairs and functioning.
15. As far as Section 452 of the Companies Act is concerned, the learned counsel for the petitioners submits that the offence being a continuing one in nature, therefore, Section 468 of the Cr.P.C. is not applicable to it. He submits that, however, cognizance of the same could not have been taken as a complaint under Section 630 of the Companies Act, 1956 with similar allegation, being CC No.521556/2016, filed against the petitioners by M/s Glory Apartment Pvt. Ltd., a company under substantial control of the respondent no.2 herein and his family members, is already pending adjudication.

Submissions of the Learned Counsel for the Respondent No.2:

16. On the other hand, the learned counsel for the respondent no.2 submits that while there is no dispute that the cognizance of an offence under Section 447 of the Companies Act can be taken only on a complaint filed by the officer under Section 212(6) of the Companies Act, and that there is a statutory bar on taking cognizance except upon a complaint made by such specified

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officer, however, there is no bar on taking cognizance of an offence of conspiracy under Section 120B of the IPC to commit offence under Section 447 of the Companies Act. He submits that an offence of conspiracy, being an independent offence, the cognizance of the same can be taken even though the complaint is not filed by an officer specified under Section 212(6) of the Companies Act. In support, he places reliance on the judgments of the Supreme Court in *State of Andhra Pradesh v. Cheemalapati Ganeshwara Rao and Anr.*, AIR 1963 SC 1850; *State of Madhya Pradesh v. Sheetla Sahai & Ors.* (2009) 8 SCC 617, and *Ajay Agarwal v. Union of India (UOI) & Ors.* (1993) 3 SCC 609.

17. As far as the question of limitation is concerned, he submits that the offence under Section 452 of the Companies Act is a continuing one, therefore, in terms of Section 472 of the Cr.P.C., there would be no period of limitation. In support, he places reliance on the judgment of the Supreme Court in *Krishna Bhattacharjee v. Sarathi Choudhury & Anr.*, (2016) 2 SCC 705.
18. He submits that Section 452 of the Companies Act has more severe punishment than that under Section 185 of the Companies Act, therefore, Section 452 of the Companies Act shall, for purposes of Section 468(3) of the Cr.P.C. would have to be treated as prescribing more severe punishment.
19. He further submits that the petitioners have also been summoned under Section 120B of the IPC, which would be punishable with the same punishment as Section 447 of the Companies Act and

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therefore, no period of limitation would apply. He submits that, in terms of Section 468(3) of the Cr.P.C. read with Section 472 of the Cr.P.C., since offence under Section 452 of the Companies Act, Section 185 of the Companies Act, and Section 120B of the IPC are being tried together, the complaint was within the period of limitation for each of the offence charged. In support, he places reliance on *Mohan Baitha & Ors. v. State of Bihar & Anr.*, (2001) 4 SCC 350 and *Anju Chaudhary v. State of Uttar Pradesh & Anr.*, (2013) 6 SCC 384.

20. He submits that in any case, if this Court is of the opinion that the complaint for an offence under Section 185 of the Companies Act was beyond the period of limitation, the matter should be remanded back with the liberty to the respondent no.2 to file an appropriate application under Section 473 of the Cr.P.C. before the learned Trial Court to seek an extension of the period of limitation.

Analysis and Conclusion:

21. I have considered the submissions made by the learned counsels for the parties.

Section 447 of the Companies Act:

22. Section 447 of the Companies Act, as was then applicable, reads as under:

“447. Punishment for fraud.—Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable



with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

(i) “fraud”, in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”

23. The Second Proviso to sub-section (6) of Section 212 of the Companies Act bars the Special Court from taking cognizance of an offence under Section 447 of the Companies Act, except upon a complaint in writing made by the Director, SFIO or any officer of the Central Government authorized, by a general or special



order in writing in this behalf by that Government. The said provision is reproduced as under:

***“212. Investigation into affairs of Company
by Serious Fraud Investigation Office-***

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(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.”



24. A complaint under Section 200 of the Cr.P.C. by a private person/shareholder or even by the company itself would, therefore, not be maintainable and cognizance of such an offence cannot be taken by a Court except on the complaint filed by the abovementioned Authorities.
25. This embargo gets further fortified by Sub-section (1) of Section 439 of the Companies Act, which is reproduced herein below:

“439. Offences to be non-cognizable.—(1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.”

26. Interpreting the above provisions, the High Court of Telangana in **Sumana Paruchuri** (supra), has held as under:

“16. As seen from Section 212 (6) of the Companies Act, 2013, it provides a safeguard against frivolous complaints and ensures that a prosecution for fraud can only be launched after due investigation. Learned counsel for the respondent No.1 contended that the respondent No.1 was entitled to file complaint as a shareholder of the company under Section 439 (2) of the Companies Act, 2013. But, an exception is carved out under Section 439 (1) itself that every offence under the Act except the offences referred to in sub-section (6) of Section 212 of the Act shall be deemed to be non-cognizable. As such, Section 439 of the Companies Act, 2013 is not applicable to offences covered under Section 447 of the said Act. The contention of the learned counsel for the respondent No.1 was that under Section 439 of the Companies Act, 2013, the Court can take cognizance of any offence including



Section 447 of the Act so long as the SFIO had not been assigned investigation by the Central Government under Section 212 of the Act. But the heading of Section 439 of the Act itself would read as "offences to be non-cognizable". Hence, cognizance of the offence under Section 447 of the Act could not have been taken by the trial Court on a private complaint, as it is a cognizable offence."

27. Similar is the view taken by the High Court of Madras in ***Sivananda Rajaram*** (Supra), and by the Karnataka High Court in the judgement dated 21.10.2022, passed in Criminal Petition No.3550 of 2017, titled ***Sri. M.Gopal v. Sri. Ganga Reddy***.
28. Recently, the Karnataka High Court, in its judgement dated 01st March, 2024 passed in Writ Petition No. 11821 of 2018, titled as ***Sri. Arun Ballakur & Anr. v. Sri. M. Krishna Reddy***, has also quashed the proceedings for an offence under Section 447 of the Companies Act initiated on a private complaint by the shareholder therein, on the ground that the cognizance for the offence under Section 447 of the Companies Act can be taken only on a complaint filed by the Director, SFIO in terms of the Second Proviso of Section 212(6) of the Companies Act.
29. For the above reason, the Order dated 05.01.2019 of the learned Trial Court as also the Impugned Order, in so far as it summons the petitioners for the offence under Section 447 of the Companies Act, cannot be sustained and are, accordingly, set aside.

Limitation:

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30. Sub Section (2) of Section 185 of the Companies Act, as was then applicable, shall be relevant for deciding the question of limitation as far as the offence under Section 185 of the Companies Act is concerned. The same is reproduced herein below:

“185. Loans to directors, etc.-

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(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.”

31. Section 468 of the Cr.P.C. bars the Court from taking cognizance after lapse of period of limitation as prescribed thereunder. It is reproduced 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."

32. As the offence under Section 185 of the Companies Act is punishable with imprisonment for a term which may extend to six months or with fine and, therefore, in terms of Section 468 Cr.P.C., the period of limitation shall be one year.
33. Section 469 of the Cr.P.C. prescribes the commencement of the period of limitation. It is reproduced as under:

"Section 469 – Commencement of the period of limitation-(1) The period of limitation, in relation to an offender, 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."



34. In the present case, as the complainant himself is a shareholder of the Complainant no. 2 company, and, in any case, has not pleaded that he did not know of the offence having been committed by the petitioners, the cognizance taken of the offence under Section 185 of the Companies Act which is stated to have been committed between the years 2002-2008, on a complaint filed in 2017, was barred by limitation and is, therefore, bad in law.
35. However, this would not be the end of the discussion on the question of limitation. As is noted hereinabove, the learned Trial Court has taken cognizance also of an offence under Section 452 of the Companies Act.
36. Section 452 of the Companies Act, as was then applicable, is reproduced herein below:

“452. Punishment for wrongful withholding of property.—(1) If any officer or employee of a company—

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.



(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years. ”

37. A reading of the above provision would show that wrongfully withholding of the possession of the property of the company, including cash, is itself an offence under Section 452 of the Companies Act. The offence would, therefore, continue till the time such property of the company is wrongfully withheld by the accused. This would, therefore, be a ‘*continuing offence*’.
38. In ***Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath***, (1991) 2 SCC 141, the Supreme Court, considering its earlier judgement in ***State of Bihar v. Deokaran Nenshi***, (1972) 2 SCC 890, and for *pari materia* provision contained in Section 630 of the Companies Act, 1956, held as under: -

“21. As was reiterated in Amrit Lal Chum v. Devoprasad Dutta Roy (1988) 2 SCC 269 “Section 630 of the (Companies) Act (1956) plainly makes it an offence if an officer or employee of a company who was permitted to use the property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment. It is the wrongful withholding of such property, meaning the property of the company after termination of the employment, which is an offence under Section 630(1)(b) of the Act.” What then is the nature of this offence. The question then is whether it is a continuing offence. According to Black's Law



Dictionary (Revised 4th edn.) continuing offence means a transaction or a series of acts set on foot by a single impulse, and operated by an unintermittent force, no matter how long a time it may occupy. In State of Bihar v. Deokaran Nenshi (1972) 2 SCC 890, the question was whether the failure to furnish returns on the part of the owner of a stone quarry under Regulation 3 of the Indian Metalliferrous Mines Regulations, 1926 even after warning from the Chief Inspector was a continuing offence. Section 79 of the Mines Act, 1952 which provided that no court shall take cognizance of an offence under the Act unless a complaint was made within six months from the date of the offence and the explanation to the section provided that if the offence in question was a continuing offence, the period of limitation shall be computed wherefore to every part of the time during which the said offence continued. Shelat, J. for the court observed :

“A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is



absent in the case of an offence which takes place when an act or omission is committed once and for all.”

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24. The concept of continuing offence does not wipe out the original guilt, but it keeps the contravention alive day by day. It may also be observed that the courts when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature, should give due weight and consideration to the provisions of Section 473 of the Code which is in the nature of an overriding provision and according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code of Criminal Procedure any court may take cognizance of an offence after the expiration of a period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice.

25. The expression ‘continuing offence’ has not been defined in the Code. The question whether a particular offence is a ‘continuing offence’ or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence.

26. Applying the law enunciated above to the provisions of Section 630 of the Companies Act, we are of the view that the offence under this section is not such as can be said to have consummated once for all. Wrongful withholding, or wrongfully obtaining possession and wrongful application of the company's property, that is, for purposes other than those expressed or directed in the articles of the company and authorised by the Companies Act, cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the



offender's possession is delivered up or refunded. It is an offence committed over a span of time and the last act of the offence will control the commencement of the period of limitation and need be alleged. The offence consists of a course of conduct arising from a singleness of thought, purpose of refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous series of acts which endures after the period of consummation on refusal to deliver up or refund the property. It is not an instantaneous offence and limitation begins with the cessation of the criminal act, i.e. with the delivering up or refund of the propriety. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put an end to. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly misapplied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment. This, in our view, is sufficient ground for holding that the offence under Section 630 of the Companies Act is not one time but a continuing offence and the period of limitation must be computed accordingly, and when so done, the instant complaints could not be said to have been barred by limitation. The submission that when the first respondent upon his retirement failed to vacate and deliver possession of the company's quarter to the company the offence must be taken to have been complete, has, therefore, to be rejected."

39. Section 472 of the Cr.P.C. prescribes that in 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. Section 472 of the Cr.P.C. is quoted herein under: -



“472. 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.”

40. Therefore, as Section 452 of the Companies Act is a ‘*continuing offence*’, it continues to be committed as long as the property of the company is withheld by the accused officer of the company. A fresh period of limitation begins to run at every moment such property is in the wrongful possession of such a person.
41. As far as cognizance taken by the learned Trial Court of the offence under Section 452 of the Companies Act is concerned, for the above reasons, it cannot be faulted on the ground of being beyond the period of limitation.
42. The question now remaining to be answered is that whether in view of Sub-Section (3) of Section 468 of the Cr.P.C., the cognizance of the complaint, as far as the offence under Section 185 of the Companies Act is concerned, was still within the period of limitation, though standalone it would have been beyond the period of limitation.
43. Sub-Section (3) of Section 468 of the Cr.P.C. has been reproduced hereinabove. For the sake of ready reference, it is again quoted herein below:

“Section 468 – Bar to taking cognizance after lapse of the period of limitation-

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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.”

(Emphasis supplied)

44. Therefore, if two or more offence can be tried together, the “*period of limitation*” under Sub-Section (2) of Section 468 of the Cr.P.C. 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.
45. Section 220 of the Cr.P.C. prescribes the circumstances where more than one offence may be tried together. It reads as under:

“220. Trial for more than one offence.”-(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219, is accused of committing, for the purposes of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the



offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860).”

46. A reading of the above provision would show that where various acts, of which one or more than one would itself or themselves constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by any one, or more than of such acts.
47. In the present case, the alleged handing over of the property of the Company by the petitioner no.1 to the petitioner no.4, as alleged in the paragraphs 13 and 21 of the complaint quoted hereinabove, constitutes an offence under Section 185 of the Companies Act. The non-return of the property, that is, loan and the advances, is alleged to constitute an offence under Section 452 of the Companies Act. Therefore, in terms of Section 220 of the Cr.P.C. both the offences can be tried together.
48. The question that would still remain is as to whether, only because the offence under 452 of the Companies Act is a continuing offence and, therefore, the complaint, as filed, was within the period of limitation as far as offence under Section 452 of the Companies Act is concerned, the complaint under Section 185 of the Companies Act would also now be within the period of the limitation.



49. Sub-section (3) of Section 468 of the Cr.P.C. provides that where two or more offences are being tried together, the “*period of limitation*” 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. Therefore, as an example, if the accused is charged in a trial with an offence punishable with fine, and for an offence punishable with imprisonment for a term not exceeding one year, the period of limitation for taking cognizance shall be one year. If in the same trial, the accused is charged with an offence which is punishable with imprisonment for a term of upto three years, the period of limitation shall be three years.
50. In this regard, it is to be noted that the punishment for the offence under Section 452 of the Companies Act is in fine alone. In terms of Section 468(2) of the Cr.P.C., therefore, the period of limitation for filing of the same would be six months. Therefore, the same shall have no effect on the “*period of limitation*” for the offence under Section 185 of the Companies Act. Merely because offence under Section 185 of the Companies Act can be tried alongwith the offence under Section 452 of the Companies Act, the period of limitation does not extend as far as the cognizance of an offence under Section 185 of the Companies Act is concerned. The effect of offence under Section 452 of the Companies Act, being a ‘*continuing offence*’, only is that for the offence under Section 452 of the Companies Act, fresh period of limitation begins to run with each day that the accused



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wrongfully withholds the property of the Company; the period of limitation however, remains to be six months.

51. The complaint, in the facts of the present case, would, therefore, still be barred by limitation as far as offence under Section 185 of the Companies Act is concerned.
52. The learned counsel for the respondent no. 2, for seeking an extension of the period of limitation, has also relied upon the cognizance taken under Section 120B of the IPC by the learned Trial Court. As far as his submission that criminal conspiracy, as defined in Section 120A of the IPC, being an independent offence is concerned, it cannot be doubted. It also cannot be doubted that it is punishable separately under Section 120B of the IPC.
53. In the present case, however, neither is the offence under Section 120B of the IPC standalone and as a separate offence pleaded by the respondent no. 2 to have been committed by the petitioners, nor has the learned Trial Court taken cognizance of such offence as a standalone or separate offence. By the order dated 05.01.2019, the learned Trial Court has taken cognizance of the "*offence u/s 185/447/452 of the Companies Act r/w offence u/s 120B of the IPC*". The learned Trial Court has, therefore, not taken the cognizance of a separate and independent offence under Section 120B of the IPC; it is of the offence under Sections 185/447/452 of the Companies Act, where the accused are sought to be charged with the aid of Section 120B of the IPC. The respondent no. 2, therefore, cannot take any benefit of the same

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for seeking an extension of the period of limitation for the offence under Section 185 of the Companies Act.

Effect of the Complaint filed by M/s Glory Apartment Pvt. Ltd.:

54. The learned counsel for the petitioners has submitted that the learned Trial Court has erred in taking cognizance of the offence under Section 452 of the Companies Act as a complaint under Section 630 of the Companies Act, 1956 with similar allegations has been filed against the petitioners by M/s Glory Apartment Pvt. Ltd., which is a company under substantial control of the respondent no.2 herein and his family members, is already pending adjudication. In my opinion, this cannot be a ground to question the Summoning Order of the learned Trial Court at this stage. This issue, being a disputed question of fact, is to be considered in the trial by the learned Trial Court at an appropriate stage and cannot be pre-judged by this Court at this stage. At an appropriate stage, the learned Trial Court shall consider whether two complaints are raising similar allegations against the petitioners and if it would amount to the petitioners facing two trials for the same offence. If the court finds so, it would then take necessary action, in accordance with law.

Final Findings:

55. In view of the above, the Order dated 05.01.2019 passed by the learned Trial Court, taking cognizance of the offence under Sections 185/447 of the Companies Act read with Section 120B



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of IPC as against the petitioners, cannot be sustained and is liable to be set aside.

56. As far as the Order 05.01.2019 passed by the learned Trial Court, taking cognizance of the offence under Section 452 of the Companies Act read with Section 120B of the IPC is concerned, the same is upheld.
57. As noted hereinabove, the learned counsel for the respondent no.2 has submitted that the respondent no.2 be granted liberty to move an application under Section 473 of the Cr.P.C. before the learned Trial Court to seek an extension of the period of limitation as far as offence under Section 185 of the Cr.P.C. is concerned. This Court would only clarify that the present Order shall not bar the respondent no. 2 from moving such an application, if otherwise, permissible in law. The same, if filed, shall be considered by the learned Trial Court in accordance with law.
58. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 03, 2024
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Click here to check corrigendum, if any

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