

Rakesh C. Jain and Others Vs C.B.I. and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 24, 2015

Acts Referred: Companies Act, 1956 - Section 10, 187-B, 2(11), 237, 391

Constitution of India, 1950 - Article 226, 227

Criminal Procedure Code, 1973 (CrPC) - Section 397, 482

Negotiable Instruments Act, 1881 (NI) - Section 138

Penal Code, 1860 (IPC) - Section 120-B, 420, 467, 468, 471

Hon'ble Judges: Anita Chaudhry, J

Bench: Single Bench

Advocate: Anand Chhibbar, Senior Advocate and Vaibhav Sahni, for the Appellant; S.S. Sandhu, APP, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Anita Chaudhry, J

This is a petition filed under Section 446 of the Companies Act read with Section 482 Cr.P.C. seeking quashing of FIR

No. RC-BD-1/2000/e/0005 and Sections 120-B, 420, 467, 468 and 471 IPC dated 22.12.2000, registered by Central Bureau of Investigation,

Bank Securities and Fraud Cell, New Delhi.

2. The primary question which requires adjudication is whether the FIR registered in Delhi can be quashed in the proceedings filed in this High

Court. Secondly, whether the expression "other legal proceedings" occurring in Section 446 of the Companies Act would include Criminal

Proceedings.

3. It would be useful to give the factual matrix, the petitioners claim themselves to be Ex-Directors/Promoters of Asian Consolidated Industries

Ltd. which was earlier in liquidation in the proceedings decided on 12.05.2014. It has been pleaded that the company is now out of liquidation as it

has settled all the secured or unsecured creditors.

4. The company started its commercial production in about 1990. It started making losses in 1996 and faced labour problems which led to

retrenching of workers. The financial position of the company continued to deteriorate and thus putting strain on the performance of the company.

In 1998, in the liquidation petition, a winding up order was passed and the petition was allowed on 07.01.1999. An official liquidator was

appointed to take charge of all the assets. The order of admission of the petition and the order of winding up was challenged in company appeal

before the Division Bench. No interim relief was granted. The appeal is still stated to be pending before the Division Bench.

5. The company had approached Small Industries Development Bank of India (here-in-after referred to as SIDBI) for sanction of limit under the

Direct Discounting of Bills (Components) to the extent of Rs. 200 lac and the limit was secured by second charge on the fixed assets of company

and personal guarantee of Mr. Rakesh Jain and Mr. Alok Jain besides other charges on their properties. The limit of Rs. 100 lacs was released to

the company after the requisite shares were pledged. An ad hoc limit of Rs. 500 lacs was sanctioned in November, 1993 against security of pledge

of equity shares.

6. The case of the petitioner is that the respondent No. 2 bank levelled allegations that they had come to know that one of the pledgers M/s.

Ganesh Exports had pledged 20 lacs shares of ACIL Company and the share certificates which were given to SIDBI by way of pledge executed

vide agreement dated 17.01.1995 and 31.08.1995 bore the same certificate number, same folio number and distinctive share number. The bank

lodged a complaint with CBI vide their letter dated 14.11.2000 and the FIR was registered with the Fraud Cell at New Delhi.

7. The petitioners have pleaded that they had informed SIDBI in October 1995 that distinctive number on share certificate in respect of 20 lac

shares pledged by M/s. Ganesh Exports were wrongly printed and they may not be utilized and should be returned so that necessary corrections

could be made. It was pleaded that they had no intention to cheat and it was a clerical mistake. The bank did not return the share certificate. The

petitioners have pleaded that the shares pledged with IDBI for a bridge loan were not parted with and the loan was repaid on 04.01.1994 much

prior to the agreement of pledge with SIDBI. The case of the petitioners further is that the company in liquidation had arrived at one time settlement

with the respondent No. 2 bank and a communication was given to the company on 01.07.2013 and one time settlement had been arrived at and

entire dues had been paid and no outstanding amount was pending. It was pleaded that the complainant of the said FIR had filed recovery

proceedings before Debt Recovery Tribunal, Delhi and they had withdrawn the recovery certificate in July, 2013 and an order was passed in this

regard. It was pleaded that the company in liquidation did not have any intention to cheat any secured or unsecured creditors. It was pleaded that

the petitioners and complainant/respondent No. 2 had reconciled their grievances and had buried their disputes and therefore, they were

approaching this Court for quashing of the FIR as continuation of further proceedings would be waste of judicial time and resultantly lead to

miscarriage of justice. The petitioners had pleaded that in view of the five Judges Bench judgment reported in Kulwinder Singh and Others Vs.

State of Punjab and Another, (2007) 4 CTC 769 : (2007) 3 RCR(Criminal) 1052 , the FIR should be quashed. The petitioners had also prayed

for interim stay.

8. A co-ordinate Bench before whom the matter was listed for the first time, passed the following order on 11.12.2014:-

It is contended by the learned senior counsel appearing on behalf of the petitioners that FIR had been registered against the petitioners on

22.12.2000, as per which, the company and its directors were guilty of pledging share certificates having the same distinct folio number to SIDBI

whereas the same had earlier been pledged to Ganesh Export Pvt. Ltd. Over the years, the company went into liquidation and proceedings were

also initiated against them before the Debt Recovery Tribunal, New Delhi. After concerted efforts, the company and its directors managed to settle

their outstandings with both their secured and unsecured creditors. Perusal of Annexure P2 issued on 01.07.2013 shows that under a one time

settlement of dues, all the outstanding of the company towards SIDBI have been settled and the company's accounts have been closed in the

books of SIDBI. Similarly before the Debt Recovery Tribunal, the RC issued against the company which was in favour of SIDBI stands closed

and the RC withdrawn. The company is stated to have come out of liquidation and has settled all its accounts as is evident from an order passed

on 12.05.2014 by the learned Company Judge of this High Court. Thus it is contended that SIDBI has no cause of action now, therefore, the

proceedings under the FIR should be quashed.

Notice of motion for 02.02.2015.

Meanwhile, further proceedings shall remain stayed.

9. Upon notice, the respondents have appeared and had filed their respective responses.

C.B.I. in its reply had taken up an objection that the petition was not maintainable before the High Court as the trial was pending before the CMM

at Rohini, New Delhi. It was pleaded that the company namely M/s. Asian Consolidated Industries had fraudulently obtained credit facilities from

the bank and it had its corporate office in New Delhi and the offence was committed under the jurisdiction of Delhi Courts. It was pleaded that the

complaint was made by the Deputy General Manager of SIDBI that they had defrauded them to the tune of Rs. 689.75 lacs by availing bill

discounting facility on the basis of two share certificates of Rs. 20 lacs shares and 13,20,000 shares of ACIL having same certificate number, folio

number and distinctive number besides other securities. It was pleaded that the same shares had been pledged with M/s. Rajasthan Breweries Ltd.

It was pleaded that investigations revealed that the share certificate issued in the name of M/s. Ganesh Exports for 20 lac shares was pledged with

SIDBI as normal security and another share certificate for 13,20,000 shares was dishonestly pledged on 30.08.1995 as additional security and

when this fact was brought to the notice of the company Mr. Sanjay Jain sent a letter that it was a case of wrong printing and had asked for the

certificates for necessary correction. It was pleaded that M/s. ACIL forwarded 20 cheques of Rs. 10 lacs and two cheques of Rs. 50 lacs and

knowing that there was no funds in the account in order to get back the disputed duplicate share certificate. Thereafter, the company sent two

bank drafts of Rs. 50 lacs each and asked for return of the two cheques sent earlier and gave an assurance that the remaining 20 cheques of Rs.

10 lacs would be honoured. It was pleaded that the bank drafts were realised while the other cheques totalling Rs. 3 crores had bounced when

presented for payment.

It was further pleaded that the investigations revealed that out of 20 lac shares of Rajasthan Breweries Ltd. pledged with SIDBI, 8,89,000 shares

having distinctive numbers were pledged with IDBI, Mumbai as collateral security for a bridge loan of Rs. 10 crores. Out of 2.4 lac shares pledged

with SIDBI, 30,000 shares with the same certificate were found to be already pledged with IDBI, Mumbai as collateral security and the company

had issued duplicate share unauthorizedly and dishonestly and availed the credit limit from SIDBI. The investigations also revealed that Ashok Jain,

Director of M/s. ACIL had informed SIDBI of having purchased printed metal sheets from the seller and had introduced M/s. V.K. Packaging

Industries as SSI Unit. M/s. V.K. Packaging Industries also furnished a certificate certifying to have sold printed metal sheets manufactured by

them, to M/s. ACIL. Investigations, however, revealed that M/s. V.K. Packaging Industries was a non-existing company and G.P. Aggarwal, the

authorized signatory was the father-in-law of Mr. Ashok Jain. Though, the registration certificate was found to be genuine but the SSI Unit did not

exist at the address given in the document. The transactions were not genuine and the bill of the firm had been dishonestly presented for discounting

and the credit was allowed on forged documents.

Investigations revealed that Sanjay Jain, Director of M/s. ACIL had submitted a request for discounting of bills of M/s. Rajasthan Industries but

this concern did not exist at the address given and this concern was owned by Mira Jain wife of Mr. Alok Jain and it had not done any business as

was reflected in the bills discounted by SIDBI and false and forged documents were presented. The investigations revealed that all the accused

arrayed in the FIR were involved in conspiracy and had cheated SIDBI to the extent of 6.8 crores.

It was pleaded that investigation into the complaint was completed and challan was presented on 21.12.2002 and the trial Court had taken

cognizance and had issued summons to the accused and the case was fixed for arguments on charge on 31.03.2015. It was further pleaded that

the criminal liability could not be extinguished by the settlement of civil liability and withdrawal of the case by the bank would not automatically

absolve the directors. It was further pleaded that they had sent a query to the bank who had clarified that the pending criminal and civil matters had

not been compromised.

10. Respondent No. 2-SIDBI took the same stand as CBI and pleaded that this Court had no jurisdiction and the cause of action had not accrued

within the jurisdiction of this Court and the petition was not maintainable in the present form and Section 446 of the Companies Act was not

relevant and the petition was misconceived. It was pleaded that one time settlement was communicated to the company/directors on 30.03.2013

with a rider which contained the following condition:-

The OTS offer of SIDBI should not be construed as constituting any commitment on the part of the Bank of withdraw criminal/civil proceedings

against the company and its promoter(s), that may be pending with various Courts.

11. The matter came up before this Court on 06.07.2015 when the counsel for CBI had stated that the CBI had registered the FIR in Delhi and

quashing petition had been filed in this Court and stay should be vacated. The counsel for the petitioners had sought time to argue.

12. Heard.

13. The counsel for the petitioners had urged that the petition was filed in this Court as the winding up proceedings took place here. It was urged

that the registered office of the company is at Rewari, Haryana. The counsel referred to Section 10 of the Companies Act and Annexure P-3. It

was urged that the company had approached the Court for revival of the company and the winding up order was recalled and the matter was

pending, therefore, they had approached this Court for quashing of the FIR. The counsel referred to Section 446 of the Company Act, 1956 and

urged that any suit or proceeding by or against the company can only be filed where the winding up proceedings have been taken. He sought

support from Steel Authority of India Ltd. Vs. O.L. of Gujrat Steel Tubes Ltd. And 5 others, decided on 13.09.2005. The counsel extensively

referred to para No. 7 of the judgment and laid stress to the provisions contained in Section 446(2)(a) and urged that the word "proceeding" used

in the Section would include criminal proceedings. It was urged that since the matters before the DRT had been settled and all the amount had

been paid, therefore, it would be an abuse of the process of the Court and the FIR be quashed.

14. On the other hand, the counsel representing respondents No. 1 & 2 had urged that this Court had no jurisdiction to quash the FIR as the case

was registered at Delhi. It was urged that they had specifically raised the plea that the jurisdiction of this Court could not be invoked and no

rejoinder has been filed. It was urged that there are allegations of giving duplicate share and dishonestly using the same for availing credit limit from

SIDBI and there are allegations that the concern which had been set up belonged to the family and there were no genuine transactions and the

companies never existed and they were not found at the addresses which were shown in the records. It was urged that credit limit agreement was

taken in Delhi and the documents were executed in Delhi and the FIR was registered in Delhi and the criminal proceedings can only be taken up by

the Court having jurisdiction. It was urged that the one time settlement does not refer to the criminal proceedings. It was urged that no approval has

been given by RBI yet to the settlement.

15. While going through the record, it was found that the petitioners had only pleaded that they had not filed any such similar petition in this Court

or before the Apex Court. The petitioner was asked to file an affidavit that no such or similar petition had been filed in any other Court in the

country. That affidavit had been filed and was taken on record.

16. It would be relevant to first refer to the provisions of Company Act, 1956 referred to by the petitioner.

Section 10 reads as under:-

Section 10

(1) The Court having jurisdiction under this Act shall be-

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent

to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2);

and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect

of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit,

empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred-

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 425 to 560) and the other

provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression ""registered office"" means the place which has longest been the registered

office of the company during the six months immediately preceding the presentation of the petition for winding up.

17. Section 446 reads as under:-

446. Suits stayed on winding up order.

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal

proceeding shall be commenced. or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave

of the Court and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being, in force, have

jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of

the company;

Whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been

made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies

(Amendment) Act, 1960 (65 of 1960).

18. It is now to be considered as to whether the ""other legal proceedings"" referred to in Sub-Section 1 and the expression ""legal proceedings"" in

Sub-Section 2 of Section 446 of Company Act would include criminal proceedings initiated against the directors of the company. The Court had

observed that the ""other legal proceedings"" as used in Section 446(1) do not include criminal proceedings. Reference may be here made to Pennar

Paterson Ltd. Vs. Shikshak Sahakari Bank Ltd., (2010) 101 SCL 290 .

19. The object of Section 446 of the Companies Act is to see that the assets of the company are brought under the control of the winding up

Court to avoid wherever possible, expensive litigation and to see that all matters in dispute which are capable of being expeditiously disposed of by

the winding up Court are taken up by that Court. This does not, however, mean that all disputes wherein a company is involved should be

proceeded with only by the company court or that if they are pending with other statutory bodies leave of the company court has to be obtained.

The requirement of the provision only is that a company cannot be proceeded against without the knowledge and consent of the company court.

The Section, however, does not prohibit proceedings being taken by the company against this nor does it prohibit the taking of any proceedings

against any directors or officers or other servants of the company. In K.P. Devassy Vs. Official Liquidator and Others, (1998) 2 CompLJ 315 :

(1997) 3 ILR (Ker) 743 , proceedings against the Managing Director of a company under Section 138 of the Negotiable Instrument Act was held

to be not an action against the assets of the company and it was held that they could not be transferred to the company Court.

20. The petitioners claim that this Court would have the jurisdiction since the winding up proceedings were taken up by this Court. The petition is

silent and they have not specifically pleaded this fact in their petition. The counsel for the petitioners had referred to Steel Authority's case (supra)

but I find that the judgment is of no help. There a party in the capacity of the Managing Director of the company had filed a criminal complaint. An

objection was taken that the Magistrate's Court had no jurisdiction to entertain and dispose off the criminal complaint filed by the company in

liquidation through its Managing Director when the company had gone in liquidation and official liquidator had been appointed. It was observed

that there are offences against an Act in which the official liquidator has to launch proceedings and therefore, the case was transferred with a

direction to the Official Liquidator to examine the complaint and proceed with the same in accordance with law. The authority is not applicable to

the facts of the present case.

21. In In Re: Pennar Paterson Ltd., (2002) 2 ALD 78 , the Andhra Pradesh High Court was examining the expression ""other legal proceedings

occurring in Section 446(1) of the Companies Act and whether they would include criminal proceedings.

Para Nos. 10, 13, 14 and 19 of the judgment are relevant and read as under:-

10. The question as to whether the expression "other legal proceedings" would include prosecution may now be considered. Section 446 of the

Act has been enacted for the purpose of protection of the assets of the Company. By reason of the said provision, the personal criminal

misconduct on the part of the Company or its Directors is not saved.

13. It has clearly been held that a prosecution does not come within the purview of Section 446 of the Companies Act inter alia on the ground that

the said provision has been enacted for the purpose of saving the assets of the Company and having regard to the provisions contained in Sections

187-B and 391(6) and 457, prosecution would not come within the purview thereof. It is now well settled principles of law that where different

expressions have been used in different sections of the statute, the same should be given different meanings.

14. The words ""suit and other legal proceedings"" may be read ejusdem generis. Had the intention of the Legislature been to include prosecution

within the expression "other legal proceedings", there was no reason as to why it could have been said so. Although the heading of section is not

relevant for construction of a statute, where the wordings of the section are clear, the same in the case of obscurity can be referred to for

ascertaining the true meaning of the provision.

19. It is now trite that even assuming that prosecution has been launched illegally, the remedy of the Official Liquidator would be either to file an

application under Section 633 of the Companies Act and or to file an application before the concerned High Court to which the Court of

Magistrate is subordinate either under Article 226 or 227 of the Constitution of India or under Section 482 or 397 of the Criminal Procedure

Code. The order taking cognisance by criminal Court can be interfered with either by a Magistrate, Sessions Judge or by the High Court.

22. It was concluded in the above case that the company Court has no jurisdiction to transfer a criminal case from one Court to another and the

expression other legal proceedings occurring in Section 446(1) did not embrace within its fold a criminal proceedings.

23. The definition of Court in Section 2(11) of the Companies Act, 1956 clearly states that the Court would mean the Court having jurisdiction

with respect to the matter relating to the company as provided under Section 10 and with respect to any offence against the act meaning thereby

the Companies Act, it would be the Court of the Magistrate of the 1st Class having jurisdiction.

24. The expression ""Court which is winding up the company"" will comprehend the Court before which a winding up petition is pending or which

has made an order for winding up of the company. Such a Court Ipso facto would have jurisdiction to entertain the proceedings enumerated in

Clause a to d of Sub-Section 2 of Section 446 of the Act.

25. In the present case there is no case against the Act, nor the matter relates to the winding up of the company. The allegations of cheating and

fraud have been levelled against the partners regarding which the FIR has been registered in Delhi. It is the Delhi Court who had summoned the

accused. The Magistrate at Delhi had taken cognizance of the matter. Therefore, the petitioners could not have approached this High Court for

quashing. The petition is dismissed being not maintainable.