Andhra Pradesh State Essential Commodities Corpn. Ltd. Vs Registrar of Companies

Court: Andhra Pradesh High Court

Date of Decision: June 7, 2002

Acts Referred: Companies Act, 1956 â€" Section 220
Criminal Procedure Code, 1973 (CrPC) â€" Section 197

Citation: (2002) 2 ALD(Cri) 263 : (2002) 2 ALT(Cri) 256 : (2002) 2 APLJ 362

Hon'ble Judges: S.R.K. Prasad, J

Bench: Single Bench

Advocate: Amancharla Krishna Murthy, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. The petitioners who are accused in S.T.C. No. 62 of 1998 invoke the inherent powers of this Court to quash the proceedings in S.T.C. No. 62

of 1998 on the file of Spl. Judge for Economic Offences, Hyderabad.

2. The facts that arise for consideration can be succinctly stated as follows :

The 1st petitioner is a Government company. Petitioners 2 and 3 are directors in the office of the said company at the time of filing of complaint.

u/s 220 of the Companies Act, 1956 ("the Act") as amended by the Companies (Amendment) Act, 1977 there is a statutory obligation on the part

of the company and its directors to file the approved balance sheet and profit and loss account within 30 days before the Registrar of Companies

after laying them before the annual general meeting. The audited balance sheet and profit and loss account of the company as on 30-6-1989 have

to be laid before the annual general meeting to be held on 31 -12-1989 as required u/s 210 of the Act. It is also mentioned that three copies of the

balance sheet, etc., so laid shall be filed with the Registrar of Companies on or before 30-1-1990. If it is not filed by them, the same has to be filed

within 30 days from the date on or before the annual general meeting should have been held. It is also alleged that petitioners 1 and 3 failed and

neglected to file with the complainant herein the said balance sheet and profit and loss account. As they failed to comply with the requirements

under law, they committed default within the meaning of Section 5 of the Companies Act, read with Section 472 of the Code of Criminal

Procedure. Hence, the complaint made by the Registrar of Companies has been taken on file and numbered as S.T.C. No. 62 of 1998.

3. Aggrieved by the same, this criminal petition is presented by the petitioners.

4. It is contended by the learned counsel for the petitioners that auditors are not appointed in time by the Central Government and they are at fault

and due to which the accounts, balance sheet and profit and loss account are not placed in time before the 1st respondent. It is also contended by

the learned counsel that the 2nd petitioner took charge only on the F.N. of 16-7-1997 as Vice-Chairrnan and Managing Director, A.P. State Civil

Supplies Corpn. Ltd. from H.S. Brahma, LAS. It is also contended that the 3rd petitioner took charge as Secretary & General Manager (Finance)

on 31-7-1976 on the retirement of P. Prabhakara Rao. It is further contended that sanction is required to prosecute the public servants u/s 197 of

the Code of Criminal Procedure.

5. The learned standing counsel appearing on behalf of the 1st respondent contends that there was no complaint made to the Central Government

about the auditors appointed. The Managing Director and Secretary are responsible since they have not complied with the provisions of Section

220. She also further contends that sanction is not required for prosecuting the Managing Director and Secretary of 1st petitioner-company.

6. Adverting to the said contentions, it is clear that petitioners 2 and 3 arc not working at the time of alleged default. It is also clear that soon after

taking charge as Vice-Chairman, 2nd petitioner got the accounts audited and the balance sheet also got prepared. Therefore, negligence cannot be

attributed to petitioners 2 and 3. It is a case of non-preparation of balance sheet and profit and loss account and getting them audited as on 30-6-

1989 by petitioners 2 and 3. It is a case of non-application of mind and acting arbitrarily by showing petitioners 2 and 3 as accused. Perhaps the

Central Government to cover up its latches for not appointing the auditors for every year, shifted the burden on the petitioners 2 and 3 by accusing

them in the present complaint. My attention is also drawn by the learned counsel for the petitioners about issuing of a show-cause notice after filing

of the complaint before the 2nd respondent. It is a classic case where there is non-application of mind by the 1 st respondent and it. shows his total

ignorance of law and procedure to be followed before the Courts.

7. Insofar as prior sanction is concerned, petitioners 2 and 3 are public servants. Therefore, sanction is required u/s 197 before prosecuting the

public servants. The learned counsel for the 1st respondent contends that sanction is not necessary for prosecuting the public servants and she

relied on a decision in Smt. K. Padmavathamma Vs. Smt. R. Uma Maheswari and Others, . The decision cited by her does not render much help,

it only helps and supports the version of the learned counsel for the petitioners as can be seen from the observations made in the judgment. The

relevant portion at para-5 and para-15 read as follows :

5. No question of sanction can arise u/s 197, unless the act complained of is an offence, the only point for determination is whether it was

committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if

the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the

merits. What a Court has to find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done

by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of situation.

** ** **

15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection u/s 197 of the Code, it has to be shown by the

accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in

the discharge of official duty as well as in dereliction of it. For invoking protection u/s 197 of the Code, the acts of the accused complained of must

be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the

performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the

case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings

will have to be dropped. It is well-settled that question of sanction u/s 197 of the Code can be raised any time after the cognizance, may be

immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain

cases where it may not be possible to decide the question effectively without giving opportunity to the defence to established that what he did was

in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the

performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to

the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be

delivered upon conclusion of trial.

It is clear from the principles laid down by the Supreme Court, if an act committed has something to do or is related in some manner with the

discharge of official duty, sanction is required. Even otherwise, they are not functioning as officials at the relevant time. They cannot be held

responsible by showing them as accused for latches of their predecessors in discharge of official duty. The complaint has been filed without

obtaining the sanction.

Therefore, it is not maintainable against public servants. Insofar as A.P. State Essential Commodities Corporation Ltd., represented by its incharge

Managing Director, is concerned, he can be prosecuted only for non-compliance of the provisions of the Act.

8. To sum up, I find that sanction is required for prosecuting petitioners 2 and 3 before the Criminal Court. It is clearly stated by the Supreme

Court in R.P. Kapur Vs. The State of Punjab, that in some categories of cases inherent power can and shall be exercised to quash the proceedings

where it manifestly appears that there is a legal bar against institution or continuance, e.g., want of sanction. The said principles have been

reiterated once again in State of Karnataka v. M. Devendrappa [2002] (1) Sup 192. In view of the settled law, this Court has no other go except

to quash the proceedings as against petitioners 2 and 3 for want of sanction. Insofar as the first petitioner is concerned, trial shall go on.

9. In the result, the proceedings taken against petitioners 2 and 3 in S.T.C. No. 62 of 1998 on the file of Spl. Judge for Economic Offences,

Hyderabad are quashed. Insofar as petitioner No. 1 is concerned the trial shall go on. Accordingly, this petition is ordered.