

(2000) 03 AP CK 0023

Andhra Pradesh High Court

Case No: Criminal Petition No. 3052 of 1999

Dr. A.V. Mohan Rao
and Another

APPELLANT

Vs

Kishan Rao and
Another

RESPONDENT

Date of Decision: March 1, 2000

Acts Referred:

- Constitution of India, 1950 - Article 245(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 188

Citation: (2000) 1 ALD(Cri) 590 : (2000) 100 CompCas 729

Hon'ble Judges: J. Chelameswar, J

Bench: Single Bench

Advocate: C. Praveen Kumar, for the Appellant; The Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J. Chelameswar, J.

This is a petition filed u/s 482 of the Code of Criminal Procedure praying to quash the proceedings in C.C.No.24 of 1999 on the file of the Court of the Special Judge for Economic Offences at Hyderabad. The petitioners are the accused Nos.1 and 2 in the said C.C., which came to be filed by way of private complaint by the first respondent herein alleging the commission of offences under Sections 60, 63, 68, 68A read with Section 621 of the Companies Act. The first respondent is a share-holder in a company called M/s. SPECTRUM POWER GENERATION LIMITED, Hyderabad which has its registered office at Hyderabad. The petitioners herein are the directors of the said company.

2. The allegations of the complaint are that the petitioners floated a Company in United States of America (U.S.A.) - M/s. SPECTRUM TECHNOLOGIES USA INC at New York. In the said company, both the petitioners own 5000 of the shares each. The accused also floated an offshore company called SPECTRUM INFRASTRUCTURES LTD., at Jersey, Channel Islands, wherein once again both the petitioners hold 50% share each. Another company called SPECTRUM INFRASTRUCTURES LTD., at Mauritius was floated by the petitioners with a similar share holding as mentioned above. Further a Company known as SPECTRUM TECHNOLOGIES USA INC, Port Louis, at Mauritius was created. The said company is totally owned by the SPECTRUM INFRASTRUCTURES LIMITED at Mauritius. A fourth company by name SPECTRUM TECHNOLOGIES USA INC at Mauritius was created by the accused in association with the afore said people. According to the complaint, all the abovementioned companies are wholly owned and controlled by the accused-petitioners herein.

3. As the matters stood thus, the first of the companies mentioned above - the SPECTRUM INFRASTRUCTURES LTD., Jersey, Channel Islands issued a document styled as "Project Overview". The said company issued a letter dated 30.9.1994 by the first accused. As the whole case revolves round this particular letter, the relevant portion of the said letter is extracted and it reads as follows:

"Re: Private Sector Power Generation Project in Kakinada, Andhra Pradesh.

I am enclosing a high level overview of the investment opportunity for the above project. Though I am introducing to you to this opportunity now, we have done extensive groundwork for this project for the last two years. Today, we have reached the point where we can now make the foreign currency investment in the project.

As you are probably aware, this is clearly the best time for investing in India's economic future. The economic liberalization towards a market economy and the focus to encourage a "for profit" private investment in infrastructural industries, such as power, has presented a unique opportunity for investors like us. We seized this opportunity and vigorously promoted and developed the fast privately held Joint Venture Power Company in India.

We have a rare ground floor investment opportunity, which would normally be sold at a premium. However, this project is being offered to you with the same high investment returns as the promoters. For the financial security of the capital and the investment income and for tax beneficial treatment, we have formed an "offshore" entity, "SPECTRUM INFRASTRUCTURES LIMITED" to execute and direct our investment in the power project. This entity will be the investment vehicle through which investors will be participating in this venture".

I will be in touch with you in the next few weeks to discuss your investment commitment. The initial investment funds will have to be made available by October 20,1994.

In the meantime, if you have any questions, please call 382 0056 or 3821727

Sincerely Yours,
Sd/-xx xx xx xx."

4. Along with the said letter, the accused also circulated a document titled:

"SPECTRUM POWER 208 MEGAWATT POWER PLANT AT KAKINADA, ANDHRA PRADESH, INDIA

PROJECT OVERVIEW"

5. It is alleged in the complaint that the first petitioner herein filed an affidavit in the High Court of Delhi in CM No.2799 of 1998 in FAO 266 of 1997 wherein the petitioner made a sworn statement, as follows:

"With regard to contents in paragraph No.6, I humbly submit that the Appellant and its associate Companies have actually remitted 9.3.million US dollars after obtaining the necessary permission from the Reserve Bank of India. Over one hundred thirty Non-Resident Indians have contributed to the equity share capital of the Appellant and its Associate Companies for the purpose of investment in the equity capital of Spectrum Power Generation Ltd., Copies of the Applications filed before the Reserve Bank of India and the Foreign Investment Promotion Board (FIPB) together with the permissions obtained from them are enclosed and marked as Annexure-XI. The Appellant has furnished all the required information and complies with the necessary formalities for the purpose of investment in Spectrum Power Generation Limited and the contents in paragraph No.6 are hereby denied."

6. As the matters stood thus, the Managing Director of the Indian Company i.e., SPECTRUM POWER GENERATION LIMITED received a letter dated 26.6.1997 said to have been sent in the name of Spectrum Non-Resident Indian Investors. According to the complaint, the substance of the said letter is that Non-Resident Indians are anxiously waiting for the Indian Company's shares offer and public issue. The said letter was followed up by some correspondence from various persons claiming to be Non-Resident Indian investors of the Indian company. In the complaint it is stated that the first of the above mentioned American Companies i.e., SPECTRUM TECHNOLOGIES USA INC at New York remitted an amount of \$ 6,16,000 (American dollars) on 5.3.1993 and 6.8.1993 to the Indian Company. Consequently, the said American Company was allotted the shares of the Indian Company. Thereafter some more amounts were remitted from the second of the above mentioned American Companies i.e., Spectrum Infrastructures Limited at Jersey, Channel Islands on various dates to the tune of \$ 2,87,000 (American dollars) and in return the said company was also allotted shares in the Indian Company.

7. Similarly, the SPECTRUM TECHNOLOGIES USA INC at Mauritius remitted another sum of \$ 8.40 (American dollars) to the Indian Company and shares were issued to the

said company at Mauritius.

8. In the background of the above mentioned facts, the complaint in question came to be filed. The substance of the complaint in the language of the complainant is as follows:

"From the above material and conclusive evidence, it is clear that Accused Nos.1 and 2 grossly misrepresenting by false representations, induced most of the unknown investors outside the country to invest monies by issuing a circular, offer documents, and dishonestly concealing the material facts and those monies were appropriated into the account of the Accused persons and the Accused persons" Companies were allotted shares and the NRIs were not given any shares, even though claim is made that 130 share holders from the United States of America are the investors of the said monies. The said modus operandi and actions of the two Accused constitute offences u/s 60, 63, 68 and 68A of the Companies Act of 1956 and accordingly this Hon"ble Court is requested to proceed according to law."

9. The present petition is filed u/s 482 of the Code of Criminal Procedure with a prayer to quash the proceedings in C.C.No.24 of 1999 on the file of the learned Special Judge for Economic Offences, Hyderabad. Learned Senior Counsel Sri C. Padmanabha Reddy appearing for the petitioners submitted that the complaint is not maintainable. He contended that even if the facts as alleged in the complaint are assumed to be true and further assumed that such facts would constitute offences as alleged in the complaint under Sections 60, 63, 68 and 68A of the Companies Act 1956, the petitioners cannot be tried for the same as the petitioners are citizens of the United States of America (U.S.A.) and therefore are not governed by the Companies Act of this country. Secondly, he submitted that admittedly the document which forms the basis of the allegation of the commission of various offences under Companies Act was issued and circulated by the petitioners outside the Indian territory, therefore even assuming that such a transaction would attract the penal provisions of the Companies Act and constitute the various offences under Companies Act referred to in the complaint, the Indian courts would not have jurisdiction to enforce the Indian law against the petitioners for a transaction which took place wholly outside the Indian territory as it would amount to giving the Indian law extra-territorial operation. Thirdly, the learned counsel submitted that even if the allegations are assumed to be true, they would not constitute the offences mentioned in the complaint.

10. The Companies Act is an enactment made by the Parliament in exercise of its legislative authority conferred on the Parliament by virtue of Article 246(1) of the Constitution of India read with Entries 43 and 44 of the List I in the VII Schedule. Article 245(2) declares that :

"No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation".

11. In view of such a declaration by the Constitution, the submission of the learned counsel for the petitioners that permitting the prosecution of the petitioners by Indian courts would be beyond the jurisdiction of the Indian Courts cannot be accepted as even a law with extra-territorial operation would be a constitutionally valid law, of which the Municipal courts of the country are bound to take cognizance of and enforce the same. Apart there from Section 4(2) of the Code of Criminal Procedure mandates as follows:

"All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

12. Section 188 of the Code of Criminal Procedure deals with the offences committed outside India.

13. The expression "offence" itself is defined u/s 2(n) of the Code of Criminal Procedure as follows:

"offence: means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the

The said definition does not stipulate that the act or omission made punishable should necessarily take place within the territory of India. On the other hand, Section 188 stipulates:

"When an offence is committed outside India

(a) by a citizen of India, whether on the high seas or elsewhere;

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:"

cattle-trespass Act, 1871 (1 of 1871)"

14. The authority of the State to exercise its jurisdiction, that is the power of the State to effect the rights of persons or entities either by legislation or executive decree or by a judgment of the court, within its territory is undisputed, subject of-course to certain exceptions recognized by the international law like in respect of members of the diplomatic missions, international institutions etc., The problem of the exercise of jurisdiction, either civil or criminal, over the persons or entities situate outside the territorial limits of the country is a very complicated area. As a matter of fact all over the world countries have been asserting such jurisdictions in various contexts, as a general principle of law "All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed". Maceod Vs. A.G. for New South Wales (1891) A.C. 455(1)

Huntington Vs. At trill (1893) A.C. 150(2).

15. However, there are departures from the above recognized rule. Learned author Dr. P.C. Rao in book " THE INDIAN CONSTITUTION AND INTERNATIONAL LAW" at page 42 observed as follows:

"While this may be so even today as a general principle, the requirements of modern life in a shrunken world have made it necessary for States to exercise jurisdiction on the basis of criteria other than that of territorial location. States claim extra-territorial jurisdiction in case where their legitimate interests are affected by means of the objective territorial claim, the nationality claim, the passive personality claim, the security claim, the universality claim and the like.. .."

16. Section 188 of the Code of Criminal Procedure is in fact one such assertion by the Parliament of the claim to extra-territorial jurisdiction. The Parliament asserted jurisdiction over every citizen of India if such a citizen commits an offence whether on high seas or elsewhere. Needless to say that the expression "offence" must be given the same meaning as indicated above. Parliament has also asserted jurisdiction over persons who commit offences though they are not citizens of this country, if such an offence is committed on any ship or aircraft registered in India.

17. In this case, the petitioners are admittedly of Indian origin. It is not certain whether they are still Indian citizens. On the other hand, in the petition filed, there are contradictory statements about the status of the petitioners.

18. At page 2 of the petition, it is stated that:

"The petitioners herein are directors in the above said company and residents of U.S.A.,"

19. Later in the petition at page 4, it is further asserted:

"The Companies Act has no application to the transactions alleged in the complaint as admittedly the petitioners are the citizens of U.S.A.,"

20. The concepts of "residence and citizenship" are well settled and distinct. The petitioners have not made any clear averment in this regard. Even if such an averment were to be made, the same will have to be established as admittedly the petitioners are of Indian origin; normally they would be citizens of India. If there is any change in their status, it is a matter to be pleaded and proved as otherwise the presumption in law is that a state of things that existed at a given point of time would continue until the contrary is established.

21. Therefore, the objection to the maintainability of the criminal case against the petitioners on the ground that they are not residents of India cannot be sustained in these proceedings. For the reasons mentioned above, the objection that the criminal case is not

maintainable against the petitioners on the ground the alleged offences are committed outside the Indian territory also cannot be accepted as the allegations in the complaint do constitute the offences alleged in the complaint, depending on the fact whether the petitioners are the Indian citizens or not, it is to be decided whether the Indian law could be enforced against the petitioners. Apart from that in a transaction like the present one, assuming for the sake of arguments that all the allegations made in the complaint are true, it is doubtful whether it can safely be said that the alleged offences are committed wholly outside the territory of India as one of the elements in the crime is situated in India i.e., the company in which the petitioners are alleged to have solicited the participation by way of equity, in view of the judgment of the Supreme Court in *Mobarik Ali Ahmed Vs. State of Bombay* (A.I.R 1956 SC 857), wherein their Lordships have held that the corporeal presence of the accused in the country is not essential to assert the criminal jurisdiction.

22. I must hasten to add that I am not declaring the legal position that the case on hand is governed by the ratio of *Mobarik Ali's* case. It only requires that the principle laid down in *Mobarik Ali's* case is required to be examined qua the facts of the case to be established at the trial, to decide that aspect of the jurisdiction. Coming to the last submission of the learned counsel that the allegations contained in the complaint even if accepted to be true, do not constitute the offences under the Companies Act alleged in the complaint. Admittedly all the documents filed in the trial court by the complainant in support of the complaint are not placed before me. Only select documents are placed before this Court. Unless all the documents relied upon by the complainant are examined, which can only be done after appropriate proof of those documents, it may not be possible for the court to come to any conclusion whether the offences alleged in the complaint are made out. Apart from that in exercise of the jurisdiction u/s 482 of the Code of Criminal Procedure, this Court would not go into the aspect of appreciation of evidence or sufficiency of evidence.

23. The allegations made in the complaint are that the petitioners have issued some kind of a prospectus inviting investment in the Indian company without the appropriate authority of law and following the due process of law. If that allegation is ultimately proved, there would be a violation of the law subject of-course to the various other aspects discussed above.

24. In the circumstances, I am of the opinion that it is wholly inappropriate for this Court at this stage to quash the case against the petitioners. In the result, the Criminal Petition is dismissed.