
(2000) 07 CAL CK 0012

Calcutta High Court

Case No: C.R.R. No. 1005 of 1991

D.P. Bajoria

APPELLANT

Vs

Register of Companies

RESPONDENT

Date of Decision: July 21, 2000

Acts Referred:

- Companies Act, 1956 - Section 58(5)(b)
- Criminal Procedure Code, 1973 (CrPC) - Section 2(x)

Citation: (2000) 2 ILR (Cal) 329

Hon'ble Judges: Ranjan Kumar Mazumder, J

Bench: Single Bench

Advocate: A. Bhattacharya, for the Appellant; Jaymalya Bagchi, for the Respondent

Final Decision: Allowed

Judgement

Ranjan Kumar Mazumder, J.

The instant Criminal revisional application under Sections 401 and 482 of the Code of Criminal Procedure is directed against the order passed by the learned Metropolitan Magistrate, 14th Court, Calcutta on March 26, 1991, in Case No. C/205 of 1979 u/s 58A(5)(b) of the Companies Act, 1956 and this is at the instance of accused-Petitioner Nos. 1, 2, 3 and 4.

2. The case of the Petitioners was in brief that in the year 1979 the Opposite Party No. 1 being Registrar of Companies, West Bengal filed a Petitioner of complaint before the learned Chief Metropolitan Magistrate, Calcutta against the Petitioners alleging inter alia that although the Petitioners received a sum of Rs. 12,30,000.00 as deposits during the year ending on March 31, 1977, they did not deposit the said amount within 30 days from the date of acceptance of such money and thus committed an offence punishable u/s 58A(5)(b) of the Companies Act, 1956. Thereupon learned Chief Metropolitan Magistrate, Calcutta took cognizance of the offence and issued process against the Petitioners and finally transferred the case to

the Court of learned Metropolitan Magistrate, 14th Court, Calcutta for disposal: According to the Petitioners, since the offence u/s 58A(5)(b) of the Companies Act was punishable with imprisonment for a term of five years and fine, the learned transferee Court ought to have followed the procedure laid down for trial of warrant cases, but unfortunately the learned Court below while dealing with the case followed erroneously and illegally procedure laid down by the code for the trial of summons procedure cases. According to the Petitioners they have thereby been prejudiced and hence the order passed by the learned Court below on March 26, 1991, was liable to be quashed.

3. I have had the opportunity of hearing learned Counsels of both sides in the matter at length.

4. The only question requiring consideration was whether the learned Court below was correct in holding the trial of the instant case by following the procedure laid down for trial of summons cases and whether the impugned order passed by the learned Court below on March 26, 1991, was lawful.

5. At the time of hearing learned Counsel for the Petitioners Shri A. Bhattacharya vehemently submitted that since the punishment prescribed for the offence u/s 58A(5)(b) of the Companies Act was five years imprisonment and fine, the instant case of his clients ought to have been tried by the learned Court below following the Warrant Procedure as laid down in Chapt. XIX of the Code of Criminal Procedure. But unfortunately, he submitted that the learned Court below followed the Summons Procedure inasmuch as the learned Court below not only took the plea of his clients as provided for in Section 251 appearing under Chapt. XX of the Code but also recorded the evidence of one witness for the prosecution and fixed a date for examination of the Petitioners u/s 313 Code of Criminal Procedure. According to Shri Bhattacharya his clients were thereby highly prejudiced and since this was a case of glaring injustice and failure of justice, the instant Criminal Proceeding should be quashed including the impugned order passed by the learned Court below on March 26, 1991.

6. Learned Counsel for the O.P. Shri Jaymalya Bagchi submitted very fairly that since the offence u/s 58A(5)(b) of the Companies Act was punishable with imprisonment for five years and fine, the learned Court below ought to have tried the case against the Petitioners following the Warrant Procedure laid down in Chapt. XIX of the Code.

7. Needless to mention that u/s 2(X) of the Code of Criminal Procedure, a "Warrant Case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. In the instant case, the Petitioners were facing trial for allegedly committing an offence punishable u/s 58A(5)(b) of the Companies Act. According to that Section every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. In view of this explicit

provision, I fail to understand as to how the learned Court below made a wrong approach to the case and proceeded to deal with the case following the Summons Procedure laid down under Chapt. XX of the Code.

8. The law is now well settled that when a Warrant Case is tried by the learned Magistrate as a Summons Case, it is an instance of illegality and not a case of irregularity which is curable u/s 460 of the Code. In this context, it may be mentioned that the procedures laid down for trial of Warrant case and Summons Case are entirely different and that the procedure prescribed for trial of a Summons Case is simpler and speedier than that laid down for trial of a Warrant Case. To be specific, Warrant Cases deal with offences graver than those in Summons Cases. Besides an accused facing trial held under the Warrant Procedure gets greater opportunity of defence than in a Summons Case. Hence if a Warrant Case is tried as a Summons Case by the learned Magistrate, it gives rise to indefeasible presumption of prejudice caused to an accused.

9. It appears that in the instant case, learned Court below recorded the plea of the accused-Petitioners on January 6, 1989, as provided for in Section 251 of the Code appearing under Chapt. XX of the Code and that thereafter recorded the evidence of one witness for prosecution on September 6, 1989, and December 18, 1989. It also appears from the record impugned order dated March 6, 1991, that the learned Court below even fixed a date for examination of the Petitioners u/s 313 of the Code vide order dated February 2, 1990. This order was also echoed by the impugned order dated March 26, 1991. Thus the learned Court below followed the Summons procedure out and out while holding trial of the instant case instead of proceeding under Chapt. XIX of the Code providing for trial of Warrant Cases. I am, therefore, of the clear view that all such orders beginning from the date of recording plea onwards including the impugned order should be quashed. I, therefore, quash all such orders. That being the position, I direct the learned Court below to hold denovo trial of the instant case involving the Petitioners by way of following the procedure laid down under Chapt. XIX of the Code prescribing trial of Warrant Cases by the learned Magistrate. The criminal revision is thus allowed and disposed of.

10. Let the lower Court records be sent down to the learned Court below immediately.

11. There will be no order as to costs.

Impugned order quashed with necessary directions.