

(2010) 09 DEL CK 0390

Delhi High Court

Case No: Criminal M.C. 6249 of 2006

Dharmendra Kr. Lila

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision: Sept. 23, 2010

Acts Referred:

- Companies Act, 1956 - Section 62, 63, 68
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2011) 161 CompCas 301 : (2011) 1 ILR Delhi 158 : (2010) 104 SCL 275

Hon'ble Judges: A.K. Pathak, J

Bench: Single Bench

Advocate: Sidharth Luthra, P.S. Singhal, Smriti Sinha and Arshdeep Singh, for the Appellant; Baldev Malik, for the Respondent

Judgement

A.K. Pathak, J.

By these petitions u/s 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of criminal complaint No. 805/2002 u/s 62 read with Section 68 of the Indian Companies Act, 1956 (for short hereinafter referred to as "the Act") filed by Registrar of Companies against them. This complaint is pending in the court of Additional Chief Metropolitan Magistrate (ACMM), Delhi. It was alleged in the complaint that the petitioners were signatories to the prospectus dated 28th April, 1994 containing misstatement of facts. The company had collected 210 lakhs from the public issue but had failed to accomplish the promises made in the prospectus.

2. Learned Senior counsel for the petitioners has contended that no criminal complaint can be filed u/s 62 of the Act as this provision deals with the "civil liability" for making misstatement in the prospectus. With regard to the complaint u/s 68 of the Act, it has been submitted that for filing of a complaint under this section, prior sanction of competent authority was required. Neither such sanction was obtained by the Registrar of Companies prior to filing of the complaint nor had the same

been placed on record. In nutshell, it has been canvassed that the complaint u/s 62 read with Section 68 of the Act was liable to be quashed. Reliance has also been placed on *Rajeev Shukla and Anr. v. Registrar of Companies* 135 (2006) DLT 599 and [Manju Yadav Vs. Registrar of Companies](#),

3. Section 62 of the Act reads as under:

62. Civil liability for misstatements in prospectus.

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every persons who subscribes for any shares or debentures on the faith fo the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,....

xx xx xx xx

4. Bare perusal of the aforesaid provision clearly indicates that violation thereof entails civil liability inasmuch as, it provides payment of compensation in case of misstatement in the prospectus. In my view, the compensation in respect of violation of Section 62 of the Act can be claimed by filing appropriate civil suit and no criminal complaint u/s 62 of the Act would be maintainable in this regard. Similar view has been expressed in *Rajiv Shukla* and *Manju Yadav*'s cases (supra).

5. As regards the complaint u/s 68 of the said Act is concerned, learned Counsel for the respondent has not disputed that prior sanction of the competent authority is required before launching prosecution under the said provision. However, he contends that such sanction was granted for initiating prosecution by the Department of Company Affairs vide its letter dated 13th March, 2002. I have perused the copy of so called sanction letter and find that the same is general permission granted to the Regional Director by the Department of Law & Justice for initiating prosecution in respect of violations of Sections 62, 63 read with 68 of the said Act. This sanction nowhere includes launching of prosecution u/s 68 of the Act. In *Rajiv Shukla*'s case (supra) also this very sanction letter was involved and was adversely commented upon. No other sanction letter has been placed on record. In absence of any such sanction, the only presumption which can be drawn is that no sanction was obtained for launching prosecution u/s 68 of the Act against the petitioners. In absence of prior sanction, the complaint u/s 68 of the said Act would also be not maintainable.

6. For the foregoing reasons, petitions are allowed and complaint case bearing No. 805/2002 pending before the ACMM and all further proceedings arising therefrom qua the petitioners are hereby quashed.

7. All the abovementioned petitions are disposed of in the above terms.