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Court : Patna

Decided On : Dec-07-1999

Judge : P.K. Deb, J.

Appeal No. : Cr. Misc. No. 18304 of 1995

Appellant : Pawan Kumar Gupta and ors.

Respondent : State of Bihar and anr.

Disposition : Petition Allowed

Judgement :

P.K. Deb, J.

1. This petition has been preferred by the above-named petitioners who have been alleged as offenders in Case No. 400(M) 87 before the Presiding Officer, Economic Offences, Muzaffarpur, for quashing the entire proceeding under Section 58(A) of the Companies Act, 1956.

2. In the offence report, it has been contended that the petitioners being the officers and Directors of the Company had accepted the deposit of Rs. 1,00,000/- during 1-3-84 to 31-3-84 and as such the same comes under the purview of Rule 3(2)(i) of Companies Acceptance of Deposits Rules 1975. It was further contended that the Company also accepted Rs. 25,000/- during the said period and the same

remained outstanding as deposit on 31-3-1984 which also comes within the purview of Rule 3(2)(ii) of the Companies Acceptance and Deposits Rules, 1975 and as such, as per violation of the Rule they are punishable under Section 58- of the Companies Act. The complaint petition has been annexed as Annexure-1 to this petition. It was in the complaint itself that Brij Mohan Bayenwala who was being arrayed as accused No. 2 (not petitioner) was the principal officer of the Director of the Company.

3. It is the contention of the petitioners that they were not in any way connected with the day-to-day affairs of the company rather they were only Directors of the Company having no relation with the day-to-day management of the Company. At the relevant time accused No. 2 Brij Mohan Bayenwala was the principal officer of the Company and he was also one of the Directors of the Company. As the petitioners were neither incharge nor responsible for day-to-day conduct of the business of the Company and as they were not the Managing Directors then they cannot be held with the responsibility of complying with the provisions of the Company's (Acceptance and Deposit Rules, 1975) and they cannot be termed as 'the officers' who are 'in default'. As per the provisions of the Rules. In that way, the proceeding against the petitioners are nothing but an abuse of the process of the Court.

4. It is submitted that reply given to such deposit before the Registrar of the Company would reveal that the acceptance and deposit was shouldered by the Managing Director of the Company and such acceptance or deposit does not in any way infer any criminality of the Company or that of the officers of the Company and might be there is violation of Rules on technical point but not for all practical purpose for which the Rules are made punishable for its violation. I am not considering it at this stage on to the factual aspect as to whether criminality can be attached with the action of the principal officer of the Company or the Managing Directors of the Company. The point urged before this Court by Mr. N. K. Agrawal appearing for and on behalf of the petitioners is that the petitioners being the Directors are not in any way connected with the day to day affairs of the Company and it was the positive case as per the offence report that accused No. 2 Brij Mohan Bayenwala was the principal officer at the relevant time and he was

responsible for the day-to-day affairs of the Company in question. As the offence is of the year 1984, the same is governed by the Companies Act of 1956 and not by the amended Act, by which all the Directors of the Company are to be construed as responsible and not the Managing Director alone. At the law existing at the relevant time only the principal officer in default is to be construed for the purpose of prosecution and not the petitioners. In that offence report itself, no allegations have been brought against the petitioners except the fact that they were the Directors of the Company at the relevant time. It was also not in the offence report that the petitioners had taken active part in the Act of borrowing or in any resolution being taken by the Board of Directors of the Company in borrowing the loan and in that way the petitioners, who were practically sleeping partners of the Board of Directors in respect of the act contemplated at the relevant time, they cannot be bound down for the offence which is nothing but a technical offence on the face of it. In support of the submissions made, Mr. Agrawal Referred to a judgment of the Bombay High Court as reported in Company Cases Volume 59 p. 356 H. Nanjundiah v. V. Govindan Registrar of Companies, Maharashtra and another, wherein it was held that when any of the Directors of the Company could not be subscribed as an officer in default then they cannot be brought for facing criminal prosecution. It was held that when the offence report does not disclose any active part on the part of the petitioners-Directors in borrowing the amount or in passing the resolution for borrowing the amount for and on behalf of the Company beyond the limits than there cannot be said that they have wilfully authorised or permitted someone or some officer of the Company to borrow money in excess amount. In that way, they cannot be prosecuted for criminal action of the principal officer of the Company. There is nothing in the criminal prosecution regarding tacit consent by the Directors of the Company in the action of the Managing Director. Although the law has been changed by the subsequent amendment and now all the Directors are responsible for the action of the Company itself but as the law was existing during the period on which the offence is alleged the only officer, in default can be held to be responsible and there cannot be any vicarious liability or tacit involvement in the offence committed by the principal officer of the Company. In the offence report itself, it is mentioned that accused No. 2 Brij Mohan Bayenwala was the principal

officer and in that way even if there is any technical offence, the same may be proceeded against him and he has not also come up for challenging the criminal proceeding. How far Brij Mohan Bayenwala could be responsible or not would depend upon the circumstances and facts of the case which cannot be considered at this stage.

5. As per discussions made above and on the basis of the judgment delivered by the Bombay High Court, I also find that when specific allegations were not there against the petitioners in borrowing the loans beyond the limits and when there is nothing to show that they had taken active part either in borrowing the loan or in passing the resolution for and on behalf of the Company giving authority to the Managing Director or the principal officer to borrow the amount beyond the limits they cannot be prosecuted for the technical offence as contemplated under Section 58A of the Company Act for violation of Section 3(2)(i) and 3(2)(ii) of the Company Acceptance and Deposit Rules, 1975.

6. Hence, this petition is hereby allowed and the criminal proceeding in Case No. 40(M) 1987 before the Presiding Officer (Economic Offences) Muzaffarpur is hereby quashed in respect of the petitioners alone being the abuse of the process of the Court.

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