

Ashok Sikka Vs. State

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Court : Delhi

Decided On : Feb-07-2008

Reported in : [2008]143CompCas573(Delhi); 147(2008)DLT552; 2008(101)DRJ370

Judge : S. Muralidhar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 141; [Companies Act 1956](#); Code of Criminal Procedure (CrPC) - Sections 156(3), 200 and 482; Indian Penal Code (IPC) - Sections 120B, 406, 409 and 420

Appeal No. : Crl. M.C. 1608/2000

Appellant : Ashok Sikka

Respondent : State

Advocate for Def. : Pawan Behl, APP and; S.I. Rakesh, Eow

Advocate for Pet/Ap. : Sidharth Luthra, Sr. Adv. an; Smriti Sinha, Adv

Disposition : Petition allowed

Judgement :

ORDER

S. Muralidhar, J.

1. These petitions under Sections 482 Cr.P.C. seek the quashing of FIR No. 972 of 1998 registered at Police Station Connaught Place under Sections 406/409/420/120B IPC and the criminal proceedings emanating there from.

2. The FIR in question narrates that a complaint was received from one Dr. Rakesh Oberoi seeking appropriate action against K.M. Capital Limited ('the Company') and its Managing Director Shri Kuldeep Mansukhani. The complaint was that the Company had failed to repay fixed deposits made by the complainant and others with it on maturity. The cheques issued by the said company for repayment of the deposits were dishonoured upon presentation to the bank for payment.

3. The investigation by the police resulted in the filing of a chargesheet on 20th April 2000. The specific averments in the chargesheet relevant for the present petitions, filed by three of the persons who are stated to have been Directors of the Company, read as under:

During the course of investigation, the complaints of the investors of K.M. Capital Limited continued to pour in the Economic Offences Wing of Crime Branch. From the scrutiny of 39 complaints received so far, it has been revealed that the company has collected Rs. 79,78,000/- from them. The investigation of the case has revealed that the accused Kuldeep Mansukhani, Chairman-cum-Managing Director, accused mentioned in Col. No. 3, as well as other Directors viz. 1. Zile Singh, S/o Shri Sadhu Ram, R/o 1669, National Highway No. 4, Faridabad, Permanent Add. Village Sheikhpura, District Karnal, Haryana; 2. Anup Kumar, S/o Shri Dharma Nand, R/o B-402, Meera Bagh, New Delhi; 3. Ashok Sikka, S/o Shri R.D.Sikka, R/o F-16, Mansarovar Garden, Kirti Nagar, New Delhi; 4. Amrit Lal Anand, S/o Dianat Rai Malik, R/o H-11, Lajpat Nagar-III, New Delhi; 5. Sunita Mansukhani, W/o Kuldeep Mansukhani, R/o H. No. D-2999, Nirman Vihar, Preet Vihar, New Delhi-92; and 6. V. Pan dya S/o Shri Hari Lal, R/o Flat No. 11, Orien Apartments, 29A Lalubhai Park, Andheri (W), Mumbai (mentioned in Col. No. 4) of K.M. Capital Limited, issued advertisements in various newspapers and invited deposits from the public by offering them high rate of interest under various schemes of the company viz. Cumulative Fixed Deposit Scheme, Money Multiplier

Scheme, Non Cumulative Fixed Deposit Scheme and Special Non Cumulative Fixed Deposit Scheme. The interest promised by the company range from 15% to 24%. The company collected deposits from the public and issued post dated cheques, which were later on dishonoured by the bankers of the company due to insufficient funds.

During the course of investigation, number of bank accounts of K.M. Capital Limited were detected and it was found that the accused company has opened accounts in various banks in its name, viz. A/c. No. 7 in that Lakshmi Vilas Bank Limited, Janpath; A/c Nos. 014/40/45491 & 522-0-506530-5 in Standard Chartered Bank, Parliament Street, New Delhi; A/c No. 692 in Central Bank of India, Sukhdev Vihar Branch New Delhi; A/C No. 5355 in Punjab National Bank, ECE House, Connaught Place, New Delhi; and A/c. No. 413 in Vijaya Bank, Barakhamba Road, New Delhi. The deposits collected from the investors were credited in these accounts of the company and the company issued post dated cheques from these accounts. The accused Kuldeep Mansukhani and other Directors of the company, viz Sunita Mansukhani and Zile Singh, opened individual bank A/c. No. 014/17/29716 in the name of Kuldeep Mansukhani in Standard Chartered Bank, Parliament Street, new Delhi; A/c. No. 2545 in the name of Sunita Mansukhani and Zile Singh; HSS A/c. No. 2193 in the name of Sunita Mansukhani and A/c. No. 794 in the name of Kuldeep Mansukhani in Central Bank of India, Sukhdev Vihar Branch, New Delhi; Joint A/c. No. 9620 in the joint names of Kuldeep Mansukhani and Rajlakshmi @ Sunita Mansukhani in Punjab National Bank, ECE House, Connaught Place, New Delhi; A/c. No. 61/14219 in the name of Kuldeep Mansukhani in State Bank of India, Kapashera, Delhi and transferred funds of K.M. Capital Limited into individual accounts of the accused persons from the respective banks stated above.

The accused persons, viz. Zile Singh, Anup Kumar, Ashok Sikka, Amrit Lal Anand, V.H.Pandya, Bhaskar Joshi and Sunit Mansukhani took part in the Meetings of Board of Directors of accused company K.M.Capital Limited in the capacity of Directors and by passing resolutions, they participated in taking major policy decisions of the accused company. They were the decision makers and were aware of the day to day functioning of the company. They were equally

respons=riaffairs of the company Along with the Chairman-cum-Managing Director Kuldeep Mansukhani, accused mentioned in Col. No. 3.

4. The present petitions are by Shri Ashok Sikka, Shri V.H. Pandya and Shri Bhaskar Joshi seeking the quashing of the criminal proceedings on more or less similar grounds. The principal ground is that these Petitioners ceased to be Directors of the Company even before the dishonour of the cheques issued on behalf of the Company. It is contended that the offence with which the Petitioners have been charged are IPC offences and that, in such circumstances, as held by the Supreme Court in Maksud Saiyed v. State of Gujarat : (2008)5SCC668 there is no question of a vicarious liability attaching to the director of a company where the company is a principal accused. There is no provision in the IPC similar to Section 141 of the [Negotiable Instruments Act, 1881](#) attaching liability to the person in charge of the affairs of the company where the company is a principal accused.

5. While directing notice to issue in these petitions, this Court stayed the further proceedings in the FIR vis--vis the Petitioners. By a further order dated 18th December, 2001 this Court required the State to file 'a short reply affidavit showing the material collected during the investigations against the Petitioners.' Pursuant thereto separate affidavits have been filed on 13th March, 2002 in respect of each of these Petitioners by Inspector N.K. Sharma, LBR Section, Crime Brach, Delhi Police who is the Investigating Officer ('IO') of the case.

6. In respect of Shri Ashok Sikka, the affidavit of the IO states that the material gathered is as under:

Role of Shri Ashok Sikka, Director/Petitioner herein:

I. That as per the orders passed by this Hon'ble Court in the above noted case, passed on the last date of hearing, the I.O. was directed to specify the evidence so far collected against the Petitioner in this case.

In this respect, it is submitted that as per the record obtained from the office of the Registrar Companies, by the I.O., it has been revealed that Shri Ashok Sikka was one of the Directors of the K.M. Capitals Ltd. He joined as a Tax Consultant in the

year 1995 and resigned in May 1997. In this period, the Company started collecting money from Investors under various schemes.

II. That the Office of the Company was closed when it apprehended action by the Police, on the complaints of various investors, and as such most of the company record was destroyed. During search, when Shri Kuldeep Mansukhani, CMD, was arrested on 4th February, 2000 (about 15 months after the registration of the company), certain documents, prospectus and publicity material of the Company was sealed.

III. That the Prospectus of the Company were signed by all the Directors, including the Petitioner.

IV. That it has also been revealed that Shri Ashok Sikka also used to attend the meetings of the Board as shown in the minutes of the meeting held on 27th November, 1995 at Company's office at Bara Khamba Road, New Delhi, which were seized during investigation.

V. That it is also evident from the investigation that in the publicity material seized during the arrest of CMD Shri Mansukhani that the Company had highlighted the experience and quality of all the Directors, including the Petitioner Ashok Sikka, by mentioning their past experience with other institutions and thereby attracting investors who were forced to believe the bona fide of the Company

VI. In view of the above facts, the Petition of the Petitioner be dismissed by this Hon'ble Court.

7. In respect of Shri V. H. Pandya, the IO states in his affidavit as under:

Role of Shri V.H. Pandya Director/Petitioner herein:

1. That, as stated earlier, during the investigation, record of the Registrar of Companies Office relating to M/s. K.M. Capitals Ltd., was obtained and seized and it is revealed that the present Petitioner was also one of the Directors of M/s. K.M. Capitals Ltd. He joined M/s. K.M. Capitals Ltd. in the year 1994 and resigned on 25.6.1997. It may be mentioned that during this period, the Company had already

started collecting money from depositors under its various Schemes, showing them rosy picture and assuring them of high rate of interest.

II. That the Office of the Company was closed when it apprehended action by the Police, on the complaints of various investors, and as such most of the company record was destroyed. During search, when Shri Kuldeep Mansukhani, CMD, was arrested on 4th February, 2000 (about 15 months after the registration of the company), certain documents, prospectus and publicity material of the Company was sealed.

III. That the Prospectus of the Company were signed by all the Directors, including Shri V. H. Pandya showing his active role in the affairs of the Company.

IV. That it is evident from the publicity material of the company seized at the time of arrest of its CMD, that the Company had highlighted the experience and quality of all the Directors, including the Petitioner V.H. Pandya, by mentioning their past experience with other institutions and thereby attracting investors.

V. That Shri V.H. Pandya, the Petitioner herein, joined the Company after having 40 years of experience with the Reserve Bank of India, the Industrial Development Bank of India and the Securities and Exchange Board of India.

5. That in view of these averments and the material already collected till date, it is submitted that there is sufficient material to prosecute Shri V.H. Pandya and Sh. Bhaskar Joshi and the present Petition is misconceived and is liable to be dismissed by this Hon'ble Court.

8. Significantly, although a common petition has been filed by Shri Pandya and Shri Joshi, there is no affidavit filed in respect of Shri Joshi by the IO.

9. It is clear from the affidavits filed by the IO that as far as Shri Ashok Sikka was concerned he had resigned in May 1997 itself. It is not indicated even in the affidavit what role Shri Ashok Sikka played either in the acceptance of the deposits during the relevant time or during the time when the company failed to repay the deposits. In particular, the cheques that were drawn and got dishonoured were all subsequent to the date of the resignation of Shri Ashok Sikka.

10. Likewise as regards Shri Pandya, apart from saying that the company had started collecting deposits around the time of his resignation on 25th June 1997, the affidavit does not say if Shri Pandya was in any way involved during the time the company default in the repayment of the deposits. Also, the cheques that were dishonoured were issued after the date of resignation of Shri Pandya. Shri Joshi resigned on the same day as Shri Pandya and copies of the respective Form 32 filed in terms of the requirements under the [Companies Act 1956](#) have been placed on record. These remain uncontroverted.

11. In Maksud Saiyed (supra) the law pertaining to the liability of the individual director under the IPC for the offences committed by a company has been explained by the Supreme Court in the following manner:

13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

12. One of the factors relied upon by the prosecution in Maksud Saiyed to hold the Directors liable was that they had signed the prospectus. The Supreme Court observed that this by itself was not sufficient and held that '...throughout the complaint petition, no allegation had been made as against any of the respondents herein that they had any thing to deal with personally either in discharge of their statutory or official duty.' The Supreme Court proceeded to affirm the view expressed by the High Court that no criminal liability would be attached in those

circumstances.

13. Reverting to the case on hand, the offences with which the petitioners are sought to be charged are all under the IPC. On the strength of the law as explained by the Supreme Court, it has to be held that the mere statement that the Petitioners were directors of company without reference to their precise role at the time of the commission of offence would not be sufficient to attach criminal liability to them. The inevitable conclusion is therefore that the criminal proceedings against these directors are unsustainable in law. Accordingly the FIR No. 972 of 1998 registered at Police Station Connaught Place under Sections 406/409/420/120B IPC and all consequential proceedings thereto including the charge sheet as far as the three Petitioners here are concerned, hereby stand quashed.

14. The petitions are accordingly allowed with no order as to costs.

15. The trial court record be sent back immediately.

16. A copy of this order be given dusty to learned Counsel for the parties.

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