

Ritz Continental Hotels Ltd. Vs. the State

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Court : Kolkata

Decided On : Jun-22-1979

Reported in : 1980CriLJ414

Judge : Jyotirmoyee Nag, J.

Appellant : Ritz Continental Hotels Ltd.

Respondent : The State

Judgement :

ORDER

Jyotirmoyee Nag, J.

1. This Rule is directed against a proceeding which is pending before the learned Metropolitan Magistrate, 6th Court, Calcutta. The prosecution is under Section 58A(3)(a) of the Companies Act, 1956. The petitioner is the Ritz Continental Hotels Limited a Company under the Companies Act, 1956 having its registered office at 12, Jawaharlal Nehru Road, Calcutta. The petitioner has prayed for quashing the proceeding which is pending against the said Company and the Directors of the Company. The facts leading to the prosecution of the petitioner and others are as follows:

The Ritz Continental Hotels Limited as I have stated is incorporated as a Public Limited Company under the Companies Act, 1956 and was registered on the 30th

March, 1964 having its registered office at 12, Jawaharlal Nehru Road, Calcutta. In the petition of complaint it is alleged that under clause (a) of Sub-section (3) of Section 58A of the Companies Act, 1956 every deposit accepted by a Company at any time before the commencement of the Companies (Amendment) Act, 1974, according to the directions made by the Reserve Bank of India, shall unless renewed, be repaid in accordance with the terms of such deposit. It is alleged that from the balance sheet of the Company as on 31-3-1974 it appears that a sum of Rs. 29,21,100/- has been mentioned in fixed deposit and Rs. 23,62,100/- under the head unsecured loan as against Company's paid up capital of Rs. 42,21,600/- and Rs. 1,09,23,956/- as free reserve. The said Company was permitted to accept deposit maximum to a sum of Rs. 37,86,380/- being the prescribed limit of 25% of the paid up capital and free reserve of the Company. It was further alleged that the complainant came to know from the different complaints made by the various depositors that the Company had failed to repay the amounts of deposit on their maturity. The petitioner along with its Directors had failed to comply with the provision of Section 58A(3)(a) and thus rendered themselves liable for punishment under Section 58A(5)(b) and under Section 629A of the Companies Act, 1956. The learned Magistrate on receiving the petition of complaint took cognizance and issued summons against the petitioner and its Directors under the Indian Companies Act.

2. It is submitted by Mr. P. C. Ghosh, learned Advocate appearing for the petitioner that the Company is being prosecuted under Section 58A, Clause (3) for contravention of any directions made under Chapter III-B of the Reserve Bank of India Act, 1934 for not making any repayment of such deposit received By them on or before 1st April, 1975 after maturity. Further under Sub-section (5) of Section 58A, if a company omits or fails to make repayment of a deposit in accordance with the provisions of Clause (c) of Sub-section (3) of the said section of the Companies Act, it is liable to be punished with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made. Now, so far as this offence is concerned the punishment is only by way of fine and according to Section 468 Cr. P. C. which provides that 'except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2) after the expiry of the period of

limitation under Sub-section (2) (a) the period of limitation shall be six months if the offence is punishable with fine only. Since the petitioner had failed to pay back the deposits after they had matured on 23-12-1975, 9-7-1976, 10-9-1976, 3-9-1975, 16-4-1976 and 26-12-1975 respectively to their respective depositors in respect of those parties mentioned in paragraph 4 of the petition of complaint the company is liable as stated above. The petition of complaint was filed on 21st day of Feb. 1978 long after the six months period had lapsed. So far as this offence is concerned certainly, the court cannot take cognizance of this offence as Section 468(2)(a) Cr. P. C. is a bar to taking cognisance of the same, unless it is shown that it is a continuing offence.

3. Mr. J. N. Ghosh, learned Advocate appearing for the opposite party has referred to Section 629A of the Companies Act wherein it is provided that 'if a Company or any other person contravenes any provision of this Act, for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five hundred rupees, and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the contravention continues'. So Section 629A is also attracted to the said offence as the contravention regarding repayment of the deposits after maturity is still continuing as no payments have been yet made and for each day's default, the punishment is fine of Rs. 50/- which will be liable to be imposed if the contravention continues.

4. In this case the company and its Directors are guilty of violation or contravention of the directions of the Reserve Bank of India by not returning the deposits to the depositors after they attained maturity. Further it is incumbent on the company and its Directors to return the deposits within time as directed by them under the Rules of the Reserve Bank upon maturity. Therefore, there are two offences in paragraphs 3 and 4 of the petition of complaint. In paragraph 3 it is stated that in accordance with the directions made by the Reserve Bank of India unless renewed every deposit should be repaid in accordance with the terms of such

deposits. The company would be liable for both the offences mainly for violation of the directions of the Reserve Bank of India i. e. acceptance of deposits and return of deposits on but it will be found on maturity that no punishment is prescribed in the Act and for not returning the deposits to the depositors on maturity. Therefore, we have to turn to Section 629A to find out what is punishment prescribed for such offences. Section 629A provides punishment of five hundred rupees fine and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the contravention continues. Therefore, it will be seen that the punishment is confined only to payment of fine whereas for second offence for non-payment of the deposit within time after maturity. Sub-section (5) (b) of Section 58A clearly makes provision for the punishment in case of violation to return the deposits after maturity by making it punishable with fine which would be twice the amount of deposits made and out of the fine after repaying the depositors the amount of their deposits, the rest will go to the exchequer of the State as fine. But it must be remembered that this punishment is meant for the company only the Directors, however, would be liable to imprisonment for five years for violation of those conditions.

5. Therefore, it has been argued by Mr. Ghosh that Section 629A has no application to such offences as punishment is provided under the Act under Section 58A(5)(b). So on that ground the prosecution against the company cannot be quashed. I agree with this submission of Mr. J. N. Ghosh and, accordingly, this limb of Mr. P. C. Ghose's argument fails. Now, the next contention of Mr. J. N. Ghosh is that the offence of default to return the deposits after maturity is a continuing one inasmuch as the liability to repay the deposit continues from the first day of maturity until such time as it is actually paid. What is a continuing offence has been clearly laid down in the Supreme Court decision reported in : 1973 CriLJ347 (State of Bihar v. Deokaran). Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed the distinction between the two kinds of offences is

between an act or omission which constitutes an offence once and for all and an act, or omission which continues and, therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and this has been clarified by several illustrations one of them is as follows : Section 12 provides that if any officer, being a member of a trade union by false representation obtained possession of any moneys, books etc. of such trade union or having the same in his possession wilfully, withheld or fraudulently misapplied the same, a court of summary jurisdiction would order such person to be imprisoned. The offence of withholding the money referred to in this section was held to be a continuing offence, presumably because every day that the moneys were wilfully withheld an offence within the meaning of Section 12 was committed. The illustration will not apply to the instant case. The deposit accepted from the depositors are directed by the Reserve Bank of India to be returned on the date of maturity and the offence consists in not returning the money on its maturity and it is completed as soon as the company fails to return the deposits on maturity. It becomes a completed offence and is accordingly not a continuing one.

6. I accept the argument of Mr. P. C. Ghosh that if the object was to make an offence such as Section 58A(5)(b) continuing one in the Act it would have provided as in Sections 162 and 168 of the Companies Act for punishment for each day's default but there is none in the said section. It is not necessary that the Legislature should make provision for punishment for every day's default but in the instant case Section 58A(5)(b) punishes for default to make payment of deposits on maturity, the date of maturity is fixed by the terms of the contract and as soon as that date expires the depositors are entitled to deposit, That makes it a complete offence when the deposit is not returned on maturity and so it cannot be said to be a continuing offence.

7. In view of my findings that under Section 58A(5)(b) provides for punishment of five years in case of Directors, the offence cannot be said to be punishable with fine only. Accordingly Section 468(2) Cr. P., Code will not apply as the punishment is for more than three years. I have found that Section 468 has no application to

such offences. On this ground I reject the prayer of Sri P.C. Ghose for quashing the proceeding and discharge the Rules.

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