

K.K.Sarma Vs. the State of A.P. Rep. by Its Public Pro

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Court : Andhra Pradesh

Decided On : Dec-03-2011

Judge : Samudrala Govindarajulu, J.

Acts : [Companies Act, 1956](#) - Section 628, 81, 81(3) 159, 75, 75(1), 75(1)(a); Code of Criminal Procedure (CrPC) , 1974 - Sections 482,

Appeal No. : CRIMINAL APPEAL No.963 of 2006

Appellant : K.K.Sarma

Respondent : The State of A.P. Rep. by Its Public Prosecutor, High Court of A.P, Hyderabad and anr

Advocate for Pet/Ap. : C.Sumon; C.V.Mohan Reddy, Advs.

Judgement :

SAMUDRALA GOVINDARAJULU, J.

JUDGMENT

1) This appeal is filed by the 2nd complainant questioning order of acquittal dated 17.02.2006 passed by the Special Judge for Economic Offences, Hyderabad in C.C. No.17 of 2001 by which the accused was acquitted of the offence under Section 628 of the [Companies Act, 1956](#) (in short, the Act).

2) Originally the complaint in the lower Court was filed by two complainants viz., M/s.Helical Tubes & Ducts Private Limited and the appellant herein by name K.K.Sarma. The accused filed criminal petition No.1864 of 2001 in this Court under Section 482 Cr.P.C. for quashing the complaint. This Court by order dated 08.11.2002 dismissed the said criminal petition with the following directions: "The only allegation against the petitioner is that he submitted a false statement regarding allotment of shares without conducting meeting etc., in violation of Section 628 of the Act. In so far as other aspects are concerned namely, failure to follow the procedure under Section 81(3) and failure to submit Form II have no basis. Accordingly, I direct the learned Magistrate not to proceed against the said allegations and ignore them and proceed only against the allegation namely false declaration and not depositing the amount in the bank while dealing with the offence under Section 628 of the Act. The petitioner is at liberty to raise all defenses, which were urged before this Court." In the said criminal petition this Court held that the complaint presented on behalf of the company is not maintainable as the complaint is against the company itself and that the second complainant being a shareholder of the company can always file the complaint for prosecution. In the light of the above findings and observations of this Court in Criminal Petition No.1864 of 2001, the second complainant/appellant alone pursued the complaint in the lower Court.

3) Subject matter of the complaint is allotment of 2500 shares of M/s.Helical Tubes and Ducts Private Limited, Secunderabad (in short, the Company) to the accused. Previously C.Rajendra Prasad was Managing Director of the Company. After C.Rajendra Prasad resigned as Managing Director, the accused was looking after affairs of the Company as one of the directors of the Company and was filing necessary returns etc, before the Registrar of Companies, Hyderabad. Gravamen of the charge against the accused is that he submitted return in Form No.2 relating to allotment of shares and that the said return reveals that share capital of the Company was enhanced and the accused was allotted 2500 shares without following the prescribed procedure under Section 81 of the Act. The said return was filed on 29.11.2000. It is further allegation against the accused that the amount representing value of shares has to be deposited with the Company and that bank statements show that no such amount was deposited, and as such form

No.2 submitted by the accused was illegal, false and created to defeat rights of the complainant and that the accused who submitted the said Form No.2 knowing it to be false, is liable to be punished under Section 628 of the Act.

4) Even though in the complaint several grounds were put forward against the accused, in view of the above order in Crl.P.No.1864 of 2001 of this Court, the only question to be considered and to be decided by the lower Court is on "false declaration and not depositing the amount in the Bank". After trial, in which the 2nd complainant examined himself as P.W-1 and examined Company Secretary as P.W-2 and marked Exs.P-1 to P-20, and private auditor of the accused as D.W-1 was examined and Exs.D-1 and D-2 were marked on behalf of the accused, the lower Court found the accused not guilty of the charge.

5) It is contended by the senior counsel for the appellant that the lower Court failed to notice that there is manipulation of records in the office of Registrar of Companies, Hyderabad at the instance of the accused in as much as return filed by the accused along with form No.2 was assigned serial No.81 which is a duplicate number and that the same serial No.81 was assigned to another document filed earlier and that it is in contravention of Regulation Nos.18 and 19(i) of the Companies Regulations, 1956. Ex.P-9 is return of allotments in Form No.2 submitted by the accused informing the Registrar about allotment of 2500 shares by the Company to the accused. The said return in Form No.2 was filed on 08.01.2001 in the office of Registrar and it can be seen from computer generated filing slip affixed on it. Even though the said return in Form No.2 was filed on 08.01.2001 in the office, it was registered/recorded by that office on 09.01.2001 and document number assigned to it was 81. The complainant also filed Exs.P-6 and P-7 which were assigned document Nos.81 and 82 respectively by the office of Registrar. Ex.P-6 is annual return of the Company filed under Section 159 of the Act. Ex.P-6 was registered/recorded on 15.12.2000. Similarly Ex.P-7 was registered by the office of Registrar on 15.12.2000. It is contended that when document Nos.81 and 82 were registered on 15.12.2000 itself, the question of registering Ex.P-9 return in Form No.2 as document No.81 again on 09.01.2001 cannot arise and that it clearly demonstrates manipulation of records by the accused in the office of Registrar of Companies. The accused has no role in

assignment of serial numbers to documents filed in that office. It is duty of the office of Registrar of Companies to register documents and to assign serial numbers to those documents. If there is any duplication of numbers, then it is an error committed by that office and it cannot be alleged against the accused. This is not a case where return in form No.2 was filed with any delay and to cover up the said delay there was any ante dating of filing papers. Computer generated slip was affixed on Ex.P-9 shows that it was filed in that office on 08.01.2001 and document seal affixed by the office on it shows that it was registered on 09.01.2001 as document no.81. Neither the office of Registrar nor the accused is going to gain anything out of duplication of No.81 assigned to Ex.P-9. Therefore, this Court is of the opinion that the said error committed in the office of Registrar is wholly irrelevant for the purpose of decision in this case/appeal.

6) It is contended for the appellant that as per Ex.P-9 return, allotment of 2500 shares to the accused was made on 29.11.2000 and that no meeting of Board of Directors was conducted on that date and that the other director C.Rajendra Prasad was not in the station on that day as he attended meeting of Board of Directors of M/s.Andhra Printers Limited at Vijayawada. Except evidence of the 2nd complainant as p.W-1, there is no other evidence on this aspect. P.W-1 admitted that he did not attend meeting of Andhra Printers Limited at Vijayawada on 29.11.2000. No minutes of any meeting of Andhra Printers Limited at Vijayawada are filed to show that meeting of Board of Directors of Andhra Printers Limited took place on that day at Vijayawada and that C.Rajendra Prasad attended the said meeting at Vijayawada. P.W-1 also did not file any extracts of minutes of meeting of Board of Directors of the Company to show either no meeting was conducted on 29.11.2000 or to show that no allotment of 2500 shares was made in the meeting if any held on 29.11.2000. No steps were taken by the 2nd complainant in the lower Court to summon minutes book of the Company to prove that no meeting was held on 29.11.2000. The complainant also failed to examine C.Rajendra Prasad as his witness to speak to the above facts alleged by P.W-1. P.W-1 in cross-examination admits that he did not see minutes book of the Company at any point of time. He admits that he is not entitled for any notice of meeting of Board of Directors of the Company as he is not one of the directors in the Board. It follows that the complainant has failed to prove that there

was no meeting of Board of Directors of the Company on 29.11.2000 and that there was no allotment of 2500 shares to the accused in that meeting. Ultimately the complainant failed to establish that Ex.P-9 form No.2 return of allotment of shares filed by the accused before the Registrar of Companies is a false return.

7) Next contention urged by senior counsel for the appellant is that there is falsity of statement in Ex.P-9 return to the effect that even though the accused did not pay value of 2500 shares at the rate of Rs.100/- per share totalling Rs.2,50,000/-, the accused had falsely stated in the return in Form No.2 that he paid the said value of shares to the company in cash. It is pointed out that column No.1 of Form No.2 relates to shares allotted payable in cash whereas Column No.2 of Form No.2 relates to shares allotted for a consideration other than in cash. In Ex.P-9 return in Form No.2 the accused filled up column No.1 and declared 2500 shares allotted to him as shares allotted for cash payable and also declared that shares allotted for a consideration other than in cash as Nil. It is contended that bank account of the Company did not contain any credit entry for the said amount of Rs.2,50,000/- representing value of 2500 shares of the Company allotted to the accused for cash. On the other hand, it is contended by senior counsel for the 2nd respondent/accused that the Company has got bank accounts in two banks and that the complainant filed only one bank account of the Company and did not file copy of another bank account of the Company. P.W-1 in cross-examination stated that the Company has got accounts in State Bank of Bikaner & Jaipur and also in Canara Bank and that he filed statement of account from State Bank of Bikaner & Jaipur. It is pointed out for the accused that P.W-1 filed statement of account from Canara Bank only and did not file statement of account in State Bank of Bikaner & Jaipur. At any rate, non-filing of statement of account of the Company in one bank is not material in this case because of the further defence put forward by the accused. It is not his case that he paid value of 2500 shares to the extent of Rs.2,50,000/- in cash either on 29.10.2000 or any subsequent date. According to him, he paid the said value from out of remuneration payable by the Company to him and also by raising unsecured loan from the Company. In view of the said defence of the accused, it is contended for the appellant that this defence of the accused takes the case of allotment of shares not as against cash but as against consideration payable other than in cash falling under Column No.2 of Form No.2

return and that it falsifies contents of Ex.P-9 return in Form No.2 attracting penal liability under Section 628 of the Act. It is further contended that in case the accused adjusted value of shares by way of any agreement with the Company, then the accused should have enclosed form No.3 along with Form No.2 return together with the agreement entered between the accused and the Company with regard to adjustment of value of shares. On the other hand, it is contended by senior counsel for the 2nd respondent/accused that payment of value of shares by way of adjustment of remuneration due to the accused from the Company and unsecured loan raised by the accused from the Company amounts to payment of value of shares in cash falling under Column No.1 of Form No.2 and not payment of value of shares by way of consideration otherwise than in cash falling under Column No.2 of Form No.2. It is pointed out from balance sheet of the Company attached to Ex.P-7 that an amount of Rs.1,29,480/- was due by the Company to the accused by the end of financial year 1999-2000 towards Director's remuneration payable to him and that the accused was entitled for further remuneration from April, 2000 upto December, 2000 by the time 2500 shares were allotted to the accused. It is also pointed out from the same balance sheet that an amount of Rs.20,000/- was due to the Company from the accused towards unsecured loan by financial year 1999-2000. It is contended for the accused that the complainant did not file any subsequent accounts of the Company by way of ledgers etc., to prove that the accused did not raise any unsecured loan from the Company during financial year 2000-01 by the date of allotment of 2500 shares to him. According to D.W-1 who is private auditor of the accused, as per his interim report, Rs.1,93,480/- was payable to the accused towards Director's remuneration by 30.11.2000 and the said amount was lying in the director's remuneration payable account of the Company. Ex.D-2 is ledger account extract pertaining to the accused in the Company. In cross-examination he deposed that enhanced remuneration for the accused as director was Rs.8,000/- from 01.04.2000 onwards.

8) P.W-1 in cross-examination deposed that after the year 1990 the accused was working as full time director looking after day-to-day affairs of the Company and that he does not know what was the remuneration payable to the accused as full time director during the year 1990 and that he does not know what was the

remuneration after the year 1990 till the date of his evidence. If the complainant/P.W-1 took steps in the lower Court for summoning minutes and accounts of the Company, they would have revealed correct facts relating to enhancement of remuneration of the accused as director from 01.04.2000 and about the total amount payable by the Company to the accused towards director's remuneration and total amount of unsecured loan raised by the accused from the Company. The complainant has failed to produce any evidence in that regard to show that the accused was not having amount equal to Rs.2,50,000/- being value of 2500 shares allotted to him, to his credit in accounts of the Company.

9) It is contended by the senior counsel for the 2nd respondent/accused that payment by way of adjustment of above amounts as against value of shares payable by the accused, is always treated as payment in cash in the Company parlance. P.W-2 who is the Company Secretary who is stated to have made search of records in the office of Registrar, stated that he is aware that the Department of Company affairs would be issuing circulars and clarifications for the purpose of Section 75 of the Act and that he does agree with clarification No.2 issued to Circular No.8/32/(75), 77-CL/V, dated 13.03.1978, which was given in A RAMAIA's Guide to the Companies Act (Part I) 13th edition at Page No.568. He admits that there are no further circulars subsequent to the above circular touching allotment of shares. The said clarification reads as follows: "Clarification-II. Further, clarification given by the Department of Company affairs is as follows:- "I am directed to refer to this Department's Circular Letter No.8/4/69, dated 18.11.1969 and to say that the views conveyed therein have since been re-examined. The Department is now of the view that the allotment of shares by a company to a person in lieu of a genuine debt due to him as in perfect compliance of the provisions of section 75(1). In this connection it is clarified that the act of handing over cash to the allottee of shares by a company in payment of the debt and the allottee in turn returning the same cash as payment for the shares allotted to him is not necessary for treating the shares as having been allotted for cash. What is required is to ensure that the genuine debt payable by a company is liquidated to the extent of the value of the shares. [Circular 8/32/(75) 77-CL-V, dated 13th March, 1978]."

10) It is contended by the senior counsel for the 2nd respondent/accused that clarifications are issued by the Department of Company affairs of the Union of India in order to explicitly give to the concerned the Government's understanding and intention of the provision of law. As per the above clarification issued by the Department of Company Affairs, payment in lieu of a genuine debt due to the allottee of shares is proper compliance of Section 75(1) of the Act. Therefore, declaration/statement contained in ex.P-9 return in Form No.2 filed by the accused to the Registrar of Companies is in accordance with Section 75(1)(a) of the Act as value of 2500 shares to the extent of Rs.2,50,000/- was paid by the accused in cash by way of adjustment of his remuneration account and his unsecured loan account towards it. Consequently this Court finds that the complainant has failed to prove beyond doubt that there is no falsity in Ex.P-9 return in form No.2 either relating to allotment of shares or relating to statement by way of payment of its value in cash. I do not find any valid or legal grounds to come to a different conclusion from that of the lower Court.

11) In the result, the Criminal Appeal is dismissed.

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