

CASE NO.:
Appeal (crl.) 688 of 2002

PETITIONER:
A.V. MOHAN RAO & ANR.

Vs.

RESPONDENT:
M.KISHAN RAO AND ANR.

DATE OF JUDGMENT: 16/07/2002

BENCH:
D.P.MOHAPATRA, K.G.BALAKRISHNAN.

JUDGMENT:

D.P.Mohapatra, J.

Leave granted.

The question that arises for determination in this case is whether on the facts and circumstances emerging from the averments in the complaint petition and the materials filed with it a case for quashing the complaint filed under Section 482 of the Code of Criminal Procedure (for short 'CrPC') is made out or not.

This appeal filed by the accused persons is directed against the order dated 1.3.2000 of the High Court of Andhra Pradesh in Criminal Petition No.3052/99 declining to grant the prayer of the appellants for quashing the proceedings in CC No.24/99 on the file of the Court of Sub-Judge, Economic Offences at Hyderabad. The proceeding was instituted on the complaint petition filed by respondent No.1. The appellants and the respondent No.1 are stated to be Directors of a Company- M/s Spectrum Power Generation Limited (hereinafter referred to as "the Power Company") incorporated under the Indian Companies Act, 1956 (for short 'the Act'), having its registered office at Secundrabad, in the State of Andhra Pradesh. The respondent No.1 filed the complaint alleging offences under Sections 60, 63, 68, 68-A read with Section 621 of the Act, against the appellants, alleging inter alia that the accused persons by making false, deceptive and misleading statements and by suppressing relevant facts induced various persons to pay them money for purchase of shares of the Power Company; raised millions of Dollars from Non-Resident Indians (NRIs); siphoned off those funds into bogus companies exclusively owned by them in off-shore companies and purchased shares of the Power Company in India in the names of bogus off-shore companies owned/controlled by them. The matter came to the notice of the complainant when some of the prospective NRI investors made correspondence with the Power Company demanding share certificates for which

they had paid substantial amounts to the appellants. The off-shore companies through which the appellants purchased the shares of the Power Company in Hyderabad are - M/s Spectrum Technologies, USA, M/s Spectrum Infrastructures Ltd., Jersey, Channel Islands and M/s Spectrum Infrastructures Ltd. at Mauritius. In this process the original investors who were promised shares in Power Company were never allotted any shares. On the other hand shares were allotted to off-shore companies which have nothing to do with the Power Companies and which are exclusively owned and controlled by the accused persons. It was specifically alleged in the complaint petition that the accused persons have in effect committed fraud on the Power Company in whose name they collected money, invested that in their own companies and those companies in turn applied and got shares at the instance of the accused persons with the result that all these overseas investors are left high and dry. These acts, it is alleged by the complainant, constitute offences under Sections 68 and 68-A of the Act. It is further alleged in the complaint petition that the appellants issued a document in the name of the Spectrum Infrastructures Ltd., Jersey, Channel Islands, styled as "Project Overview". The said company issued a letter dated 30th September, 1994 by the first accused. The relevant portions of the said "Project Overview" and the letter are extracted hereunder:

"SPECTRUM POWER
208 MEGAWATT POWER PLANT AT
KAKINADA, ANDHRA PRADESH, INDIA

PROJECT
OVERVIEW"

The letter dated 30.9.94 reads as follows:

"Re: Private Sector Power Generation
Project in Kakinada, Andhra Pradesh

I am enclosing a high level overview of the investment opportunity for the above project. Though I am introducing to you to this opportunity now, we have done extensive groundwork for this project for the last two years. Today, we have reached the point where we can now make the foreign currency investment in the project.

As you are probably aware, this is clearly the best time for investing in India's economic future. The economic liberalization towards a market economy and the focus to encourage a "for profit" private investment in infrastructural industries, such as power, has presented a unique opportunity for investors like us. We seized this opportunity and vigorously promoted and developed the fast privately held Joint Venture Power Company in India.

We have a rare ground floor investment

opportunity, which would normally be sold at a premium. However, this project is being offered to you with the same high investment returns as the promoters. For the financial security of the capital and the investment income and for tax beneficial treatment, we have formed an "offshore" entity, "SPECTRUM INFRASTRUCTURES LIMITED" to execute and direct our investment in the power project. This entity will be the investment vehicle through which investors will be participating in this venture."

I will be in touch with you in the next few weeks to discuss your investment commitment. The initial investment funds will have to be made available by October 20, 1994.

In the meantime, if you have any questions, please call 382 0056 or 3821727.

Sincerely yours,
Sd/- "

The complainant further alleged that the Managing Director of the Power Company received a letter dated 26.6.1997 said to have been sent in the name of Spectrum NRI Investors the substance of which is that the NRIs are anxiously waiting for the Indian Company's share offer and public issue. The said letter was received by some persons claiming to be NRI investors of the Power Company. In the background of the above mentioned facts on which the complaint in question came to be filed the gist of which may be stated thus :

"From the above material and conclusive evidence, it is clear that Accused Nos.1 and 2 grossly misrepresenting by false representations, induced most of the unknown investors outside the country to invest monies by issuing a circular, offer documents, and dishonestly concealing the material facts and those monies were appropriated into the account of the Accused persons and the Accused persons' Companies were allotted shares and the NRIs were not given any shares, even though claim is made that 130 share holders from the United States of America are the investors of the said monies. The said modus operandi and actions of the two Accused constitute offences under Section 60, 63, 68 and 68A of the Companies Act of 1956 and accordingly this Hon'ble Court is requested to proceed according to law."

On receipt of the complaint the Special Judge for Economic Offences, Hyderabad issued summons to the

accused persons on 13.4.1999 requiring them to appear in person before the Court on the date fixed therein. On receipt of the same the accused persons filed the petition dated 28.6.1994 under Section 482 CrPC in the High Court of Andhra Pradesh with the prayer to quash the proceedings in CC No.24/99 and pending disposal of the petition to stay all further proceedings including appearance of the petitioners before the Court. The main grounds of challenge against the proceeding was that the complaint does not make out any of the offences alleged by the complainant and as such it is bad in law and not maintainable; that the Act has no application to the transactions alleged in the complaint as the petitioners are the citizens of USA and they are the Directors of the overseas company which has been incorporated and functioning abroad and that the offer for investment was made to NRIs in USA; that the investing companies headed by the petitioners have taken necessary RBI permission to invest in the Power Company and accordingly have made the investment, and therefore they have not violated any law of the land; that even otherwise the investing companies did invest all the monies collected by them in the Power Company and as such the Power Company does not stand to lose anything; that the complainant who is not a mere shareholder but is the Vice-Chairman and Managing Director of the Power Company is in no way aggrieved by any of the alleged acts by the petitioner, and therefore, the complaint has been filed with an oblique motive. The further ground taken by the petitioners was that Section 60 of the Act is not at all attracted because the section requires registration of the prospectus before it is issued by the existing Company or an intended company. In view of the fact that the Companies involved herein are not Companies coming within the purview of the Companies Act and as there has been no prospectus issued by them as defined in Section 60 of the Act, the section has no applicability to the facts of the case on hand.

In the counter affidavit filed on behalf of the complainant respondent no.1 herein, the allegations and averments made in the petition filed under section 482 Cr.P.C. were denied. It was contended that in view of the specific allegations made in the complaint petition a clear prima facie case under Sections 60, 68, 68-A read with Section 621 of the Act has been made out. It was further contended by the complainant that the questions raised by the accused persons in the quashing petition can be considered only at the trial of the case after evidence is placed in the case. The complainant submitted that in the context of the facts and circumstances of the case the power under section 482 Cr.P.C. could not be exercised to quash the complaint petition and to terminate the proceeding at the preliminary stage.

The High Court in its order construing the provisions of Section 4(2)(n) and Section 188 of the Cr.P.C. held that the authority of the State to exercise its jurisdiction effects the rights of persons or entities either by legislation or execution decree or by judgment of the Court, within its territory is undisputed, subject of course to certain exceptions recognized by the international law like in respect of members of the diplomatic missions, international institutions etc. The High Court noting that the problem of exercise of jurisdiction either civil or criminal over the persons or entities situate outside the

territorial limits of the country is a very complicated area, took note of the observations in the case of Macleod Vs. A.G. for New South Wales (1891) A.C. 455 (1) and Huntington vs. Attrill (1893) A.C. 150(2) that "All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed". The High Court referring to that section observed that the Parliament asserted jurisdiction over every citizen of India if such a citizen commits an offence whether on high seas or elsewhere.

Regarding the claim of the accused persons that they are citizens of USA, different stands have been taken by them in the petition; at one place the statement is made that petitioners are the Directors in the company and residents of USA while at another place it is stated that the petitioners are citizens of USA. The High Court took the view that this fact has to be ascertained from the evidence to be led by the parties at the trial of the case. The Court observed:

"Apart from that in a transaction like the present one, assuming for the sake of arguments that all the allegations made in the complaint are true, it is doubtful whether it can safely be said that the alleged offences are committed wholly outside the territory of India as one of the elements in the crime is situated in India i.e. the Company in which the petitioners are alleged to have solicited the participation by way of equity, in view of the judgment of the Supreme Court in Mobarik Ali Ahmed vs. State of Bombay (AIR 1957 SC 857), wherein their Lordships have held that the corporeal presence of the accused in the country is not essential to assert the criminal jurisdiction."

On the submissions made on behalf of the accused persons that even accepting the allegations contained in the complaint to be true the averments did not constitute the offences alleged therein, the High Court observed :

"Unless all the documents relied upon by the complainant are examined, which can only be done after appropriate proof of those documents, it may not be possible for the court to come to any conclusion whether the offences alleged in the complaint are made out. Apart from that in exercise of the jurisdiction under Section 482 of the Code of Criminal Procedure, this Court would not go into the aspect of appreciation of evidence or sufficiency of evidence."

On the discussions and the findings noted above, the High Court declined to quash the complaint petition and to drop the case against the accused persons. The said order is under challenge in this appeal.

The main thrust of the arguments of Shri Dushyant A.Dave, learned senior counsel appearing for the appellants was that the allegations in the complaint taken in entirety do not make out the offences as alleged in it; that the document alleged to have been issued by the appellants is not a 'prospectus' as defined in Section 2(36) of the Act; that the ingredients for applicability of Sections 60, 63, 68 and 68-A are not established on the allegations made in the complaint and the materials produced by the complainant even prima facie and that the appellants are citizens of U.S.A. and therefore, a criminal proceeding instituted against them in the court before the Magistrate is not maintainable. The offences alleged in the complaint petition were committed outside India and, therefore, a Magistrate has no jurisdiction to entertain the complaint petition.

Shri A.K.Ganguly, learned senior counsel appearing for the complainant-respondent joined the issue on each of the points urged by Shri Dave and urged that a strong prima facie case for criminal action against the appellants has been made out in the case. Shri Ganguly further contended that the questions raised in the proceeding on behalf of the appellants cannot be considered at this stage of the proceeding since they are to be determined during the hearing of the case. In any view of the matter, Shri Ganguly contended, that no case for quashing of the complaint and the proceeding initiated on its basis under Section 482 of the Cr.P.C. or Article 226 of the Constitution of India has been made out and, therefore, the High Court rightly dismissed the petition filed by the appellants.

The position has to be taken as well settled that power of quashing a criminal complaint and the proceeding initiated on its basis under Section 482 of the Cr.P.C. or Article 226 of the Constitution is to be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

This Court in the case of State of Bihar vs. Murad Ali Khan & Ors. reported in (1988) 4 SCC 655 observed :

"It is trite that jurisdiction under Section 482 CrPC, which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in

the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not."

A similar view was taken by this Court in the case of State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supl.(1) SCC 335 wherein it was observed thus :

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

The same view was expressed by this Court in the case of Mahavir Prasad Gupta & Anr. vs. State of National Capital Territory of Delhi & Ors., 2000 (8) SCC 115.

In view of the principles of law it is to be considered whether on the allegations which applicants made in the complaint and the materials filed by the complainant a case for exercise of jurisdiction under Section 482 Cr.P.C. or Article 226 of the Constitution has been made out. As noted earlier, it is alleged in the complaint that the accused, appellants herein, have committed the offences under Sections 60, 63, 68, 68-A read with Section 621 of the Act.

Section 60 provides that : No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon the documents enumerated in the section.

The expression 'prospectus' is defined in Section 2(36) of the Act to mean "any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate".

Section 63 of the Act makes provision regarding criminal liability for mis-statements in the prospectus. In sub-section (1) thereof it is laid down that "where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand

rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true."

Section 68 of the Act makes provision regarding penalty for fraudulently inducing persons to invest money.

It is laid down therein that : "Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures;

shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to one lakh rupees, or with both.

Section 68-A of the Act deal with personation for acquisition, etc., of shares and the action of any person who makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, or otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name, shall be punishable with imprisonment for a term which may extend to five years.

Reading of the complaint petition and the materials produced by the complainant with it in the light of provisions in the aforementioned sections it cannot be said that the allegations made in the complaint taken in entirety do not make out, even prima facie, any of the offences alleged in the complaint petition. We refrain from discussing the merits of the case further since any observation in that regard may effect one party or the other. The allegations made are serious in nature and relate to the power company registered under the Act having its head office in this country. Whether the appellants were or were not citizens of India at the time of commission of the offences alleged and whether the offences alleged were or were not committed in this country, are questions to be considered on the basis of the evidence to be placed before the Court at the trial of the case. The questions raised are of involved nature, determination of which requires enquiry into facts. Such questions cannot be considered at the preliminary stage for the purpose of quashing the complaint and the proceeding initiated on its basis. It is relevant to note here that from Sections 4 and 188 of the Criminal Procedure Code it is clear that even if the offence is committed by a citizen of India outside the country the same is subject to the jurisdiction of courts in India. [See Central Bank of India Ltd. vs. Ram Narain, AIR 1955 SC 36, Mobarik Ali Ahmed vs. The State of Bombay, 1958 SCR 328 and Ajay Aggarwal vs. Union of India & Ors., (1993) 3 SCC 609].

On consideration of the matter, we are of the view that in the context of the facts and circumstances of the case, the High Court was right in declining to quash the complaint petition and the proceedings initiated on its basis. In the result, this appeal being devoid of merit is

dismissed.

JUDIS