

2013 (5) GLR 3918

GUJARAT HIGH COURT

Hon'ble Judges:Sonia Gokani, J.

Mohindersingh Gujral Chairman - Monnet Ispat Limited Versus Bajranglal
Balkishan Agrawal

SPECIAL CRIMINAL APPLICATION No. 1154 of 2009 ; *J.Date :-
NOVEMBER 30, 2013

- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [482](#)
- [INDIAN PENAL CODE, 1860](#) Section - [406](#) , [409](#) , [420](#) , [465](#) , [467](#) ,
[468](#) , [471\(1\)](#) , [120](#) , [114](#) , [34](#)
- [COMPANIES ACT, 1956](#) Section - [10F](#)

Code of Criminal Procedure, 1973 - S. 482 - Indian Penal Code, 1860 - S. 406, 409, 420, 465, 467, 468, 471(1), 120, 114, 34 - Companies Act, 1956 - S. 10F - complaint filed in Criminal Court alleging that applicants refused to transfer share and issue duplicate Share Certificate - serious question raised against complainant under S. 10F of Act of 1956 - contended on behalf of applicant that Court having competent jurisdiction is seized of the entire dispute and when there is no element of criminality, complainant has tried to give colour of criminal matter to civil nature dispute - held, criminal complaint is lodged to pressurize or to get duplicate Share Certificate - complaint required to be quashed - petition allowed.

Imp.Para: [[14](#)] [[15](#)] [[16](#)]

Cases Referred To :

1. Minu Kumari And Another V/s. State Of Bihar And Others, 2006 4
SCC 359

Equivalent Citation(s):

2013 (5) GLR 3918 : 2014 JX(Guj) 356

JUDGMENT :-

1 Leave to amend. In the wake of death certificate of petitioner Nos.1 and 7, the complaint in question qua them is directed to be abated.

2 The present petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, seeks quashment of the proceedings of complaint registered as Criminal Case No.480 of 2009 pending before the Metropolitan Magistrate, Court No.2, Ahmedabad and further proceedings emanating from the said complaint in connection with the offences punishable under sections 406, 409, 420, 465, 467, 468, 471(1), 120(B), 114 and 34 of the Indian Penal Code, 1860, in the following factual background.

3 The petitioners are the Managing Directors and Company Secretary of the company namely Monnet Ispat and Energy Ltd. (hereinafter referred to as the Company), having its registered office at Raipur and corporate office at New Delhi. Without making the said Company a party, the complainant, who is averred to have held the share certificates of the Company, filed the complaint in question. The complainant and the Company were in litigation before the Company Law Board at New Delhi. The complainant is the proprietor of M/s.Mittal Investment and as averred he purchased 6300 equity shares of the Company. Thereafter, again he purchased 3200 equity shares of the very Company. Out of total 9500 equity shares, he lost 9400 equity shares in transit and they were stolen from the custody of the complainant, which he could not find despite due efforts. This loss of shares was communicated by the complainant to the Company on October 02, 1994 and December 06, 1994. Civil Suit Nos.5329 of 1994 and 1101 of 1995 in respect of 6200 equity shares and 3200 equity shares respectively, were preferred before the City Civil Court at Ahmedabad. The Court in both the suits granted prohibitory order in favour of the complainant.

3.1 The complainant vide its communication dated January 13, 1997 addressed to the Company made a request for issuance of 3200 duplicate shares and yet by another communication dated February 14, 1997 requested for issuance of 6200 duplicate share certificates. In a petition preferred before the Company Law Board bearing No.21/111/04, withdrawal of both the suits, was ensured. The Company Law Board dismissed the petition of the complainant by holding that the Company Law Board has no jurisdiction to decide the petition and no action is called for. However, on June 05, 2001 the Company Law Board at New Delhi had directed the Company to issue 6600 duplicate shares and for remaining shares on completion of due period within a period of six weeks. The parties were further directed to exchange the information regarding to enable the complainant to establish the case.

3.2 On the very day, the Board held that the Bench had no jurisdiction. The complainant moved this Court by way of preferring a petition being Miscellaneous Civil Application No.24 of 2008 for initiating action under the

Contempt of Courts Act against the respondents therein due to the alleged breach of the order dated March 05, 2007 passed by the Company Law Board, Northern Region Bench, New Delhi in Company Petition No.21/111/04. The Court after bi-partiate hearing and assigning detailed reasons dismissed such application vide order dated July 14, 2008, by holding that there was no substance in the application. The Court held that there was no willful disobedience on the part of the respondents of the order dated March 05, 2007 passed by the Company Law Board at New Delhi, as the same was passed without jurisdiction. Even otherwise, the petitioner had already filed a new petition before the Company Law Board at Mumbai and was awaiting for its decision.

3.3 In view of the order dated July 07, 2008 passed by this Court in O.J. Miscellaneous Civil Application No.24 of 2008 preferred by the complainant in contempt application, dismissing the contempt application emphasising that the earlier order dated March 05, 2007 passed by the Company Law Board at New Delhi, came to an end as subsequently on February 18, 2008, the very Board dismissed the petition for want of jurisdiction and the complainant himself has accepted such decision and moved to the Company Law Board at Mumbai by preferring Petition No.32/111A.CLB/MB/2008. It is averred that despite such glaring facts, with a view to make sheer abuse of the process of the Court, a complaint came to be registered vide criminal case in the Court of Metropolitan Magistrate bearing No.480 of 2009 and the Court also passed an order for issuance of process unmindful of these facts. Therefore, a request has been made by way of present petition to quash and set aside the complaint registered vide Criminal Case seeking following reliefs :

"48.(A) Your Lordships may be pleased to issue appropriate writ, order or direction to quash the criminal complaint registered as Criminal Case No.480/2009 pending in the Hon'ble Court No.II of learned Metropolitan Magistrate, Ahmedabad;

(B) Your Lordships may be pleased to issue appropriate writ, order or direction to quash and set aside order dated 13.3.2009 passed by Hon'ble Court No.II of learned Metropolitan Magistrate, Ahmedabad;

(C) Pending hearing and final disposal of the present petition, your Lordships may be pleased to stay the further proceedings of Criminal Case No.480/2009 pending in the Hon'ble Court No.II of learned Metropolitan Magistrate, Ahmedabad;

(D) An ex-parte ad-interim relief in terms of prayer (C) above may kindly be granted;

(E) pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case."

4 An affidavit-in-reply has been filed by the respondent No.1-original complainant inter alia contending that the complaint against the present petitioners is already registered under sections 406, 409, 420, 465, 467, 468, 471(1), 120(B), 114 and 34 of the Indian Penal Code, 1860 and the Court since has already taken cognizance and issued the process, only with a view to avoid such proceedings that the present petition has been filed. It is further contended that the petitioner-Company was requested not to transfer the said shares to anybody, however, no heed was paid. After two suits were filed, the Court granted interim injunction. Nobody appeared for the Company. Several times the complainant met in person, but no action for transferring the shares had been taken. It is further contended that the grievances against the company before the National Stock Exchange, Bombay Stock Exchange, Ministry of Company Affairs, etc. have been raised. Much emphasis has been laid on the communication dated November 16, 2006, whereby the Company communicated to the respondents about the willingness of issuance of 6600 shares and the request for remaining 2800 shares was kept pending under the presumption of objection. Pursuant to such communication, the order dated March 05, 2007 was passed by the Company Law Board, New Delhi, whereby it directed issuance of 6600 shares to the complainant and 1200 shares within a period of eight weeks. The parties were also directed to exchange information regarding the remaining 1200 shares. It is further contended that to comply with these conditions, a letter was addressed on March 27, 2007 and the respondent No.1 also communicated the Company the withdrawal of the suit as was directed by the Company Law Board. The notices were also issued on May 12, 2007 and May 15, 2007, pursuant to such orders at the instance of the respondents. However, when no such transfer, in fact, was effected, the contempt petition was preferred before this Court being O.J. Miscellaneous Civil Application No.24 of 2008, whereby the Company Law Board questioned validity of the ownership of the respondent No.1. It is further contended that the respondents preferred a petition before the Company Law Board at Mumbai, wherein it is contended as to why during the course of pendency of the petitions, the petitioner-Company transferred 5800 shares between the years 1992 and 1994. It was the compulsion exercised by the Company for withdrawal of the suit, which had compelled the respondents to withdraw the suit and later on the company took a volte face before this Court and Company Law Board at Mumbai. It is alleged that the Company manipulated the version and played with different firms and, therefore, the Court may not interfere exercising inherent powers under the Criminal Procedure Code, 1973. The additional

affidavit and the rejoinder affidavit have been filed by both the sides. The details of which are not necessary to be reproduced. Suffice it to mention that the petition preferred before the Company Law Board at Mumbai, ended in favour of the petitioner and against the respondent No.1.

5 The learned senior counsel Mr.K.S. Nanavati appearing for the petitioners, has vehemently argued on the line of the memo of the petition. He has urged that all the petitioners are the directors and officers of the Company. Without impleading the company as accused, such a complaint at the outset would not be tenable. It is his further say that listing of the company's shares with Stock Exchange was done on September 23, 1993 at New Delhi and on October, 1993 in Mumbai. However, the purchase which is averred to have been made by the respondent-complainant on four different dates ranges from June 02, 1993 to September 22, 1993. The bills are dated September 22, 1993; October 05, 1993; October 06, 1993 and October 12, 1993. Therefore, the genuineness of the bills also need to be doubted as this is not a direct allotment by the company, but a purchase made by the respondent- complainant from the secondary market, which could not have started prior to October, 1993. He further urged that the dispute pertaining to this very shares when was pending before the Company Law Board, there was no earthly reason for filing the complaint. During the pendency of this petition, according to the learned senior counsel, not only the Company Law Board had dismissed the petition on the ground of no jurisdiction, but subsequently the petition filed before the Company Law Board at Mumbai also tilted in favour of the present petitioners on September 18, 2010. Of course, against such decision of the Company Law Board, the respondent-complainant through its proprietor approached the High Court of Chhattisgarh at Bilaspur and the Court had granted injunction against the petitioner- Company not to transfer or alienate the shares till final disposal of the appeal. Therefore, when the Court of competent jurisdiction is seized with the entire dispute, in absence of any element of criminality, the present complaint is only an attempt to give colour of a criminal matter to a civil dispute by attaching criminality to the act of the company.

6 Some of the vital contentions raised by the learned Senior Counsel read as under :

(i) The breach alleged will attract none of the provisions mentioned in the complaint. For a dispute between the company and the complainant, the proceedings before the competent forum are pending.

(ii) The offence if there be any committed by the company, the Company has not been made an accused and the complaint will not be competent in absence of the company being impleaded as an accused.

(iii) There are no allegations of facts to connect the petitioners-accused with the crime in question.

(iv) The dispute is purely of civil nature and no criminality is involved therein.

(v) There is a gross delay in lodging the complaint since the dispute arose in the year 1993 and the complaint has been filed in the year 2009.

(vi) There is a serious dispute of the jurisdiction of the Court.

(vii) The entire complaint is based on assumption that the Directors of the Company are vicariously liable, when, in fact, no role is attributed to any of the petitioners.

(viii) The Company records the ownership. If the shares are lost, the transaction forms along with the share certificates need to be with the company. Even if it is assumed that the company before the Company Law Board had ensured to take due steps, the Company has already done what it could have done legally. However, those persons in whose names the shares stood when contacted the company and when the record of the company culled out that the shares which the complainant wants the company to be transferred in his name, are presently in the name of those owners, it is not legally permissible for the company to transfer the shares.

(ix) There are no share certificates or folio numbers in the averred bills produced. The complaint also says that the transfer forms are also lost. No photocopy is also brought on record. Cumulatively, he urged to quash the complaint in these given facts and circumstances.

7 The learned advocate Mr.Dipen Desai appearing for the respondent-complainant has vehemently urged that the listing-cum-rating permission in respect of shares of the company was from September 23, 1993 from Delhi Stock Exchange, whereas for Bombay Stock Exchange the date was October 23, 1993. The first bill starts from September 22, 1993 and the rest are of subsequent dates. His principal allegation against the petitioners is that they were all part of Share Transfer Committee and despite subsistence of prohibitory order by the competent Court, many of the shares have been transferred. He emphasized on the fact that the Company Law Board at New Delhi passed an interim order directing to issue 6600 share certificates and to give advertisement at the expenses of the respondent No.1 for 1200 shares. The respondent No.1 was directed to adduce necessary evidence in relation to 1500 shares and, therefore, till such order was passed, there was no dispute with regard to the same. At the instance of the company of the petitioners, the respondent No.1 had withdrawn the petition and thereafter,

when a letter was sent, acting upon such a letter, the respondent No.1 withdrew the suits and the advertisement had been given at the instance of the respondent No.1. No objection was received, however, the petitioners have chosen not to issue the share certificates. This gives rise to the complaint and it is outrightly the act of breaching the promise, which was given all along before the Company Law Board and thereafter, vide communication dated November 16, 2006.

8 In rejoinder, many of these aspects have been refuted, which do not require any reproduction. It is pertinent to note that in rejoinder, it has been specified that the withdrawal of the suit was after the order of the Company Law Board at New Delhi and not after the communication dated November 16, 2006.

9 The learned Additional Public Prosecutor Mr.N.J. Shah appearing for the respondent-State has urged that when the Court has also issued the process, this Court at this stage may not interfere exercising the inherent jurisdiction under section 482 of the Criminal Procedure Code, 1973. He further urged that it is not correct to say that within local jurisdiction, the part of the cause of action has not arisen. It is his say that although the Company Law Board at Mumbai has rejected the petition of the respondent-complainant, the complaint pertains to the criminality attached to the alleged act of the petitioners.

10 Upon thus hearing both the sides and on careful examination of the materials on record, for the reasons to follow hereinafter, the complaint requires to be quashed :

10.1 Taking firstly the contention raised by the petitioner in respect of delay in filing the complaint, it could be noted that the first communication with regard to loss of 9400 shares was communicated to the Company by the complainant on October 02, 1994. Soon thereafter, both the Civil Suits came to be filed being Civil Suit Nos.5329 of 1994 and 1101 of 1995 before the competent Court, wherein the Court also precluded the complainant by way of prohibitory order not to transfer the disputed shares, which continued for a long time. A petition before the Company Law Board was preferred on November 21, 2004, nearly after 10 years, wherein the Company Law Board passed an order in favour of the complainant on March 05, 2007, which was eventually on the ground of jurisdiction dismissed by the Company Law Board.

10.2 When the matter was pending before the Company Law Board at New Delhi, a communication dated November 16, 2006 in respect of issuance of duplicate share certificates was addressed by the petitioner-Company Secretary to the respondent-complainant. It is the basis of this complaint

that the said communication had led the complainant to withdraw the suits and also incur expenses for giving advertisement in respect of the share certificates which he had lost. When this had not been adhered to by the Company under one or the other pretexts, the respondent got an order from the Company Law Board at New Delhi and such an order dated March 05, 2007 requires reproduction, which reads as under :

"Heard the parties, R.I. is directed to issue 6600 duplicate shares, forthwith and the remaining 1200 on completion of the due procedure within a period of eight weeks. Petitioner to bear the cost of advertisement. Parties to exchange information regarding the remaining 1500 shares to enable the petitioner to withdraw from the forums w.r.t. then share forthwith. Adjourned to 8.6.2007 at 2.30 p.m."

10.3 When a contempt petition was preferred before this Court being Miscellaneous Civil Application No.24 of 2008 against the present petitioners for the alleged breach of the said order dated March 05, 2007 passed by the Company Law Board, Northern Region Bench, New Delhi, this Court dismissed the petition noting the fact that the suit of the petitioners preferred before the City Civil Court, wherein the interim relief so granted, was dismissed for availing the remedies under the Companies Act, as the suit was withdrawn and the petition preferred before the Company Law Board at New Delhi on the ground of the Company Law Board not having jurisdiction came to be terminated on February 08, 2008. Accordingly, such an order dated March 05, 2007 since was passed without jurisdiction, the same came to an end as well.

10.4 The Court held that there was no willful disobedience on the part of the respondents therein as such an order was passed without jurisdiction and even otherwise for the identical prayer, the respondent No.1 herein had filed a company petition before the Company Law Board, Western Region Bench, Mumbai. Accordingly, such petition was dismissed on July 15, 2008.

10.5 It is a matter of record that the complaint came to be filed on March 07, 2009. The base of the complainant for lodging the complaint is the communication dated November 16, 2006, coupled with other alleged acts on the part of the petitioners. Although the dispute with regard to the non-issuance of the duplicate share certificates is from the year 1993, the condonation of delay in lodging the complaint from the years 1993 to 2009 cannot be sustained. Considering the communication in November, 2006 as the precipitating factor, then also, the period of delay is neraly three years.

10.6 Per se, this period of delay cannot form a ground for intervention under section 482 of the Criminal Procedure Code, 1973, but the same surely becomes one of the considerations while examining all essential facts on

merit. However, not upholding such contention of the petitioners of delay ipso facto would not mean approving the action of the complainant of filing the complaint belatedly.

11 With this, the contentions raised by the petitioners inter alia that the breach alleged does not attract any provisions of the Indian Penal Code as the dispute essentially is civil in nature, require consideration at this stage.

12 Aggrieved by the fact that the Company Law Board at New Delhi dismissed the petition for want of jurisdiction, such order passed on March 05, 2007, as mentioned hereinabove was challenged before this Court and the same was not entertained as the Court did not find any willful disobedience on the part of the petitioners herein. The Court held and observed that the concerned order was passed without the Company Law Board having jurisdiction and again the Court was also actuated by the fact that the petition for much or less similar reliefs was moved before the Company Law Board, Bombay and on all these grounds, the say of the complainant of non-compliance of order dated March 05, 2007, is set at rest.

13 It is to be noted at this stage that essentially the dispute is with regard to non-issuance of the duplicate share certificates, which the petitioners appear to have lost in the year 1994. If two suits were filed in the year 1994 and 1995, which the complainant eventually withdrew, the fact remains that for issuance of duplicate share certificates, right forum is the Company Law Board. And, therefore, even if such withdrawal on the part of the complainant resulted into injunction not operating in his favour, it is not the case of the complainant-respondent that on account of withdrawal of the suit and in absence of the prohibitory order, the shares have been transferred to the third party. The case of the complainant is that during the pendency of the prohibitory order, such transfer has been effected, whereas according to the petitioners, there is no transfer but on account of new rules with regard to demat having come into existence, the shares have been transferred in the demat form of concerned owners. The very basis of complaint under question is the act of Company of not adhering to its promise of issuance of shares pursuant to the direction of the Company Law Board, New Delhi. The very basis has gone in wake of order of Company Law Board, New Delhi dated February 08, 2008 and challenge in the form of contempt petition also has failed, making the case of complainant-respondent further shaky. Again, the Company having ensured before the Company Law Board to take steps for issuance of share certificate prima facie appears to have made attempts in that direction. However, having noticed that huge number of shares from the disputed scrips belong to the third parties, it stopped consequently from translating the act into issuance

of share certificate. Nothing also emerges as to in what manner the present petitioners are vicariously liable for any alleged default on the part of the Company. Moreover, when once the Company Law Board, Bombay, which has jurisdiction to decide all the disputes, has chosen not to entertain the petition preferred invoking provision of section 111(A) of the Companies Act, 1956, seeking various directions and when the complainant has already challenged such an order of the Company Law Board before the High Court of competent jurisdiction which has also granted interim relief in his favour vide order dated July 14, 2008, this complaint appears to be nothing but an attempt to get the reliefs sought for in the civil litigation giving such dispute the colour of criminality by asserting the pressure through the criminal complaint.

14 This Court while examining rival contentions cannot be oblivious of the fact that the Company Law Board vide order dated September 18, 2010 in no uncertain words has cast a shadow of serious doubt on the case of alleged breach and loss of share certificates by the complainant. It also has observed that the complainant is repeatedly indulged in the act of concealment of facts, which it believed would go against his case. The bills are fabricated and they aim to commit fraud. They did not cover 9400 shares as claimed by the complainant as the purported bills had shown sale of 3100 shares. They also did not carry any details of distinctive number, nor even share certificate numbers. It would be worth noting in the words of Company Law Board as various dates of purchase and opening of the issue of the Company led it to believe that the following crucial facts were concealed by the complainant :

"7. . . . The contention of the petitioner is that they purchased the shares of RI Company from various persons on 22.9.1993, 5.10.1993, 6.10.1993 and 12.10.1993 respectively and the said shares have been lost from the custody of the petitioner with the signed transfer deeds. The stand of the respondents that the purported bills are fabricated for the reason that the public issue of the RI Company was opened on 21.6.1993 and the allotment of shares made th on 18 August, 1993 whereas the listing-cum- trading permission was granted by Bombay th Stock Exchange with effect from 20 October, 1993. Any transaction of shares prior to the trading permission with the respective Stock Exchanges is illegal. From the documents it is evident that the petitioner alleged to have purchased the said shares prior to the listing permission for trading was granted by the Bombay Stock Exchange i.e. on 20th October, 1993. Irrespective of above, the respondents have taken various objections with regard to non joinder of parties and maintainability, delay and latches etc. However, having regard to the fact that the purchase of shares by the petitioner prior to listing on the Bombay

Stock Exchange is illegal, hence this Bench did not consider to go into other aspects. It is not the case of the petitioner that they applied directly to the RI Company for issuance of shares under IPO. Thus, this Bench is of the firm opinion that the so called purchase of shares of the Respondent Company by the petitioner is fabricated and not recognized in the eye of law. In view of the reasons stated supra the petition is miserably failed for grant of any reliefs and liable to be dismissed. Hence the CP is dismissed. No order as to costs."

15 When there are serious questions raised by the Company Law Board against the very conduct of the complainant, which of course is at large before the High Court of Chhatisgarh at Bilaspur under section 10F of the Companies Act in Company Petition No.32 of 2008, all the aspects will be scrutinised by the concerned High Court and this Court is of the firm opinion that this attempt of lodging a criminal complaint belatedly on the part of the complainant is nothing but an attempt to pressurise the company to arrive at a settlement or a way of getting the duplicate share certificates issued in the name.

16 Apt would be to refer to the decision of the Apex Court in the case of Minu Kumari and another v. State of Bihar and others, reported in (2006) 4 SCC 359, the relevant paragraph of which reads as under :

"19. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and

with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."

11. For the foregoing reasons, the present application succeeds and is, accordingly, allowed. The complaint in question registered vide Criminal Case No.480 of 2009 pending before the learned Metropolitan Magistrate, Court No.2, Ahmedabad and all the proceedings emanating therefrom are quashed and set aside. Rule is made absolute accordingly.