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REGISTRAR OF COMPANIES

v.

RAJSHREE SUGAR AND CHEMICALS LTD. AND ORS.

MAY 11, 2000

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[K.T. THOMAS, D.P. MOHAPATRA AND RUMA PAL, JJ.]

Companies Act 1956—Sections 113 (2) and 621—Person aggrieved—Whether Registrar of Companies is a person aggrieved—Held, yes.

C

Companies Act 1956—Sec. 113 (2)—Criminal Procedure Code—Sec. 469 (1)(b)—Complaint of failure to transfer shares in time—Filed within 6 months of date of knowledge of offence—Held, complaint is within limitation.

A complaint was filed by the appellant against the respondents alleging that the respondents had, in violation of Section 113 of the Companies Act, 1956, defaulted in transfer of shares within the time specified in that Section. The Chief Judicial Magistrate, Coimbatore dismissed the complaint on the ground that it was barred by limitation under Section 468 of the Code of Criminal Procedure, 1973.

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Appellant filed a Revision Petition under Sections 397 and 401 Cr. P.C. before the Madras High Court. He contended that the Magistrate overlooked the provisions of Section 469 (1)(b) of the Code which provides for the computation of the period of limitation from the first day on which the offence comes to the knowledge of "the person aggrieved by the offence or to the police officer". High Court rejected the submission and also held that the appellant was neither the person aggrieved nor a police officer and that the prosecution under Section 113 could be launched only on the application of an affected shareholder. According to the High Court, this was clear from clause (3) of Section 113.

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The respondents in this Court contended that the view of the Madras High Court has also been taken by the Gujarat High Court and the Delhi High Court.

Allowing the Appeal, the Court

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HELD : 1. The phrase 'person aggrieved' has not been defined in Cr. P.C. However, as far as offences under the Companies Act are concerned, the

words must be understood and construed in the context of Section 621 of the Act. If the words 'person aggrieved' are read to mean only 'the person affected' by the failure of the Company to transfer the shares or allot the shares, then the only 'person aggrieved' would be the transferee or the allottee, as the case may be. Under Section 621 of the Act, no Court can take cognizance of an offence under companies Act except on the complaint of a share holder, the Registrar or the person duly authorised by the Central Government. Where the transferee or allottee is not an existing share-holder of the Company, if the words 'person aggrieved' is read in such a limited manner, it would mean that Section 469(1)(b) of the Code would be entirely inapplicable to offences under Section 113 of the Act of 1956. There is in any event, no justification to interpret the words 'person aggrieved' as used in Section 469 (1)(b) restrictively particularly when, as in this case, the statute creating the offence provides for the initiation of the prosecution only on the complaint of particular persons. Having regard to the clear language of Section 621 of the code, there is no manner of doubt that the appellant would a 'person aggrieved' within the meaning of Section 469(1)(b) of the Code in respect of offence (except those under section 545) against the Companies Act.

[259-A-D]

Vasantlal Chandulal Majmudar v. Navin Chandra Manilal & Anr., Guj. LR Vol XXII 436; *Nestle India Limited and Ors. v. State and Another*, (1994) 4 Comp LJ 446 (Del); *Sulochana v. State of Registrar of Chits (Investigation and Prosecution)*, (1978) CrL LJ 116; *Bhagwati Prasad v. Assistant Registrar of Companies*, (1983) 53 CC 56; *Sushil Kumar and Others v. ROC*, (1983) 53 CC 54 and *Abdul Rahim v. State represented by the Chit Registrar Nagapatinnam*, (1978) 1 LW CrL 195, distinguished.

2. The High Court erred in construing the provisions of Section 113(2) with reference to Section 113(3). The latter deals with the civil liability of the Company and its officers for a breach of Section 113(1) at the instance of the transferee of the shares. Section 113(2) deals with the criminal liability arising out of a violation of Section 113(1). The objects of the two sub-sections are different. Section 113(3) is primarily compensatory in nature whereas Section 133(2) is punitive. An application under Section 113(3) can only be made by the transferee A transferee who is not an existing share-holder of the Company cannot file a complaint under Section 113(2) at all. [259-E-F]

3. The appellant as a person aggrieved would be entitled to the benefit of the provisions of Section 469(1)(b) of the Code. It is not in dispute that the appellant came to know of the offences on 20th July, 1992. The commencement

A of the period of limitation of six months for initiating the prosecution would have to be calculated from that date. The complaint was filed on 20th August 1992 well within the period specified under Section 468(2) of the Code.

[259-G]

B 4. The decision of the High Court as well as the Chief Judicial Magistrate, Coimbatore are set aside and the matter is remanded back to the Chief Judicial Magistrate, Coimbatore for being decided on merits.

[259-H; 260-A]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 483 of 2000.

From the Judgment and Order dated 17.3.98 of the Madras High Court in Crl. R. No. 125 of 1995.

C.V. Subba Rao and B. Krishna Prasad for the Appellant.

D K.V. Viswanathan, Kunwar Ajit M. Singh and K.V. Venkataraman for the Respondents.

The Judgment of the Court was delivered by

E RUMA PAL, J. Leave granted.

F This appeal has been preferred from the decision of the High Court of Madras dated 17th March, 1998. The appeal was filed on 26th July, 1999 after a delay of 406 days. The application for condonation of delay filed by the appellant shows that the Department of Legal Affairs took up the matter only on 16th December, 1998. No explanation whatsoever has been given for the appellant's inaction during this period of nine months. The observation of this Court in *State of U.P. v. Bahadur Singh and Others*, AIR (1983) SC 845 regarding the latitude to be shown to the Government in deciding questions of delay, does not give a licence to the Officers of the Government to shirk their responsibility to act with reasonable expedition. However, since the matter has been permitted to be argued on merits, it would not be appropriate to dismiss the appeal on the ground of delay, but our disapproval of the conduct of the appellant in this regard will be reflected in the costs which we intend to award against the appellant in favour of the respondents, irrespective of our decision on merits.

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The issue to be decided in this appeal relates to an offence allegedly committed by the respondents under Section 113 of the Companies Act, 1956 (referred to as the 'Act'). The complaint was filed by the appellant against the respondents on 28th August, 1992 alleging that the respondents had, in violation of Section 113 of the Act, defaulted in transfer of shares within the time specified in that Section. The Chief Judicial Magistrate, Coimbatore by his order dated 30th March, 1993 dismissed the complaint on the ground that it was barred by limitation under Section 468 of the Code of Criminal Procedure (for short 'the Code').

The appellant filed a petition under Sections 397 and 401 Cr.P.C. before the High Court of Madras praying for revision of the order dated 30th March, 1993. The High Court by the impugned judgment not only upheld the order of the trial court but also held that the appellant was incompetent to file a complaint in respect of an offence under Section 113 of the Act.

1. 113(1) [Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred.

Provided that the Company Law Board may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks allotted or transferred shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods.]

The expression "transfer" for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (1), fails to make good the default within ten days after the service of the notice, the (Company Law Board) may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default (4) Notwithstanding anything contained

A Section 113¹ sub-Section (1) of the Act requires a company to deliver the share certificates to the allottee or transferee within three months after the allotment and within two months after the application for registration of transfer of the shares. The period is extendable in certain circumstances on an application by the company to the Company Law Board subject to a maximum period of nine months.

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Sub Section (2) of Section 113 provides that if default is made in compliance with sub Section 1 the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues. In addition to this criminal liability for punishment, under Section 113 (3) a person entitled to have the shares delivered to him, may apply to the Company Law Board for a directive on the company to deliver the certificates or the debentures to the complainant. The Company Law Board is authorised to pass an order directing the company and any officer of the company “ to make good the default” within such time as may be specified and also provide for the costs of and incidental to the application to be paid to the complainant by the company or any officer of the company who may be responsible for the default.

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In this case, the complaint filed by the appellant was under Section 113 (2). It was alleged in the complaint that the company was sent share transfer certificates along with applications for transfer in two batches; - on 23.11.1990 and 18.12.1990. The first batch of applications for transfer was received by the company on 11.12.1990, approved on 29.3.1991 and dispatched on 6.4.1991. The second batch of applications was received on 26.12.1990 approved by the company on 3.4.1991 and dispatched on 16.4.1991. Apparently, Section 113 (1) was not complied with. This came to the knowledge of the appellant only on 20.7.1992 when the appellant inspected the books of account of the company under Section 209A (1) (i) of the Act. The complaint was filed by the appellant on 20th August 1992 before the Chief Judicial Magistrate, Coimbatore.

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As already noted, the Chief Judicial Magistrate dismissed the complaint relying on Section 468 of the Code, which provides:

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“468. *Bar to taking cognizance after lapse of the period of limitation:*
- (1) Except as otherwise provided elsewhere in this Court, no Court

in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

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shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. A

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

The date on which period of limitation is to commence has been provided for in Section 469 of the Code in the following manner: B

“469. *Commencement of the period of limitation.*—(1) The period of limitation, in relation to an offender, shall commence, -

(a) on the date of the offence; or C

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier.”

It is unnecessary to decide whether the offence under Section 113 of the Act is a continuing one under Section 472 of the Code on the facts of this case. Even if the offence were a continuing one, the offence, if any, continued upto the date when the deliveries were in fact effected under Section 113 viz. on 6.4.91 and 16.4.91. As the offence of delayed delivery is punishable with a fine, the time to initiate proceedings under Section 468 of the Code would expire at the latest in October, 1991. The appellant, in fact, filed the complaint almost a year later. D E

According to the appellant, the Magistrate overlooked the provisions of Section 469 (1) (b) of the Code which provides for the computation of the period of limitation from the first day on which the offence comes to the knowledge of “the person aggrieved by the offence or to the police officer”. The High Court rejected the submission holding that the appellant was neither the person aggrieved nor a police officer and that the prosecution under Section 113 could be launched only on the application of an affected shareholder. According to the High Court, this was clear from clause (3) of Section 113. F G

It is contended by learned counsel appearing for the respondents that the view of the High Court has also been taken by a learned Single Judge of the Gujarat High Court in *Vasantlal Chandulal Majmudar v. Navinchandra Manilal & Anr. Guj.*, LR Vol. XXII 436; by a learned Single Judge of the Delhi H

A High Court in *Nestle India Limited and Others v. State and Another*, (1994) 4 Comp L.J. 446 (Del) as well as by a learned Single Judge of the Madras High Court in *Sulochana v. State of Registrar of Chits (Investigation and Prosecution)*, Madras, (1978) CrI. L.J. 116.

B A contrary view has been expressed by two Division Bench judgments of the Calcutta High Court in *Bhagwati Prasad v. Assistant Registrar of Companies*, (1983) 53 Company Cases 56; *Sushil Kumar and Others v. Registrar of Companies*, (1983) 53 Comp. Cases P. 54 with reference to Section 113 of the Act.

C As far as the decision of the Gujarat High Court is concerned, it dealt with the provisions of the Gujarat Co-operative Societies Act, 1967, the provisions of which are not before us. As far as the decision of the High Court of Madras is concerned, the decision of the learned Single Judge in *Sulochana v. Registrar* (Supra) has been expressly over-ruled by the Division Bench of the Madras High Court in *Abdul Rahim v. State represented by the Chit Registrar Nagapattinam*, (1978) 1 L.W. CrI. 195. The Division Bench has held that the Registrar of Chits was a “person aggrieved” within the meaning of s.469 (1) (b) of the Code and was competent to initiate prosecution for an offence under the Tamilnadu Chit Funds Act, 1961. *Sulochana’s* case was also distinguished in the two Calcutta High Court’s decisions noted earlier.

E The only decision cited by the respondents which is on Section 113 of the Act is the decision in *Nestle India Limited* (supra). Neither the learned Judge in his decision in *Nestle India* nor the High Court in the judgment under appeal considered the provisions of Section 621 (1) of the Companies Act, which provides:

F “621 (1) No Court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under Section 545), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf.”

G Under this Section therefore, the appellant is competent to file a written complaint in respect of offences under, inter-alia, Section 113 of the Act.

H The phrase ‘person aggrieved’ has not been defined in the Code. However, as far as offences under the Companies Act are concerned, the

words must be understood and construed in the context of Section 621 of the Act. If the words 'person aggrieved' are read to mean only 'the person affected' by the failure of the Company to transfer the shares or allot the shares, then the only 'person aggrieved' would be the transferee or the allottee, as the case may be. Under Section 621 of the Act, no Court can take cognizance of an offence against Companies Act except on the complaint of a share-holder, the Registrar or the person duly authorised by the Central Government. Where the transferee or allottee is not an existing share-holder of the Company, if the words 'person aggrieved' is read in such a limited manner, it would mean that Section 469 (1) (b) of the Code would be entirely inapplicable to offences under Section 113 of the Act. There is, in any event, no justification to interpret the words 'person aggrieved' as used in Section 469 (1) (b) restrictively particularly when, as in this case, the statute creating the offence provides for the initiation of the prosecution only on the complaint of particular persons. Having regard to the clear language of Section 621 of the Act, we have no manner of doubt that the appellant would be a 'person aggrieved' within the meaning of Section 469 (1) (b) of the Code in respect of offence (except those under Section 545) against the Companies Act.

Apart from overlooking the provisions of Section 621 of the Act, the High Court erred in construing the provisions of Section 113 (2) with reference to Section 113(3). The latter deals with the civil liability of the Company and its officers for a breach of Section 113 (1) at the instance of the transferee of the shares. Section 113 (2) deals with the criminal liability arising out of a violation of Section 113 (1). The objects of the two sub-sections are disparate. Section 113 (3) is primarily compensatory in nature whereas Section 113 (2) is punitive. An application under Section 113 (3) can only be made by the transferee. And as already seen, a transferee who is not an existing share-holder of the Company cannot file a complaint under Section 113 (2) at all.

For the reasons stated, we are of the view that the appellant as a person aggrieved would be entitled to the benefit of the provisions of Section 469 (1) (b) of the Code. It is not in dispute that the appellant came to know of the offences on 20th July 1992. The commencement of the period of limitation of six months for initiating the prosecution would have to be calculated from that date. The complaint was filed on 20th August 1992 well within the period specified under Section 468 (2) of the Code.

In the circumstances, the decision of the High Court as well as the Chief

A Judicial Magistrate, Coimbatore are set aside and the matter is remanded back to the Chief Judicial Magistrate, Coimbatore for being decided on merits.

Because of the inordinate delay by the appellant in preferring this appeal, the appellant shall pay the costs of the appeal to the respondents.

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Appeal allowed.