

SUPREME COURT OF INDIA

GHCL Employees Stock Option Trust

Vs.

India Infoline Limited

Crl.A.No.488 of 2013

(P.Sathasivam and M.Y.Eqbal JJ.)

22.03.2013

JUDGMENT

M.Y. EQBAL, J.

1. Leave granted.

2. Since these seven appeals arose out of the common order passed by the Delhi High Court in seven Criminal Miscellaneous Cases filed by the respondents, the same have been heard and disposed of by this common judgment.

3. The aforesaid seven Criminal Miscellaneous Cases were filed in the High Court challenging the order dated 27th September, 2008 passed by the Metropolitan Magistrate, New Delhi whereby he had summoned the respondents to face trial under Sections 415, 409, 34, 120B of the Indian Penal Code (IPC) on a complaint filed by the appellant. These Criminal Miscellaneous Cases were filed separately in the High Court on behalf of the Company, namely, India Infoline Limited, and by the Managing Director, Company Secretary and other Directors of the said Company.

4. The appellant had filed a complaint before the Metropolitan Magistrate alleging commission of offences under the aforementioned Sections of IPC. The brief facts of the case as set out in the complaint are as follows: The complainant opened a Demat Account with respondent No. 1 Company, namely, India Infoline Limited in 2007 and placed orders from time to time for purchase of shares and also made payments against its running account with the Company. The Company allegedly claimed outstanding debit of Rs.10.48 crores against the complainant in its Demat

Account with it. The said Company was having a lien on 20,46,195 shares purchased by the complainant in that account. The respondent- Company being accused No. 1 informed the complainant about the aforesaid debit. The complainant cleared the amount outstanding against it by making payment of Rs.10.48 crores by a cheque. Later on, it transpired that the correct debit against the complainant was Rs.10,22,77,522/-. It was alleged that the respondent- Company dishonestly received a sum of Rs.25,22,477.53 from the complainant by making false demand. It was further alleged by the complainant that on receipt of the amount of Rs.10.48 crores the respondent- accused were under legal obligation to transfer the shares purchased by the complainant from the Pool Account to its Demat Account but instead of doing that and refunding the excess amount of Rs.25,22,477.53, they, vide letter dated 14th May, 2008 asked the complainant to clear the debit of 5 companies, namely, (i) Carissa Investments Pvt. Ltd. (ii) Altar Investments Pvt. Ltd. (iii) Oval Investments Pvt. Ltd. (iv) Dalmia Housing Finance Ltd. (v) Dear Investment Pvt. Ltd. in terms of its letter dated 1st March, 2008 failing which they would regularize the aforementioned 5 accounts by selling the stock of the complainant. The complainant alleged that since no letter dated 1st March, 2008 had been written by the complainant to the accused, it denied the averments made in their letter dated 14th May, 2008. The complainant further alleged that they met respondents Nos. 2 to 7, namely, the Managing Director, the Company Secretary and the Directors of respondent No. 1 Company and requested to refund the excess amount and transfer its shares to Demat Account but nothing was done. The complainant, therefore, alleged that the respondents have committed criminal breach of trust and cheating, inasmuch as they have sold off 8,76,668 shares of the complainant on 23rd June, 2008 and misappropriated the entire sale proceeds.

5. The Metropolitan Magistrate after considering the allegations made in the complaint, documents placed on the record and the evidence led by the witnesses, and after being satisfied that a prima facie case is made out, directed issuance of summons against the respondents to face trial under the aforementioned Sections of IPC.

6. Aggrieved by the said order passed by the Metropolitan Magistrate, New Delhi, the respondents filed separate petitions before the Delhi High Court challenging the issuance of summons against the Company, the Managing Director, the Company Secretary and the Directors of the Company. The High Court by the impugned order held that issuance of summons against respondents Nos. 2 to 7, namely, the Managing Director, the Company Secretary and the Directors of the Company cannot be sustained and the same are liable to be set aside. So far as

respondent No. 1 Company is concerned, the High Court held that issuance of summons as against the Company under Section 415 IPC also cannot be sustained. The learned Magistrate has been directed to proceed with the trial against respondent No. 1 M/s. India Infoline Limited under other Sections of IPC.

7. Dissatisfied with the aforesaid order passed by the High Court, the complainant has preferred these appeals by special leave.

8. Mr. Rakesh Tiku, learned senior counsel appearing for the appellant assailed the impugned order passed by the High Court as being illegal and wholly without jurisdiction. Learned counsel first contended that the High Court has gravely erred in law in taking into consideration probable defence of the accused, which was tendered at the time of the hearing of the petitions under Section 482 Cr.P.C. questioning the legality of the summoning order passed by the learned Magistrate. Learned counsel submitted that the High Court has failed to appreciate that the allegations against the Managing Director, Company Secretary and other Directors of the Company (accused Nos. 2 to 7) in the original complaint were not based on any vicarious liability but on the specific allegations of their having conspired together to cheat and commit breach of trust, which is supported by documentary evidence. According to the learned senior counsel, the High Court exceeded its jurisdiction under Section 482 Cr.P.C. by entering into the merits of the case observing that there were no material against the accused so as to proceed against them under Sections 406, 409, 420, 477A, 34 and 120B of I.P.C. Learned counsel submitted that the appellant is a registered Trust created by M/s. G.H.C.L., a Company registered under the Companies Act, for the benefit of eligible employees of the Company for transfer of Company's equity shares. It was contended that accused Nos. 2 to 7, who were Managing Director, Company Secretary and Directors of the Company are involved in the day-to-day activities of the Company and responsible for the conduct and business of the said Company. Lastly, it was submitted that there is a specific allegation and averment in the complaint that the complainant had been interacting with the Directors of the Company and, therefore, there was sufficient material for issuance of summons against them. Learned counsel put reliance on the decisions of this Court in *Madhav Rao Jiwaji Rao Scindia Ors. vs. Sambhajirao Chandrojirao Angre Ors.* (1988) 1 SCC 692 and *S.K. Alagh vs. State of Uttar Pradesh Ors.* (2008) 5 SCC 662.

9. Per contra, Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the respondents in all the cases at the very outset submitted that the High Court has correctly quashed the criminal proceedings initiated against the Managing

Director, the Company Secretary and other Directors of the Company holding that there cannot be vicarious liability; and moreover, the complainant needs to specifically allege the act/complaint of/against the individual Director and what role such individual Director had played. Learned counsel submitted that the complainant made a general averment that respondent Nos. 2 to 7 were responsible for day-to-day affairs of the Company without specifying the exact role played by them in the transaction. It was contended that the appellant-complainant is seeking to make new allegations supplemented by new documents to show that the order passed by the Magistrate summoning the respondents was justified. Nowhere in the complaint, the appellant-complainant mentioned the details of the alleged meeting and discussion with respondents Nos. 2 to 7 or even alleged that which of the appellant's authorized representative met the Managing Director or Directors of the Company and vague allegations have been made stating that on numerous occasions the appellant's representative met accused Nos. 2 to 7 which is not sufficient for summoning them in a criminal proceedings. Dr. Singhvi then contended that at the outset the alleged letter dated 1st March, 2008 has been treated by the High Court for all practical purposes in favour of the respondents which is grossly incorrect when the High Court by arriving at its decision has proceeded on the assumption that the letter dated 1st March, 2008 was not written by Shri Bhuwneswar Mishra to the respondent Company. Referring various decisions of this Court, Dr. Singhvi submitted that a mere bald statement that respondents Nos. 2 to 7 were in charge of the Company and responsible for day-to-day affairs of the Company is not sufficient, but the complaint must contain specific averments and allegations against each and every Director of the Company. Lastly, it was contended that the dispute raised by the complainant is purely a civil dispute. Further, the parties have already put their disputes before the Arbitrator and the arbitration proceedings are pending for hearing. Under these circumstances, according to Dr. Singhvi, the criminal proceedings are nothing but an abuse of the process of court. Learned counsel put reliance on the decisions of this Court in the cases of *Madhav Rao Jiwaji Rao Scindia Ors. vs. Sambhajirao Chandrojirao Angre Ors.* (1988) 1 SCC 692, *S.K. Alagh vs. State of Uttar Pradesh Ors.* (2008) 5 SCC 662, *M/s. Thermax Ltd. Ors. vs. K.M. Johnny Ors.* 2011 (11) SCALE 128 and *Standard Chartered Bank and Ors. Etc. vs. Directorate of Enforcement Ors.* AIR 2005 SC 2622.

10. We have carefully considered the submissions of the learned counsel on either side. The various decisions relied upon by the learned counsel appearing on either side have been considered by us. It is not necessary to quote extensively various passages from several judgments except a few which are relevant and touching the issue directly on the point raised in these appeals.

11. In order to appreciate the rival contentions made by the learned counsel, we would like to refer hereinbelow some of the relevant paragraphs of the complaint in order to find out as to whether those averments constitute offences under Sections 406/409/420/477A/34/120B, IPC:

“2) That the Accused No. 1 is the Company registered under the Companies Act, 1956. The accused deal in securities and are the registered stock brokers and agents with the National Stock Exchange India Ltd. and also with Bombay Stock Exchange Ltd. It also has their branch office in Delhi. That the Accused Nos. 2 to 6 are the Directors of the accused company and accused No. 7 is Secretary of the accused No. 1 Company and are looking after day to day affairs of the company and are/were responsible for conduct and business of the accused No. 1 and at some or the other time interacted with the complainant. The employees of accused No. 1 act as per the direction given by the accused Nos. 2 to 7 from time to time. They in connivance with each other in order to fulfill the malafide intention and in order to make illegal gain has cheated the petitioner company and in breach of trust also sold the shares worth Rs. Nine crores approximately.

3) That the trustees of the Complainant at the request of the GHCL opened a Demat Account No. (DP ID and Client ID is IN302269- 120107581) with accused No. 1 on 11.9.2007 and transferred the shares acquired in the said account after entering into Broker- Client Agreement.

4) That after opening the Demat account, the complainant kept on placing orders for purchase of share on the accused and made payments against the running account from time to time.

5) That the Accused No. 1 vide letter dated 30.4.2008 informed the complainant that there is an outstanding debit of Rs.10.48 crores against the complainant and the 20,46,195 quantity of GHCL shares acquired by the Complainant shall be free from lien after clearing the debit in their account. The relevant portion of the letter is reproduced as under:-

“It is hereby informed that your trading account with client code EMPTRUST is having an outstanding debit of Rs.10.48 crores. Further, the 20,46,195 quantity of GHCL share bought by you shall be free from lien after clearing the debit in the account.”

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9) That instead of transferring the share to the Demat account of the complainant and refunding the excess amount of Rs.25,22,477.53, the Accused vide a letter dated 14.5.2008 to the complainant asked to clear the debit of the following companies:

(a) Carissa Investments Pvt. Ltd.

(b) Altar Investments Pvt. Ltd.

(c) Oval Investments Pvt. Ltd.

(d) Dalmia Housing Finance Ltd.

(e) Dear Investment Pvt. Ltd.

The aforesaid letter by the Accused though dated 14.5.2008 was received by the complainant on 28.5.2008. In fact, the above said letter was predated as evident from the postal stamp on the envelop which bears the date posting as 21.5.2008.

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11) That the complainant on numerous occasions met the Accused Nos. 2 to 7 and requested to refund the excess amount and to transfer its share to Demat Account, however the meetings as well as various communications with the accused failed to bring any result. The complainant also requested to the Accused to withdraw the fictitious claim/adjustment as desired by it in their letter dated 14.5.2008. However, instead the accused vide its letter dated 9.6.2008 again intimated the complainants to regularize the accounts of the aforesaid companies by selling the stocks in the Complainant's accounts as instructed vide letter dated 1.3.2008 alleged to be signed by one of the trustees of the complainant Mr. Bhuneshwar Mishra.

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14) That all the accused not only received the excess amount but misappropriated the same, which they invariably refused to refund and instead constantly started intimidating the complainant to discharge the

liabilities of the aforesaid companies mentioned in their letters dated 14.5.2008 and 9.6.2008 whereas the complainant was under no such legal obligation to clear the debits of these companies for the reason that these five companies are separate legal entities and there is no relation whatsoever with the complainant. All the accused were fully aware that complainant is under no obligation to pay any amount alleged to be payable from the other companies.

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16) That it has now been learned that the accused despite having no legal right, has illegally, without any authorization, and in order to cheat the complainant sold off 876668 shares on 23.6.2008 of the Complainant trust in the open market. The Complainant received SMS on 24.6.2008 about the said sale. The trust has suffered a huge monetary loss on account of this illegal disposal of stocks of the complainant by the accused. The shares were lying/kept with the accused for the purpose of DEMATINC, to account of complainant and as evident from their own letter dated 30.4.2008 they had no lien once the payment was made and thus accused in connivance with each other committed breach of trust and caused unlawful loss to the complainant and this also offence of cheating.

17) That accused by raising the false and fabricated debit note induced the complainant to deposit a huge amount of Rs.10.48 crores, which as per their own admission i.e. statement of account is excess to the tune of Rs.25,22,477.53. The accused have thereby rendered themselves liable to be prosecuted by this Hon'ble Court under Section 477A of the Indian Penal Code.

18) That the accused in connivance with each other have further dishonestly transferred/misappropriated funds obtained on the pretext of some unaccounted debit and further the accused despite having no legal right has illegally without any authorization, sold off 876668 shares on 23.6.2008 of the Complainant trust in the open market without any prior intimation to the complainant and has misappropriated the sale proceeds for wrongful gain since the shares never kept with them in trust. By disposing of the said shares without any prior consent or intimation clearly reflects that the accused dishonestly misappropriated the shares in trust with the Accused and thus liable to be prosecuted under the provisions of section 406 of the Indian Penal Code, 1860.”

12. From bare perusal of the complaint and the allegations made therein, we do not find in any of the paragraphs that the complainant has made specific allegations against respondent Nos.2 to 7. In paragraph 2 of the complaint, it is alleged that respondent Nos.2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorized representative interacted has also not been specified. Although in paragraph 11 of the complaint it is alleged that the complainant on numerous occasions met accused Nos.2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in paragraph 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated debit note. In the entire complaint there are bald and vague allegations against respondent Nos.2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.

14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.

15. In the case of *Madhavrao Jiwaji Rao Scindia and Another Etc. vs. Sambhajirao Chandrojirao Angre and Others Etc.* AIR 1988 SC 709, this Court held as under:

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the

special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

16. In the case of Punjab National Bank and Others vs. Surendra Prasad Sinha, AIR 1992 SC 1815, a complaint was lodged by the complainant for prosecution under Sections 409, 109 and 114, IPC against the Chairman, the Managing Director of the Bank and a host of officers alleging, inter alia, that as against the loan granted to one Sriman Narain Dubey the complainant and his wife stood as guarantors and executed Security Bond and handed over Fixed Deposit Receipt. Since the principal debtor defaulted in payment of debt, the Branch Manager of the Bank on maturity of the said fixed deposit adjusted a part of the amount against the said loan. The complainant alleged that the debt became barred by limitation and, therefore, the liability of the guarantors also stood extinguished. It was, therefore, alleged that the officers of the Bank criminally embezzled the said amount with dishonest intention to save themselves from financial obligation. The Magistrate without adverting whether the allegations in the complaint prime facie make out an offence charged for, in a mechanical manner, issued the process against all the accused persons. The High Court refused to quash the complaint and the matter finally came to this Court. Allowing the appeal and quashing the complaint, this Court held as under: “5. It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.”

17. In the case of Maksud Saiyed vs. State of Gujarat and Others (2008) 5 SCC 668, this Court while discussing vicarious liability observed as under :-

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz., as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”

18. From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein. While ordering issuance of summons, the learned Magistrate concluded as under :-

“The complainant has submitted that the accused Nos.2 to 6 are the directors of the company and accused No.7 is the secretary of the company and were looking after the day to day affairs of the company and were also responsible for conduct and business of the accused No.1 and some time or the other have interacted with the complainant.

I have heard arguments on behalf of the complainant and perused the record. From the allegations raised, documents placed on record and the evidence led by the witnesses, prima facie an offence u/s 415, 409/34/120B is made out. Let all the accused hence be summoned to face trial under the aforesaid sections on PF/RC/Speed Post/courier for 2.12.2008.”

19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. Recently, in the case of M/s.Thermax Ltd. Ors. vs. K.M. Johny Ors. 2011 (11) SCALE 128, ors. while dealing with a similar case, this Court held as under :-

“20. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1 – Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role

21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of ‘vicarious liability’ is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company.”

20. As stated above, the decisions relied upon by the counsel for the appellant and the respondents need not be discussed as the law has been well settled by those decisions as to the power and duty of the Magistrate while issuing summons in a complaint case.

21. In the instant case the High Court has correctly noted that issuance of summons against respondent Nos.2 to 7 is illegal and amounts to abuse of the process of law. The order of the High Court, therefore, needs no interference by this Court.

22. For the aforesaid reasons, we find no merit in these appeals, which are accordingly dismissed.