

# SUPREME COURT OF INDIA

S.Satyanarayana

Vs.

Energo Masch Power Engineering & Consulting Pvt.Ltd.

Crl.A.No.516-518 of 2010  
(Jagdish Singh Khehar and S.A.Bobde JJ.)

26.03.2015

## JUDGMENT

### **S. A. BOBDE, J.**

1. These Criminal Appeals are preferred by the complainant against the Judgment of the High Court of Judicature of Andhra Pradesh at Hyderabad by which the High Court has in exercise of powers under Section 482 of the Code of Criminal Procedure (in short Cr.P.C.) quashed the proceedings in CC No. 37 of 2008 on the file of the court of the Special Judge for Economic Offences at Hyderabad insofar as the accused Nos. A4, A5, A6, A9 and A10 are concerned.

2. The complainant i.e. the appellant herein lodged a private complaint in his capacity as a Promoter Director of Sri Satyanarayana Power Private Ltd. - a company incorporated to generate biomass based power project in the District of Warangal in the State of Andhra Pradesh (hereinafter referred to as the 'Company'). The complaint was filed in respect of the offences allegedly committed under Section 628 of the Companies Act, 1956 (in short the 'Companies Act') and Sections 120B and 420 of the Indian Penal Code (in short the 'IPC'). This complaint was filed in the Court of Special Judge for Economic Offences at Hyderabad.

3. The accused Nos. 1, 2 and 3 are Directors of the Company. The accused no. 4 i.e. Energo Masch Power Engineering & Consulting Pvt. Ltd. is another Company. The accused Nos. 5, 6, 7 & 8 are its Directors. Accused No. 9 is the Manager of M/s Indian Renewable Energy Development Agency (in short 'IREDA') a financing agency and is brother-in-law of A5 and A6, and accused No. 10 is a private person, namely Mrs. Sudha Ramani who is said to have been given a fictitious authorization in respect of a Bank account by a resolution of the company.

4. In brief, it was alleged that the accused entered into a criminal conspiracy to cheat the complainant and the Company. Further, accused A1 to A3 made false declaration in regard to record maintained under the provisions of the Companies Act, and filed a false declaration purporting to be an extract of Board Resolution of the Company before Andhra Bank, Sowcarpet Branch, Chennai in order to open a bank account. According to the complainant the signatory to the Board Resolution was not even a Director in the Company on the date the bank account was opened. A series of events alleged in the complaint show how the complainant was induced to invest in the Company by acquiring land for the Company at a cost of Rs. 20 lakhs and make payment for the front end fee to IREDA which had in collusion with the other accused sanctioned the financial assistance to the Company to the extent of Rs. 11.50 crores subject to the condition that the promoters should invest Rs. 4.98 crores as their contribution towards the total project cost of Rs. 16.48 crores.

5. According to the complainant, accused A9 - the Manager of IREDA, suggested that the company should appoint A4 Company as a contractor representing that the Directors of the said A4 Company i.e. A5 and A6 in reality his brother-in-law, have wide experience in executing such projects. The complainant believed that representation and allowed those persons and others to become Director as a result of which A1 along with his nominee Directors enjoyed a majority on the Board of the Company. Thereafter, in order to obtain the first installment of loan the accused represented that they have spent an amount of Rs. 1,88,21,484/-, to the accused A4 Company as if the amount was invested from the Company's account maintained in Andhra Bank, Sowcarpet Branch. On such a representation, A9 IREDA released the first installment of loan. The accused again induced A9 to release the second installment of loan of Rs. 2.85 crores without the knowledge of the complainant and without submitting any Board Resolution of the Company. A major amount of the loan was paid to the accused A4 Company, which had not done any substantial work. Though Rs. 145 lakhs from the first installment of loan and Rs. 92 lakhs from the second installment of loan were paid to the A4 Company only a nominal amount of Rs. 30 lakhs was used for work and the rest was swindled. As a part of these transactions the complainant alleged that A1 to A3 had made a false declaration as records in a purported Board Resolution of the Company in order to open a bank account and falsely authorised A10 and thereby made a false declaration amounting to an offence under Section 628 of the Companies Act. Thus, A10 was falsely authorized to operate the bank account.

6. It will thus be seen from the above that according to the complainant the transactions of all the accused persons in conspiracy with each other amounted to

offences under Sections 120B and 420 of the IPC and Section 628 of the Companies Act.

7. Against the complaint, the following accused-namely A4 Company; its Directors A5 and A6; A9 the manager of the IREDA; and A10 the private person approached the High Court under Section 482 of the Cr.P.C.. The High Court took the view that the Special Judge could not have taken cognizance of the offences under Sections 120B and 420 of the IPC unless he could also try the accused under Section 621 of the Companies Act. As regards the accused Company A4 and its Directors A5 and A6, the High Court held that no cognizance could be taken against the said accused because the complainant did not belong to any of the categories or persons who were entitled to file a complaint under Section 621 of the Companies Act[1] i.e. to say the complainant was neither (a) the Registrar, (b) a shareholder of the company, or (c) a person authorized in that behalf. Thus, the High Court held that taking of cognizance by the Special Court in so far as accused nos. A4, A5 and A6 is without jurisdiction. This finding is sought to be supported by the provisions of Section 621(1) of the Companies Act. However, without giving any special reasons as regards accused Nos. A9 and A10 the High Court quashed the taking of cognizance. In fact A9 is the manager of IREDA a financing agency and A10 is a private person and are prima facie not a company or officers of a Company vide Section 621. The High Court has not committed any error in reading Section 621 of the Companies Act and observing an accused cannot be prosecuted under Section 621 of the Companies Act because the complainant is not a share holder in the accused Company. However, it is obvious from the complaint that there was no allegation that the accused Nos. A4, A5, A6 and A9 have committed an offence under Section 628 of the Companies Act. Such an allegation of commission of an offence under Section 628 of the Companies Act was only against the accused A10 (vide para 19 and 20 of the complaint). It may be recalled that the allegation as regards Section 628[2] of the Companies Act is said to have been committed by the accused A1 to A3 by making a false declaration with regard to the record that is maintained in accordance with Section 193 of the Companies Act by filing an extract of the Board resolution of the company before the Andhra Bank, Sowcarpet Branch, Chennai in order to open a bank account 'the said Board resolution being a false declaration,' since a bank account in the said bank was already opened even before A1 had obtained consent of the complainant to open the said account and further since the said Board resolution is signed by Hari Sessa Reddy - A3 who was not even a Director in the company as on the date of the opening of the bank account. The offence alleged against A10 was that she had drawn huge amounts through self cheques in the capacity of the authorized signatory of the company. It is surprising to see that the High Court has quashed

the complaint against the accused persons on the ground of legal defects though no allegation containing such defects were made against the said accused persons.

8. As can be seen from the complaint the allegations are that the accused conspired with each other to cheat the complainant and a series of transactions gave rise to offence under Section 120B read with Section 420 of the Indian Penal Code as also Section 628 of the Companies Act. It is, therefore, clear that if the Special Court has jurisdiction to try offences under both the aforesaid Acts then the trial can certainly continue in respect of the offences which do not require the complainant to belong to the categories specified under Section 621 of the Companies Act. Thus the trial could certainly continue against those accused under the IPC.

9. The High Court completely overlooked the fact that the complaint made allegations against the accused A4, A5, A6, A9 and A10 only in respect of Section 120B and 420 of Indian Penal Code and there was no reason in law to quash a complaint against them on the ground that they were immune from prosecution under Section 628 of the Companies Act by virtue of Section 621 of that Act.

10. We accordingly set aside the findings of the High Court that taking of cognizance against the accused A4, A5, A6 and A9 is without jurisdiction on the ground that the complaint does not make out a prima facie case for the offences under Section 628 of the Companies Act, 1956 against the said accused. At this stage, it may be noted that the Special Court is empowered to try the offences under the Companies Act alongwith other Acts by virtue of a notification issued by the erstwhile Government of Andhra Pradesh dated 13.3.1981 which empowers such special Courts to try offences under specified enactments such as The Companies Act, 1956, The Income-tax Act, 1961, The Wealth-tax Act, 1957 etc., which reads as follows:-

"even if such cases include offences punishable under the Indian Penal Code, 1860 and any other enactments, if such offences form part of the same transaction."

[vide Notification reproduced in Criminal Petition No. 5846 of 2014 The Superintendent Of Customs Vs. Kannur Abdul Kader Mohammed Haneefa reported in 2014 (310) ELT49(A.P.)]

11. Thus, even if a number of persons are accused of offences under a special enactment such as 'the Companies Act and as also the IPC' in respect of the same transaction or facts and even if some could not be tried under the special enactment, it is the special court alone which would have jurisdiction to try all the offences based on the same transaction to avoid multiplicity of proceedings. We

make this observation because at some stage in the hearing learned counsels addressed us on this point. We make it clear that in the present case all the accused are liable to be tried by the special court in respect of the offences under the IPC as well as the Companies Act as alleged in the complaint.

12. Appeals are allowed in above terms.