

Criminal Revision
Present:
The Hon'ble Justice Ashim Kumar Roy
C.R.R. No. 1720 of 2009
Sunil Kumar Agarwal & Ors.
versus
G. Mukhopadhyay
Judgment On : 27-01-2010.

Point:

QUASHING: No untrue statement in the prospectus – Person authorized to issue prospectus – Whether liable to be prosecuted- Companies Act, 1956, S. 63.

Fact: The petitioners moved the instant criminal revision for quashing of their prosecution under Section 63 of the Companies Act, in connection with a Case pending before the Ld. Metropolitan Magistrate.

Held: Since there was no allegation that any incorrect statement was made in respect of an existing facts or circumstances, on the mere allegation that no investment has been made, neither any assets have been acquired nor the loan amount has been reduced as proposed in the prospectus, any case for an offence punishable under Section 63 (1) of the Companies Act has been made out.

Paragraph – 5

For Petitioners : Mr. Joymalya Bagchi
 Ms. Sreyashee Biswas

For Union of India: Mr. Prasun Kumar Dutta

The Court: The petitioners have moved this criminal revision invoking inherent jurisdiction of this Court for quashing of their prosecution under Section 63 of the Companies Act, in connection with Case No. C/13483/2006, now pending before the Learned Metropolitan Magistrate, 10th Court, Calcutta.

2. The case of the complainant against the petitioners, as it appears from the allegations made in the petition of complaint and in the show cause notice as well as those appearing from records of the case, produced before this Court by the Learned Counsel of the Union of India, are as follows;

The books of account and other records of the company, Allied Stock Investors Limited, of which the petitioners were directors, were inspected by an officer authorized under Section 209 of the Companies Act. During such inspection it was found;

(a) The fund which was obtained by public offer was not properly utilized in the manner as mentioned in the prospectus.

(b) There was no addition to fixed assets while such addition was supposed to be Rs. 4.48 lakhs as per prospectus.

(c) Investment in securities increased by Rs. 16 lakhs compared to projection of Rs. 30 lakhs in prospectus.

(d) The current assets were increased by 14.18 lakhs while as per prospectus leasing assets supposed to be increased by Rs. 40 lakhs.

(e) Loan got reduced by 1.55 lakhs while ICDS were supposed to be made 7.50 lakhs.

Therefore, there has been a violation of Section 63 of the Companies Act and accordingly a show cause notice was issued on 20th of July, 2005, but the reply of the accused dated 8.11.05 was not maintainable under the law.

3. Mr. Joymalya Bagchi, the Learned Counsel appeared on behalf of the petitioners submitted that making any untrue statement in the prospectus necessarily means an incorrect statement in respect of an existing facts of circumstances but in the present case the allegations are

of not making of investment, acquisition of assets and reduction of loan as proposed in the prospectus. According to Mr. Bagchi on these allegations it cannot be said that any untrue statement is made in the prospectus and as such the prosecution of the petitioners under Section 63 (1) of the Companies Act is not tenable and consequently the impugned proceeding is liable to be quashed.

On the other hand, Mr. Prasun Kumar Dutta, the Learned Counsel appeared on behalf of the Union of India opposed the prayer for quashing and submitted whatever have been proposed by the petitioners in the prospectus as regards to investment and acquisition of offence not being fulfilled certainly the offence punishable under Section 63 of the Companies Act has been made out.

4. The provisions of Section 63 (1) of the Companies Act is read as follows;

“63. Criminal liability for mis-statements in prospectus.-(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorized 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.”

5. Thus, according to the said provisions, every person who authorized to issue prospectus is liable to be prosecuted thereunder if the prospectus includes any untrue statement. However, according to the allegations made in the petition of complaint it was the case of the complainant that there was no addition to fixed assets nor there was any increase in investment in securities as proposed in the prospectus. It was the further case of the complainant that neither the current assets has been increased nor the loan amount has been reduced as supposed to be done in terms of statement made in the prospectus. The case of the complainant is essentially of non-utilization of funds obtained by public offer in the manner as proposed in the prospectus and if that

be so, it cannot be said that there was any untrue statement made in the prospectus. There was no allegation that any incorrect statement was made in respect of an existing facts or circumstances. In my opinion, on the mere allegation that no investment has been made, neither any assets have been acquired nor the loan amount has been reduced as proposed in the prospectus, any case for an offence punishable under Section 63 (1) of the Companies Act has been made out.

In the result, the instant criminal revisional application succeeds and stands allowed and the impugned proceeding stands quashed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)