

**Criminal Revision**

Present:

**The Hon'ble Justice Ashim Kumar Roy****C.R.R. No. 1826 of 2009****Sunil Kumar Agarwal & Ors.**

versus

**G. Mukhopadhyay****Judgment On : 27-01-2010.****Point:**

**QUASHING:** No allegation that the petitioners made any statement in the prospectus knowing the same to be false - No omission to mention any material fact in the prospectus knowing it to be material- Allegation that no investment has been made nor any assets have been acquired in terms of proposal made in the prospectus- Whether any case punishable under Section 628 of the Companies Act can be made out - Companies Act, 1956, S. 628.

**Fact:** The petitioner moved the instant criminal revision for quashing of their prosecution under Section 628 of the Companies Act in connection with a Case pending before the Ld. Metropolitan Magistrate.

**Held:** There is no allegation that the petitioners made any statement in the prospectus knowing the same to be false in any material particulars or there has been any omission to mention any material fact in the prospectus knowing it to be material. On the mere allegation that no investment has been made nor any assets have been acquired in terms of proposal made in the prospectus, no case punishable under Section 628 of the Companies Act can said to have been made out.

Paragraph – 7,8

For Petitioners : Mr. Joymalya Bagchi  
Ms. Sreyashee Biswas

For Union of India : Mr. Prasun Kumar Dutta

**The Court:**

Invoking inherent jurisdiction of this Court the petitioner moved the instant criminal revision for quashing of their prosecution under Section 628 of the Companies Act in connection with the Case No. C/13485/06, now pending before the Learned Metropolitan Magistrate, 10<sup>th</sup> Court, Calcutta.

2. Having gone through the petition of complaint as well as the show cause notice and the records of the case produced by the Learned Counsel appearing on behalf of the Registrar of Companies/Union of India, I find the case against the petitioners 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 was a violation of Section 628 of the Companies Act. In this connection a show cause notice was issued to the accused persons but their reply is not maintainable.

3. Mr. Joymalya Bagchi, the learned advocate appearing on behalf of the petitioners strenuously argued that on the allegations what have been stated in the prospectus has not been fulfilled as it appears from the balance-sheet of the next year that does not make out any offence punishable under Section 628 of the Companies Act. He further submitted there is no allegation of making any false statement and only allegation is this non-fulfillment of promise made in the prospectus. Thus, the impugned proceeding is liable to be quashed.

On the other hand, Mr. Prasun Kumar Dutta, the Learned Counsel appearing on behalf of the Union of India vehemently opposed the prayer for quashing and submitted whatever have been proposed by the petitioners in the prospectus as regards to investments and acquisition of assets not being fulfilled certainly a clear case of violation of Section 628 of the Companies Act has been made out.

4. Heard Mr. Bagchi appearing with Ms. Sreyashee Biswas on behalf of the petitioners as well as Mr. Prasun Kumar Dutta appearing on behalf of the Union of India. Perused the impugned complaint, the show cause notice as well as the records of the case produced by Mr. Dutta.

5. This is a case for quashing of a complaint relating to an offence punishable under Section 628 of the Companies Act. The said provision is read as follows;

**S. 628. Penalty for false statements.** – If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement-

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

6. A bare reading of the aforesaid provisions makes it abundantly clear a person is liable to be prosecuted under the aforesaid provisions under the following circumstances;

(a) When such person knowingly makes a false statement in any material particulars in any return, report, certificate, balance sheet, prospectus, statement or other documents required by or for the purpose of any of the provisions of the Companies Act.

(b) Or when such person omits any material fact knowingly it to be material in any return, report, certificate, balance sheet, prospectus, statement or other documents required by or for the purpose of any of the provisions of the Companies Act.

7. However, it is 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 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 the statement made in the prospectus. Thus, the case of the complainant is essentially one of non-utilization of funds obtained by public offer in the manner as proposed in the prospectus. There is no allegation that the petitioners made any

statement in the prospectus knowing the same to be false in any material particulars or there has been any omission to mention any material fact in the prospectus knowing it to be material.

8. On the mere allegation that no investment has been made nor any assets have been acquired in terms of proposal made in the prospectus, no case punishable under Section 628 of the Companies Act can said to have been made out. Thus, I am of the opinion that on the face of the allegations made in the complaint no case punishable under Section 628 of the Companies Act has been made out against the petitioners. Accordingly, this application stands succeeds and the impugned proceeding is quashed.

9. 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. )**