

Gujarat High Court

Saurabh vs State on 2 September, 2008

Author: Z.K.Saiyed,&Nbsp

Gujarat High Court Case Information System

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CR.MA/12539/2007

6/ 6 JUDGMENT

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL

MISC.APPLICATION No. 12539 of 2007

For  
Approval and Signature:

HONOURABLE  
MR.JUSTICE Z.K.SAIYED

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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SAURABH  
C CHOKSI - Applicant(s)

Versus

STATE

OF GUJARAT & 1 - Respondent(s)

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Appearance

:

MR

RAJU K KOTHARI for

Applicant(s) : 1,

MR

KC SHAH Ld. APP for

Respondent(s) : 1,

MRS

VASAVDATTA BHATT for

Respondent(s) :

2,

=====

CORAM

:

HONOURABLE

MR.JUSTICE Z.K.SAIYED

Date

: 02/09/2008

ORAL

## JUDGMENT

1. The facts of the present case stated briefly that the present application is directed for quashing of Criminal Case No. 132/2001 pending in the Court of Addl. Chief Metropolitan Magistrate, Ahmedabad, which was filed against the present petitioner by respondent no. 2 under the provisions of Sec. 220(3) of Companies Act. That the complainant ? respondent no. 2 - Deputy Registrar, Registrar of Companies for Gujarat, has filed the said complaint against the petitioner and then the process was issued by the trial Court, therefore, the present petitioner has filed this application under sec. 482 of Code of Criminal Procedure.

2. It is submitted by the petitioner that in the above Criminal Case, accused no. 1 ? M/s. Pan India Forest & Land Development Ltd., is a limited company. The petitioner was Non-Executive Director of the said company. It is also contended that the petitioner is a Chartered Accountant by profession and also Principal of JG College of Commerce. The petitioner was never in-charge of affairs of the company and never attended any meeting nor signed any document on behalf of the company and also not aware about the financial position of the said company. It is also contended by the petitioner that he has resigned from the Directorship of the said company on 1.4.1999 and Form No. 32 has been placed on record at Annexure-B to this application. It is also the say of the petitioner that complaint filed by respondent no. 2 for non-filing of the Annual Return which was required to be filed with the complainant's office on or before 30.11.1999. In view of this, the petitioner submitted that the offence has been committed on 1.12.1999 and on the said date, the petitioner was not Director of the said company. It is also contended by the petitioner that he had resigned on 1.4.1999, that is, much before the offence and, therefore, he cannot be booked under the said offence. It is further contended by the petitioner that on 1.12.1999, the petitioner had no relationship with the company, therefore, complaint is not maintainable against the petitioner.

3. Learned advocate Mr. Raju Kothari has vehemently argued that the petitioner was a Non-Executive Director but not in-charge of day to day affairs of the company, and therefore, criminal liability cannot be fastened upon him. From the perusal of complaint at Annexure-A, and Form No. 32 which is at page 10 of this application, it appears that from Column No. 5 and 6 of the Form No. 32 that on the alleged date, he was not a Executive Director of the said company.

4. Heard Mr Mukesh Patel learned APP for respondent no. 1 ? State of Gujarat. He has submitted that from the complaint, prima-facie case is established against present petitioner. He has also opposed this application. Ms. Vasavdatta Bhatt learned advocate appearing on behalf of respondent no. 2 submitted that every Director is responsible officer within the meaning of sec. 5 of the Companies Act, 1956, whether appointed as technical, non-technical, executive or non-executive for default committed by the company and its officers as the case may be as he cannot be absolved his liability in filing the return with the office of respondent no. 2 for the period during which he was Director of the Company. Therefore, it is contended by the learned advocate that criminal case has been filed for non-filing Annual Return for the financial year ending on 31.3.1999, which was required to be filed with the office of respondent no. 2 on or before 30.11.1999 as required under sec. 159 of the Companies Act, 1956. So, it is contended that when the prima-facie case is made out against the petitioner, then the powers under sec. 482 of Code of Criminal Procedure, cannot be

exercised in favour of the petitioner.

5. In support of his submission, learned advocate Mr.Kothari for the petitioner has placed reliance on the decision of this court in the case of Jayesh More vs. State of Gujarat & Anr., reported in 2000(1)GLR p. 121, wherein, this Court has held that by 30th November, income tax return is required to be submitted, failure to do so is an offence. If before 30th November, a person has ceased to be a Director of the Company, he cannot be prosecuted for failure to submit the return. In para-12 of the above case, this Court has observed as under:

?S12.

The outcome of the above discussion is that, on the date on which the offence/default is said to have been committed, i.e. On 30th November, 1996, of not submitting copies of the annual return, the petitioner's relationship with the company was not in existence. The petitioner cannot be held responsible even otherwise as he does not fall within the definition of officer in default as given in Sec. 5 of the Companies Act and sub-sec. (1) of Sec. 162 of the Companies Act holds the company and every officer in default responsible for such lapse and, therefore, the petition deserves to be allowed. No offence against the petitioner can be said to be constituted and as a necessary consequence the petition must succeed and complaint qua the petitioner must be quashed.??

6. There cannot be any dispute with the proposition of law laid down in the decision cited above, on which, strong reliance has been placed by the petitioner, however, the basic principles which are required to be kept in mind while exercising the powers under sec. 482 of Code of Criminal Procedure. The principle laid down by the Apex Court in the case of State of Haryana vs. Bhajanlal, reported in 1992 Suppl.(1) SCC 335 would squarely applies to the facts of the present case. From the Form No.32, it appears that allegations which are made in the complaint on the said date when petitioner was not Director of the Company, then, how he can be booked under the provisions of Companies Act for criminal offence. It is true that in the case of Jayesh More (supra), this court has also considered the same issue that on the said date when the petitioner was not a Director of the Company, then he cannot be prosecuted for the failure to file return. From the allegations made by respondents no. 2 and no. 1, I have not found any legality to convince that against whom the complaint was filed was proper, legal and tenable in view of the above observations and principles laid down by this Court as well as Apex Court.

7. In the result, this application is allowed. The complaint filed by respondent no. 2 before the learned Addl. Chief Metropolitan Magistrate, Ahmedabad being Criminal Case No. 132/2001 for the offence punishable under sec. 220(3)of Companies Act, 1956, is hereby quashed qua the present petitioner. Rule is made absolute.

(Z.K.

SAIYED, J.) mandora/ Top