

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2022

BEFORE

THE HON'BLE Mr. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION No.3755 OF 2017

c/w

CRIMINAL PETITION No.835 OF 2017

IN CRL.P.No.3755/2017

BETWEEN:

1. MUKKARAM JAN

2. RUDRA PRATAP

...PETITIONERS

(BY SRI.RAVI.B.NAIK, SR. ADV A/W
SRI.DHYAN CHINNAPPA, SR.ADV FOR
SRI.CHINTAN CHINNAPPA, ADV)

AND:

SECURITIES EXCHANGE BOARD OF INDIA
HEAD OFFICE AT SEBI BHAVAN,
C-4A, G BLOCK, BANDRA KURLA COMPLEX,
BANDRA EAST, MUMBAI-400051
WITH ITS REGIONAL OFFICE
AT 2ND FLOOR, JEEVAN MANDAL BUILDING,
NO.4, RESIDENCY ROAD,
BANGALORE-560025
BY ITS ASST GENERAL MANAGER,
MR.SHESHASHAYEE N.S

...RESPONDENT

(BY SRI.JEETHENDRA.C.P, ADV)

THIS CRIMINAL PETITION IS FILED UNDER SECTION
482 OF CR.P.C. PRAYING TO QUASH THE PROCEEDINGS
AS AGAINST THESE PETITIONERS PENDING AS
C.C.NO.114/2016 ON THE FILE OF PRESIDING OFFICER,
OF THE SPL. COURT (ECONOMIC OFFENCES), BANGALORE
VIDE ANNEXURE-E.

IN CRL.P.No.835/2017

BETWEEN:

1. CRANES SOFTWARE INTERNATIONAL LTD
NO.2,TAVAREKERE,
BANNERUGHATTA ROAD,
1ST STAGE, BTM LAYOUT,
BANGALORE - 560029
2. ASIF KHADER

3. MUEED KHADER

PETITIONERS

(BY SRI.R.HEMANTH RAJ, ADV)

AND:

SECURITIES EXCHANGE BOARD OF INDIA
HEAD OFFICE AT SEBI BHAVAN,
C-4A G BLOCK BANDRA KURLA COMPLEX,
BANDRA EAST MUMBAI - 400051
WITH ITS REGIONAL OFFICE AT 2ND FLOOR,
JEEVAN MANDAL BUILDING NO 4,
RESIDENCY ROAD,
BANGALORE - 560025
BY ITS ASST GENERAL MANAGER,
MR SHESHASHAYEE N S

RESPONDENT

(BY SRI. JEETHENDRA.C.P. ADV)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE ALL PROCEEDINGS AS AGAINST THESE PETITIONERS PENDING AS C.C.NO.114/2016 ON THE FILES OF THE LEARNED PRESIDING OFFICER OF THE SPECIAL COURT (ECONOMIC OFFENCES) BANGALORE VIDE ANNEXURE-E.

THESE CRIMINAL PETITIONS COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Respondent has filed a private complaint under Section 200 of Cr.P.C. for the offences punishable under Sections 205A, 207 r/w Section 55A, 205(1A), 205A(1) and 621 of the Companies Act, 1956 (for short 'the Act').

2. Summary of the complaint is as follows:

The Company in its Annual General Board Meeting held on 29.09.2009 resolved to declare dividends to its shareholders. Since the Company did not pay the dividends as resolved in its meeting, the respondent issued several notices to the Company calling upon the Company to pay the dividends. It is only after issuance of the show cause notices, the Company in question paid the dividends to its shareholders from 27.04.2012 to 03.11.2013 with interest and fine for the delayed payment. The company having not paid dividend within 30 days as specified under

Section 207 of the Act have committed the aforesaid offences.

3. Learned Magistrate after perusal of the complaint took cognizance of the aforesaid offence and issued summons. Taking exception of the same, the Company as well as the Director are before this Court.

4. Sri.Ravi.B.Naik, and Sri.Dhyan Chinnappa learned Senior Counsels appearing on behalf of petitioner's counsel submits that the non payment of dividend to the shareholders was brought to the notice of the respondent on 13.02.2013 and the complaint was filed after expiry of three years from the date of the said knowledge. Hence, complaint is barred by limitation as specified under Section 468(2)a and c of Cr.P.C.

5. In addition, Sri Dhyan Chinappa, learned Senior Counsel would submit that the complaint filed by the second respondent is not maintainable, since the second proviso to Section 621 of the Act specifies that the

respondent can maintain a complaint only for non payment of dividend and that the dividends having already been paid to the shareholder as on the date of filing of the complaint, the complaint filed by the respondents is barred under Section 621 of the Act.

6. On the other hand, learned counsel appearing for the respondents submits that Section 207 of Act is a continuing offence and the complaint was filed within three years from the date of last payment of the dividend to the shareholders. Hence, he submits that the complaint is not barred by the limitation as specified under Section 468 (2) of Cr.P.C. In support he places reliance on the decision of the Hon'ble Apex Court in the case of Udai Shankar Awasthi Vs. State of U.P and Another reported in (2013) 2 SCC 435 (Paragraph-29). He also places reliance on the order passed by the Co-ordinate Bench of this Court in Cri.P.No.3454/2017 disposed of on 19.05.2022.

7. He further submits that section 55A empowers SEBI to secure not only the payment of dividend but also

to file a complaint against the company and its directors for non payment of dividend and merely because the company has paid the dividend, it cannot be said that SEBI has no locus standi to maintain the complaint when the petitioners have committed the aforesaid offences punishable under section 207 of the Act.

8. I have examined the submissions made by the learned counsels for the parties.

9. The points that arise for consideration in this petition are:

- i) Whether the complaint filed by the respondent is barred by limitation as specified under Section 468(2) of Cr.P.C.?
- ii) Whether the respondent has locus-standi to maintain the complaint when the dividends were already paid to the shareholders as on the date of filing the complaint?

Regarding Point-1:

Section 207 was substituted by Act 53 of 2000 with effect from 13.12.2000, which specifies that when dividends have been declared by the company but have not been paid within 30 days from the date of declaration, every director of the company shall, if he is knowingly a party to the default be punishable with simple imprisonment for a term which may extend to three years and shall be liable to fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues. The said provision specifies that for every day's default in paying dividend shall be liable to pay fine at the rate of one thousand rupees for every day's default which clearly implies that the offence under Section 207 continues till the dividends are paid .

The unamended section 207 of the Act reads thus:

"Penalty for failure to distribute dividends within forty two days-- Where a dividend has been declared by a company but has not been

paid, or the warrant in respect thereof has not been posted, within forty-two days from the date of the declaration, to any shareholders entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to seven days and shall also be liable to fine"

A reading of the unamended Section specifies that the company and its directors are said to have committed an offence if the dividends are not paid within 42 days from the date of declaration. There is no provision that the company or its directors shall also be liable to pay a fine of Rs.1000 everyday during which such default continues. Hence, the offence committed under the unamended section was not a continuing offence. The decisions relied upon by the learned counsel for petitioners were rendered with reference to unamended section and the same are not applicable to the present case since the offence alleged to have been committed by the Petitioners is under the amended section which is a continuing offence. Hence, the complaint is not barred by limitation as specified under Section 468(2) of Cr.P.C .

Regarding Point 2:

Section 621 of the Act specifies that no Court shall take cognizance of any offence committed under this Act by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorized by the Central Government in that behalf.

The second proviso to Section 621 is an exception where it specifies that the cognizance of an offence relating to issue and transfer of security and non payment of dividend can be taken on the complaint in writing by a person authorized by the Security Exchange Board of India (for short 'the SEBI').

10. Section 55(A) of the Act deals with power of the SEBI to be administered under Section 207 among other provisions with regard to non payment of dividend. The second proviso to Section 621 of the Act specifies that the cognizance can be taken on a complaint filed by the SEBI for non payment of dividend. Hence, SEBI has got

the locus standi to maintain a complaint under the 2nd proviso to Section 621 of the Act.

11. A combined reading of Section 55(A) and Section 207 clearly indicates that the SEBI is vested with power to safeguard the interests of the shareholders in the matter of non payment of dividends and the moment the dividends are paid, the SEBI has no power to initiate any action against the company or its directors who have defaulted in payment of dividend within 30 days as specified under Section 207 of the Act. Section 621 clearly specifies that the shareholder/registrar of companies/person authorized by a central government can only maintain a complaint for the offence punishable u/s 207 even though the dividends are paid, since criminality does not get absolved on payment of dividends after the stipulated time. Hence, Point No.2 is answered affirmatively in favor of the Petitioners.

12. For the foregoing discussions, the respondent had no locus standi to file the complaint and the

cognizance taken on the said complaint stands vitiated.

Accordingly, I pass the following

ORDER

- i) Criminal petition is allowed.
- ii) The impugned proceeding in CC No.114/2016 on the file of the Presiding Officer, Special Court (Economic Offences), Bengaluru vide Annexure-E is hereby quashed.

Sd/-
JUDGE

pgg/RKA/PK