* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Crl.M.C. 531/2009**

% Reserved on : 25th January, 2010
Pronounced on: 29th January, 2010

\# SANJAY SURI & ORS. ..... Petitioner
! Through: Mr. Vijay Aggarwal and Mr. Rakesh Mukhija, & Mr. Gurpreet Singh Advs.

versus

$ STATE & ANR. ..... Respondent
! Through: Mr. Darpan Wadhwa and Ms. Divya Jha, Advs. for (ROC)

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* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: V.K. JAIN, J.

1. By this common judgment, I shall dispose of all the three petitions referred above.

2. Petitioner No.1 and 3 are the Managing Director and Director respectively of petitioner No.2, Dr. Morepen Ltd. (hereinafter referred to as the "company"). Vide its letter dated 7th June, 2005, Ministry of Company Affairs directed inspection of books of accounts and other records of the company. Pursuant thereto, inspection was carried out by Deputy Registrar of Companies for the period from 11th July, 2001 to 30th September, 2004, on various dates starting from 10th October, 2005 and the inspection continued up to 10th March, 2006. During the course of inspection, it was noticed that the company had acquired 8,86,716 shares of Total Care Limited on 8th March, 2003 and since the aforesaid shares constituted 95% of the total paid up capital of M/s Total Care

Limited. In terms of provisions of Section 212(1) of Companies Act, 1956, M/s Total Care Limited thereby became subsidiary of the company w.e.f that date and accordingly balance sheet of Total Care Limited for the period subsequent to 8th March, 2003 ought to have been attached alongwith the Balance Sheet of the company. The complaint under Section 212 (9) of Companies Act for contravention of Section 212(1) thereof was therefore filed by the respondent-Registrar of Companies against the petitioners and one Chander Shekhar N.K., another Director of the Company. It was alleged in the complaint that the contravention came to the knowledge of the complainant/respondent only on 24th May, 2006, the date on which the Inspection Report was received in the office of the complainant and, therefore, the complaint was within the prescribed period of limitation. As a matter of abundant caution, the complainant, however also filed an application under Section 473 of Code, for condonation of delay. The learned ACMM, Delhi having summoned the petitioners for the offence punishable under Section 212 (9) of Companies Act, in Crl.M.C. No. 531/2001, the petitioners are seeking quashing of the complaint on the ground that the complaint being barred by limitation and the delay in filing the complaint also

not having been condoned by learned ACMM, the order of summoning the petitioners is bad in law.

3. In the complaint subject matter of Crl.M.C.No.532/2009, the complaint has been filed under Section 212 (7) of Companies Act for contravention of Section 212 read with Schedule VI of Companies Act on the ground that during the course of inspection by Deputy Registrar of companies, it was found that it its Balance Sheet for the period ending 31st March, 2002, the company had not made proper disclosure in terms of Schedule VI of Companies Act since the company had given collateral security pursuant to order of this Court attaching its bank account to the extent of Rs.6.24 crores, but the company had not made any provision in its Balance Sheet for the aforesaid contingent liability. This contravention, according to the complainant, came to its knowledge on 24th May, 2006 when the report of Deputy Registrar of Companies was received in its office.

4. In the criminal complaint subject matter of Crl.M.C. No.533/2009, complaint has been filed under Section 217(5) of Companies Act for contravention of Section 217(1)(e) thereof and the allegation of the complainant is that the Board of Directors of the Company had failed to give information

relating to "activities relating to exports, initiative taken to increase exports development of new export market for products and services and export plans" as required in para (f) under column C of the Companies (Disclosure of Particulars in the Report of Directors) Rules, 1988 in the Annexure to the Director's Report on Company's Balance Sheet as on 31st March, 2002, 30th September, 2003 and 30th September, 2004." This contravention also, according to the complainant, came to its knowledge only on 24th May, 2006, the date on which Inspection Report was received in its office.

5. Section 468 of the Code of Criminal Procedure, to the extent it is relevant that no Court shall take cognizance of an offence punishable with imprisonment for a term not exceeding one year after expiry of one year. Section 469 of the Code to the extent it is relevant provides that where the commission of the offence was not known to the 'person aggrieved by the offence' or to any police officer, the period of limitation in relation to an offence shall commence from the first day on which such offence comes to the knowledge of the aggrieved person or to any police officer, whichever is earlier.

6. The first question which comes up for consideration in this case is as to whether the complainant-Registrar of

Companies is a 'person aggrieved by the offence' within the meaning of Section 469(1)(b) of the Code, as contended by learned counsel for the respondent or his position is akin to that of a police officer as contended by learned counsel for the petitioner.

7. In support of his contention that Registrar of Companies cannot be said to be person 'aggrieved by the offence', the learned counsel for the petitioner has referred to the decision of Madras High Court in **Sulochana vs. State of Registrar of Chits**, 1978, Crl.L.J. 116 and the decision of this Court in **Nestle India Ltd and others vs. State and Anr.** 1999 JCC (2), Delhi, 473.

8. In the case of **Sulochana** (supra), the question before the High Court was whether Registrar of Chits (Investigation and Prosecution) Madras was a 'person aggrieved by the offence' as envisaged in Section 469(1)(b) of the Code of Criminal Procedure. After noticing that neither the word 'person' nor the word 'person aggrieved' is defined in the Code, the learned Single Judge of the High Court was of the view that the words 'person aggrieved by the offence' should be given a limited or restrictive coverage viz. one who is personally or directly affected by an offence and not any member of the public or

even an officer who is charged with the duty of enforcing the prohibitory regulations under a statute. Relying upon two earlier decisions of his High Court in **Official Receiver vs. Chellappa Chettiar,** AIR 1951 Madras 953 and **Thiruvengadam vs. Muthu Chettiar,** AIR 1970 Madras 34, the learned Single Judge of the High Court, inter alia, observed as under:

> "These authorities certainly lend support to my view that the Registrar cannot be taken to be a person aggrieved by the offences so as to claim the benefit of extended limitation provided under S. 469(1)(b) and (c) of the Code. The Registrar has come forward his official duty and not on account of any grievance felt or sustained by him personally in the contravention committed by the petitioner. Complaints preferred in discharge of one's official duty are vastly different in character and nature from complaints preferred by persons aggrieved by the commission of the offences. They distinctly fall in two different categories and the former is not to be confused with the latter."

9. In the case of **Nestle India** (supra), the learned Single Judge of this Court, inter alia, observed as under:

> "When an offence is committed against a person the Court could take cognizance of the offence either on a police report or on the complaint of the aggrieved person. In both these cases a complaint could be made within six months of the commission of the offence. Clause (b) of

> Sub-section (1) of Section 469 makes a distinction between an aggrieved person and a police officer, obviously the police officer is not an aggrieved person. He is an officer who is enjoined by law to take steps to bring the offender to book. The position of the Company Prosecutor who is the complainant in the present case is akin to that of a police officer. If a police officer is not the "aggrieved person", the Registrar of Companies would also not be an aggrieved person. An aggrieved person would be one who is directly affected by the acts of commission or omission of another person. In this case the UTI who as transferee of the shares and debentures had made application for the registration of transfer in their name is the aggrieved person if its shares etc., were not registered and transferred in its name within time and not the Registrar of the Companies."

In taking this view, the learned Single Judge of this Court, took support from the decision of the Madras high Court in the case of **Sulochana** (supra) and agreed with the view taken in that case.

10. As far as the judgment of Madras High Court in **Sulochana** (supra) is concerned, that having been over-ruled by a Division Bench of the High Court in **Abdul Rahim vs. State**, 1979 Crl.L.J. (NOC) 192, no reliance on that judgment can be placed. The Division Bench of Madras High Court specifically held that Registrar of Chits was a person aggrieved within the meaning of Section 469(1)(b) of the Code, and

therefore, was competent to initiate prosecution for an offence punishable in Tamil Nadu Chits Funds Act, 1961.

11. As far as the judgment of this Court in the case of **Nestle India Ltd.** (supra) is concerned that also stands impliedly over ruled by the decision of the Hon'ble Supreme Court in **Registrar of Companies vs. Rajshree Sugar and Chemical Limited**, AIR 2000 SC 1643. In the case before the Hon'ble Supreme Court, prosecution of the respondent was initiated by the appellant for violation of Section 113 of Companies Act which requires a company to deliver shares certificates/debenture certificates, within three months after allotment and transfer shares/debentures within two months after the application for registration of transfer of any share/debenture is submitted to it. It was contended before the Hon'ble Supreme Court that the appellant was not the 'person aggrieved by the offence' within the meaning of Section 469(1)(b) of Code of Criminal Procedure. Rejecting the contention, the Hon'ble Supreme Court, inter alia, held as under:

> "The phrase 'person aggrieved' has not been defined in the Code. However, as far as offences under the Companies Act are concerned, the words must be understood and construed in the context of Section 621 of the Act. If the words

'person aggrieved' are read to mean only 'the person affected' by the failure of the Company to transfer the shares or allot the shares, then the only 'person aggrieved' would be the transferee or the allottee, as the case may be. Under Section 621 of the Act, no Court can take cognizance of an offence against Companies Act except on the complaint of a share-holder, the Registrar or the person duly authorised by the Central Government. Where the transferee or allottee is not an existing share-holder of the Company, if the words 'person aggrieved' is read in such a limited manner, it would mean that Section 469(1)(b) of the Code would be entirely inapplicable to offences under Section code of the Act. There is, in any event, no justification to interpret the words 'person aggrieved' as used in Section 469(1)(b) restrictively particularly when, as in this case, the statute creating the offence provides for the initiation of the prosecution only on the complaint of particular persons. Having regard to the clear language of Section 621 of the Act, we have no manner of doubt that the appellant would be a 'person aggrieved' within the meaning of Section 469(1)(b) of the Code in respect of offence (except those under Section 545) against the Companies Act."

12. As regards the decision of this Court in the case of **Nestle India Ltd.** (supra), the Hon'ble Supreme Court noted that the learned Single Judge of this Court had not considered the provisions of Section 621(1) of Companies Act, which provides as under:

> "621(1) No Court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under Section 545), which is alleged to have been committed 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 authorised by the Central Government in that behalf."

13. In view of the above-referred authoritative pronouncement of the Hon'ble Supreme Court, no reliance can be placed either upon the decision of Madras High Court in the case of **Sulochana** (supra) or the decision of this Court in **Nestle India Ltd** (supra). If Registrar of Companies is a person aggrieved in case of default on the part of the company in delivering the share certificate/debenture certificate or transferring shares/debentures, it cannot be said that it is only the shareholders of the company, who would be 'persons aggrieved by offence' in respect of violations of Section 212(a) read with Section 212(1) of Companies Act, Section 211 (7) read with Schedule VI of Companies Act or Section 217(5) read with sub-section (1) of Section 217 of Companies Act. In fact, the person affected on account of violations of various provisions of Companies Act by its Directors, officers,

employees, etc. need not necessarily be the shareholders of the company. Such a person may, in some cases, be creditors, depositors or banker of the company, if the contravention is of such a nature that it may substantially affect their vital interests. The Registrar of Companies, in any case, would be a 'person aggrieved of an offence' under Companies Act, as he has been assigned a statutory duty to ensure compliance of the provisions of the Act and also in view of the provisions contained in Section 621(1) of Companies Act, whereunder he is one of the persons on whose complaint the Court can take cognizance of such an offence.

14. In fact, a number of High Courts have disagreed with the view taken by Madras High Court in the case of **Sulochana** (supra) and have held that Registrar of Companies is the 'person aggrieved by the offence' within the meaning of Section 469(1)(b) of the Code of Criminal Procedure. In **S. Ashok Rao and Ors. vs. State of Andhra Pradesh**, 2001 Company Cases 120, a complaint, filed against the company and its Directors under Section 628 of Companies Act, on the allegations that they had made a false statement in Form No.32 by showing the complainant as one of the Directors of the Company even though he was not, was dismissed holding that he not being

the shareholder of the company or Registrar of Companies or a person, authorized by the Central Government, cognizance could not have been taken on the complaint filed by him. This judgment, therefore, accepts the proposition that Registrar of Companies, being one of the persons mentioned in Section 621 of Companies Act, would be a person aggrieved from the offence alleged to have been committed against Companies Act. Similar view was taken by Madras High Court in its subsequent decision in **V. Karthikeyan vs. Registrar of Companies** (2001) 106 Company Cases, 685. On taking this view, Madras High Court relied upon the decision of its Division Bench in the case of **Abdul Rahim (supra)** and the decision of Hon'ble Supreme Court in the case of **Rajshree Sugar and Chemical Limited** (supra).

15. In **Sushil Kumar Lahiri and Ors. vs. Registrar of Companies**, (1983) 53 Company Cases 54, Calcutta High Court rejected the contention of the petitioners that Registrar of Companies was not the person aggrieved within the meaning of Section 469(1)(b) of the Code of Criminal Procedure and, therefore, his knowledge was immaterial for the purpose of period of limitation. Relying upon the provisions, contained in Section 621 of Companies Act, it was held that Registrar of

Companies, including Assistant Registrar, was a person competent to file the complaint, he being the person aggrieved. In the case before Calcutta High Court, the allegation was that the Balance Sheet and the Profit & Loss Account of the Company for the year ending 31st December, 1974 had not been laid before the General Body in time.

16. In **Ritesh Exports Ltd. and Anr. vs. Registrar of Companies** (2005) 127 Company Cases 583, Andhra Pradesh High Court, after referring to the decision of this Court in the case of **Nestle India Ltd.** (supra) and the decision of Madras High Court in the case of **Sulochana** (supra) and relying upon the decision of the Hon'ble Supreme Court in the case of **Rajshree Sugar and Chemical Limited** (supra), held that Registrar was person aggrieved and, therefore, was competent to file complaint under Section 113 of Companies Act.

17. In **V.M. Modi, vs. State of Gujarat** (1997) 88 Company Cases 871, Gujarat High Court (Hon'ble Mr. Justice J.M. Panchal) held that the complaint, filed by a transferee alleging failure by company to comply with the order of Company Law Board to register transfer of shares, was not maintainable since he was not a shareholder and such a complaint could be filed only by a shareholder, Registrar of Companies or a

person authorized by Central Government in that behalf. Again, this judgment recognizes that in view of the provisions contained in Section 621 of Companies Act, Registrar of Companies is a person aggrieved on account of an offence committed under Companies Act.

18. Since the prescribed period of limitation starts from the date the offence came to the knowledge of the 'person aggrieved by the offence', the next question which comes up for consideration is when the offence alleged to have been committed by the petitioners came to the knowledge of the complainant/respondent. The contention advanced by the learned counsel for the petitioners is that since the office of the respondent is required to scrutinize the balance sheet, etc. at the time it is filed and not to just store the document in its godown, the offence alleged to have been committed by the petitioners came to the knowledge of the complainant on the date Balance Sheet was filed. In support of his contention, the learned counsel for the petitioners has referred the decision in **Assistant Registrar of Companies vs. H.C. Kothari and Ors.** 1992 (75) Company Cases 688. In the case before Madras High Court, complaint was filed on the allegations that Balance Sheets of the company had revealed that investments

made by the company for the financial years 1980-81 & 82 in shares of other bodies corporate was in excess of 30% limited prescribed in Section 372(2) of the Companies Act and the approval of Central Government as well as Resolution under Section 376(2) having not been obtained, the respondents had committed an offence under Section 377(2)(4) read with Section 374 of Companies Act. It was held by the High Court that the Registrar of Companies was deemed to have knowledge of the contents of the Balance Sheets and of the offence, on the day, the same were received by him. During the course of the judgment, the High Court, *inter alia*, observed as under:

> "After receiving the balance-sheets, it is not open to the Registrar to keep these balance-sheets in cold storage, keep his eyes closed to them and then to deny knowledge of these contents, thereby defeating the law of limitation. The very object of the bar of limitation would be defeated if the contention of the appellant is accepted. When the balance-sheets are received by the Registrar of Companies, he is deemed to have knowledge about the contents of the balance-sheets and, consequently, of the offence, and limitation will start running from that day onwards."

19. As against this, the learned counsel for the respondent has referred to decision of Kerala High Court in **Thomas**

Philip and Ors. Vs. Assistant of Registrar of Companies & Anr. 2006 (133) Company Cases, 842. In the case before Kerala High Court, a complaint was filed on October, 24, 2001 under Section 628 of Companies Act, 1956 alleging fictitious entries in the books of accounts and Balance Sheet of a company for the period 1995-1996. The petitioners, directors of the Company, filed a petition under Section 482 of the Code of Criminal Procedure, contending that the complaint was barred by limitation since the Balance Sheet was filed on December 24, 1996. The High Court considered the decision of Madras High Court in the case of **H.C. Kothari** (supra), but did not agree with the view taken in that case and preferred to go by the view taken by Andhra Pradesh High Court in **Mishra Dhathu Nigam Ltd. vs. State**, 1998 (92) Company Cases, 730. During the course of judgment, the High Court observed that there may be patent as well as latent offences revealed from the Balance Sheet and that at least regarding latent offences, merely because a Balance Sheet comes into the hands of the Registrar, it cannot be assumed that the Registrar had come to know of all the offences revealed on a vetting of the Balance Sheet. The learned counsel for the petitioners, before the High Court, relied upon Regulation 17

of Companies Act to contend that Registrar, on receipt of a document like Balance Sheet, is required to examine the document or cause it to be examined and which further stipulates that if there be any defect or incompleteness in the document, it has to be returned within a period of 15 days. The High Court, however, felt that an offence like the one before it cannot be said to have come to the notice of the Registrar, actually or constructively, on the date when the Balance Sheet was delivered at his office, so as to hold that the period of limitation starts running from that date. It was noticed that Balance Sheets and Annexures thereto are usually voluminous documents and receipt of Balance Sheet or even a cursory perusal cannot and may not bring to the knowledge of the Registrar and his officials, information about the commission of the offence. The learned Judge of the High Court felt that detailed consideration and application of mind would be necessary and this was taken note of by law when it provided that limitation would start running only when commission of the offence is known to the person aggrieved. The apprehension of the petitioner that giving such an interpretation may enable the Registrar to file complaint at any time and claim that it had come to its knowledge only at a

later date, the learned Judge of the High Court, *inter alia*, observed as under:

> "The contention that if such an interpretation were placed on Section 469(1) (b) the complainants will be able to assert that the offence came to their knowledge only on a later point of time that suits them is disturbing. But the contra interpretation may result in graver injustice and prejudice. In an appropriate case the indictee will be able to contend and establish that the complainant did have actual knowledge or at least constructive knowledge about the offence and the period of limitation had started running from that day. That option will secure the interests of prevention of misuse of the provisions of Section 469(1) (b). The Legislature advisedly has chosen to stipulate that in a case where the person aggrieved did not have knowledge of the commission of offence, not the date of offence but the date of knowledge of the offence alone must be reckoned as the date of commencement of limitation."

20. In the case of **Mishra Dhathu Nigam Ltd.** (supra), Andhra Pradesh High Court, while rejecting the contention that mere filing of Balance Sheet is sufficient to impute knowledge of the offence to the Registrar of Companies, *inter alia*, observed as under:

> "Mere filing of the balance-sheets with voluminous annexures does not necessarily mean that the offence can be detected by the Registrar immediately. As there are a number of limited companies, it is humanly impossible for the Registrar

> to closely scrutinise each and every balance-sheet the moment it is filed and to find out whether any offence has been committed by a particular company. It is only after close scrutiny, which is done as in the case of inspection, that any offence committed by the company can be detected. Moreover, whether the particular deployment of funds is in the nature of investment or deposit cannot be detected by a mere look at the balance-sheets with its annexures and can be detected only after due inspection and close Scrutiny. Thus, I respectfully disagree with the decision of the Madras High Court in Asst. Registrar of Companies v. H. C. Kothari [1992] 75 Comp Cas 688. Accordingly, the first contentions of Mr. S. Ravi is rejected."

21. Though the complaints, subject matter of these petitions, were filed within one year from the date inspection was concluded, even the date on which the contraventions came to the knowledge of the Inspecting Report, cannot be said to be the date when the offence came to the knowledge of the complainant. It was only on receipt of Inspecting Officer, in its office that the complainant came to know of these offences. In taking this view, I find support from the decision of a Division Bench of this Court in **Oriental Bank of Commerce & Anr. vs. DDA & Anr.** 23 1983 Delhi Law Times (SN) 46 where this Court held that the knowledge of Inspecting Officer cannot be imputed to DDA because until the matter comes to the notice

of the proper person, who is authorized to file a complaint, it cannot be said that the knowledge of the Inspecting Officer is the knowledge of DDA.

22. In the complaint subject matter of Crl.M.C.531/2009, the allegation in the complaint is that the Company having acquired 95 % of Total Paid Capital and Total Care Limited, the Balance Sheet of the acquired Company was also required to be attached to the Balance Sheet of the company and that having not been done, there was contravention of Section 212(1) of Companies Act. Even if the office of Registrar of Companies were to scrutinize the Balance Sheet of the Company, it could not have known that Total Care Limited had become a subsidiary company of the 'Company'. This could have been ascertained only by scrutinizing the Balance Sheet and other documents pertaining to Total Care Limited. Unless the official scrutinizing the Balance Sheet of the Company also knows what is total paid up capital of Total Care Limited, he cannot find out how much per cent of the paid up capital of that company had been acquired by the Company, by purchasing 8,86,716 shares of Total Care Limited. Therefore, there was no way the complainant could have known commission of this offence, unless it is carried out

detailed inspection of the record of the Company and also cross- checked the information given in its Balance Sheet with the information given in the Balance Sheet and other documents of Total Care Limited. Therefore, the offence alleged to have been committed by the petitioners, cannot be said to be a patent one, which could be detected merely by examination of the Balance Sheet.

23. The allegation in the complaint subject matter of Crl.M.C.532/2009 is that the company had not made proper disclosure in terms of Schedule VI of Companies Act since it had not disclosed that it had not made any provision in its Balance Sheet for the contingent liability on account of the company having given collateral security pursuant to order of this Court attaching its bank account to the extent of Rs.6.24 crores. Without a detailed examination of the account books, etc. of the company, the Registrar or his official could not have known that there was an order of this Court attaching its bank account and that the company had given collateral security pursuant to that order. Hence, it cannot be said that the offence committed in this case could have come to the knowledge of the Registrar merely from scrutiny of the Balance Sheet filed by the company.

24. In the criminal complaint subject matter of Crl.M.C.533/2009, the allegation is that the company had failed to give information relating to "activities relating to exports, initiative taken to increase exports development of new export market for products and services and export plans" as required in para (f) under column C of the Companies (Disclosure of Particulars in the Report of Directors) Rules, 1988, in the Annexure to the Director's Report on Company's Balance Sheet, as on 31st March, 2002, 30th September, 2003 and 30th September, 2004". This contravention also could not have come to the knowledge of Registrar except upon a detailed scrutiny of the annexures to the Director's Report on the Balance Sheet of the company for the period ending 31st March, 2002, 30th September, 2003 and 30th September, 2004.

25. Even otherwise, in my view, it cannot be said that all the offences against Companies Act come to the knowledge of Registrar, on the date Balance Sheet or other relevant document is filed in his office. The number of companies, in our country, may be running into lakhs. It would be impractical and unrealistic to expect the Registrar or his office to carry out a detailed scrutiny and cross-checking of the Balance Sheets and other documents filed in his office, on the

date the documents are filed or even soon thereafter. The Registrar does not possess the requisite infrastructure and manpower to carry out such an exercise. If he is to carry out a meticulous examination and verification of information provided in the Balance Sheet and other documents filed in his office, within a short period of say 10 or 15 days, he will require a huge infrastructure, including office space and manpower, which no Government can provide to him. If the Court is to take a view that irrespective of infrastructural and other constraints of the Registrar, the offence is deemed to have come to his knowledge on the day the Balance Sheet or other document filed in his office or within a period of say 10-15 days in terms of Regulation 17 of Companies Act, or any administrative instructions, the inevitable result would be that most of the persons, violating the provisions of Companies Act, would go scot-free on account of delay in filing of complaint of Registrar of Companies. If two views are possible, the Court must take the view which would advance the course of justice and discourage commission of offence such as contraventions of Companies Act. If the Directors, officers or employees of the company know that knowledge of offence would be attributed to Registrar of Companies from the date the Balance Sheet or

other documents, as the case may be, is filed in his office, they would be encouraged to violate the provisions of the Act with impunity, since they would be knowing that it is neither possible nor practical for the Registrar or his office to come to know the offence committed by them, within a short period of filing of the documents in his office. Such a view, if taken, would only frustrate the legislative intent behind enactment of various penal provisions in the Companies Act and, therefore, should not be taken.

26. The learned counsel for the petitioners has referred to the decision of the Hon'ble Supreme Court in **P.K. Choudhury vs. Commander, 48 BRTF** 2008 (2) JCC 934 where the Hon'ble Supreme Court reiterated the settled proposition of law that an accused is entitled to be heard before the delay in instituting the criminal proceeding is condoned by the Magistrate. There is no quarrel with the proposition of law reiterated in this case. However, there is no delay in instituting the complaints subject matter of these petitions since the complaints were filed within one year not only of the Inspection Report having been received in the office of Registrar of Companies, but also of completion of inspection by the officer, detailed by him, for this purpose. The learned

counsel has also referred to a decision of this Court in **Vinay Kumar @ Vinay Kumar Kedia vs. State & Anr.** 2008 IV AD (Delhi) 421, where this Court, considering a complaint under Section 138/141 of Negotiable Instruments Act, found that the allegations made in the complaint, even if taken to be correct in their entirety, did not disclose the commission of any offence for which the complaint has been filed and the petitioner had been summoned. This judgment has absolutely no application to the issue involved in these petitioners, and, therefore, does not help the petitioners in any manner.

27. The learned counsel has also referred to the decision of Hon'ble Supreme Court in **Pepsi Foods Ltd. & Anrs. vs. Special Judicial Magistrate & Anr.** 1998 SCC (Cri) 1400, where the Hon'ble Supreme Court made the following observations in respect of an order summoning the accused to face trial in criminal case:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the

> complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused."

28. No doubt, the order passed by the learned Metropolitan Magistrate in the complaints subject matter of these petitions, does not deal with the issue of limitation. The order passed by him does not show whether or not he was in agreement with the complainant that since the offence subject matter of the complaint came to his knowledge on the date Inspection Report was received in his office, the period of limitation would start only from that date. But, an order, summoning the accused, need not necessarily be set aside merely because it does not indicate application of mind to an issue of this nature when this Court itself has gone into the question and is of the view that the complaints were not barred by limitation, they having been filed within one year from the date the commission of offences, subject matter of the complaints, came to the knowledge of the complainant.

29. Relying upon the provisions contained in Section 209(6) of Companies Act, it was lastly contended by the learned counsel for the petitioners that since the company admittedly has a Managing Director, other directors of the Company are

not liable to be prosecuted for the violations subject matter of the complaints.

30. In the complaint subject matter of Crl.M.C.No.531/2009, the petitioners are accused of violating of Section 212(1) of Companies Act. Sub-section (9) of Section 212 provides that if any person referred to in sub-section (6) of Section 209 fails to take all reasonable steps to comply with the provisions of this Section, he shall be liable to punishment. A perusal of Section 209(6) of Companies Act would show that the following are the persons liable in this regard:

> "(a) Where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company; and
> (d) Where the company has neither a managing director nor manager, every director of the company;"

31. In the complaint subject matter of Crl.M.C.No.532/2009, the petitioners are alleged to have committed violation of Section 211(7) of Companies Act read with Schedule VI. Under sub-section (7) of Section 211, if any such person, as is referred to in sub-section (6) of Section 209, fails to take all the reasonable steps to secure compliance by the company as respects any accounts laid before the Company in General Meeting, with the provisions of this Section and with the other

requirement of the Act, as to the matters to be stated in the accounts, he is liable to punishment.

32. The term 'officer' has been defined in Section 2(30) of Companies Act and includes Director. Though the wording of Section 209(6)(a) gives an impression that even if the company has a Managing director or a Manager, not only the Managing Director or the Manager, but all its officers, which includes directors and all its employees, would be liable for the contravention, such an interpretation cannot be given to this provision since it would lead to absurd and illogical consequences. This could never have been the intention of the Legislature to make all the directors, officers and employees of the company liable for the contravention of a provision of Companies Act. Clause (d) clearly says that if the company does not have either a Managing Director or a Manager only in Managing Director or a Manager, in that case, every director of the Company would be liable for the contravention. Had the intention of the Legislature been to make all the directors of the Company liable for the contravention, irrespective of whether they were responsible for it or not, there would have been no necessity of incorporating Clause (d) in the sub-section. A harmonious and sensible reading of the aforesaid

two clauses would mean that (i) if the company has a Managing Director or a Manager, the Managing Director or Manager, as the case may be, as well as all those Directors, other officers and employees of the company, would be liable for the contravention, who are responsible for the contravention complained of. In fact, even the learned counsel for the respondent did not contend that all the Directors of the Company would be liable to prosecution even if the company has a Managing Director or a Manager. His contention, and in my view, right too, was that besides to Managing Director or Manager, as the case may be, only those Directors of the Company would be liable to be prosecuted who were responsible for ensuring compliance with the relevant provisions of Companies Act and who commit default in discharging the function assigned to them in this regard. A perusal of the complaints subject matter of Crl.M.C.531 and 532 of 2009 would show that the complainant has specifically alleged that the petitioners were the officers in default at the relevant point of time and were accordingly responsible for compliance of the provisions of Companies Act, 1956. At this stage, in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, this Court cannot go into the question

as to whether the petitioners were actually responsible for compliance of the provisions of Section 212(1) and 211(7) of Companies Act or not. At this stage, all the allegations made in the complaint have to be taken as correct and on their face value and, therefore, it has to be presumed that petitioners before this Court were the persons responsible to ensure compliance of the relevant provisions of the Companies Act and, therefore, were the officers in default at the relevant point of time.

33. In the complaint subject matter of Crl.M.C.No.533/2009, the petitioners are alleged to have contravened the provisions of Section 217(5) of Companies Act, which reads as under:

> "If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [2][twenty thousand rupees], or with both :
>
> Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully :
>
> Provided further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a

> defence to prove, [3][* * *] that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty.

34. It is not in dispute that the petitioners 2 & 3 were the directors of the Company, at the time the offence subject matter of the complaint in Crl.M.C.533/2004, is alleged to have been committed. Therefore, both of them are liable to be prosecuted under section 217(5) of the Act.

35. The last contention raised by the learned counsel for the petitioners is that the company cannot be prosecuted for the contraventions subject matter of these complaints. A bare perusal of Section 209(6) of Companies Act would show only directors, officers and employees of the company have been made liable for these contraventions and the company itself has not been subjected to any criminal liability on account of these contraventions. Similarly, the company has not been made liable for contravention of the provisions of Section 217(1) of Companies Act and it is only the directors of the Company who have been made liable for the offence. No provision of the Companies Act, envisaging prosecution of the company for such contraventions, has been brought to my notice, despite a specific opportunity given to the learned

counsel for the respondent for this purpose. In the absence of any provision in the Companies Act, making the company liable for the offence alleged to have been committed in these cases, it is not possible to sustain the prosecution and consequent summoning of the company in respect of these offences. The learned counsel for the respondent has referred to the decision of Hon'ble Supreme Court in **Standard Chartered Bank vs. Directorate of Enforcement & Ors.** 2005 (4) SCC 530. In my view, reference to this decision is wholly misplaced. The issue before the Hon'ble Supreme Court was as to whether a company can be prosecuted for an offence, such as prosecution under Section 56 of Foreign Exchange Regulation Act, which prescribes a minimum mandatory sentence of imprisonment which cannot be enforced against a company. The Hon'ble Supreme Court held that the company, being a juristic, could be prosecuted even for an offence for which the mandatory sentence of imprisonment and fine, is provided, though when found guilty the Court has the discretion to impose a sentence of fine only. The question of criminal liability of a company would arise only if an offence has been committed by the company. When there is no provision in Companies Act, making a company

liable for prosecution on account of a contravention of this nature, the judgment of the Hon'ble Supreme Court would have absolutely no application.

36. For the reasons given in the preceding paragraphs, the impugned order is hereby modified to the extent that summoning of the company Dr. Morepen Ltd. is quashed. The summoning and prosecution of the petitioners Sanjay Suri and Ajay Sharma is, however, maintained.

The petitions stand disposed of, with this modification.

(V.K.JAIN)
JUDGE

JANUARY 29, 2010
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