

આંક- ૩૭ લગત હુકમ

ફરિયાદપક્ષ :- વિ.કંપની પ્રોસિક્યુટર શ્રી વિપલ સોલંકી

આરોપીપક્ષ :- વિ.વ.શ્રી રાકેશ શર્મા

(૧) બચાવપક્ષ ધ્વારા હાલના કામે આંક-૩૭ થી રજુ હાલની અરજી ક્રિ.પ્રો.કોડની કલમ રજપ(૨) હેઠળ આરોપી નં.૧ થી ૬ ને સદર ફરિયાદના કામેથી ડીસ્ચાર્જ કરવા બાબતે તા.૨૧/૧/૨૦૨૫ ના રોજ રજુ થયેલ છે. હાલની અરજીમાં બચાવપક્ષના જણાવ્યા મુજબ આંક-૧ ની ફરિયાદમાં કંપનીએ પ્રોસ્પેક્ટસ બહાર પાડતી વખતે ક્યુ સ્ટેટમેન્ટ ખોટું કરેલ છે અને ક્યુ સ્ટેટમેન્ટ લલચાવનારૂ છે અથવા ક્યુ સ્ટેટમેન્ટ ગેરકાયદેસર દોરનારૂ છે, તેવી કોઈપણ બાબતનો ઉલ્લેખ ફરિયાદમાં કરેલ નથી. કંપનીએ જ્યારે પ્રોસ્પેક્ટસ બહાર પાડેલ ત્યારે પ્રોસ્પેક્ટસમાં જોખમી પરીબળો બાબતે રોકાણકારોને ચેતવેલ હતા અને સદર જોખમી પરીબળનો ઉલ્લેખ પ્રોસ્પેક્ટસમાં કરેલ હતો. આથી કંપનીએ રોકાણકારોને ભવિષ્યના રીઝલ્ટ અંગે પણ ચેતવણી આપેલ હતી. જેથી રોકાણકારોને લલચાવવાનો કોઈ બદધરાદો કંપનીનો હતો નહિ. વધુમાં, કોઈ રોકાણકાર કે શેર હોલ્ડરે કોઈપણ ફરિયાદ રજીસ્ટ્રાર ઓફ કંપની કે અન્ય સંસ્થામાં કરેલ નથી. આરોપી નં.૨ થી ૬ નાઓ કંપનીમાં સક્રીય ડાયરેક્ટર ન હતા અને રોજબરોજની કાર્યવાહીમાં તેઓએ ભાગ લીધેલ ન હતો. વધુમાં, કંપની ધ્વારા સને-૨૦૦૪ સુધીની તમામ બેલેન્સશીટ રજીસ્ટ્રાર ઓફ કંપનીની કચેરીમાં ફાઈલ કરવામાં આવેલ છે. જે તમામ બેલેન્સશીટ અંગે રજીસ્ટ્રાર ઓફ કંપની ધ્વારા કોઈ વાંધો લેવામાં આવેલ નથી. જેથી, પ્રોસ્પેક્ટસનો અમલ થયેલ નથી તે મુજબની ફરિયાદ ચાલી શકે તેમ નથી. વધુમાં, આંક-૧ ની ફરિયાદ સમયમર્યાદા બહારની છે. કંપનીએ પ્રોસ્પેક્ટસ સને-૧૯૯૬ માં બહાર પાડેલ હતો. જેની ફરિયાદ આશરે ૧૭ વર્ષ બાદ સને-૨૦૧૩ માં કરવામાં આવેલ છે. ફરિયાદને સમયમર્યાદાનો બાદ નડે છે. વધુમાં, આરોપી નં.૧,૨,૪ તા.૨૪/૬/૨૦૦૫ થી અને આરોપી નં.૩,૫,૬ તા.૧/૧૧/૧૯૯૬ થી કંપનીમાં રાજીનામા આપી છુટા થયેલ છે. તેઓના રાજીનામા બાબતે કંપની એક્ટ મુજબ

રજીસ્ટ્રાર ઓફ કંપનીમાં ફોર્મ સબમીટ કરેલ છે. રાજીનામા બાદ આરોપીઓ કંપનીમાં કોઈપણ રીતે સંકળાયેલ હતા નહિ. જેથી, આરોપી નં.૧ થી ૬ ને કલમ ૬૩ અને ૬૮ મુજબની ફરિયાદના કામે જવાબદાર ઠરાવી શકાય નહિ. ઉપરોક્ત તમામ હકીકતો ધ્યાને રાખી આરોપી નં.૧ થી ૬ નાઓને સદર કેસમાંથી ડીસ્ચાર્જ કરવા અરજ ગુજારેલ છે.

- (૨) આંક-૩૭ થી રજુ ઉપર મુજબની ડીસ્ચાર્જ અરજીના વિરૂદ્ધમાં ફરિયાદી આર.ઓ.સી. ડીપાર્ટમેન્ટ તરફથી કોઈ લેખિત વાંધા-જવાબ રજુ કરવામાં આવેલ નથી. આર.ઓ.સી. ડીપાર્ટમેન્ટના સ્પે.પી.પી.શ્રી ધ્વારા આંક-૩૭ ની અરજી ઉપર લેખિતમાં શેરો કરી, અરજી નામંજુર કરવા અરજ ગુજારવામાં આવેલ છે.
- (૩) હાલની અરજીના અનુસંધાને બંને પક્ષકારોની રેકર્ડ મુજબની મૌખિક દલીલો સાંભળવામાં આવેલ છે. બચાવપક્ષના વિ.વ.શ્રી ધ્વારા આંક-૩૭ ની અરજીના સમર્થનમાં નીચે મુજબના ન્યાયિક ચુકાદાઓ રજુ કરવામાં આવેલ છે. જે તમામ ન્યાયિક ચુકાદાઓ અત્રેની અદાલત ધ્વારા માનપુર્વક રીતે વંચાણે લેવામાં આવેલ છે.

Sr.No.	Judgment/Citation
1	Bhagyesh Gyanswaroop Bhatnagar V/s. State of Gujarat, Special Criminal Application No.5083/2017, Order Dt.15/03/2018
2	Nirmalsingh Dirubha Rana V/s. State of Gujarat, R/SCR.A/2828/2018, Order Dt.04/05/2018
3	Vadibhai M.Patel V/s. Registrat of Companies, R/SCR.A/2841/2011, Order Dt.16/06/2017
4	Ramakrishna Raja V/s. Registrar of Companies, (2005)123 COMPCAS319(MAD)
5	Hafez Rustom Dalal V/s. Registrar of Companies, (2005) 128 COMPCAS883(GUJ).
6	Registrar of the Companies (Gujarat) V/s. Shri V.C.Gandhi and Others, In The City Session Court At Ahmedabad, CR RA/335/2019.
7	Registrar of the Companies V/s. Shri Kalpen R.Shah, CR.RA 408/2018, In The City Session Court At Ahmedabad, Dt.13/01/2021.
8	Registrar of the Companies V/s. Shri Navnit P.Patel and Others,

In The City Session Court At Ahmedabad, CR.RA.417/2018.

(જ) આંક-૩૭ થી રજુ હાલની ડીર્યાર્જ અરજી ધ્યાને રાખી, આંક-૧ ની ફરિયાદ વંચાણે લેતાં ફરિયાદી આર.ઓ.સી.ડીપાર્ટમેન્ટ દ્વારા આ કામના આરોપી નં.૧ થી ૭ નાઓ M/S. Tripex Overseas Limited કંપનીના સક્રીય ડીરેક્ટરો અને રોજબરોજના કંપનીના વ્યવહારો સાથે સંકળાયેલ હોવાનું જણાવી કંપની દ્વારા તા.૭/૩/૧૯૯૬ ના રોજ બહાર પાડવામાં આવેલ પ્રોસ્પેક્ટસ મુજબ કામગીરી નહિ કરી ફરિયાદમાં જણાવ્યા મુજબ કંપની એક્ટ, ૧૯૫૬ ની કલમ ૬૩ સાથે વાંચતા કલમ ૬૮ મુજબનો શિક્ષાપાત્ર ગુનો કરેલ હોવાના આક્ષેપો મુકવામાં આવેલ છે ત્યારે સૌપ્રથમ અત્રે કંપની એક્ટ, ૧૯૫૬ ની કલમ ૬૩ અને ૬૮ વંચાણે લેવી આવશ્યક હોય જે નીચે મુજબ છે.

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 authorised 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 1[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.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given -

- (a) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or
- (b) the consent required by sub-section (3) of section 60.

68. PENALTY FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY

Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into -

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures;

or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures ; shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to 1[one lakh] rupees, or with both.

(પ) વધુમાં, અત્રે ક્રિ.પ્રો.કોડની કલમ ૨૪૫(૨) વંચાણે લેવી આવશ્યક હોવાથી જે નીચે મુજબ છે.:

Sec.245 :- When accused shall be discharged.

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

(ક) ઉપરોક્ત કાયદાકીય જોગવાઈઓ ધ્યાને રાખી આંક-૧ થી ૨જુ ફરિયાદની હકીકતો વંચાણે લેતાં, તેમા આરોપી નં.૧ થી ૭ નાઓ તે M/S. Tripex Overseas Limited કંપનીના ડીરેક્ટરો હોવાનું જણાવી કંપની ધ્વારા તા.૭/૩/૧૯૯૬ ના રોજ પ્રસિધ્ધ થયેલ પ્રોસ્પેક્ટસ મુજબની કાર્યવાહી કંપની ધ્વારા થયેલ નહિ હોવાના

આક્ષેપો મુકવામાં આવેલ છે અને કલમ ૨૦૯એ મુજબ થયેલ ઈન્સ્પેક્શનમાં કંપની દ્વારા કલમ ૬૩ સાથે વાંચતા કલમ ૬૮ મુજબની કાયદાકીય જોગવાઈનો ભંગ કરેલ હોવાનું માલુમ પડતા આર.ઓ.સી.ડીપાર્ટમેન્ટ દ્વારા કંપની અને તેના ડીરેક્ટરોને તા.૨૬/૯/૨૦૧૩ ના રોજ શો-કોઝ નોટીસ આપ્યા બાદ રીઝનલ ડીરેક્ટર અમદાવાદના તા.૨૯/૮/૨૦૧૩ ના સેક્શન હુકમ મુજબ હાલની ફરિયાદ દાખલ કરેલ હોવાનું જણાવેલ છે.

(૭) આંક-૧ ની ફરિયાદ ધ્યાનપુર્વક વંચાણે લેતાં, હાલના આરોપીઓ દ્વારા તેમની કંપનીના ડીરેક્ટર તરીકેની કામગીરી દરમિયાન તા.૭/૩/૧૯૯૬ ના રોજ પ્રસિધ્ધ કરવામાં આવેલ પ્રોસ્પેક્ટસમાં ચોકક્સ કઈ હકીકતો ખોટી રીતે જાહેર કરેલ છે તેનો કોઈ સ્પષ્ટ ઉલ્લેખ આંક-૧ ની ફરિયાદમાં કરવામાં આવેલ નથી. વધુમાં, કંપનીના પ્રોસ્પેક્ટસ બાબતે અને તેની કામગીરી બાબતે કંપનીના કોઈ રોકાણકાર કે શેર હોલ્ડર દ્વારા કોઈ ફરિયાદ રજીસ્ટ્રાર ઓફ કંપની સમક્ષ આપવામાં આવેલ હોય તેવી કોઈ હકીકત પણ રેકર્ડ ઉપરથી જણાઈ આવતુ નથી.

(૮) વધુમાં, આંક-૧ ની ફરિયાદ હકીકત ધ્યાને લેતાં તા.૭/૩/૧૯૯૬ ના રોજ કંપની દ્વારા પ્રસિધ્ધ થયેલ પ્રોસ્પેક્ટસ મુજબની કામગીરી નહિ કર્યા બાબતની ફરિયાદ આર.ઓ.સી.ડીપાર્ટમેન્ટ દ્વારા સને-૨૦૧૩ ના વર્ષમાં અત્રેની અદાલત સમક્ષ દાખલ કરવામાં આવેલ છે. આમ, રેકર્ડ ઉપરની હકીકતો લક્ષમાં લેતાં આંક-૧ ની ફરિયાદ આશરે ૧૭ વર્ષના લાંબા સમયગાળા બાદ દાખલ થયેલ છે ત્યારે નામદાર ગુજરાત હાઈકોર્ટના ચુકાદા Bhagyesh Gyanswaroop Bhatnagar V/s. State of Gujarat, Special Criminal Application No.5083/2017, Order Dt.15/03/2018 ના અગત્યના પેરા વંચાણે લેવા આવશ્યક હોય જે નીચે મુજબ છે:

22. Let me now straightway go to the decision of the Delhi High Court. The short point involved in the case before the Delhi High Court was, whether the complaint filed by the respondent against the petitioners therein for making a misstatements or false

statements in the prospectus was within the period of limitation. The Delhi High Court observed as under:-

"2. The complaint has been filed only on 14.01.2004. According to the petitioners this complaint has been filed by the petitioner for making a mis-statement in the public prospectus which was filed by the petitioners on 11.04.1997 is barred by limitation. It is submitted that the punishment for making a mis-statement in a prospectus is punishable under Section 63 of the Companies Act which provides punishment of two years. The said Section for the sake of reference is reproduced hereunder:

63. Criminal liability for misstatements in prospectus:-

(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised 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 1[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.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given--

(a) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or

(b) the consent required by sub-section (3) of section 60.

3. *Section 628 of the Companies Act which is the other provision for which the petitioners are sought to be prosecuted also provided punishment of two years only. The said provision also reads as under:*

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.

4. *It is submitted by the petitioners that for any offence punishable for up to two years the period of limitation is only three years as per the provisions of Section 468 of the Cr.P.C. As such the complaint which has been filed after seven years of the filing of the prospectus is barred by limitation.*

5. *The petitioners have also relied upon a judgment delivered by this Court in CrI.M.C.1777/2005 titled as Sunair Hotels Ltd. and Anr. Vs. The Registrar of Companies and Anr. decided on 18.03.2009 wherein in a*

similar circumstance also a complaint was filed beyond period of limitation, this Court has held:

6. Section 374 of the Companies Act reads as under:

374 - Penalty for contravention of section 372 or 373:- If default is made in complying with the provisions of1[section 372 [excluding sub-sections (6) and (7)] or section 373], every officer of the company who is in default shall be punishable with fine which may extend to2[fifty thousand rupees.

7. Similarly, it will also be appropriate to take note of Section 468 of Cr.P.C.1973.

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) Six months, if the offence is punishable with fine only;

(b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

6. *It was further held (page 207 of 151 Comp Cas):*

8. In view of the aforesaid it is apparent that the limitation to take cognizance of the offence alleged to have been committed by the petitioner expired long ago before the filing of the compliant which has been filed sometimes in 2004.

9. The only explanation given by the respondents to justify the delay is that the sanction for lodging the prosecution against the petitioner company was required to have obtained prior to the filing of this complaint which was received from the Department of Company Affairs, Shastri Bhawan, New Delhi. They have also relied upon the provisions of Section 470(3) of the Code of Criminal Procedure and submits that in the circumstances, the period taken by them in obtaining the prior sanction which they say has to be excluded from the period of limitation as provided under Section 468 of the Cr.P.C. Since the sanction was received only on 13.04.2004 and, therefore, filing of the complaint within 6 months thereafter is

justified and brings the complaint within limitation.

10. Coming to the judgments which have been relied upon by the petitioner I find that in the case of Vinod Kumar Jain (supra) it has been held:

(4) The petitioner appeared in the trial Court in obedience to the process issued to him but he has challenged the legality and validity of the summoning order through this petition.

(5) The learned counsel for the petitioner has at the outset assailed the cognizance of the complaint by the learned Additional Chief Metropolitan Magistrate on the ground that the complaint was hopelessly barred by time on the date it was presented and the learned Magistrate could not take cognizance of the same without first condoning the delay as envisaged in Section 473 of the Code and that too after notice to the petitioner. Hence, the impugned order, according to him, is vocative of principles of natural justice. Moreover, it betrays total non-application of judicial mind with regard to the facts spelt out by the respondent-complainant in the application made by him under Section 473 of the Code for condensation of delay. As pointed out by him, the cryptic order" and find prima facie grounds to proceed against the accused under Section 473 Criminal Procedure Code", does not disclose

whether the learned Additional Chief Metropolitan Magistrate condoned the delay and if so, on what ground.

(6) SUB-SECTION (1) of Section 468 of the Code lays down that except as otherwise provided elsewhere in the Code, no court shall take cognizance of an offence of the category specified in Sub-section (2) thereof after the expiry of the period of limitation prescribed in clauses (a), (b) & (c) of the Sub-section. Obviously the bar of limitation operates before the court takes cognizance of an offence. Under clause (a). Sub-section (2) of Section 468, the period of limitation is six months if the offence is punishable with fine only as is admittedly the position in the instant case. Section 469 of the Code prescribes the terminus a quo for the commencement of period of limitation. It is the date of the offence or where the commission of the offence was not known to the person aggrieved by the offence, the first day on which such offence comes to the knowledge of such person whichever is earlier. In the instant case, the contention of the respondent-complainant is that he came to know of the commission of offence on 24th January 1981 when he perused the report of the Inspecting Officer Shri O.P. Chadha. Obviously, therefore, the complaint was hopelessly barred by time on the date of its institution.

(7) Section 473 of the Code, however, provides that notwithstanding anything contained in the foregoing provisions the court may take cognizance of an offence after the expiry of period of limitation provided therefore if it is satisfied on the facts and in the circumstances of the case that

(i) the delay has been properly explained; or that

(ii) it is necessary so to do in the interests of justice.

(8) It is thus manifest that if a complaint is prima facie barred by time when it is filed, it becomes necessary for the prosecuting agency to explain the delay and seek condensation of the same. Unless the delay is condoned the court cannot take cognizance of the complaint. In other words, the Magistrate has to apply his mind to the question of limitation at the pre-cognizance stage and satisfy himself that delay has been properly explained or that it is necessary to condone the delay in the interests of justice. The Magistrate cannot hasten to issue the process without first recording his satisfaction that the delay was satisfactorily explained to him or that he was of the view that the condensation of delay was in the interests of justice. It is highly doubtful that the court can condone the delay and thus extend limitation subsequent to the taking of cognizance of the

offence. Of course, the condensation of delay may be implied from the act of the Magistrate in taking cognizance after the expiry of the period of limitation and proceeding with the case but the order must be clear and categorical in this respect. He has no power or authority to condone the delay provisionally or ex facie as has been seemingly done in the instant case.

(9) In State of Punjab v. Sarwan Singh, AIR 1981 SC1054, the accused Sarwan Singh was convicted of an offence under Section 406, Indian Penal Code, by the trial Court. However, on appeal having been preferred by him, the High Court set aside his conviction and acquitted him mainly on the ground that the prosecution launched against him was clearly barred by limitation under sections 468 & 469 of the Code. The State went in appeal by special leave to the Supreme Court but the same was dismissed with the following observations which are very pertinent to notice:.

"The object of Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object

which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

(10) Obviously an accused person acquires a valuable right the moment his prosecution is barred by limitation. Hence, that right cannot be taken away except in accordance with the provisions of law. It is, therefore, imperative for the court taking cognizance of the offence to apply its judicial mind as to whether the prosecution has satisfactorily explained the delay in launching prosecution at the pre-cognizance stage i.e. when the Magistrate applies his mind for the purpose of proceeding under Section 200 and the succeeding Sections in Chapter 15 of the Code. Since the discretion vesting in the Magistrate to condone the delay or not has to be judicially exercised, the principles of natural justice require that the accused must be afforded an opportunity before he is called upon to face the prosecution in a time barred matter. As observed by a Division Bench of this Court in State (Delhi Administration) v. Anil Puri and others ILR 1979 Delhi 350

In the present case, the respondents have submitted that it is only when a balance sheet was filed by the petitioners for the year ending 31.03.2001 that they came to know that the statement made in the prospectus was not correct and accordingly they gave a show cause notice which was given on 21.05.2002 and then they have filed a complaint dated 14.01.2004. It is submitted that the delay had been caused because of obtaining sanction etc. from the department concerned.

Even if one takes the case of the respondents at the highest and apply the provision of Section 473 of the Cr.P.C. to the facts of this case, then also once the respondents having come to know about the violation, i.e, on filing of the balance sheet, no where it is stated as to when the said balance sheet was filed, it is also not stated as to whether prior to 31.03.2001 any balance sheet was filed by the petitioner or not and in case such balance sheet was filed then what was the status shown in that balance sheet. It is hard to believe that the petitioner had not filed any balance sheet prior thereto though balance sheet as per the petitioners were filed on year to year basis. Moreover, it is nowhere stated in the complaint as to from which date the limitation starts so as to bring the complaint within limitation. As a matter of fact, the averments

made in the response by the respondents are not even forming part of the complaint.

Thus, even the averments made in the complaint are per se false to the knowledge of the respondents and therefore the plea taken by the respondents that this is a case where neither there was any continuing wrong and that the limitation period was continuing till the respondents filed the complaint cannot be sustained. Even otherwise the law has been already discussed by this Court in the judgment quoted above. No contrary judgment has been cited.

Taking into consideration that the prospectus in this case was filed on 11.4.1997, filing of the complaint in this case in the year 2004 cannot be justified at all. Thus, the complaint as well as the summoning order issued in this case is set aside and the complaint filed by the respondents is quashed. Consequently, all the proceedings emanating therefrom are hereby quashed.

Petition stands disposed of. ”

23. In the case at hand also, even if one takes the case of respondent no. 2 at the highest and apply the provisions of Section 473 of the Code of Criminal Procedure to the facts of this case, then also once the respondents, having come to know about the violation, i.e. on filing of the balance-sheets, nowhere it is stated as to when the said balance-sheet was filed, and in case such

balance-sheet was filed, then what was the status shown in the balance-sheet. Moreover, it is nowhere stated in the complaint as to on which date the limitation started so as to bring the complaint within the period of limitation.

(૯) ઉપરોક્ત ન્યાયિક ચુકાદો ધ્યાને રાખી રેકર્ડ ઉપરની હકીકતો લક્ષમાં લેતાં સને-૧૯૯૬ ના વર્ષમાં કંપની ધ્વારા તેનું પ્રોસ્પેક્ટસ જાહેર કરવામાં આવ્યા બાદ અને કંપની અસ્તિત્વમાં આવ્યા બાદ કાયદા મુજબ કંપનીના બેલેન્સ શીટ રજીસ્ટ્રાર ઓફ કંપનીસ સમક્ષ રજુ કરવામાં આવેલ છે. જે બેલેન્સ શીટ ધ્યાને રાખી રજીસ્ટ્રાર ઓફ કંપનીસ ધ્વારા કંપનીએ તેના પ્રોસ્પેક્ટસ મુજબની કામગીરી નહિ કરેલ હોવાની કોઈ લેખિત નોટીસ આપેલ હોવાનું જણાઈ આવતું નથી ત્યારે ક્રિ.પ્રો.કોડની કલમ ૪૭૩ ધ્યાને લેતાં, આશરે ૧૭ વર્ષના સમયગાળા બાદ દાખલ થયેલ હાલની ફરિયાદ સમયમર્યાદા બહારની હોવાનું ફલીત થાય છે.

(૧૦) વધુમાં, આંક-૧ ની ફરિયાદના પેરા નં.૬ વંચાણે લેતાં તેમાં રીઝનલ ડાયરેક્ટર (NWR) અમદાવાદ ધ્વારા હાલની ફરિયાદ દાખલ કરવા સેક્શન તા.૨૯/૮/૨૦૧૩ ના રોજ આપેલ હોવાનું જણાવવામાં આવેલ છે જે પેરા નં.૬ માં જણાવેલ હકીકતો લક્ષમાં રાખી આ કામે ફરિયાદપક્ષ ધ્વારા એનેક્સર-ઈ થી રજુ થયેલ કથીત સેક્શન ઓર્ડર ધ્યાનપુર્વક વંચાણે લેતાં તેમાં M/S. Tripex Overseas Limited કંપની અને તેના ઓફીસરો ધ્વારા ઘ કંપનીઝ એક્ટ, ૧૯૫૬ ની કલમ ૧૨૫ નો ભંગ કરેલ હોવાનું જણાવવામાં આવેલ છે. વધુમાં, એનેક્સર-ઈ થી રજુ તા.૨૯/૮/૨૦૧૩ ના રોજનો કથીત સેક્શન હુકમ ધ્યાને રાખી નામદાર ગુજરાત હાઈકોર્ટના ચુકાદા Bhagyesh Gyanswaroop Bhatnagar V/s. State of Gujarat, Special Criminal Application No.5083/2017, Order Dt.15/03/2018 ના અગત્યના પેરા નં.૨૪ અહીં વંચાણે લેવા આવશ્યક છે, જે નીચે મુજબ છે:

24. So far as the issue of validity of the sanction is concerned, as noted above, the very same sanction was considered by the High Court of Delhi in the case of Dharmendra Kumar Lila Vs. Registrar

of Companies, [2011] 161 Company Case 301 (Delhi). The Delhi High Court took the view that the sanction which was sought to be relied upon was no sanction in the eyes of law. It was just a general permission granted for initiating prosecution in respect of the violations of certain provisions of the Act, 1956. I may quote the entire decision of the High Court in the case of Dharmendra Kumar Lila (supra):-

“2. Learned Senior counsel for the petitioners has contended that no criminal complaint can be filed under Section 62 of the Act as this provision deals with the “civil liability” for making misstatement in the prospectus. With regard to the complaint under Section 68 of the Act, it has been submitted that for filing of a complaint under this section, prior sanction of competent authority was required. Neither such sanction was obtained by the Registrar of Companies prior to filing of the complaint nor had the same been placed on record. In nutshell, it has been canvassed that the complaint under Section 62 read with Section 68 of the Act was liable to be quashed. Reliance has also been placed on Rajeev Shukla & Anr. vs. Registrar of Companies 135 (2006) Delhi Law Times 599 and Manju Yadav vs. Registrar of Companies 2007 (98) DRJ 312.

Section 62 of the Act reads as under:-

*“62. Civil liability for misstatements in prospectus.
(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every persons who subscribes for any shares or debentures on the faith fo the*

prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say, ”

*Bare perusal of the aforesaid provision clearly indicates that violation thereof entails civil liability inasmuch as, it provides payment of compensation in case of misstatement in the prospectus. In my view, the compensation in respect of violation of Section 62 of the Act can be claimed by filing appropriate civil suit and no criminal complaint under Section 62 of the Act would be maintainable in this regard. Similar view has been expressed in *Rajiv Shukla* [2006] 135 DLT and *Manju Yadav's* cases [2007] 98 DRJ 312.*

*As regards the complaint under Section 68 of the said Act is concerned, learned counsel for the respondent has not disputed that prior sanction of the competent authority is required before launching prosecution under the said provision. However, he contends that such sanction was granted for initiating prosecution by the Department of Company Affairs vide its letter dated 13th March, 2002. I have perused the copy of so called sanction letter and find that the same is general permission granted to the Regional Director by the Department of Law & Justice for initiating prosecution in respect of violations of Sections 62, 63 read with 628 of the said Act. This sanction nowhere includes launching of prosecution under Section 68 of the Act. In *Rajiv Shukla's* case (*supra*) also this very sanction letter was involved and was adversely commented upon. No other sanction letter has been placed on record. In absence of any such sanction, the*

only presumption which can be drawn is that no sanction was obtained for launching prosecution under Section 68 of the Act against the petitioners. In absence of prior sanction, the complaint under Section 68 of the said Act would also be not maintainable.

For the foregoing reasons, petitions are allowed and complaint case bearing no. 805/2002 pending before the ACMM and all further proceedings arising therefrom qua the petitioners are hereby quashed.

All the abovementioned disposed of in the above terms. ”

(૧૧) ઉપરોક્ત ન્યાયિક ચુકાદામાં પ્રસ્થાપિત થયેલ સિદ્ધાંત લક્ષમાં લેતાં આરોપી કંપની અને તેના ડીરેક્ટરો ધ્વારા કંપનીઝ એક્ટ, ૧૯૫૬ ની કલમ ૬૩ સાથે વાંચતા કલમ ૬૮ મુજબની કાનુની જોગવાઈનો ભંગ કર્યા બદલનો કોઈ સેક્શન હુકમ આંક-૧ ની ફરિયાદ દાખલ કરતા પહેલા મેળવેલ હોવાનું રેકર્ડ ઉપરથી જણાઈ આવતું નથી. જેથી, આંક-૧ ની ફરિયાદના કામે આરોપીઓને જવાબદાર ઠરાવી શકાય તેમ નથી. ઉપરોક્ત તમામ હકીકતો ધ્યાને લેતાં તથા બચાવપક્ષે રજુ થયેલ ન્યાયિક ચુકાદાઓ વંચાણે લેતાં હાલની ડીસ્ચાર્જ અરજી મંજૂર કરવા પાત્ર જણાઈ આવે છે. જેથી ઉપરોક્ત હકીકતોએ નીચે મુજબનો ન્યાયિક હુકમ કરવામાં આવે છે.

હુકમ

(૧) આરોપી નં.૧ થી ૬ તરફે આંક-૩૭ થી રજુ ડીસ્ચાર્જ અરજી મંજૂર કરી, ક્રિ.પ્રો.કોડની કલમ ૨૪૫(૨) અન્વયે આરોપી નં.૧ થી ૬ ને સદર ફરિયાદના કામેથી ડીસ્ચાર્જ કરવાનો હુકમ કરવામાં આવે છે.

(૨) કેસના સંજોગો ઘ્યાને લેતાં સદર કામના આરોપી નં.૭ અરવિંદભાઈ કે. પટેલ નાઓને પણ ડિ.પ્રો.કોડની કલમ ૨૪૫(૨) અન્વયે સદર ફરિયાદના કામેથી ડીસ્ચાર્જ કરવાનો હુકમ કરવામાં આવે છે.

હુકમ આજરોજ તા.૩૦/૦૪/૨૦૨૬ ના રોજ ખુલ્લી અદાલતમા વાંચી, સંભળાવી, સહી કરી જાહેર કર્યો.

તા.૩૦ / ૦૪ / ૨૦૨૬.
અમદાવાદ (સીટી).

(ડી.એચ.ખંભાતી)
અધિક ચીફ જ્યુડીશીયલ મેજીસ્ટ્રેટ,
અમદાવાદ (સીટી).(GJ00866)