



2025:KER:29594

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

CRL.A NO. 1622 OF 2006

AGAINST THE JUDGMENT DATED 05.09.2005 IN CC NO.63 OF
2003 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O),
ERNAKULAM ARISING OUT OF THE ORDER DATED 27.07.2006 IN
CRL.L.P. NO.54 OF 2006 OF HIGH COURT OF KERALA

APPELLANT/COMPLAINANT:

THE ASST.REGISTRAR OF COMPANIES
KERALA, ERNAKULAM, NOW FUNCTIONING AT COMPANY LAW
BHAVAN, 1ST FLOOR, BMC ROAD, THRIKKAKARA, COCHIN-21

ADV.MINI V.G., CGC

RESPONDENTS/ACCUSED:

- 1 MRS.ARTECH POWER PRODUCTS LTD
ADMINISTRATION BUILDING, 2/94, VATTUKUNNU ROAD,,
KANDANAD P.O., THIRUVAMKULAM, ERNAKULAM.
- 2 VARGHESE I. VIJAYAN
ITTANTHOTTIL HOUSE, KARIKODU, MULANTHURUTHY,
ERNAKULAM.
- 3 REPSY VIJAYAN,
ITTANTHOTTIL HOUSE, KARIKODU, MULANTHURUTHY,
ERNAKULAM.
- 4 SUDHIR MENON
IX B, SURYAKANTHI APARTMENTS, EEYATTIL JUNCTION,,
CHITTOOR ROAD, ERNAKULAM, (M/S.JOY THATTIL & CO.)

SRI.DILISH JOHN
SRI.JOY THATTIL ITTOOP

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON
01.04.2025, THE COURT ON 07.04.2025 DELIVERED THE FOLLOWING:



C.S.SUDHA, J.

Crl. Appeal No.1622 of 2006

Dated this the 7th day of April 2025

J U D G M E N T

This is an appeal under Section 378(4) Cr.P.C. filed by the complainant, namely, the Assistant Registrar of Companies, Kerala, in C.C. No.63/2003 on the file of the Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam, challenging the acquittal of the respondents/accused of the offence punishable under Section 58A(10) of the Companies Act, 1956 (the Act).

2. The prosecution case is as follows:

The 1st accused (A1), namely, M/s.Artech Power Products Limited, is a public limited company incorporated under the Act. The 2nd accused (A2) is the Managing Director of A1 and accused nos.3 and 4 (A3 & A4) are the directors. The accused persons at the relevant time were responsible to comply with the



provisions of Section 58A(9) of the Act. While so, one K.M. Thomas, K.T. Mathai and Siji Thomas filed an application under Section 58A(9) of the Act before the Company Law Board, Chennai, against A1 for a direction to repay the amounts deposited by them. The applicants 1 and 2 deposited an amount of ₹20,000/- each and the 3rd applicant, an amount of ₹10,000/- with A1. The Company Law Board passed Ext.P3 order dated 28/12/2001 directing A1 to repay the amounts deposited by the applicants within the time prescribed in the order. The applicants vide letter dated 19/02/2002 informed the complainant that they had neither received the principal amount nor the interest from A1 as directed by the Company Law Board. Thereupon, the complainant issued a letter to A1 along with a copy to A2 directing to return the amounts deposited by the applicants. In response to the same, A2 sent a reply dated 04/03/2002 seeking further time to comply with the direction of the Company Law Board. Thereafter, notice was issued to all the directors of A1 stating that they would be prosecuted under Section 58A(10) of the Act. However, none of them have



replied to the same. A2 to A4, the directors of A1, were the officers responsible to comply with the direction under sub-section (9) of Section 58A of the Act. As they have failed to comply with Ext.P3 order of the Company Law Board, they have committed the offence punishable under Section 58A(10) of the Act and hence the complaint.

3. When the accused persons appeared before the trial court, copies of all the relevant records were furnished to them. After complying with the necessary formalities, a charge under Section 58A(10) of the Act was framed, read over and explained to the accused persons to which they pleaded not guilty.

4. PW1, Senior Technical Assistant of Complainant Firm, was examined and Exts.P1 to P10 series were marked on the side of the complainant. After closing the evidence of the complainant, the accused persons were duly questioned under Section 313(1)(b) Cr.P.C. They denied the entire allegations and pleaded innocence. A2 was examined as DW1. No documentary evidence was produced by the accused persons.



5. The trial court on consideration of the oral and documentary evidence and after hearing both sides found from the materials on record that there was nothing to conclude that the accused persons had willfully contravened the provisions under Section 58A(9) of the Act attracting punishment under Section 58A(10) of the Act and hence acquitted them under Section 248(1) Cr.P.C. Aggrieved, the complainant has come up in appeal.

6. The only point that arises for consideration in this appeal is whether the finding of acquittal of the accused persons by the trial court suffers from any infirmity calling for an interference by this Court.

7. Heard both sides.

8. Ext.P3 order reads thus:

“The depositors in M/s Artech Power Products Limited (“the Company”) have made applications under Section 58A(9) of the Companies Act, 1956 (“the Act”) submitting that the company failed to repay the deposits aggregating Rs.50,000/- together with interest as per details given in the annexure and forming part of this order. The



applications came up for hearing and disposal before this Bench on 28.12.2001.

2. During the hearing, none appeared for the Company inspite of notice of hearing sent to the Company.

3. Taking into consideration the facts and circumstances of the case, interests of the depositors and the opportunity afforded to the Company, it is hereby ordered that the Company shall repay the deposits together with interest at the contracted rate calculated upto the date of payment and filing fee by 15.02.2002 and file an affidavit of compliance within 7 days thereafter. The Company, its directors and concerned officers shall ensure compliance of the order within the stipulated period, failing which the applicants are at liberty to execute this order under Section 634A of the Act for realization of the defaulted amount, if any.” (Emphasis supplied)

9. Section 634A of the Act reads thus:

“634A. ENFORCEMENT OF ORDERS OF COMPANY LAW BOARD

Any order made by the Company Law Board may be enforced by that Board in the same manner



as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction, -

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.”

10. Referring to Section 634A of the Act, the trial court held that the order of the Company Law Board can be enforced in the same manner as if it were a decree made by a court in a suit. In Ext.P3 order, it is specifically stated that in case the company, its directors and the officers concerned fail to comply with the order within the stipulated period, the applicants would be at liberty to execute the order under Section 634A of the Act for realization of the defaulted amount, if any. Therefore, the trial court concluded that the remedy of the applicants who had deposited the amount with A1 was to execute Ext.P3 order as a decree in a court against



the company instead of launching prosecution against the accused. That being the position, it was held that the complainant cannot succeed and hence the respondents/accused were acquitted.

11. The learned standing counsel for the appellant/complainant has not been able to show in what manner the impugned judgment suffers from any infirmity. That being the position, I find no grounds for interference into the impugned judgment.

Hence, the appeal is dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE