

Emperor Vs. Ramnarayan Amarchand

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Court : Mumbai

Decided On : Feb-25-1919

Reported in : (1919)21BOMLR732

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Appeal No. 53 of 1919

Appellant : Emperor

Respondent : Ramnarayan Amarchand

Judgement :

Heaton, J.

1. This is an appeal by two persons who were convicted by the First Class Magistrate of Poona. It was transferred by this Court for hearing from the Court of the Sessions Judge of Poona to this Court.

2. The case relates to a Company which for brevity's sake is called the Poona Mill. It had been working as a Mill from about the year 1894 with not very fortunate results, though it survived until 1915, in which year the Company went into liquidation and has since been wound up. The accused were for a good many years the Agents, Secretaries and Treasurers of the Company, and it is in relation to the balance-sheets for the years 1912 and 1913 that criminal accusations have

been made against them. I need not go into details further than this: the charges in relation to the balance-sheet for 1912 were based on the allegation that in that year the mill had not by its working earned a profit, but that a profit was shown in the balance-sheet and that in so doing and in taking the profit declared, the accused, who, it is said, were really responsible for the preparation of the balance-sheet, committed the offences of cheating and criminal misappropriation. When the balance-sheet for 1913 took its final shape which was not until June 1914, the new Companies Act had come into operation, and under that Act in virtue of Section 282 it is a criminal offence to wilfully make a false statement in a balance-sheet. No charge under this section was possible in relation to the balance-sheet for 1912, but this was the charge made in regard to the balance-sheet for 1913. The trial and the appeal had a somewhat unfortunate course. At the trial itself a very large mass of evidence was recorded and a large number of details were minutely inquired into. The Magistrate has dealt with this mass of evidence and with these details in a lucid way, but it does seem to us that much of the evidence and many of the details might have been spared had there been a more painstaking and intelligent inquiry into the affair before it was brought into the Magistrate's Court. As the result of the trial before the Magistrate which, considering the mass of evidence he had to deal with, was not unduly prolonged, the accused were convicted of all the charges. After the appeal was transferred to this Court there was a most unfortunate delay duo to the preparation of translations of the many papers. We are not concerned with the cause of that delay at the moment. But it has attracted our notice and I certainly do profoundly regret that such a delay should have occurred in the disposal of a criminal appeal in this Court.

3. When charges were framed in the Magistrate's Court, exception was taken to them on behalf of the accused. It was urged that there could not be a joint trial of the charges relating to the balance sheet of 1912 with the charge relating to the balance-sheet of 1913. It was argued for the prosecution, as we think most mistakenly, that the joint trial could proceed, because the offences relating to those balance-sheets could be regarded as parts of the same transaction. We think not, and the result is that the trial is illegal and the conviction cannot be upheld.

4. Before saying why we think this, I must remark that I think where prosecutions of this kind are conducted, where you are dealing with complicated and extensive matters, it is most important that the prosecution should not urge the joint trial of matters as to the joint trial of which there could be any doubt. It does not in the long run save time or trouble. And where there are several matters in contest, if the prosecution will select that on which they have the best case, they will undoubtedly to my thinking in the long run save time and further the ends of justice. Now here there were jointly tried matters relating to two totally distinct affairs, one being the balance-sheet for the year 1912, the other the balance-sheet for the year 1913. It is said that both of them were prepared in pursuance of a policy of deception, that the Company was really insolvent as early as the year 1910 and that the subsequent balance-sheets were prepared falsely with the deliberate purpose of concealing this practical insolvency; and it is said that because this was so, the preparation of those two balance-sheets for successive years was in reality but one transaction. The word 'transaction' used in the Criminal Procedure Code is not defined. Its meaning has frequently been illustrated by cases which are in the books, but in the long run we have to deal with every case that arises on its own facts. Knowing the general idea of the words 'the same transaction', we have to determine whether these words do or do not apply to the particular facts of a particular case. Here it seems to me that to apply the words 'the same transaction,' to these two separate proceedings is to confuse the meaning of those words with the idea of things that are done in pursuance of a conspiracy. From the prosecution point of view it is perfectly correct to say that both these balance-sheets were prepared in pursuance of a conspiracy. One only has to think over the matter, a little carefully however, to see that this idea of a conspiracy covers a very great deal that cannot be included in the idea of 'the same transaction.' If we were to take those words as covering a case of this kind, it would lead us to treat the same acts of misconduct or fraud, however often repeated, as constituting the same transaction, if there was the same general purpose underlying the repeated acts. But something far more definite than that is required, before separate proceedings can be brought within the meaning of the words 'the same transaction'. I cannot, I confess, think of any way of describing the preparation of these two balance-sheets so as to bring them

within the true idea underlying the words 'the same transaction.' I regard the preparation of these two balance-sheets as entirely separated occurrences. The balance-sheet for the year 1912 was prepared from the accounts of that year. It related to the affairs of that year and had for its purpose the presentment, truly or falsely, of the condition of the Company as the Agents wished it to appear in that year. Similarly with the balance-sheet of 1913. The two affairs seem to me to be quite as distinct as where you have a band of dacoits co operating with the same general purpose of plunder, who commit several dacoities at different places and at different times. I never heard it suggested that occurrences of that kind should be regarded as forming parts of one transaction though three of such cases might be tried together on other grounds. Therefore it seems to me that the joinder of these charges was against the law, that, therefore, there has not been a proper trial and that the appellants must be acquitted and discharged.

5. We then have to consider what is to follow. For my part I think it better that the proceedings should end here and now, and that they should not be revived. I think so, amongst others, for these reasons. It is now an old story. The Company has been wound up and has come to an end. The appellants have been subjected to a trial of considerable length and to a very long period of suspense between the trial and the hearing of the appeal, and they must have been put to very serious expense in connection with legal charges. That being so, it seems to me that it would be oppressive to have them tried over again unless this were a case of a very flagrant type.

6. As regards the charge for the year 1912, after hearing what has been said on behalf of the defence and giving close attention to the evidence, it seems to me doubtful whether the conviction would be sustained. When we came to ask the Advocate General, who appears for the prosecution, whether he would elect, if further proceedings were taken, to go on with that charge or with the one relating to the year 1913, he said that he would go on with the latter charge, that for the year 1913. So what we are concerned with now is the broad general facts relating to that charge. It is a charge under Section 282 of the new Companies Act which makes the preparation of a false balance-sheet in itself an offence. Prior to the enactment of that section the preparation of a false balance-sheet in itself was not

an offence. That is a matter which may very properly be taken into consideration.

7. Then the evidence, the judgment of the Magistrate and, as I understand it, the theory of the prosecution does not so much suggest that we are dealing with fraudulent persons who have cheated their directors or their share-holders, as with persons who have, it may be, presented the balance-sheet with much concealed that ought to have been displayed, but who have done this for the purpose of enabling the Company to survive as a working Company ; to give it another chance of tiding over years of difficulty and eventually reaching years of security. And I think the case as a whole suggests that this really was so and that the object of the accused-the appellants-was not the enrichment of themselves, but the benefit and survival of the Company. Whether that be really the truth of the matter I cannot say, but it is a view of the case which presents itself very readily to the mind and which we are certainly justified in accepting as a working hypothesis for the time being.

8. Those being the conditions, then, I think that it would indeed be rather oppressive if we were to direct that further proceedings should go on. So I think we should express that opinion and that our order should be simply that the appellants be acquitted and discharged.

Shah, J.

9. In view of the importance of the case I desire to state briefly the grounds upon which I agree with my learned brother.

10. The two appellants in this case were tried jointly on five charges by the First Class Magistrate of Poona; and after a prolonged trial, the learned Magistrate convicted them of all the offences charged and sentenced them to different terms of imprisonment.

11. The appellants preferred an appeal to the Court of Session at Poona, and that appeal has been transferred to this Court.

12. At the outset I desire to express my agreement with the remarks of my learned brother as to the delay that has occurred in the hearing of this appeal, though in a largo measure it is attributable to the exceptionally heavy record, and to the circumstance that it is an appeal from the judgment of a First Class Magistrate in a warrant case and not an appeal from the judgment of a Sessions Court as in usually the case.

13. After arguing the appeal on the merits as to the set of charges connected with the balance-sheet of 1912, the counsel for the appellants urged that the joinder of the charges in the present case was contrary to the provisions of the Criminal Procedure Code, and that the whole trial was illegal. We have heard the learned Advocate-General as to the joinder of the charges and the legality of the trial and as to the order to be made in the event of the trial being found to be illegal. The first four charges against the two appellants framed by the trial Court relate to the balance-Sheet for the year 1912, and the point of the charges is that the profit of Rs. 35,179 for the year 1912 is shown in that balance-sheet dishonestly with a view to induce the directors to recommend and the share-holders to sanction the declaration of a dividend, when in fact there was no profit, and further that the two accused dishonestly received their respective dividends in connection with the shares held by them in this Company and the commission which would be due to them under the Articles of Association on the profits shown in that balance-sheet. That is the substance of the first four charges. It is not suggested that the joint trial of the accused in respect of these four charges would be open to any objection, if there were no further independent charge.

14. The further charge relates to the making of a false balance-sheet for the year 1913 which is an offence punishable under

15. Section 282 of the Indian Companies Act, VII of 1913, the balance-sheet having been submitted to the Directors and share-holders after the 1st April 1914 when the Act came into force. The joint trial of the two accused in respect of all these charges can be justified only if the acts attributed to the appellants can be reasonably held to form part of the same transaction. Under Sections 235 and 239 of the Code of Criminal Procedure, the charges that could be jointly tried must

arise out of acts committed in the same transaction or so connected together as to form the same transaction, I do not think that Section 234 of the Code has any application to the facts of this case. The trial Court has allowed the joinder of charges against the accused in spite of the objection raised on their behalf ; and the question now is whether this joinder is legal.

16. In my opinion the acts attributed to the accused in respect of the balance-sheet of 1912 are quite distinct and separate from the acts attributed to them in respect of the balance-sheet of 1913, and according to no possible meaning of the word 'transaction', can it be said that these acts form part of the same transaction. The acts are quite separated in point of time; there is, in my opinion, no continuity of action-The acts attributed to the accused in respect of the balance-sheet of 1912 relate to the declaration of profits for the year in the balance-sheet while the acts attributed to the accused in respect of the balance-sheet of 1913 relate to various items detailed in the charge, which have practically no connection with the profits of the year 1912 and the declaration of the dividend and the charging of the commission in respect of that year. The inquiry relating to the question of profits in the year 1912 would be quite distinct and essentially different in its scope from the inquiry which would have to be made with reference to the acts attributed to the accused in respect of the balance-sheet of 1913. Lastly, it cannot be said that there was any object common to these two sets of acts. As to the first set of charges the accused are said to have shown the profits during the year 1912 falsely in order to earn their commission and the dividends on the shares. As to the other charge the object is said to be to conceal the true condition of the Company, in order to keep it going. Thus the objects are essentially different. The way in which the charge in respect of the balance-sheet of 1913, has been explained by the learned Advocate-General with reference to the items of depreciation, reserve fund, and the unpaid dividend accounts illustrates to my mind clearly that the acts said to have been done with reference to the charge under Section. 282 of the Indian Companies Act are entirely distinct and have reference solely to the balance-sheet of 1913. It is true that the charge under Section 282 of the Indian Companies Act as framed in the lower Court relates to many more items; and it may be that the general object of concealing the true condition of the Company was common to the preparation of the balance-sheets

for various years, including the years 1912 and 1913. That in fact is the only ground upon which it is suggested that the several acts may be treated as constituting the same transaction. It is argued that during all the years of stress and difficulty the Agents of this Company tried to under-estimate the losses and to over-estimate the profits of the Company with a view to conceal the true state of the Company. Assuming that to be the general purpose underlying the preparation of these balance-sheets for many years particularly the balance-sheets for the years 1910 to 1913, I do not think that such a general purpose can afford any justification for treating the different acts attributed to the accused as forming part of the same transaction within the meaning of Sections 235 and 239 of the Code. Thus the joinder of the charges is clearly contrary to the provisions of the Code : and it follows that the whole trial is illegal.

17. The question then arises as to whether we should order a retrial of the accused. I am clearly of opinion that in the interests of justice no retrial is needed and that it would be proper to allow the proceedings to terminate at this stage.

18. The prosecution are to a certain extent responsible for the joint trial on all these charges. The original complaint contained allegations covering all the charges, and I do not find anything in the proceedings to show that the prosecution at any time attempted to make it clear to the trial Court, that the joinder of charges could not well be justified. On the contrary the trial proceeded in spite of the objection raised by the defence. Further the trial in this case has been much prolonged and, as the voluminous, needlessly voluminous, record of the case shows, undoubtedly very expensive to both the parties. Besides the circumstances connected with the charge also suggest that there should be no further trial. The learned Advocate-General has pressed for a retrial in respect of the charge under Section 282 of the Indian Companies Act relating to the balance-sheet of 1913 : and as he explained the charge no doubt the retrial would be much more limited in its scope than the trial which proceeded on the charge as framed in the lower Court. The charge under Section 282 of the Indian Companies Act as framed in the trial Court necessitated an inquiry into the accounts of the Company ranging over a period from 1894 to 1913. It must be remembered that the acts attributed to the accused substantially relate to the year prior to the coming into force of the

now Companies Act, and that the balance-sheet is to a certain extent the result of the accumulated errors of the past years arising out of a faulty method of keeping accounts and not the result of any dishonesty on the part of the accused. Treating the charge under Section 282 of the Indian Companies Act as limited in the manner now suggested on behalf of the prosecution, . I do not think that the interests of justice demand that there should be any further trial on that charge.

19. As regards the set of charges relating to the balance-sheet of 1912 the learned Advocate General has fairly conceded that there need be no retrial. I do not think that any useful purpose could be served by ordering any further proceedings in connection with those charges.

20. On these grounds I agree with the order proposed by my learned brother.

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