

In Re: P.D. Shamdasani

In Re: P.D. Shamdasani

SooperKanoon Citation : sooperkanoon.com/336317

Court : Mumbai

Decided On : Apr-08-1929

Reported in : (1929)31BOMLR1144

Judge : Amberson Marten, Kt., C.J. and; Murphy, J.

Appeal No. : Criminal Application for Revision No. 387 of 1927

Appellant : In Re: P.D. Shamdasani

Disposition : Application dismissed

Judgement :

Amberson Marten, Kt., C.J.

1. This is an application in revision by the complainant, Mr. Sharndasani, against the order of the Acting Chief Presidency Magistrate of October 12, 1927, dismissing his complaint against the six respondents, for an alleged offence under Section 282 of the Indian Companies Act. That section provides that 'whoever in any...balance-sheet or other document required by or for the purposes of...the provisions of this Act wilfully makes a statement false, in any material particular, knowing it to be false,' shall be punishable in a particular way.

2. Now, this application to us, it is important to observe, is in revision, and not in appeal. Indeed, if this was an appealable case, there would be no right at all for the complainant to be heard. The right of appeal would be in the Crown, Then, as

regards revision, although we have wide powers under Sections 435 and 439, Criminal Procedure Code, under which the present application is made to us, yet Section 440 provides as follows :-

No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision : Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect Section 439, Sub-section (2).

3. Section 440 applies to an accused, and therefore still more strongly does it apply to a complainant. We have, however, thought it right to hear the complainant on the subject of his complaint, but to this limited extent, viz., in order to see, in effect, what his case is about. If, for instance, that case on investigation should tend to show that there has been any denial of natural justice, or that some gross and palpable error has been committed in the Court below, then it might be, that we should have required, at any rate, fuller arguments, or if prima facie grounds were made out, then we should direct a rule to issue in order to hear what is to be said on the other side.

4. Taking, then, the petition of the petitioner, which, I think, sets out quite clearly his various contentions and which, as I personally acknowledge, I have found easy to grasp notwithstanding the large and complicated figures involved, one finds that there are three main points, viz., (1) the question of contingent liabilities, (2) the question of bounties, and (3) the question of works profit.

5. Taking first the question of contingent liabilities, the complaint of the complainant is that in the balance-sheet for the year ending March SI, 1926, there were entered certain arrears of cumulative preference dividends as required by Section 132 of the Indian Companies Act and form in the Third Schedule, but that when one comes to the balance-sheet for the year 1927, this item is omitted, Consequently, he says, a very large sum, which ought to have been entered in the 1927 balance-sheet in respect of these arrears, is omitted.

6. Now, the answer is this, that in November 1926 a scheme Shamdas4ni was approved by the Court under the Indian Companies Act, on one construction of

which the rights of the original preference shares were extinguished and rights of a different character established. The clause which the learned Magistrate relies on runs as follows :-

the said second preference shareholders having waived and abandoned all rights to be paid the said arrears as originally provided.

And undoubtedly, for one thing these preference shareholders were only to be paid in the future a particular sum out of fifty per cent, of the surplus profits instead of out of the whole. There was, in short, an agreement of compromise as between them and the ordinary shareholders, under which their original rights were substantially altered.

7. Mr. Shamdasani's argument is that notwithstanding this scheme and the agreement thereby arrived at, these arrears still remained payable as such, and he states that he himself was subsequently paid as a small shareholder certain sums for interest and so on. It, however, appears from the judgment of the learned Magistrate that the company took the advice of eminent counsel on this point, and he advised that if the scheme was adopted the company's contingent liability in respect of arrears of preference dividend would be deemed to be cancelled and the amounts would be omitted from the balance-sheet as such. It is true that this opinion was given before the scheme was actually passed by the Court, but that, in no way, vitiates the opinion, Nor can I see that the company was obliged to consult the eminent counsel again after the scheme was passed and ask him, 'Do you agree with what you said a few months ago' ?

8. The learned Magistrate points out that Section 282 of the Indian Companies Act under which the respondents are charged requires that they should wilfully make a false statement knowing it to be false. Even assuming then that a different view may be taken of the effect of the scheme why should these directors be regarded as dishonest, because they acted on the opinion of eminent counsel in this matter. If that is so it really comes to this, that supposing that they had taken the other course and decided that these alleged arrears should be included as arrears under the heading 'contingent liabilities', Mr. Shamdasani could then have taken out a summons saying that that view was the wrong one, and that dishonesty was

shown because they had acted contrary to the advice of counsel.

9. Here, it is important to observe that we are dealing with an alleged criminal offence. Speaking generally, it is essential for Shamdasani a criminal offence that what is known in English law as mens rea a guilty mind ' should be established. I am aware that that precise expression is not in the Code, but the provisions of the Code amount in effect to this, Accordingly on a question like this, I entirely agree with the learned Magistrate in thinking that no prima facie case has been made out here for thinking that any false statement was wilfully made knowing it to be false.

10. I wish to add this. In a criminal Court one often wants to test the alleged guilty mind by seeing what was the motive of the alleged criminal in doing the particular act. I quite agree that under the Code it is not essential for the prosecution to establish a motive. But, as a matter of common sense this is usually of importance, because an average man does not commit a criminal offence unless he has a strong motive for doing it. I have accordingly asked Mr. Shamdasani on every one of the points here what motive he suggests the respondents had in making these alleged false statements. Substantially, he can point to no motive. Then I asked him, 'Supposing the balance-sheet was drawn up in the way you say it ought to be drawn up, then how would you as a shareholder be damnified by the way in which the balance-sheet and the profit and loss account were, in fact, drawn up' Apart from the question of the amount of contingent liability-which I will deal with later on-Mr. Shamdasani was unable to point out to us how he would be pecuniarily affected, except that it is material for the public to know the exact position of a company so that the market can appraise the shares of a company at their proper value, and that accordingly, the ten second preference shares and the two preference shares which the complainant says is his sole holding, should maintain their proper market value. I am not impressed with that last suggestion.

11. I may also say that if, for instance, as regards the agent's commission, it could be established that it was calculated on a wrong basis and that they had received too much, then I take it it would be open to the petitioner as a shareholder to test the matter in the civil Court and thereby establish his view of the rights of the parties and thus prevent the assets of the company from being improperly

distributed. In fact, no such proceedings have been taken by him or anybody else. On the contrary, the company in general meeting, so we are informed, have passed and adopted this very balance-sheet, notwithstanding the protests that Mr. Shamdasani made at the meeting or meetings at which it was passed.

12. Further, speaking for myself, I think, that the Police Courts are not the proper place to fight out disputed questions of finance in big companies or banks. That can be more properly done in the civil Courts, more especially as the decision of the civil Courts is binding, For if a wrong is done it can order a refund of the improper receipts, whereas the Court of a Police Magistrate, with all respect, can only decide that an accused shall be fined, imprisoned or acquitted. The Magistrate's judgment then does not substantially affect the civil rights of the parties and it is open to the civil Courts entirely to disregard the finding of the criminal Courts in that respect. That is partly because criminal cases are decided on entirely different basis from civil suits. In the criminal Courts the sole question is whether the accused has committed a criminal offence, and in this country he cannot even give evidence. In the civil Courts the test is breach of contract and so on. The evidence of all parties is available, and damages or restitution may be ordered.

13. I fully recognise that in the case of dishonest men it may be very proper to resort to this criminal remedy under the Indian Companies Act, But when it is a bona fide dispute on which people may take different views, that is not, in my opinion, a case which is best fitted for a police Court.

14. I will now pass to the next point, which again illustrates what I have just been saying. That is the question of bounties. Now, it appears that Government had granted a bounty to this particular company, and the question is how should that bounty be dealt with in the profit and loss account, and whether, in particular, the agents should be entitled to charge commission on the bounties so paid. In fact, the bounty is disclosed in the balance-sheet. The Magistrate takes the view that it is income and that the company would be justified in treating it as such. Whether the agents were entitled to charge commission on that bounty depends primarily on the true construction of their agreement with the company. The auditors, the

directors and the company in general meeting have apparently adopted the view contrary to what Mr. Shamdasani says is the true one. If Mr. Shamdasani wishes to challenge the matter I should have thought it better for the civil Court to decide once and for all what is the true construction of this agreement. It would indeed be a very undesirable state of affairs if the Magistrate took one view on the true construction and the civil Court, which has the final word on it, took the other view. Here again, I am satisfied that this is not a case which comes within Section 282, even if it should be held that the bounty ought not to be included for the purposes of calculating the commission.

15. Lastly, I take the question of what is described in the petition as 'works profit'. That depends on some lengthy paragraphs in the petition and a considerable number of figures. But here the complaint which Mr. Shamdasani makes is that the works profit is really a larger sum than that shown in the balance-sheet, and that it should roughly be Rs. 1,54,33,047-14-10 and not Rs. 1,46,30,277-5-0, with the result that approximately some eight lacs less is disclosed in the balance-sheet as works profit than there should be.

16. But the learned Magistrate has gone carefully into this, and he has shown what in his opinion are the fallacies of the arguments put forward by Mr. Shamdasani and the errors of what I may call the counter-balance-sheet which Mr. Shamdasani has exhibited as being, in his opinion, the true balance-sheet of the company. We have read what the learned Magistrate has said on this point, and without going into any further details we substantially agree with what he has said and that here again no case for intervention under Section 282 is made out. It has indeed to be borne in mind that this is the company's balance-sheet and not Mr. Shamdasani's, and further that it has been adopted by the company in general meeting. Here again, if there was anything involving practical loss to Mr. Shamdasani as a shareholder, it is open to him to pursue his remedy in the civil Courts.

17. For these reasons, then, I would hold that the learned Magistrate rightly dismissed this complaint, and that no adequate ground is shown to us for hearing this case more fully either in this Court or in the Court below.

18. I wish to add, speaking for myself, that I think it might be considered whether Section 282 of the Indian Companies Act should be amended by requiring the sanction of the Advocate General before any prosecution is launched under that section. The present company happens to be an iron and steel company, but one can imagine cases of banking companies, for instance, where their credit is a more tender plant than that of an iron and steel company. There are certain provisions in England which impose a check on persons desiring to put the criminal law in motion in certain respects and it may be that a similar check 1920 might be usefully imposed as regards Section 282, at any rate as regards banking companies in India. In re

Murphy, J.

19. The charge made by the applicant before the Chief Presidency Magistrate related to certain items to be found in the balance-sheets of the Tata Iron and Steel Company for 1925-1926 and 1926-1927. The allegation was, that in respect of three matters shown in these balance-sheets, the directors and other accused had made wilfully false statements, in contravention of Section 282 of the Indian Companies Act. All the three points have been discussed at considerable length in the learned Presidency Magistrate's judgment, and have also been considered in the judgment just delivered by the learned Chief Justice, and I think it is unnecessary for me, in a concurring judgment, further to discuss them. But, I think, the general effect of the three charges really is, that they amount to a difference of opinion, between the applicant and the company, on points of accounting. It may be that the manner in which these items have been dealt with in the balance-sheets is technically incorrect, or what has happened may even amount to a civil wrong. If this is so, the applicant has clear remedies in another Court, but it seems to me that by no possibility can it be inferred, on the allegations made in the complaint, and from the arguments before us, that what was done by the directors and agents was in any way dishonest. As I have just said, the points involved are really technical matters of correct or incorrect accounting, and cannot be included within the scope of a criminal charge. I agree, therefore, that the application must be dismissed.

Amberson Marten, Kt., C.J.

20. I wish to add this as to the apparent delay in hearing this application. This is partly due to the fact that shortly after it was lodged it was adjourned at Mr. Shamdasani's request as he had to go to England in connection with his case in the Privy Council now reported as Parashuram Detaram Shamdasani v. The Tata Industrial Bank, Limited : (1928)30BOMLR1115 . The other ease of his which was referred to by him is Shamdasani v. Pookhanavalam (1927) 29 Bom. L.R. 722.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com