

Ramchandra and Sons Private Ltd. and ors. Vs. State

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Court : Allahabad

Decided On : Apr-08-1966

Reported in : [1966]36CompCas585(All)

Judge : D.P. Uniyal, J.

Acts : [Companies Act, 1956](#) - Sections 220 and 633

Appeal No. : Criminal Revision No. 828 of 1964 (Connected with Criminal Revision Nos. 829, 846, 847, 848, 849, 85

Appellant : Ramchandra and Sons Private Ltd. and ors.

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : T.N. Sapru and ;J. Sarup, Advs.

Disposition : Revisions dismissed

Judgement :

D.P. Uniyal, J.

1. These ten connected revisions involve the consideration of identical questions of law and I, therefore, propose to dispose of them by a single judgment.

2. In nine of the above cases, three applicants who are a private limited company, managing director and director of the company, have been convicted under Section 220 of the Companies Act for committing default in filing with the Registrar copies of the balance-sheet and the profit and loss account of the company within 42 days of the holding of the annual general meeting. In the last mentioned case they have been convicted under Section 162 for not complying with the provisions of Section 159 which requires every company to file with the Registrar an annual return made by the company within the prescribed period.

3. It is not denied--indeed it is admitted--that no general meeting of the company had been called and the balance-sheet and profit and loss account of the company had not been laid before it. It is also admitted that the annual returns had not been filed with the Registrar within the stated period as required by Section 159.

4. The defence put forward by the applicants was that in the years in question no general meeting had been held and, therefore, no balance-sheet and profit and loss account was filed with the Registrar of Joint Stock Companies. It was urged that these preliminaries not having been fulfilled, it was impossible for the company or the directors to comply with the requirements of Section 220. It was said that the applicants should have been convicted, if at all, not under Section 220 but under Section 168 for default in calling a general meeting.

5. In this connection stress was laid on the language of Section 220(1) which says :

'After the balance-sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar at the same time a copy of the annual return referred to in Section 161. '

6. It was contended that the opening words of the section require the filing of the balance-sheet and the profit and loss account with the Registrar after the same had been laid before the general meeting. No balance-sheet and profit and loss account could have been filed with the Registrar as the condition precedent had not been fulfilled. It was, therefore, sought to be contended that the conviction of the applicants under Section 220 could not be sustained.

7. On behalf of the applicants strong reliance was placed on *Emperor v. Pioneer Clay and Industrial Works Ltd.* A.I.R. 1948 Bom. 357. In that case the applicants had been convicted under Section 134(4) of the Companies Act for failure to file with the Registrar three copies of the balance-sheet and accounts of the company. Chagla C.J. accepted the defence of the accused and held that the stage had not arrived when they could be called upon to send copies of the balance-sheet and profit and loss account, because that stage could only be reached after a general meeting had been called and the balance-sheet and profit and loss account had been placed before that meeting. The learned Chief Justice was of the view that in the circumstances no offence had been committed. He did not agree with the opinion of the Calcutta High Court in *Devendra Nath Das Gupta v. Registrar of Joint Stock Companies*, (1918) I.L.R. 45 Cal. 486, which followed the rule laid down in *Park v. Lawton*, [1911] 1 K.B. 588, 592, that it is not open to an accused to plead in answer to a charge under Section 134 Ms prior default in respect of the calling of the prescribed general meeting and of placing before the company at such meeting a duly prepared and audited balance-sheet.

8. The facts upon which a conviction had been founded in *Park v. Lawton* were these. The accused, two directors of the company, were charged with an offence under Section 26 of the English Companies (Consolidation) Act, 1908, in that they knowingly and wilfully permitted default to be made by the company in forwarding to the Registrar of Companies a copy of its list of members, with summary as to capital and shares for the year 1909, as required by Section 26. Section 26 of the English Act provided that a company 'shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company'. No general meeting of the company had been held during the year 1909 and the accused had taken no steps to hold such a meeting. The question tarried on the meaning of Section 26 of the English Companies Act; Sub-section (5) of that section imposed a penalty if default was made in complying with the requirements of the section. Lord Alverstone C.J. stated that principle of law in these words:

' The cases of *Gibson v. Barton*, L.R. 10 Q.B. 329 and *Edtnonds v. Foster*, 45 L. J. (M.C.) 41 are clear authorities that a person charged with an offence under

Section 26 is not entitled by way of defence to plead the impossibility of complying with Section 26 by reason of no general meeting having been held, at any rate if the person charged was also a party to the default in holding the meeting; in other words, a person charged with an offence cannot rely on his own default as an answer to the charge. If it were the case that everything required to be inserted in the list was dependent on the fact of the general meeting having been held, it might perhaps have been contended with some force that it is impossible to calculate a continuing penalty from a day which has never come into existence : but when one sees that Section 26 requires a number of most important matters to be included in the list of members which are entirely independent of the holding of a general meeting, this very much weakens the contention that no list need be compiled if, owing to the failure to hold a general meeting, it is impossible to say what day is the fourteenth day thereafter. '

9. The above principle was affirmed by the Supreme Court in *State of Bombay v. Bandhan Ram Bhandani* : 1961 CriLJ319 . Their Lordships were considering a case in which the directors of a company had been charged with offences under Section 32(5) and Section 133 of the Companies Act for having knowingly and wilfully failed to file the summary of share capital for a certain year as required by Section 32(3), and for failure to lay before the company at the general meeting the balance-sheet and profit and loss account as required by Section 131. No general meeting had been held in that case and the point raised before the Supreme Court was that as no annual general meeting had been held it was impossible for the directors to comply with the provisions of Section 131. On behalf of the accused it had been contended that the view taken by Chagla C.J. in *Emperor v. Pioneer Clay and Industrial Works Ltd.*, A.I.R. 1948 Bom. 357 was the sound one and the accused were not liable to be convicted for default in complying with the provisions of Section 131 inasmuch as no annual general meeting had been held which was a condition precedent to the filing of these documents with the Registrar. The Supreme Court pointed out that Chagla C.J. had not questioned the correctness of the decision in *Park v. Lawton*, [1911] 1 K.B. 588 and observed:

' The fact that one of the requirements of the English Section 26 is not present in Section 32 of our Act cannot create any material difference between Section 32 of

our Act and Section 26 of the English Act. If the principle that a person charged with an offence cannot rely on his own default as an answer to the discharge is correct, as we think it is, and which we do not find Chagla C.J. saying it is not, then that principle would clearly apply when a person is charged with a breach of Section 32 of our Act.'

10. It is true that Section 220 is not very happily worded in that the opening words of the section indicate that the balance-sheet and profit and loss account required to be filed with the Registrar must be such as have been laid before the annual general meeting. That, however, in my opinion does not and cannot absolve the company or its directors from performing their statutory duty in filing the balance-sheet and the profit and loss account with the Registrar within the stated time. It seems to me that the fact that Sub-section (3) of Section 220 makes the offence a continuing one shows that the obligation to file the balance-sheet and the profit and loss account is independent to the holding of a general meeting.

11. In *Viswanathan v. Assistant Registrar of Joint Stock Companies*, [1953] 23 Comp. Cas. 63 Ramaswamy J. pointed out that Sections 76 and 133 create two distinct offences, namely, one for not holding a general meeting and another for not laying balance-sheet before the general meeting. Thus the same transaction may give rise to several distinct offences and it is not open to the accused directors to plead their own default by saying that as no general body meeting could be held no question of placing the balance-sheet arose and, therefore, no offence was committed.

12. The above discussion would go to show that all the High Courts, with the exception of the Bombay High Court in the case of *Emperor v. Pioneer Clay and Industrial Works*, A.I.R. 1948 Bom. 357, are of the view that the company and its directors are liable to be convicted for their failure to file the balance-sheet and the profit and loss account with the Registrar of Joint Stock Companies even if no annual general meeting had been held at which it could have been laid.

13. It was next contended that it had not been shown that the applicants were officers who had committed default. The expression 'officer who is in default' has been defined in Section 5 and means any officer of the company who is knowingly

guilty of the default, etc., or who knowingly or wilfully permits such default. The submission was that the default had not been committed knowingly and wilfully by the applicants and, therefore, they could not be held guilty under Section 220.

14. In *Gibson v. Barton*, (1874-75) L.R. 10 Q.B. 329, at page 339, Blackburn J. said that:

' If a man is allowed to manage the company, so that de facto he can get a meeting called when he likes, and he does not shew that he ever made the attempt to call a meeting, it is some evidence that he has knowingly and wilfully permitted default in calling the meeting, the meeting being necessary as a condition precedent before a list of members could be sent.'

15. Lush J. agreed with the opinion of Blackburn J. and pointed out that:

' If the accused had shown that he had summoned the directors and taken reasonable steps to enable them to hold the meeting, then he might not have become liable ; but there is nothing of that kind shown, and I think that the inference is a very reasonable one that the omission to hold the general meeting in the year 1873, which according to our view the company ought to have held, was an omission with its sanction. He is, therefore, guilty and liable to the penalty for having knowingly and wilfully committed that default. '

16. In *Reg. v. Senior*, [1899] 1 Q.B. 283 Lord Russell of Killowen C. J. said that the expression ' wilfully ' means that the act is done deliberately and intentionally ; not by accident or inadvertence, but so that the mind of the person who does the act goes with it. He further said that ' neglect is want of reasonable care, that is, the omission of such, steps as a reasonable person would take such as are usually taken in the ordinary experience of mankind.'

17. It is not disputed that the applicants were under an obligation to call a general meeting every calendar year, and also that they were under a statutory duty to lay the balance-sheet and the profit and loss account of the company before that meeting. The statute further provides that the company and its directors shall forward copies of the balance-sheet and the profit and loss account laid before the

general meeting to the Registrar of Joint Stock Companies within the stated time. Failure to do either has been made punishable and is treated as a continuing offence. It was said by the accused that they were unable to hold the annual general meeting as the books of the company had been filed in criminal courts in connection with certain cases. Even if that was so, it could not have prevented the applicants from inspecting the documents with the permission of the court concerned. There was no difficulty in preparing the balance-sheet and the profit and loss account after verifying the figures and getting it audited. I am not satisfied that the applicants took steps to get the balance-sheet and profit and loss account prepared as required by the Companies Act. The applicants being responsible officers of the company could not be heard to say that they were not aware of the duties imposed by law on them. The duties attaching to the office of director of a company required him to call an annual general meeting and to see that the requisite balance-sheet and profit and loss account are prepared and, after being laid before the general meeting, they are forwarded to the Registrar in accordance with law. The applicants were thus liable for not complying with the mandatory provisions of the Companies Act. The applicants were in my opinion officers who were in default.

18. The further question that requires to be considered in this connection is whether the court ought to excuse them for their default in exercise of its power under Section 633, The court has discretion to relieve an accused from, liability if it is satisfied that he has acted honestly and reasonably. I have already said enough to show that the failure of the accused to hold the general meeting and to file the balance-sheet and the profit and loss account with the Registrar within the prescribed time were acts done in violation of their statutory duties as director. They could not, therefore, be said to have acted honestly, that is, bona fide or reasonably, which is the same thing as acting with due care and diligence expected of a person holding a responsible office. In the circumstances there could be no question of the applicants being given the benefit of Section 633. So far as the revision application relating to the conviction of the applicants under Section 162 is concerned, it had been entertained on the question of sentence only by the learned sessions judge. Having regard to all the circumstances of the case he was of the opinion that there were extenuating circumstances in favour of

the applicants and he accordingly reduced their sentences of fine from Rs. 150 to Rs. 50 each. I see no reason to make any further reduction in the sentences of fine imposed on the applicants.

19. Before I part with this case, I would like to emphasise that under the Companies Act several duties have been imposed on the directors in order to safeguard public interest at various stages in the management of the company. If the directors were allowed to flout the obligatory provisions of the Act, it would set at naught the very object for which the law has been enacted.

20. In the result these revisions fail and are dismissed.

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