

Badrinaraln and anr. Vs. the State

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Court : Rajasthan

Decided On : Jul-27-1960

Reported in : AIR1961Raj48; [1962]32CompCas647(Raj); 1961CriLJ433

Judge : L.N. Chhangani, J.

Acts : [Companies Act, 1913](#) - Sections 86D and 237(6); [Companies Act, 1956](#) - Sections 295(3), 295(4) and 545(6); General Law; Indian Penal Code; Code of Criminal Procedure (CrPC) ; Company Law

Appeal No. : Criminal Revn. No. 243 of 1959

Appellant : Badrinaraln and anr.

Respondent : The State

Advocate for Def. : R.A. Gupta, Deputy Govt. Adv.

Advocate for Pet/Ap. : P.N. Dutta and; K.C. Ajmera, Adv.

Disposition : Revision allowed

Judgement :

ORDER

L.N. Chhangani, J.

1. This is a revision by Badrinarain and Nandlal against the appellate order of the Additional Sessions judge, Jaipur City dated 6-7-1959, dismissing the petitioners' appeal and maintaining their convictions under Section 86D of Indian [Companies Act, 1913](#) and sentence of Rs. 200/- fine on each.

2. The Registrar of companies, Rajasthan, Jaipur forwarded a complaint against the petitioners to the District Magistrate on 21-6-1957 which was ordered to be forwarded to the City Magistrate for disposal. The public prosecutor presented this complaint before the City Magistrate on 16-9-57. The allegations made in the complaint were as follows:

3. That the Vyapar Sangh Ltd., Chomu was incorporated and registered as a public limited company on 10-12-1946 under the provisions of the Jaipur Companies Act, 1942. The accused No. 1 Radri Narain was its director from the very inception of the company. The accused No. 2 was appointed as director of the Company on 1-11-1946.

4. That the Company advanced a loan of Rs. 1800/- to M/s. Badri Narain Hari Narain Chomu in the year 1955 in which the accused No. 1 was interested as a partner, in contravention of Section 86 D of Indian [Companies Act, 1913](#). The loan was granted on interest at the rate of 6 per cent. A part recovery was made and the balance of Rs. 550/- was stated to be due to the company.

5. As regards Nandlal it was stated that the company advanced a loan of Rs. 2,000/- in the year 1948 to M/s. Chandlal Fatehlal, Chomu in which accused No. 2 is interested as a member of Hindu undivided family in contravention of Section 86D Indian [Companies Act, 1913](#). The loan was granted at the rate of 6 per cent interest. There was a repayment for a part of the loan and Rs. 268/12/6 was stated due to the company. The two accused were charged with having wilfully contravened the provisions of Section 86D of the Indian [Companies Act, 1913](#) and it was prayed that they should be tried and convicted for these offences.

6. Both the accused admitted that Vyapar Sangh Ltd., was a public limited company with a share capital and both of them were its directors. They, however, denied the guilt. Badrinarian's case was that although he was a partner of M/s

Badri Narain Hari Narain he had no knowledge of the loan having been advanced to that firm and that he was not a party in contravention of Section 86D. Nandlal denied his connection with the firm M/s Chandahal Fatehlal.

7. After recording the evidence of the parties the trial Magistrate accepting the prosecution version and overruling the plea of the accused, convicted them under Section 86D and sentenced each one of them to pay a fine of Rs. 200/-. Their appeal in the court of the Additional Sessions Judge was unsuccessful. They have filed the present revision.

8. In the first instance, it was contended that as there has been no compliance with the provisions of Section 237(6) of the Indian [Companies Act, 1913](#) hereinafter referred to as old Act, or Section 545(6) of the [Companies Act, 1956](#) hereinafter referred as the new Act, the entire trial is vitiated and the convictions cannot be maintained.

9. Section 237(6) requires that when a matter is reported or referred to the registrar under this section, for the prosecution of delinquent directors and when he considers that the case is one in which the prosecution is to be instituted he shall place the papers before the Advocate General or the Public Prosecutor and if advised to do so institute proceedings. The proviso to Sub-section (6) further says that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon. These provisions of the old Act have been modified in the new Act; under which the Registrar is required to report the matter to the Central Government and the Government may then after taking such legal advice as it thinks fit direct the registrar to institute proceedings.

The proviso remains the same even under the new Act. The petitioners' grievance is that in the present case if the case is to be treated as governed by the old law there was no reference to the Advocate General or public prosecutor for obtaining the opinion and no notice was given to the accused of making his submission against the proposal of the registrar to launch prosecution. Alternatively if the case is to be governed by the new Act there was no report made to the Central Government and no direction was obtained from the Central Government for

launching the prosecution.

10. The Deputy Government Advocate's answer to this contention is that in the first instance the petitioners never raised this objection during the course of the trial and in the absence of any objection it was not possible for the complainant to lead evidence to show that there was in fact a reference to the Central Government and that notice was duly served on the petitioners and that there was a direction of the Central Government for prosecution of the petitioners,

11. Secondly it was argued that the provisions of Sections 237(6) and 455(6) are concerned with the administration of the company law and regulate the pre-trial action of the registrar or the liquidator. They cannot be treated to regulate the actions of the criminal courts either in the matter of taking cognizance or in the matter of the mode of trial. A non-compliance of these provisions, it was submitted by the Deputy Government Advocate, cannot vitiate the trial. In support of this contention the Deputy Government Advocate strongly relied upon an observation made in *Sailendra Nath v. State*, (S) AIR 1955 Cal 29. Chakravarti, C. J. observed as follows :

'The provisions of the Companies Act which deal with the subject of the liquidator taking criminal proceedings are concerned only with the powers of the Liquidator under the Act. They purport to control him alone but not also the Criminal Court. At least with regard to offences under the Penal Code and not special offences created by the Companies Act, the Criminal Courts are in no way limited to complaints by the liquidator and the fact that the Companies Act contains certain Specific provisions regarding the initiation of criminal proceedings by the liquidator for offences committed in relation to the Company does not mean or involve that the Criminal Courts cannot entertain a complaint with regard to the same offences by anyone else.'

12.-13. Stressing the latter part, it was argued that the observations made in this case should be limited to the prosecution for the offences under the Indian Penal Code and should not be extended to offences under the Indian Companies Act.

14. I am unable to accept this argument. To my mind these observations have been made not for the purpose of dividing the offences into two categories (a) those falling under the Indian Penal Code and (b) those falling under the Company Law and treating the former as outside the purview of Section 237(6) or Section 545(6) and the latter as subject to them. The observations seek to bring out that a view that Section 237(6) or 545(6) should be treated to regulate the functions of the criminal courts is quite inconsistent with the basic principles of criminal law and the inconsistency was prominently pointed out by reference to the offences under the Indian Penal Code,

15. A reference to the language of the relevant provisions also leads to the conclusion that it applies to all offences whether under the General Law or under the Company Act. On principles also, there is no adequate justification for making out a distinction between the two classes of offences. The Company Law does not prescribe any special procedure for the enquiry into and trial of offences under the Act and the Criminal Procedure Code must therefore, govern the enquiry said trial of these offences also. It is difficult to accept the view that while these provisions do not regulate the functions of the criminal Courts in connection with offences under the Penal Code, they must be regarded to so regulate in connection with offences under the Company Law.

16. The general principles, the scheme and the language of the relevant provisions unmistakably point out that they are intended to regulate the actions of the registrar or liquidator or other authorities under the Company Law in connection with the administration of the Company Law and cannot be taken to regulate the trials by criminal courts. It follows that the trials completed by the criminal courts cannot be allowed to be vitiated on account of the prior non-compliance by the authorities under the Company Act, of certain provisions made for their guidance in connection with the initiation of prosecutions and no judgment, order or sentence passed after trial should be reversed on account of error or irregularity committed in these pre-trial matters. It will be proper to treat them like irregularities committed in the course of investigation not affecting the validity of the trial. The objection on the ground of compliance with the relevant provisions of law is without force and must be rejected.

17. The learned counsel for the petitioners then referred to the repeal of the old Company Act and the re-enactment of the provisions of Section 86D in Section 295 in a highly modified form and submitted that the legislature must be deemed to have impliedly provided that the prosecution for violations of old provisions contained in Section 86D are not maintainable. The Deputy Government Advocate on the other hand urged that the liability of the petitioners for offences under the old law continues under Section 6 of the General Clauses Act and the provisions of the new Act do not provide any evidence of a contrary intention either expressly or by implication.

18. It will be useful to analyse the changes effected in law on this matter. Section 86D of the old law prohibited companies absolutely from making any loan or guaranteeing of any loan made to a director or firm of which the director is a partner or to a private company of which such director is a member or director. Sub-section (2) made all directors parties to the contravention punishable and also liable for the repayment of the loan or the discharge of the guarantee.

It may be pointed out the transactions of loans or guarantees did not become void and unenforceable. It appears that these provisions were considered very stringent and further they were found inadequate in some respects. The New Act liberalised the law and abolished the absolute prohibition and permitted companies to make loans or guarantees or provide securities in connection with any loan to directors and other specified persons with the previous approval of the Central Government. The provisions of the Act were made more adequate by the inclusion of additional categories of persons to whom loans cannot be made etc., with previous approval. The most important provision, is however, contained in Sub-section (3) which seeks to give retrospective effect to the provisions of the New Act. It reads as follows:

'Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act could not have been made, given or provided, without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not

exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary'.

19. Sub-section (4) makes contravention of Sub-section (3) punishable. Obviously Sub-section (3) provides for the regularisation of old loans and guarantees or securities by enabling the companies to obtain approval of the Government after the promulgation of the new Law within the time prescribed. It is contended on behalf of the petitioners that it is open to the companies to obtain approval of the Central Government for all old loans and guarantees after the promulgation of the New Act and thereby regularise them.

They thereafter cannot be the subject matter of offences under the old law. The legislature has thus impliedly provided that omissions under the old law should not remain punishable after the new Act. Mr. Gupta's answer to this contention is that Sub-section (3) is not intended to validate old transactions of loans and guarantees which were prohibited under the old law but provides for only those transactions which were valid under the old law but which have become invalid on account of the retrospective effect of the New Act. I do not feel inclined to accept this contention for the following reasons.

(i) The old transactions of loans and guarantees were not void and unenforceable under the old law and these loans and guarantees were in existence at the commencement of the New Act. Clearly on the plain language of Sub-section (3) of Section 295 there is nothing to prevent the companies from obtaining approval of the Government and regularising them. The language is not acceptable of the narrow interpretation suggested by the Deputy Government Advocate.

(ii) Secondly, when the restrictive provisions of Section 295 are given retrospective effect and the companies are required to obtain approval for transactions which were valid under the old law and which become irregular on the promulgation of the new law and further make omissions to obtain approval in some cases punishable there is hardly any justification for interpreting Sub-section (3) so as to

deny the retrospective effect of the liberal policy of the new Act.

20. I, therefore, hold that under Sub-section (3) of Section 295 the companies can obtain approval of the Government in respect of loans and guarantees made earlier and regularise them. If such loans and guarantees are capable of being regularised, as they are in my opinion it will not be difficult to infer that the New Act does not contemplate the maintainability of prosecutions under Section 86D and that it contemplates prosecutions only under Sub-section (4), on omission to obtain approval after the enforcement of the New Law within the prescribed time.

In this view of the law the petitioners cannot be prosecuted under Section 86D of the old Act. They are not being prosecuted under Section 295(4) nor can they be so prosecuted as I am told that the loans remaining outstanding against the firms M/s. Badri Narain Hari Narain and M/s. Chanda Lal Fatehlal have since been repaid. I accordingly accept the contention of the petitioners and hold that their prosecution under Section 86D was not justified and their convictions cannot be maintained.

21. A number of other points on the merits were also argued during the course of hearing but as the convictions are to be quashed on the non-maintainability of the prosecution it is unnecessary to take up and decide those points.

22. I accordingly accept the revision petition, set aside the conviction of the petitioners and acquit them. Fines if paid shall be refunded.