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State Vs. Tonk Calico Printers (Private) Ltd., Jaipur and ors.

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Court : Rajasthan

Decided On : Aug-27-1962

Reported in : AIR1963Raj138

Judge : J.S. Ranawat, C.J. and; P.N. Shinghal, J.

Acts : [Companies Act, 1956](#) - Sections 159(1) and 162

Appeal No. : Criminal Appeal No. 160 of 1960

Appellant : State

Respondent : Tonk Calico Printers (Private) Ltd., Jaipur and ors.

Advocate for Def. : Sagarmal and; N.M. Kasliwal, Adv.

Advocate for Pet/Ap. : Rajnarain, Asst. Govt. Adv.

Disposition : Appeal allowed

Judgement :

Ranawat, C.J.

1. This is an appeal by the State from the judgment of the City Magistrate, Jaipur, dated the 10th of December, 1959, acquitting the three accused, namely, the Tonk Calico Printers (Private) Ltd., Jaipur, and its two Directors Seth Mehtabchand Golchha and Harinarain Rathi of an offence under Section 159 read with Section

162 of the [Companies Act, 1956](#), (hereinafter in this judgment referred to as the Act), for not submitting, in spite of the Registrar's notice, a return containing the particulars specified in Part I of Schedule V of the Act, with reference to the day on which the annual general meeting was held.

2. The explanation of the accused persons was that the company was running in loss and that as no general meeting was held for that reason, the return containing the particulars required by Section 159(1) was not submitted to the Registrar.

3. The learned Magistrate held that Section 159 was controlled by Section 166(1) and that as no annual general meeting was held, no liability was incurred by the accused for default in submitting the return under Section 159(1) of the Act.

4. It is urged by the learned counsel for the State that the view of the trial Court is erroneous and he has cited a decision of the Supreme Court in *State of Bombay v. Bandhan Ram*, AIR 1961 SC 186. The counsel for the accused has no answer to that ruling.

5. We find that in *State v. Mewar Mineral Co. Ltd.* Cri. Appeal No. 296 of 1960, D/- 11-5-1962 (Raj), a similar question regarding the interpretation of Section 159 came up for consideration in this Court and it was held as follows:

'On a plain reading of Section 159 of the Act, it appears that the annual return referred to in it had to be filed (i) 'within 48 days from the day on which each of the annual general meetings referred to in Section 166 is held', and

(ii) the return had to contain 'the particulars specified in Part I of Schedule V as they stood on that day.' The starting point for calculating the time limit for the filing of the return could not therefore be ascertained in a case in which no annual general meeting had been held at all, and it was also not possible to prepare the return when the date with reference to which it had to be prepared was not known.'

6. It was further observed:

'It is true that the Directors of the company might themselves be to blame for not holding the annual general meeting, but we are unable to think that a distinct

offence could be said to have been committed in not preparing and filing the return when even the annual general meeting had not been held.'

7. A similar point arose in AIR 1961 SC 186 and their Lordships of the Supreme Court while approving the principle in *Park v. Lawton*, 1911-1 KB 588, held that 'A person charged with an offence could not rely on his own default as an answer to the charge.' They set aside the acquittal of the accused and directed them to be tried and dealt with for an offence under Section 32(5) even though they were liable for punishment under Section 76 of the Companies Act for not holding the annual general meeting. Even though the said decision of the Supreme Court relates to a case of contravention of the provisions of the Companies Act of 1913, it applies with full force to the present case, which is under the new Act, as the provisions of Section 159 of the new Act are almost similar to those of Section 32 of the old Act. We may point out that in the decision of this Court in *Saraswati Printers Ltd., Jaipur v. The State*, ILR (1960) 10 Raj 857, *Park's case*, 1911-1 KB 588 was followed and the same view as has been taken by the Supreme Court in *Bandhan Ram Bhadani's case*, AIR 1961 SC 186 was adopted.

8. It appears that the aforesaid decisions both of the Supreme Court and this Court were not brought to the notice of the Division Bench of this Court which decided *Mewar Mineral Co.'s case*, Cri. Appeal No. 296 of 1960, D/- 11-5-1962 referred to above. As it is, the decision in Cri. Appeal No. 296 of 1960, D/- 11-5-1962 stands overruled by *Bandhan Ram's case*, AIR 1961 S C 186. The accused cannot be allowed to take advantage of their own failure to hold an annual general meeting of the company as a pretext for not submitting the returns required to be submitted by Section 159 of the Act. The view of the trial Court is thus obviously incorrect and the order of acquittal deserves to be set aside.

9. The appeal is therefore allowed, and the order of acquittal in favour of the accused is set aside. Each one of them is convicted of an offence under Section 159(1) read with Section 162 of the Act, and sentenced to a fine of Rs. 50/-each. The District Magistrate concerned may be directed to execute the sentences passed by this Court as noted above.

