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

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Court : Rajasthan

Decided On : Aug-27-1962

Reported in : AIR1963Raj134

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

Acts : Companies Act, 1956 - Sections 220(3)

Appeal No. : Criminal Appeal No. 152 of 1960

Appellant : State

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

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

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 accused persons of an offence under Section 220 of the Companies Act, 1956 (hereinafter referred to as the Act).

2. Messrs. Tonk Calico Printers (Private) Limited was registered as a private company on the 29th of September, 1956 and the other two accused Mehtabchand Golchha and Harinarain Rathi were its Directors. The Company failed to file copies of its balance-sheet and profit and loss account with the Registrar of Companies. The plea of the accused was that as the business of the Company was not commenced and its capital was not raised, there was no necessity of submitting the documents. It was argued in the trial Court that as no annual general meeting was held, the question of filing the documents did not arise and the same argument has been advanced before us.

3. The trial Magistrate held that the provisions of Section 220 were controlled by Section 166 of the Act and that as no general meeting was held, the Company or its directors did not incur any liability for non-submission of the balance-sheet etc. to the Registrar. This is why he passed an order of acquittal as mentioned above.

4. On behalf of the State, it is urged that the view taken by the learned Magistrate is erroneous as the accused could not take advantage of their own failure to hold an annual general meeting of the Company and that they are liable for the default in submitting the copies of the balance-sheet and the profit and loss account The deci-SION in State of Bombay v. Bandhan Ram Bhadani, AIR 1961 SC 186 has been cited in support of this centention. Mr. Mehta for the accused has referred to a decision of the Bombay High Court in Emperor v. Pioneer Clay and Industrial Works Ltd., AIR 1948 Bom 357 which also came up for comments in the aforesaid decision of the Supreme Court.

5. Section 220 of the Act corresponds to Section 134 of the Companies Act of 1913. It imposesliability upon the Company and its officers to file with the Registrar three copies of the balance-sheet and the profit and loss account signed by the managing director, managing agent etc., together with three copies of all documents which are required by the Act to be annexed or attached to such balance sheet or profit and loss account. Thedefault in this behalf is punishable under Section 220(3).

In Registrar of Joint Stock Companies Jaipur v. Mewar Mineral Co., Private Ltd., Criminal Appeals Nos. 190, 191 and 296 of 1960, decided by a Division Bench of

this Court on the 11th of May, 1962 the accused admittedly did not prepare and file the returns with the Registrar under Section 159 of the Companies Act and they contended that there could be no question of preparing and sending the returns when no meetingof the Company was held and the contention of the accused was upheld and their acquittal was maintained. Although that decision pertains to an offence under Section 159, its ratio could be said to be applicable to the instant case. It, however, appears that the decision of the Supreme Court in AIR 1961 SC 186 was not brought to the notice of the Court. The principle laid down by Park v. Lawtoa, (1911) 1 KB 588 has been approved by the Supreme Court in Bandhan Ram Bhadani's case, AIR 1961 SC 186 and so the decision in Cri. Appeals Nos. 190, 191 and 296 of 1960, is no longer good law.

6. The learned counsel for the accused have placed reliance on a decision of the Bombay High Court in AIR 1948 Bom 357. In that case the Company was charged with an offence under Section 134(4) for default in complying with the requirements of Section 134 (1) of the Indian Companies Act 1913. The learned Chief Justice who delivered the judgment held that there was no obligated cast upon the Company to file copies of the balance sheet and the profit and loss account if no general meeting was called. He distinguished the decision in Park's case, (1911) 1 KB 588 by observing that the language of Section 134 was different from that of the corresponding provision of the Endish law.

The decision came up for comments by the Supreme Court in Bandhan Ram's case, AIR 1961 SC 186. Their Lordships did not express any opinion feeing different or otherwise from that of the English law and about the language of Section 134, observed that in case the principle in Park's case, (1911) 1 KB 588 could be distinguished on the basis of the language of Section 134, the decisionof Chagla, C. J. in the aforesaid case may be saved otherwise it could not be regarded as laying down the correct law. The question therefore ariseswhether the language of Section 220, which corresponds to Section 134 of the old Act, can helpthe contention of the accused persons. While dealing with the provisions of Section 159 of the Act their Lordships of the Supreme Court clearly observed that the accused persons cannot take advantage of their own default in holding an annual general meeting of the Company for not submitting documents required by

Section 159. We have therefore to compare the language of Section 159 with that of Section 220 in order to ascertain whether it is in any way different so as not to merit the application of the principle laid down in Park's case, (1911) 1 KB 588.

7. Section 159 of the Act lays down that every company having a share capital shall, within forty-two days from the day on which each of the annual meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day regarding the items mentioned therein. Section 220(1) of the Act is as follows,--

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

(a) three copies of the balance sheet and the profit and loss account, signed by the managing director, managing agent, secretaries and treasurers, manager or secretary of the company, or if there be none of these, by a director of the company together with three copies of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account.'

A comparison of the languages of the two sections would show that whereas in Section 159 a period is provided within which action has to be taken commencing from the date of the holding of the annual general meeting, the action contemplated by Section 220 has to be taken after the holding of the annual general meeting in which the balance sheet and the profit and loss account are placed before the company. The argument of the learned counsel for the accused is that when no general meeting was ever held, the occasion for submitting copies of the balance sheet and the profit and loss account did not arise, as the law requires that such copies should be submitted after the general meeting. The same argument could have been advanced in respect of the provisions of Section 159 of the Companies Act also, for the only difference in the language of the two sections in this behalf as noted above is about the performance of an act within a prescribed time from, or after the holding of the meeting,

But it has now been settled in Bandhan Ram's case, AIR 1961 SC 186 that the accused cannot plead his own default in holding the annual general meeting by way of defence for non-compliance with Section 219 of the Act. We are therefore of opinion that the principle laid down in Park's case, (1911) 1 KB 588 is equally applicable to a default under Section 220. We are not inclined to follow the decision in AIR 1948 Bom 357 and the accused are clearly guilty under Section 220(3) of the Act. We may point out that the decision of a Single Judge of this Court in Saraswati Printers Ltd., Jaipur v.The State, ILR (I960) 10 Raj 857 supports the (view which we have taken in this case.

8. No other point has been urged before us. The appeal is allowed and the order of acquittalpassed by the Magistrate is set aside and the threeaccused are convicted under Section 220(3) of theAct and sentenced to a fine of Rs. 50/- each.

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