

The Public Prosecutor Vs. the Coimbatore National Bank Ltd. Represented by Its Managing Director, B. Nanjunda Gounder

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Court : Chennai

Decided On : Nov-26-1941

Reported in : (1943)1MLJ119

Appellant : The Public Prosecutor

Respondent : The Coimbatore National Bank Ltd. Represented by Its Managing Director, B. Nanjunda Gounder

Judgement :

Horwill, J.

1. The Assistant Registrar of Joint Stock Companies, Coimbatore, preferred a complaint against the Coimbatore National Bank, Limited, of that town for not complying with a requirement of Section 87 (2) of the Indian Companies Act that particulars of any change in the directorships held by any of its directors should be reported to the Registrar within fourteen days of the change. The Sub-Divisional Magistrate of Coimbatore who tried the case, found that a director by name Ponniah Goundar had ceased to be the director of another company and that this fact had not been reported. He nevertheless acquitted the Bank, saying that he was unable to understand how a company is to know of such a change unless the director concerned intimates the change to the company. He held that as there

was no evidence to show that the company was aware of the change, the company was not guilty of the offence with which it was charged. The Crown has appealed.

2. I pointed out in *The Public Prosecutor v. B.V.A. Lury and Company* : AIR1942 Mad75 in connection with the interpretation of Section 32 (5) of the Act, that one cannot impute intention and knowledge to an entity such as a company, that it is only a human being who can be said to have knowledge and intention, and that on a grammatical construction of Section 32 (5) this knowledge, wilful intention has only to be proved where the charge is against an officer of the company, and that the company is liable for failing to comply with the requirements of the section even though none of its officers may be. Section 87 (4) says that if default is made in complying with Sub-section (1) or Sub-section (2) of this section (section 87), the company and* every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees. 'Who' can refer only to an officer of the company and not to the company; and as I pointed out in *The Public Prosecutor v. B.V.A. Lury and Company* : AIR1942 Mad75 'knowingly and wilfully' can only relate to a person and not to a company. So it is unnecessary for the prosecution to prove that anybody connected with the company had knowledge of the change. '

3. Mr. Somasundaram seeks to make a distinction between facts which are available from the records of the company and facts which are not. For example, where certain annual returns have to be submitted to the Registrar and there is some error in those returns, such an error may be and generally is clear from the records of the company. On the other hand, if we assume that Ponniah Goundar did not officially inform the accused company that he had resigned from one of his directorships, the 'company would not have been in a position to send the information to the Registrar. A clear distinction between the two sets of cases can no doubt be made; but Section 87 does not make that distinction. Sub-section (2) of Section 87 says:

The company shall within the periods respectively mentioned in this sub-section send to the Registrar a return in the prescribed form ...and a notification in the

prescribed form of any change among its directors, managers, or managing agents or in any of the particulars contained in the register.

In the following paragraph the periods are laid down, and it is stated that the period within which such notification of a change is to be sent shall be fourteen days from the happening thereof. It is argued from the wording of the first paragraph in Sub-section (2) that all that the company is expected to do is to notify a change in the register. The section however says that the company has to notify a change in any of the particulars contained in the register; and the particular in question is that of other directorships held by the directors. If Mr. Somasundaram's contention were correct, then there would be a premium upon negligence by companies. Even though a notice had been sent to the company of a change in directorships or in other particulars, the company would be free of any penalty as long as it did not make a change in the register; so that it would obviously be to the great advantage of the company if it did not take the trouble to keep its registers up to date. Where a statutory duty is cast upon a company to do something, it must take steps to see that it is aware of all the changes that it has to notify to the Registrar, and if it fails to do so, then the company becomes liable for the default. The scheme of penalties in the Act makes the company liable for every default without proof of negligence. If it were otherwise, the enforcement of the provisions of the Act would be impossible.

4. The acquittal is therefore set aside and the company convicted of the offence with which it was charged and sentenced to pay a fine of Rs. 25.

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