

(1965) 11 KL CK 0024

In the High Court Of Kerala

Case No : Criminal Revision Petition No's. 286 and 287 of 1964

Achutha Pai

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 16-11-1965

Acts Referred:

Companies Act, 1956 — Section 220, 220(3)

Citation : (1966) 36 CompCas 598 : (1966) CriLJ 478

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : T.M. Mahalinga Iyer and S.K. Brahmanandan, for the Appellant; V. Narayana Menon and P. Narayanankutty Menon, for the Respondent

Final Decision : Dismissed

Judgement

P. Govinda Menon, J.—These two revision petitions can be disposed of by a common judgment as the point involved is the same. The Registrar of Companies had filed two complaints. The first accused in each of these cases being the company --The Hindustan Corporation (P.) Ltd.--second accused the petitioner here, the governing director of the company and accused Nos. 3 and 4 being ordinary directors. The subject-matter of the charge in the case in Criminal Revision Petition No. 286 of 1964 was for failure to submit returns as required by Sections 159 and 161 of the Indian Companies Act (shortly stated the Act), offence punishable u/s 162 of the Act. In Criminal Revision Petition No. 287 of 1964, it was for failure to file the balance-sheet and profit and loss account as required by Section 220 of the Act, offence punishable u/s 220(3) of the Act. Learned District Magistrate on the evidence found all the accused guilty as charged. The company and the petitioner were each sentenced to pay a fine of Rs. 50 and accused Nos. 3 and 4 were sentenced each to pay Rs. 25. Out of the fine collected Rs. 10 each was awarded as costs from accused Nos. 1 and 2 and Rs. 5 each from accused Nos. 3 and 4. In appeal by the petitioner to the Sessions Judge of Ernakulam, the conviction and sentence were confirmed and

he has therefore come up in revision.

2. That the returns were not sent and the balance-sheet and profit and loss account was not filed is admitted. According to the petition he had resigned his director's place on 7th August, 1961, and was, thereafter not liable to send up the returns, the default of which has given rise to the prosecution. Accused Nos. 3 and 4 admitted that the returns were not sent, but they would say that the petitioner was in control and charge of the books and accounts and that he was the person who ought to have sent up the returns. Admittedly, returns became due after 7th August, 1961, the date on which the petitioner had sent up his letter of resignation and the only question for decision is whether by merely sending up the resignation letter the liability of the petitioner could be considered to have ceased. Reference was made to exhibit P-2, the articles of association of the company, and reliance was placed on Clause (f) of Article 21 which states that one of the ways in which the office of the director shall be vacated is by notice in writing. But here the position of the petitioner was not merely that of a director, but he was the governing director of the company. His position under the Act is that of the manager of the company because he was in management, control and supervision of the affairs of the company.

3. The definition of the term "manager" in the Act may be looked into. Section 2(24) says:

""Manager" means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not."

4. Section 2(26) defines who is a "managing director". It says :

""Managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called."

5. We have also to see the definition of "officer" u/s 2(30), which says :

" "Officer" includes any director, managing agent, secretaries and treasurers, manager or secretary, and also includes-

(a) where the managing agent, the secretaries and treasurers or the secretary is or are a firm, any partner in the firm ;

(b) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate ;

(c) where the secretary is a body corporate, any director, managing agent, secretaries and treasurers or manager of the body corporate ;

but, save in Sections 477, 478, 539, 543, 545, 621, 625 and 633 does not include an auditor."

6. Section 162 of the Act under which action is taken reads :

"(1) If a company fails to comply with any of the provisions contained in Section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(2) For the purposes of this section and Sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act."

7. The petitioner has, therefore, two capacities combined in him, one that of a director and the other that of a manager or an officer. His capacity as manager cannot be terminated by mere sending of two resignations but it must be duly accepted by the company and he should be relieved of his duties and responsibilities.

8. In this connection, I will refer to one or two documents produced in this case. In exhibit P-4, the returns sent by the company on 11th February, 1960, the petitioner has been shown as the governing director and he has signed the return as the governing director. Exhibit P-13 is another very important document. It is a letter written by the petitioner and it is stated therein that even though he had sent his resignation letter on 7th August, 1961, the other directors have not taken charge and relieved him and he has stated that the audited balance-sheet and the returns would be submitted to the Registrar as early as possible and requesting that no action may be taken. It is, therefore, practically admitted that the petitioner continues as the governing director and has not been relieved of that post.

9. The decision referred to by the learned counsel in P.R.M. Abdul Huq Vs. Katpadi Industries Ltd. and Another, cannot help the petitioner as it refers only to the resignation of an ordinary director.

10. The conviction of the accused in the two cases is, therefore, proper and no interference is called for. The revision petitions are dismissed.