

(1933) 06 CAL CK 0004
In the Calcutta High Court

Ajit Kumar Chatterjee

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 13-06-1933

Acts Referred:

Companies Act, 1956 — Section 134(4), 287
Criminal Procedure Code, 1898 (CrPC) — Section 386, 411

Citation : AIR 1934 Cal 63 : 147 Ind. Cas. 848

Hon'ble Judges : Costello, J

Bench : Division Bench

Judgement

Costello, J.—This appeal is, in my opinion, not properly constituted. It is somewhat difficult to understand how it came to be admitted in its present form. The memorandum of appeal reads thus: In the matter of Ajit Kumar Chatterjee, Managing Director, Eastern National Insurance Co, Ltd., appellant against The King Emperor ; and in the matter of convictions and sentence u/s 32(4) and Section 134(4) Companies Act (Act 7 of 1913); and in the matter of an appeal u/s 411, Criminal P. C. The convictions referred to were not of Ajit Kumar Chatterjee but of the Eastern National Insurance Co. Ltd. It is therefore obvious that the company should have been the appellant acting through a properly authorized agent. It is to be observed that in para. 6 of the memorandum of appeal it is stated: Being aggrieved by the said orders of the learned Chief Presidency Magistrate, your petitioner begs humbly to prefer this appeal in this Hon"ble Court, the petitioner,: as I have stated, being Ajit Kumar Chatterjee. However, putting; on one side this defect in the proceedings, one has to see whether there is any substance in this appeal. The Eastern National Insurance Company was convicted u/s 32(4) and Section 134(4), Companies Act, 1913, and u/s 134(4) was sentenced to pay a fine of Rs. 500. No. separate sentence had been passed u/s 32(4) of the Act. It is clearly admitted and could not have been denied that this company has failed to comply with any of the requirements of the Companies Act in regard to the preparation and filing of the list of the members of the company and a balance-sheet.

2. The complainant in the matter was the Registrar of Joint Stock Companies, Bengal. He instituted proceedings not only against the company but against its directors, B.C. Roy, S.N. Banerjee, P.K. Banerjee and Abdur Rahim. These individuals were acquitted by the learned Chief Presidency Magistrate of the charges made against them on the ground that it was not established that they knowingly and wilfully authorized or permitted the default on which the company was clearly guilty. The company, as I have stated, failed to cause the accounts of the company to be balanced and the balance-sheet to be prepared, as well as failed to make a list of the members of the company as required by Section 32 of the Act. It would seem that it would have been more appropriate that the company should have been convicted u/s 131 rather than u/s 134 as the latter section provides that after the balance sheet has been laid before the company at the general meeting, a copy of it shall be filed before the Registrar of the Joint Stock Companies. The conviction of the company u/s 134(4) however in effect makes very little practical difference as u/s 131 the company is liable, by reference to Section 32, to a fine not exceeding Rs. 50 for every day during which the default continues, and it is obvious that the default did continue for a period of at least ten days, so that the fine of Rs. 500 imposed by the learned Chief Presidency Magistrate was less than the fine which he might have imposed under the provisions of Section 131, the full penalty for not complying with the requirements of that section being Rs. 1,000. If it is necessary for the purpose of putting the record in a more satisfactory shape, I should be prepared to substitute in place of the conviction u/s 134 a conviction u/s 131. But I think in all the circumstances of this case the matter can reasonably remain where it is. Mr. Bireswar Chatterjee, who has appeared on behalf of the company in this appeal, sought to argue that the conviction was wrong in law because the company concerned was carrying on life insurance business and so is subject to the provisions of the Life Insurance Companies Act (Act 6 of 1912). He referred to Section 287, Companies Act of 1913, in the course of his argument. It seems to me that there is no substance whatever in this contention. The Life Insurance Companies Act was passed in 1912 and the Companies Act was passed in the year 1913. This particular company is registered under the Companies Act of 1913 and, therefore, is subject to all the provisions of the Act of 1913; and as it carries on life insurance business it is in addition subject to the further provisions contained in the Act of 1912. All the provisions of the Act, with which we are concerned, are of course designed for the protection of the investing public and of persons who take out policies in companies dealing with life insurance business. It is therefore necessary in the public interest that the provisions of these Acts should be strictly complied with. Any company registered under the Companies Act, 1913, takes upon itself all the obligations imposed by that Act, and there is no escape from those obligations. It is to be observed that the provisions of Section 32, Section 131 and of Section 134 are mandatory as regards the company, the words of the section being: the company shall make a list of its members, shall cause accounts to be balanced and a balance-sheet to be prepared and shall file a copy of that balance-sheet. There are no

qualifications to those provisions. Therefore, any company which makes default in compliance with them ipso facto renders itself liable to the penalties imposed by those sections.

3. The position of course is different as regards the officers of the company. I have already pointed out that so far as they are concerned, before a conviction can rightly be obtained, it is necessary for the complainant to show that the default on the part of the officers was authorized or permitted knowingly and wilfully. The observations I have just made dispose of the second point taken by Mr. Bireswar Chatterjee.

4. On behalf of the company there has been a reiteration of the defence set up before the Chief Presidency Magistrate by Ajit Kumar Chatterjee, the present managing director who was representing the company. The plea was that the accounts had been called for by various criminal Courts and, therefore, the company was unable to comply with the requirements of the Act. I desire once more to emphasise that no such excuse is or can be of the slightest avail. The company must comply with the very salutary provisions of the Companies Act or become liable to the penalties provided. It follows from what I have said that the conviction of the company by the learned Chief Presidency Magistrate was right. This appeal must be dismissed. With regard to the application made by Ajit Kumar Chatterjee in connexion with this appeal, the matter can be disposed of by my expressing the opinion, that the right procedure is that the fine imposed upon the company should be realized by the methods laid down in Section 386, Criminal P.C.