
(1964) 08 MAD CK 0049

In the Madras High Court

Case No : Criminal Revision Case No. 1652 of 1963 and Criminal Revision
Petition No. 1602 of 1963

A.R. Hussain Khan

APPELLANT

Vs

Register of Companies, Madras

RESPONDENT

Date of Decision : 07-08-1964

Acts Referred:

Companies Act, 1956 — Section 269, 628, 69

Citation : AIR 1965 Mad 307 : (1965) CriLJ 104 : (1964) 77 LW 751

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—This petition is filed against the conviction and sentence imposed on the petitioner by the IVth Presidency Magistrate, G. Y. Madras. The lower court found that the petitioner submitted certain records to the Registrar of Companies with some particulars knowing them to be false and sentenced him to imprisonment till the rising of the court and a fine of Rs. 50 a on each of the counts. The facts of the case relevant for the disposal of this petition may be stated as follows: the petitioner was appointed as Managing Director by a special resolution of the company on 10-6-1956. He made an application to the Government of India for approval of his appointment as managing director under S. 269 of the Companies Act, in form No. 25. The Government of India called on the petitioner to produce the audited accounts of the company. But the petitioner declined to produce them as according to him, the documents called for need not be produced under S. 269. There was protracted correspondent between 1957 and 1961 and no decision of the Government of India was communicated to the petitioner. During the pendency of this matter the petitioner submitted three returns Ex. P. 32 dated 31-12-1957, the balance sheet annual return of the company and, Ex. P. 33 dated 24-7-1959, the annual return if the company and Ex. P. 34 dated 24-11-1956, the return of allotment of shares of the company. In all these documents, Exs. P. 32, P. 33 and P. 34, the petitioner signed his name as the managing director of the company. The petitioner was again re-elected for

five years as managing director on 10-6-1961. The petitioner applied for approval under S. 269 of the amended act and his appointment was approved by the Government in December 1962. It is the contention of the prosecution that the petitioner is guilty under S. 628 of the Companies Act in that he made statements in Ex. P. 32 to 34 that he was the managing director knowing them to be false.

2. S. 269 was amended in the year 1960. As the petitioner was appointed as the Managing Director 1956 we are concerned with S. 69 as it stood before the amendment in 1960. Section 269 before amendment reads thus:

Appointment of managing or whole-time director to require Government approval: In the case of a public company or a private company which is a subsidiary of a public company, the appointment of a managing or whole time director for the first time after the commencement of this Act in the case of an existing company, and after the expiry of three months for the date of its incorporation the case of any other company, shall not have any effect unless approved by the Central Government: and shall become void, if, and in so far as it is disapproved by that Government.

3. The appointment of the petitioner as Managing Director was in 10-6-1956 after the commencement of the Act. It was contended by Mr. Ramalingam, learned counsel for the petitioner that S. 269 was intended to cover only appointment of a managing director for the first time after the commencement of the Act when the company had a managing director before the commencement of the Act. In other words, the submission of the learned counsel is that he approval of the Government of India was necessary only in a case when the office of the Managing director was created for the first time after the commencement of the Act and not to appointment of a particular persons as a managing director. To support this argument, he relied on S. 269 as amended. Instead of the words "the appointment of a managing or whole-time director for the first time after the commencement of this Act", the words "the appointment of a person for the first time as managing or whole-time director" were introduced by the new Act". Under the new section therefore the appointment of a person for approval of the Central Government whereas the appointment of a managing director for the first time after the commencement of the Act alone needed approval of the Government. The ambiguity that is found in the old Section 269 is removed so as to include the appointment of any person as managing director after the commencement of the Act, But section 269 as it stood before the amendment is capable in that what was required was approval in the case of an appointment of a person as managing director for the first time after the commencement of the Act. The learned public prosecutor referred to form No. 25 Rule 3(1) where particulars about existing managing director, managing agent. Secretaries and treasurers were given. The Form is one prescribed for an application under S. 269 and the reference to the existing managing director supports the contention of the learned Public Prosecutor that S.

269 was sentenced to attract cases of appointment of a persons after the commencement of the Act, But this intention has not been made clear in S. 269 before the amendment of 1960. In the absence of such clear intention it cannot be held that S. 269 is applicable to person appointed as managing director after the commencement of the Act as distinguished from the appointment of managing directors after the commencements of the Act. I therefore agree with the contention of the learned counsel for the petitioner and held that he petitioner was not bound to apply to the Central Government under S. 269 for approval. If the appointment of the petitioner was not subject to approval by the Central Government, the information furnished by him in Exs. P. 32 to P. 34 cannot be said to be false. There can therefore be no contravention of S. 628 of the Companies Act.

4. The petition is allowed and the conviction and sentence of the petitioner and set aside. Fine, if recovered, will be refunded to him.

5. Petition allowed.