
(1935) 06 CAL CK 0015
In the Calcutta High Court

Baidya Nath Biswas

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 07-06-1935

Acts Referred:

Companies Act, 1956 — Section 282

Citation : AIR 1935 Cal 741 : 159 Ind. Cas. 523

Hon'ble Judges : Jack, J

Bench : Division Bench

Judgement

Jack, J.—Appeal No. 891. In this case, the appellant Baidyanath Biswas, Managing Director of the Federal Insurance Co. Ltd., was charged u/s 282, Indian Companies Act, with having prepared a false balance-sheet. The section reads as follows:

Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable under this section.

2. The prosecution case is that certain items on the expenditure side of the balance-sheet were false, The establishment charge actually shown in the balance-sheet was Rs. 120, whereas the actual establishment charge during the year was Rs. 1,020, the balance of Rs 900 being credited to organisation expenses which amounted to Rs. 2,257. Certain other correct items of expenditure were also credited to organisation expenses. The result of this was that the company were able to show in the revenue account a balance to their credit of Rs. 227-10-5 which was shown as "life fund" at the end of the period ending 31st December 1932. Had these ordinary current charges been shown in the revenue accounts as expenditure in fact the revenue accounts would have shown a loss of over Rs. 1,400.

3. For the appellant it has been maintained that these being initial heavy

expenditure charges, the appellant was entitled to show them in his accounts in the way in which he has done. But the prosecution evidence is to the effect (and this is supported by authority) that the initial expenditure which can be shown as organisation expenses is limited to the expenditure incurred before the Company began to earn revenue. Unless the expenditure is shown in the profit and loss account, the purpose, for which under the Indian Companies Act a balance-sheet has to be returned, would be defeated inasmuch as the public might be deceived, because there would be no check on the amount of expenditure which might be shown as organisation expenses. For instance, in this case, a great deal more current expenditure might have been shown as organisation charges, thus increasing the favourable balance of the revenue account. The fact that the auditor has given a certificate to the effect that this account is drawn up in conformity with the provisions of the Provident Insurance Societies Act, is not of much value when the auditor himself admits that the account is not correct. He excuses himself in these terms:

Had the liabilities of the company been all properly disclosed to me, this life fund would have been washed out. There would have been a debit balance on the other side. I was shown entries in the books and on the basis thereof I certified the balance-sheets. All the facts had not been disclosed to me. If they had been I would not have certified them.

4. It appears that the first premium was received on 4th November 1931, and the prosecution case is that the current wages which were incurred after that date should not have been debited to the organisation expenses. At all events it appears to me that if current expenditure on wages was debited to organisation expenses, this ought to have appeared in the revenue account. It is not alleged that the appellant misappropriated any funds, that all the items of his expenditure were not shown in some form in his account, but there is no doubt that the balance-sheet of the revenue account has not been correctly shown and there was therefore a technical offence under the Act inasmuch as in the balance-sheet there is a wilful false statement as regards expenditure. It is not necessary that the statement should be such as to deceive any one or that it should even be dishonestly made.

5. Considering all the circumstances of the present case and the fact that the accused has already been for a period of some months in jail, we think that the remainder of the sentence should be set aside, as also the sentence of fine; and we order accordingly that the sentence be reduced to the period already served and the order for payment of fine be set aside and the appellant be released forthwith.

Sentence reduced.

Judgment.

6. (Appeal No. 894 of 1934). There was another case against the same appellant in which he has also been charged u/s 282, Indian Companies Act, in respect of a

return as regards the date of allotment of certain shares. The first item is as regards 40 shares which are said to have been allotted on 1st April 1933, but the return showed that the allotment was made on the 5th April. On referring to the papers of the company, it appears that in fact this allotment was only confirmed by the directors on 19th April 1933, and therefore the return on the 4th May was within time. It cannot be said that the accused committed an offence, because by mistake he stated the allotment to have been made on the 5th April instead of on the 19th April.

7. The other item of the charge concerns the allotment of 200 shares; admittedly there was some dispute as to the payment of the initial instalment due on this allotment and on this account there had to be a subsequent allotment of these shares. Accordingly the charge as regards this item is not pressed. This appeal is, accordingly, allowed. The convictions and sentences are set aside and the appellant will be released forthwith. The fine, if paid, will be refunded. The accused, who is on bail, will be discharged from his bail bond.