
(1953) 08 AP CK 0013
In the Andhra Pradesh High Court

Bankat Lal Badruka and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-08-1953

Acts Referred:

COMPANIES ACT, 1956 — Section 131, 134, 32, 76, 77

Citation : (1954) CriLJ 437

Hon'ble Judges : Siadat Ali Khan, J;Palnitkar, J

Bench : Division Bench

Judgement

1. These are six appeals Nos. 433 to 438, Register No. 6 of 1950. The second Magistrate (City Criminal Court), by judgment dated 22nd Bahman 1359 P. convicted the appellants under Sections 48 and 74 of the Hyderabad Companies Act. An appeal was lodged before a single Bench of this Court and it has by judgment dated 5-4-1950, referred the case to this Bench. We have heard the arguments of the learned Advocates of the parties and we record with pleasure that Shri Hari Pershad of the Department also assisted us with remarkably clear statements and adduction of relevant papers.

2. The complaint was filed on 16th Dai, 1358 F. against the Deccan Porcelain and Enamel Works Ltd., and its four Directors who are the appellants here by the Deputy Registrar of the Hyderabad joint stock Companies. The evidence also consists largely of the deposition of the Deputy Registrar and a few letters. The gist of the complaint as evidenced by the deposition and the letters is that the offending company and its directors did not send the balance sheet of 1945 A. D. and sent the balance sheets of 1946 and 1947 A. D. late; that similarly they did not send in time the list of the shareholders and, therefore, they offended against the provisions of Sections 74 and 48, respectively, of the Hyderabad Companies Act corresponding respectively to Sections 76, 131, 134 and 32, Indian Companies Act. We will take both these complaints seriatim.

3. As already stated, the first complaint is that the balance-sheet for 1945 A. D. was not prepared and was not sent to the Registrar of the joint Stock

Companies. The Magistrate did not give any finding on this count but held generally the complaint is proved. We probed into the matter and as the learned Advocate for the complainant laid stress on the balance-sheet of 1945 only, we examined the papers. It appeared that the Managing Agents in their letter No. 3677/48 dated 14-12-1948, had replied to the Registrar, Joint Stock Companies that the balance-sheets of 1945 (as also of 1946 and 1947) were sent in time, but that as it appears that he had not received them, copies were being enclosed with the reply.

The papers and the file of the complainant's office show that the balance sheet of 1945 was prepared in time and the Directors sent it in July, 1946. The auditor's signatures followed on 30th July, 1946. It was admitted that the Directors also held the annual meeting for the year 1945, in good time as provided in the Companies Act, and that the General Body passed the same. It is, therefore, evident, that the Annual General Meeting for 1945 was held in consonance with the provisions of the Companies Act after the preparation of the balance-sheet and that the Directors had complied with all the requirements in this regard, i.e., they prepared balance-sheet, got it audited, and called a general meeting which passed it. We are, therefore, not inclined to hold the appellants liable. Their conviction and fine, in this respect, is, therefore, set aside.

4. There remains now the complaint that the list of share-holders as on 29-8-1946, was not sent till the complaint was filed on 16th Dai 1358 P., i.e., 16-11-1948 A. D. It was argued by the learned Advocate for the complainant that this list should have been sent on or before 5-9-1946, as required by Section 48, Hyderabad Companies Act. We again examined the papers including those in the file of the complainant's office which the learned inspector, Hari Pershad, of the Joint Stock Companies had with him and produced for our perusal. It was clear from them that the said list of the shareholders was in fact prepared on 29-8-1946. Hence, it cannot be said that the list was not prepared but, as far as the question of forwarding it in time is concerned, there does not appear to be enough material on record to draw any conclusion in favour of the appellants. The burden of proof that the list was forwarded to the Registrar in time was on the company and as it was not discharged, the company in our opinion, is responsible. We, therefore, maintain the fine of Rs. 200 imposed on the company u/s 50, Hyderabad Companies Act.

5. The question is: whether the Directors who are appellants here should also be held liable for the same. Their liability depends under the express words of Section 48 on their knowingly and willfully withholding the list. There is no proof whatsoever of their knowledge or intention to withhold the same. No doubt, u/s 32, Indian Companies Act the Directors as well as every officer of the company is made responsible for forwarding the list in time, but, the liability of the Directors depends, as already stated, on their knowledge and wilful action. The relevant clause of Section 48 runs as follows:

If a company makes default in complying with the requirements of this section, it

shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

On this clause, it has been held in - The Public Prosecutor Vs. B.V.A. Lury Company and Another, that while a company is always liable where the list is not sent as is required by this section, the officers of the company are liable only if they knowingly and wilfully authorise or permit the default. And it has been held in - V.K. Lakshmana Mudaliar and Another Vs. Emperor, , - Ballav Dass Vs. Mohan Lal Sadhu, and - "Sundar Das v. Emperor" AIR 1929 Lah 838 (D) that:

In order that the conviction under this Section or Section 77(10) or Section 134(4) (where the same words "knowingly and wilfully" are used) of an officer may be sustained, the only thing the prosecution has to prove is that the "particular" officer knowingly and wilfully authorised or permitted the default.

The learned Advocate for the complainant argued that this is to be inferred from their not sending it in time, as intention can only be gathered from an act or omission. As already stated, an examination of the papers placed before us by the learned Inspector, Hari Pershad, show that the list was actually prepared in time and the question, therefore, relates only to its not forwarding in time. The learned Advocate for the complainant-respondent argued that more than, one letter was written by the Registrar, Joint Stock Companies, to remind them of their duty under the Section but even then the list was not forwarded. It appears from the record, however, that the letters were addressed to the Managing Director. We are of the opinion that as the list was prepared in time and as the prosecution has failed to establish that the particular directors, excepting Managing Director, who are appellants here knowingly and wilfully authorised or permitted the non-forwarding of them, they cannot be held responsible. Hence, with the exception of the appellant, D. D. Italia, the Managing Director, there being no proof of the default being committed knowingly and wilfully by the other Directors-appellants, their conviction and fine is set aside. As repeated reminders were addressed to D. D. Italia, he cannot be treated in the same way and it can be presumed " that the default was committed by him knowingly, and wilfully, and thus the fine imposed on him is maintained.

In the result, the conviction and fines of the appellants, excepting u/s 74 (Sic 48/50 ?) are set aside; the conviction and fines of the company and that of the Managing Agent, D. D. Italia, u/s 48 are maintained, but that of the other Director is set aside and their appeal allowed. In conclusion, the appeals of the appellants Bankatlal Badruka, Sohrabji Nakra, Navsher S. Chenoy are allowed and the appeal of Dinshaw D. Italia is dismissed. Out of the two appeals filed by the Company, the appeal u/s 74 is allowed and! the appeal u/s 48/50 is dismissed.