(1981) 04 GUJ CK 0037

In the Gujarat High Court

Case No : Company Applications No''s. 16 to 19 of 1980 in Criminal Revision Application No. 773 of 1978

B.N. Chikarmane APPELLANT

Vs

Swashraya Benefit Pvt. Ltd. (In Liquidation) and Others RESPONDENT

Date of Decision : 24-04-1981

Acts Referred:
Companies Act, 1956 — Section 446
Reserve Bank of India Act, 1934 — Section 58B, 58B(5), 58C, 58C(1)

Citation : (1982) GLH 517 : (1982) 1 GLR 111

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Judgement

B.K. Mehta, J.—By these Company Applications, the petitioner, who is the Deputy Chief Officer, Dept. of Non-Banking Companies of the Reserve Bank of India, has taken out Judge''s Summons for obtaining leave under s. 446 of the Companies Act, 1956, for launching prosecutions against respondents Nos. 1 to 3 in all these applications for the alleged violation of clause 4 of the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973, and thereby having committed an offence under s. 58B(1) read with s. 58C(1) of the Reserve Bank of India Act, 1934.

2. A question arose whether such a permission is necessary in view of the decision of this court (Coram : B. K. Mehta J.) in company Application No. 207 of 1980 - M. B. Parikh v. Manekchowk & Ahmedabad Mfg. Co., Ltd. (In liquidation) [1983] 53 CompCas 515 SC (supra), where in the context of criminal prosecution under the Provident Funds Act read with the Provident Funds Scheme, the erstwhile directors and other officers of the Manekchowk & Ahmedabad Mfg. Co. (in liquidation) were prosecuted. In that context, following the decisions of the Supreme Court in Jaswantrai Manilal Akhaney Vs. The State of Bombay, and Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another, , it was held that no such permission was necessary since, admittedly, the company was not joined as a party accused.

3. So far as the present case is concerned, the company is sought to be prosecuted for the alleged violation of the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973, under s. 58C(1) of the Reserve Bank of India Act, 1934. Section 58B provides for penalties. Section 58B(5), inter alia, provides that if any person receives any deposit in contravention of any direction given or order made under Ch. III-B, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. Section 58C provides for a deeming fiction when an offence is said to have been committed by a company and its directors. Sub-section (1) of s. 58C reads as under :

"58C(1) Where a person committing a contravention or default referred to in section 58B is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default."

4. On a plain reading of s. 58C(1), therefore, if any director or officer of such company committing the offence under s. 58B(5) is to be prosecuted, the condition precedent which is required to be satisfied is that the alleged contravention or default was by the company of which such persons were directors or officers. Unless, therefore, the company has violated the restrictions, neither the officers nor the directors in charge of the management of the company nor the company can be held guilty by operation of the deeming fiction (vide : State of Madras Vs. C.V. Parekh and Another, and State of Gujarat v. Rajnikant M. Thakkar, Criminal Appeal No. 323 of 1976 decided by D. P. Desai & N. H. Bhatt JJ (per Bhatt J.) on September 6, 1976). The decision of this court, therefore, in Company Application No. 207 of 1980 dated October 8, 1980 - M. B. Parikh v. Manekchowk & Ahmedabad Mfg. Co. Ltd. (In liquidation) [1983] 53 Comp Cas 515(Guj) (supra) (per B. K. Mehta J.) cannot be pressed into service on the facts and in the circumstances of the present case.

5. A further question arose whether the company could be prosecuted under s. 58C(1) since the corporal punishment of imprisonment relevant for the time being and, therefore, I need not go into the same. However, the learned advocate, appearing on behalf of the petitioner, had invited my attention to the Full Bench decision of the Delhi High Court in Municipal Corporation of Delhi Vs. J.B. Bottling Company Private Limited, , where the full Bench has in the context of the relevant provisions contained in s. 17 of the provisions of the Food Adulterantion Act, 1954, which is in pari materia to the one contained in s. 58C(1) of the Reserve Bank of India Act, 1934, ruled that on the recognised principles of interpretation of statutes, even if the corporal punishment of

imprisonment is a mandatory part of the sentence, the court can, in order to effectively carry out the statutory sentence, impose the sentence of fine only in cases where the offence is committed by the company. However, as stated above, the larger question is not relevant for the present purpose.

6. In that view of the matter, having regard to what is stated in the affidavit in support of the summons, the contents of which are not controverted by any of the respondents, I am of the opinion that leave under s. 446 of the Companies Act, 1956, should be granted to the petitioner to continue the prosecution as launched by the petitioner, against the directors and the company.

7. Summons is, accordingly, disposed of.