
(1914) 06 CAL CK 0042
In the Calcutta High Court

Deputy Legal Remembrancer

APPELLANT

Vs

Sital Chandra Pal

RESPONDENT

Date of Decision : 04-06-1914

Acts Referred:

Provident Insurance Societies Act, 1912 — Section 21

Citation : AIR 1915 Cal 115 : (1915) ILR (Cal) 300

Hon'ble Judges : Holmwood, J;Chapman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Holmwood and Chapman, JJ.—This is an appeal preferred by the Government against an order passed by the Chief Presidency Magistrate, Calcutta, on the 20th September 1913, acquitting the respondents Sital Chandra Pal, Surendra Nath Chowdhry, B. P. Ghose and Purna Chandra Ghose of an offence punishable u/s 21 of the Provident Insurance Societies I. L. R (1913) . Cal. 570 578. Act (V of 1912). That section provides that any provident insurance society which makes default in complying with any of the requirements of this Act, and every director, manager or secretary or other officer or agent of the society who is knowingly a party to the default, shall he punished with fine which may extend to five hundred rupees, etc.

2. The learned Presidency Magistrate on an apparent misreading of the judgment of Mr, Justice Fletcher in the case of Oriental Government Security Life Assurance Co., Ltd. v. Oriental Assurance Co. Ltd. I. L. R (1913) Cal. 570 thought that the company in question called the "New King Insurance Company, Limited" was not amenable to Act V of 1912, inasmuch as it was a company which had share capital divided into shares. But this is obviously untenable upon the construction of the plain wording of the Act in Section 2, Sub-clause (8) where it is stated that a provident insurance society means any person or body of persons, whether corporate or unincorporate, which receives premiums or contributions for insuring money etc. That clearly lays down that whether the society already in

existence is a corporate company before, or whether its share capital is divided into shares or not, registration under the Provident Insurance Societies Act is necessary before business can be carried on under the conditions laid down in that Act. There is nothing in Mr. Justice Fletcher's judgment to the contrary. It appears that the legal advisers of the company were misled, first, by a remark which Fletcher J. made in the course of the argument; and, secondly, by a passage in his judgment at page 578. The remark was that the defendant company cannot be a provident insurance society as a provident society is not incorporated (1) I. L. R (1913) . Cal. 570. under the Companies Act but registered, or inscribed under the Provident Insurance Societies Act. That is against the view taken by the Chief Presidency Magistrate, for what Fletcher J. says is that a company incorporated under the Companies Act cannot be a provident insurance society by reason of its registration under the Companies Act, not that any society may not be both a company and a provident insurance society; and again in the passage in his judgment at page 578 what he says is that the company he was dealing with considered that, by issuing policies not exceeding 500 Rupees, they can bring themselves under the heading of a provident insurance company, and were entitled to carry on business untrammelled by the provisions of the law. This is not so, because under the Provident Insurance Societies Act registration has to be made subject to certain conditions which are set out in the Act and which have to be approved of by the Registrar, and these provisions do not apply to a company which, has a share capital divided into shares. In saying this he does not say that a company which wishes to carry on the business of a provident insurance company need not be registered under the Act, but he says that the conditions which are set out in the Act obviously do not apply to a company which has already complied with these conditions in its published prospectus under another Act, and what he is referring to is the form of the policy and he holds that, so far from having complied with the law. they have simply tried to avoid the provisions of another Act, namely, the Indian Life Insurance Act of 1912, which were intended to prevent a company from embarking in the business of life insurance unless and until they had the amount of cash that was necessary for them to deposit with the Governor. General in Council in order to meet their obligations. So in this case the Act V of 1912 which is before us was intended to prevent the company from embarking in the business of life insurance unless and until it had been registered under the Act. There seems to have been a misunderstanding, and the learned Standing Counsel, who appears for the Government, does not press for anything more than a nominal penalty, But a mistake of law cannot take the defendants out of the word "knowingly" in the section.

3. The order of acquittal must, therefore, be set aside, and in lieu thereof the respondents Nos. 1 to 3 will each be fined five Rupees. The respondent No. 4, Puma Chandra Ghose, against whom proceedings do not seem to have been pressed in the Court below, will be exempted from this order.

4. We understand that the society has already applied for registration but that

the Government has not yet made rules necessary to carry out the purposes of the Act, and, in the circumstances, we are of opinion that this conviction should make no difference whatever to the result of any such application.