
(1978) 06 KL CK 0014

In the High Court Of Kerala

Case No : Company Application No. 767 of 1976

FR. Augustine Kandathil

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 26-06-1978

Acts Referred:

Companies Act, 1956 — Section 614A(1), 614A(2), 633(1), 633(2)

Citation : (1978) 48 CompCas 742 : (1978) 2 ILR (Ker) 664

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : K.N. Parameswaram Pillai, for the Appellant;

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—This application is filed for relief u/s 633(2) of the Companies Act. The applicant was a director in Chundakkal Plantations (Private) Ltd., a company registered under the Companies Act. He became a director in 1971. For failure to file the annual return for the year 1974, the Registrar of Companies filed a complaint against him and four others as C.C. No. 249 of 1975 before the Chief Judicial Magistrate, Krnakulam. He pleaded guilty and the court pronounced judgment in the case on June 29, 1976, convicting and sentencing him to pay a fine and also directing him to file with the Registrar the annual return within a period of two months thereof. Since he failed to file the return, the Registrar by his letter dated October 6, 1976, marked exhibit A, reminded him of the court's order to file the return within two months and intimated him that the Registrar will be constrained to invoke the penal provisions u/s 614A(2) of the Act, On receiving that letter the applicant has come forward with this application for an order to relieve him from the liability to file the documents called for in the said letter, and from being proceeded against by the Registrar u/s 614A. According to the applicant he became a director under peculiar circumstances. The company had agreed to sell over 100 acres of the company's estate at Kazhani in Palghat and received Rs. 25,000 from him. There were also

further advances to the managing director, but the proposed sale did not take place and instead he was allotted 42 shares and made a director of the company in 1971. One M. G. Menon and his mother, Janaki Amma, were directors for life under the articles of association of the company and Mr. M. G. Menon is the managing director of it for life. He further contended that he was not in possession of any records of the company and no meeting of the board of directors or the general body have since been held or conducted after he became a director. Even before he received the Registrar's letter he had written to the Registrar that the managing director of the company was reported to have expired some time in July, 1976, that the estate of the company was in the possession of the receiver appointed by the Sub-Court of Palghat in O. S. No. 93 of 1973 and since Mr. M. G. Menon was in possession of the books of the company, he had no access to the books and papers and even their whereabouts. He had also resigned his directorship on March 19, 1976. In these circumstances, the applicant is not in a position to file the return and the default on his part has occurred in circumstances beyond his control. He further submitted that he has acted honestly and reasonably all along and that having regard to all the circumstances connected with his appointment the High Court may be pleased to relieve him from the liability in respect of the proposed action of the respondent referred to earlier.

2. In answer to this the Registrar has filed a counter-affidavit. He contended that after the petitioner was made a director, the company had held its 10th annual general meeting on September 27, 1971, at which the balance-sheet and profit and loss account as at March 31, 1971, was placed and adopted. The company filed the said balance-sheet and profit and loss account with the Registrar and one of the signatories to the said document was shown as the applicant. Therefore, it is not correct to say that there was no general body meeting after the applicant was appointed a director. The Registrar further submitted that he is not aware of the suit and the appointment of the receiver to the estate and also regarding the statement that the applicant has resigned from the directorship with effect from March 19, 1976. No intimation as required in Form No. 32 as per the provisions of Section 303(2) of the Companies Act has been filed before the Registrar regarding the cessation of the directorship of the applicant. Further, the applicant did not take up the plea before the Magistrate that he had no access to the books and papers of the company nor did he take the plea that he resigned the directorship on March 19, 1976, and that he will not be able to comply with the direction if passed u/s 614A(1) of the Companies Act. On the other hand, he pleaded guilty to the charge and did not choose to take any steps to challenge the order of the learned Magistrate relating to the direction u/s 614A(1) of the Companies Act. In the light of the applicant's contention that he is not an officer of the company he is not competent to file an application u/s 633(2) of the Act. And, lastly, it was contended that the application u/s 633(2) is not maintainable as the failure to comply with the direction of the Magistrate's court cannot be taken as a default, breach of duty, misfeasance or breach of trust within the

meaning of these expressions used in Section 633(2) of the Act and there is no case made out to show that the petitioner acted reasonably and honestly.

3. The petitioner has filed a rejoinder wherein he repeated his earlier stand that he had resigned his directorship from March 19, 1976, and he had hoped that the managing director and other directors who are also co-accused and were in possession of the entire records of the company will file the overdue returns. He did not intimate the fact of his resignation to the Magistrate's court only because that was not relevant in that case inasmuch as it relates to a period before his resignation. He further maintained that the only forum where he can get relief is an application u/s 633(2) in the nature of the threat held out by the respondent.

4. In an application u/s 633(2), the High Court has got the same power to relieve the applicant as it would have had if it had been a court before which a proceeding against the officer for negligence, breach of duty, misfeasance or breach of trust has been brought under Sub-section (1) of Section 633. The default referred to in Sub-section (1) refers to the various defaults like failure to file annual return, failure to hold statutory meeting and subsequent statutory reports, failure to hold annual general meeting, failure to register certain resolutions and agreements and the like duties imposed on the company under the various provisions of the Companies Act. If a proceeding is taken against an officer for such default the court before which the proceeding is taken, if satisfied that the officer proceeded against has acted honestly and reasonably and having regard to all the circumstances of the case he ought to be fairly excused, may relieve him from his liability. It is this power that the High Court can exercise in an application filed in anticipation of a proceeding u/s 633(1) of the Companies Act. But if the concerned person does not move the court in which the proceeding is pending against him for negligence, default, breach of duty, etc., that court can, if the person is found guilty, sentence him to pay a fine and also if the default is of a nature referred to in Section 614A direct him within a time stipulated to file with or deliver to the Registrar any return, account or document for which default he was convicted and sentenced. This direction by the court is made after he is found guilty and sentenced. This will not come under the various acts or omissions referred to u/s 633(1). For failure to comply with the direction of the Magistrate the concerned officer can be further proceeded against u/s 614A(2). Can the Magistrate at that stage relieve him from the liability to comply with the direction ? I think he cannot.

5. Section 633(1) does not comprehend that situation. If he cannot do it the High Court u/s 633(2) cannot exercise such a power in an application filed in anticipation of a proceeding for failure to comply with the direction in the judgment convicting the officer and as provided for u/s 614A(1). The power of the High Court u/s 633(2) is similar to the power u/s 633(1) only. I am in agreement with the view taken by the Delhi High Court in *In re Auto Link Financiers P. Ltd.* [1971] 41 Comp Cas 63, a case similar to the one here. At page 65, this is what the learned judge observed :

" In my opinion they cannot do so. Relief can be granted by the High Court under Sub-section (2) of Section 633 if there is negligence, etc., in relation to the affairs of the company. Sub-section (2) of Section 633 does not empower the High Court to grant relief against a default in the compliance of a direction of a competent court, in this case the Court of the Magistrate which has been given u/s 614A(1). In terms, such a default does not appear to me to be comprehended within the scope of sub-section (2) of Section 633.

There is, to my mind, another aspect of the matter. If the High Court is not possessed of jurisdiction to grant relief under Sub-section (2) of Section 633 after the institution of criminal proceedings, I fail to see on what principle the High Court will have such jurisdiction after the termination of the criminal proceedings in respect of the defaults which were the subject-matter of the criminal proceedings."

6. In view of this conclusion, I hold that this court has no jurisdiction to grant the relief sought for under Sub-section (2) of Section 633 of the Act.

7. Further, there is only the applicant's evidence regarding the circumstances under which he became a shareholder and a director. It may be that Mr. M.G. Menon was the managing director for life. It may be that the petitioner was and is not in a position to file the necessary returns, but he should have mentioned all these in the proceedings taken against him in C.C. No. 249 of 1975. He did not state any of these things before the Magistrate in the proceedings taken against him. He also did not take any steps to get the direction contained in the order passed by the Magistrate by taking appropriate proceedings. When he is threatened again by the Registrar that he will be proceeded against u/s 614A(2) he has come forward with this application. I do not think that it can be said that he has acted reasonably and honestly. It follows that even if in the circumstances an application u/s 633(2) will lie I am not satisfied that the petitioner acted reasonably and honestly in not complying with the direction given by the Magistrate within the time given by him. This application is, therefore, dismissed, but I make no order as to costs.