(1966) 07 CAL CK 0023

In the Calcutta High Court

Case No : Criminal Revision No''s. 305 to 322 of 1965

Great Indian Steam Navigation Co. Ltd. APPELLANT

Vs

State and Another RESPONDENT

Date of Decision : 29-07-1966

Acts Referred:

Companies Act, 1956 — Section 210(1), 210(5), 220(1), 220(3), 633

Citation : (1967) 37 CompCas 135 : 71 CWN 157

Hon'ble Judges : T.P. Mukerji, J

Bench : Single Bench

Advocate : Hiran Kumar Roy, N.C. Talukdar, for the Appellant;

Judgement

T.P. Mukerji, J.—The eighteen cases out of which the eighteen revision cases arise were tried together by the learned Magistrate as the same questions of fact and law are involved in all of them. The eighteen revision cases were also taken up and heard together for the same reasons and as they all arise out of the same judgment passed by the learned Magistrate.

2. Criminal Revision Cases Nos. 305 to 310 of 1965 arise out of six cases wherein the petitioner, The Great Indian Steam Navigation Company Limited, was prosecuted u/s 220(3) of the Indian Companies Act for violation of the requirements of Section 220(1) of the Act in the matter of filing the balance-sheet and profit and loss account of the company with the Registrar during the years 1956-1961.

3. Criminal Revision Cases Nos. 311 to 316 of 1965 arise out of six cases filed against the three directors of the above company for an offence u/s 220(3) of the Indian Companies Act committed by them during the years 1956 to 1961 by failing to file with the Registrar the balance-sheet and profit and loss account of the company during the period.

4. In six cases out of which Criminal Revision Cases Nos. 317 to 322 of 1965, the same three directors were prosecuted u/s 210(5) of the Companies Act for

failure to comply with the requirements of Section 210(1) of the Act in the matter of placing the balance-sheet and profit and loss account of the company before the annual general meeting of the company.

5. The learned Magistrate convicted all the accused in the eighteen cases under the respective sections they were charged with and sentenced each of them to pay a fine of Rs. 50.

6. The defence in all the cases pressed before me by Mr. Roy appearing on behalf of the petitioners was a prayer for relief from liability u/s 633 of the Companies Act. This prayer is based on the fact that in June and July, 1957, all the papers of the company were seized by the police in connection with a criminal case and that because of the seizure of the documents and papers, which were necessary for the purpose of preparing the balance-sheet and the profit and loss account of the business, it was physically impossible for a balance-sheet and the profit and loss account to be prepared. The learned Magistrate, in view of the decision in the case, Ram Krishna Dalmia v. Registrar, Joint Stock Companies, Delhi [1962] 32 Comp. Cas. 341 found that the accused before him were not entitled to any relief as they had been given ample opportunities for the purpose of examining and inspecting the documents that were necessary for the purpose of preparation of the balance-sheet and the profit and loss account.

7. So far as the company is concerned, i.e., in Criminal Revision Cases Nos. 305 to 310 of 1965, there is no question of any relief u/s 633. Regarding the directors it would appear from the evidence as well as from the judgment of the learned Magistrate that ample opportunities were given to the officers of the company in the matter of inspection and examination of the books and accounts and other papers that had been seized by the police and that as a matter of fact those books and papers were examined and inspected on several occasions by the officers of the company. If in spite of that it is urged that it was physically impossible for the balance-sheet and the profit and loss account to be prepared, the authority of Dalmia''s case is there for the purpose of negativing that contention.

8. The preliminary duty for the purpose of preparation of the balance-sheet is that of the directors and it is after the balance-sheet has been prepared and placed before the directors that the question of its audit by the auditors comes in. Here, in the present case, the directors did not appear to have taken any step whatsoever in the matter of preparation of the balance-sheet and, when they have not taken the steps that were required in the matter in spite of full opportunities being given to them for the purpose, I do not see how they can claim any relief on the ground that it was physically impossible for them to prepare the balance-sheet. It is true that there were difficulties in the matter of audit of the accounts by the auditors but the question of audit by auditors will come up after the directors have prepared the balance-sheet.

9. Then again the papers up to June, 1957, were seized by the police. It is

nobody''s case that the business of the company is not being carried on. In any event, the company is still on the register of the Registrar of Joint Stock Companies and, so long as it is there, the duty of placing the balance-sheet and the profit and loss account before the annual general meeting and of filing a copy thereof with the Registrar will be there. It is a finding of the learned Magistrate that the annual general meetings were held during the years 1957 to 1961 and that the annual returns of the company were also filed duly with the Registrar during the concerned years. In these circumstances, I cannot find that there was a good case for giving relief to the directors from their liability in the matter.

10. In the result, all these eighteen rules stand discharged.

