

(1960) 10 AP CK 0006
In the Andhra Pradesh High Court
Case No : A.A.O. No. 377 of 1956

Gumpana Hanumantha Rao

APPELLANT

Vs

T.S. Rama Rao and Others

RESPONDENT

Date of Decision : 03-10-1960

Acts Referred:

Companies Act, 1913 — Section 179, 237, 237(1)
Penal Code, 1860 (IPC) — Section 409, 477A

Citation : AIR 1961 AP 493 : (1962) 32 CompCas 466 : (1961) CriLJ 615

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : G. Balaparameswararao, for the Appellant; K.V. Rangachari, for the Respondent

Judgement

Krishna Rao, J.—This appeal is brought u/s 22 of the Companies Act, (VII of 1913) - hereinafter called the Act -- and is directed against the order of the Court of the District Judge, Krishna, sanctioning the prosecution of the appellant for 12 offences punishable under Sections 409 and 477-A, I. P. C. On 2-8-1950, the Madras High Court in O. P. No. 168 of 1949 ordered the winding up of the Jaggayyapeta Electricity and Water Supply Corporation Ltd., Jaggayyapet (hereinafter called the Company").

The first respondent to this appeal, Ramarao was appointed as the Official Liquidator and O. P. No. 168 of 1949 was transferred to the lower Court for further proceedings. The appellant was the promoter and the managing agent of the Company. On 4-1-1958 respondents 2 and 3 who are the shareholders, made the application to the lower Court, which has given rise to the appeal, under Sections 179, 237 (1) and 238-A of the Act. Fourteen distinct offences punishable under Sections 407 and 477-A, I. P. C. and 238-A of the Act were set out in Clauses (a) to (n) of paragraph 3 of the application.

The prayer was to grant sanction for the prosecution of the appellant for these offences and to direct the first respondent herein to institute the necessary

proceedings. The Public Prosecutor, to whom notice was ordered on the application, submitted that there was a prima facie case so far as the offences mentioned in Clauses (a) to (k) and (n) were concerned. On this sole ground, the learned District Judge accorded sanction for the prosecution and directed the Official Liquidator to prosecute the appellant under Sections 409 and 477-A, I. P. C.

2. The main point taken in appeal is that the sanction is bad, because the learned District Judge did not apply his own mind to the question of giving the sanction. It is urged in this connection that sanction is necessary only for a prosecution u/s 238-A of the Act which was not accorded and is not necessary for a prosecution under Sections 409 and 477-A, I. P. C. and that so far as the offence mentioned in Clause (n) was concerned, sanction had already been given earlier in C. M. P. No. 346 of 1952.

3. The scope and object of Sections 179 and 237 of the Act were elaborately considered by the Calcutta High Court in *Dr. Sailendra Nath Sinha and Another Vs. State and Another*, . There the Official Liquidator by his assistant filed a complaint against two past directors of the Bank of Commerce Ltd. in liquidation for offences punishable under Sections 406 and 477-A read with Section 120-B, I. P. C. The said two directors sought to quash the criminal proceedings on the ground that in the absence of a prior direction judicially given by the Company Court u/s 237 (1) of the Act, the prosecution launched against them was ab initio void.

The learned Judges held that Clause (a) of Section 179 merely refers to empowering the liquidator for acting in the name and on behalf of the company in respect of the legal proceedings. They further held that Sections 179 and 237 (1) were merely intended for the control of the Company Court over the liquidator in the discharge of his functions under the Act and have no bearing on the validity of proceedings instituted by the liquidator in other Courts. Discussing Section 237 (1), Chakravarti, C. J., observed at pp. 34 and 35.

"The Act undoubtedly lays down the powers and the duties of the liquidator and undoubtedly seeks to control him in his administration of the assets of the company. But the relevant provisions have only what I may call an internal application. They aim at keeping the liquidator within certain limits and leading him along certain lines in the discharge of his functions under the Act and as between him and the persons interested in the Company as creditors or shareholders, the propriety or validity of his acts must be judged by the conditions they prescribe. If he fails to observe those conditions or exceeds his statutory powers he will be answerable to the Company Court which may hold his acts to be unauthorised or refuse him his costs or even remove him. But these provisions of the Companies Act have no bearing on the competency of the liquidator as a suitor in other courts or the validity of proceedings instituted by him, except when they say so, either expressly or by necessary implication

The section does not purport to go beyond laying down in what circumstances a prosecution by the liquidator will be warranted by the Companies Act, but it cannot have the effect of regulating the validity of any prosecution actually launched by him before a Criminal Court."

The decision in *Gokulchand Dwarkadas v. The King* AIR 1948 FC 82, strongly relied upon by Sri G. Balaparameswararao with regard to the requirements of an order of sanction, was based on the stringent terms of Section 23 of the Cotton Cloth and Yarn (Control) Order, 1943. It has no bearing on the construction of Sections 179 and 237 (1) of the Act

4. In *Subramania Iyer v. Podanur Bank Ltd.* AIR 1947 Mad 343, the District Judge's sanction u/s 237 (1) to prosecute the Directors and the Secretary of the Podanur Bank Ltd. was objected to by two share-holders on the ground that it was an unnecessary expenditure to the company. Wadsworth, J. who spoke for the Division Bench quoted with approval the principle laid down by Buckley, J. in *Re London and Globe Finance Corporation Ltd.* (1903) 1 Ch 728, that the question to be answered is whether an honest and upright citizen would think that his duty to the State required him to prosecute. Dealing with the criticism that the District Judge's orders contained no statement of reasons therefor, the learned Judge said :

"There is, however, no provision in Section 237, Companies Act requiring the Court to set forth its reasons when directing the Liquidator to launch prosecutions; and although it is obviously desirable whenever a Court passes an appealable order that some indication should be given that the Court has applied its mind to the questions which have to be decided in passing the order, it seems to us difficult to say that the order has necessarily to be vacated, merely because it does not itself set forth the reasons which causes the Court to pass it."

5. Thus there is no force in Sri Balaparameswararao's criticism that the lower Court's order of sanction does not comply with the legal requirements and is bad in law. No doubt in order to determine whether leave ought to be given to institute criminal proceedings u/s 237 (1), a Court has to consider whether it is a case in which a good citizen desirous of doing his duty to the State thinks that he ought, at his own expense, institute a prosecution. The learned District Judge's approach was incorrect because he founded himself solely on the fact that there was a prima facie case with regard to the offences. The application made to the lower Court shows that the alleged offences were committed on various dates prior to 21-7-1948 and a number of them related to petty amounts.

Sri K.V. Rangachari, the learned counsel on behalf of the fourth respondent who is the present liquidator, states that cases have been actually launched only in respect of offences mentioned in Clauses (b) (c), (f), (g) and (h) of paragraph 3 of the application and that prosecution in respect of the remaining offences are awaiting the disposal of this appeal. It is difficult to say that a good citizen would consider it his duty to pursue so many prosecutions for similar and petty offences

in a criminal court after a lapse of over ten years. The sounder view is that it is sufficient if smaller number such as five or six, are selected for being pursued.

6. As the approach of the learned District Judge was erroneous, the order is set aside and the petition is remanded for fresh disposal in the light of the observations in this judgment. The validity of the pending prosecutions already launched will not, of course be affected, because the sanction by the Company. Court is not a condition precedent for their validity. The parties will bear their own costs in this court.