
(1966) 04 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Revision No"s. 876, 877 and 894 to 899 of 1964

Hanuman Pershad Gupta and Another

APPELLANT

Vs

Hira Lal

RESPONDENT

Date of Decision : 01-04-1966

Acts Referred:

Companies Act, 1956 — Section 207

Citation : AIR 1967 All 135 : (1967) CriLJ 305

Hon'ble Judges : D.P. Uniyal, J

Bench : Single Bench

Advocate : P.C. Chaturvedi and P.C. Gupta, for the Appellant; S.D. Agarwala, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : H.P. Gupta Vs. Hiralal, AIR 1971 SC 206 : (1970) 40 CompCas 1058 : (1971) CriLJ 262 : (1970) 1 SCC 437 : (1970) 1 SCC(Cri) 190 : (1970) 3 SCR 788

D.P. Uniyal, J.—These 8 connected revisions raise common questions of fact and law and may be disposed of by the same judgment. The above revisions arise out of complaints filed by one Hira Lal, opposite party, u/s 207 of the Indian Companies Act against the first applicant Sri Hanuman Prasad Gupta, Director in Charge, M/s. Iron Traders Private, Ltd., and the second applicant Sri Wisakha Singh, the Managing Director.

2. The opposite party is admittedly a shareholder of the Company aforesaid. His case was that he had not been paid dividend which had been declared by the Company during the years in question and, therefore, the applicants were liable to be punished. The complaints were filed in the court of a Magistrate, first class, at Meerut. After examining the complainant the Magistrate issued summons for the attendance of the accused u/s 204(1) Cr. P. C. The applicants made an application disputing the jurisdiction of the Meerut court to take cognisance of

the offence. They contended that as the registered office of the Company was situate in Delhi and the failure to pay dividend or to post warrants of payments in respect thereof to the share-holders occurred at Delhi, the Meerut court had no jurisdiction to try the case. The Magistrate repelled the objection and held that as the payment of dividend had to be made at the registered address of the share-holder, which in the instant case was at Meerut, the Meerut court was competent to entertain the complaints. The Sessions Judge affirmed the order of the Magistrate and hence the revisions.

3. Sri P. C. Chaturvedi, learned counsel for the applicants, contended that the Meerut court had no jurisdiction to entertain the complaints because the payment of dividend was to be made in the manner provided in Section 207 of the Companies Act. That section, according to him, required payment of the dividend to the share-holder within 42 days from the date of declaration of dividends by posting warrants in respect of the dividends within the said period. Since the posting of the warrant had to be done at Delhi, that court alone was competent to entertain the complaints.

4. In order to appreciate the contention made by the learned counsel it is necessary to set out the provisions of Section 207, which are as follows:

"when a dividend has been declared by a company but it has not been paid, or the warrant in respect thereof has not been posted, within 42 days from the date of the declaration, to any share-holder entitled to the payment of the dividend, every Director of the Company, its Managing Agent or Secretaries or Treasurers shall, if he is knowingly a party to the default, be punished with simple imprisonment for a term which may extend to 7 days, and shall also be liable to fine."

The section involves two things: first, that the dividend declared by the company had not been paid to the share-holder and secondly that the warrant in respect of the dividend had not been posted to the share-holder within the prescribed period. The mode in which payment may be made is set out in Section 205 which requires that the dividend should be sent by cheque or warrant to the registered address of the shareholder entitled to receive payment. The provisions of Article 132 of the Memorandum and the Articles of Association of the Company are also to the same effect.

5. The question arises; when is an offence committed u/s 207? The section says that an offence is committed ""when a dividend is declared by a company but it has not been paid." Therefore, the gist of the offence is non-payment of dividend to a share-holder, The question of its non-payment can arise only when it is not delivered to or received by him. If, however, a cheque or warrant is delivered directly to a share-holder it would constitute payment thereof. In that event there will be no need to post a cheque or warrant to him. It is only when payment is not made directly to a share-holder that necessity of sending a cheque or warrant by registered address would arise it being one of the steps

which a company is required to take in order to ensure payment of the dividend. It follows that where a company has not adopted any of these methods it will be legitimate inference that it has committed a default in the payment of dividend.

It would thus appear that what is made punishable is not the omission on the part of the company or its Directors to post a cheque or warrant but the consequence of its inaction in taking necessary action in that behalf. On this reasoning the venue for the purpose of trial would be the place where non-payment occurs. In normal circumstances that place would be no other than the place given in the registered address supplied by the share-holder to the company.

6. The learned counsel submitted that the statute merely required the company to post a cheque or warrant to the registered address of a share-holder and that since this had to be done at Delhi where the registered office of the company was situate, the jurisdiction of the Meerut court to entertain the complaint was ousted. The argument, in my opinion, is not well founded. The object behind the statute is to ensure prompt payment of a dividend to a share-holder. That payment may be made to him directly or it may be made by sending a cheque or warrant to his registered address. If a shareholder complains that he has not received payment he is entitled to proceed against the company and its Directors by filing a complaint at the place where he resides, because the law demands that payment should have been made to him there.

7. It was next urged that the averments in the complaint do not make out a case u/s 207 in that there was no allegation that the Company had not posted the dividend warrant within the prescribed period to the complainant. In the absence of any such allegation, so it was argued, the complaint was liable to be thrown out and the prosecution deserved to be quashed. It is no part of the duty of the complainant to assert--which indeed it may well nigh be difficult for him to do--that the company had not posted a cheque or warrant to him within the prescribed time. If a share-holder has not received payment of dividend he is justified in saying that it has been withheld by the Company. No doubt it may still be open to the Company or its Directors to plead that they had taken legitimate steps to post a cheque or dividend warrant to the registered address of the share-holder in order to prove their bona fides and to show that they had acted according to law. But this cannot in any way affect the jurisdiction of the court to entertain the complaint.

8. I am, therefore, of opinion that the Meerut court had jurisdiction to entertain the complaint because the offence alleged in the complaint was committed at Meerut where the act of non-payment had occurred within the meaning of Section 179 of the Code of Criminal Procedure.

9. For the reasons given above, I dismiss these revisions. The stay order stands discharged. The record of the case shall be sent down to the court below at an early date.