

(1957) 01 MAD CK 0015

In the Madras High Court

Case No : Criminal Revision Case No's. 772 to 775 of 1956 (Criminal Revision Petition No's. 723 to 726 of 1956)

In Re: Arcot Citizen Bank Ltd., Arcot by A.E. Chandrasekhara Nayagar, Arcot and Others

Date of Decision : 11-01-1957

Acts Referred:

Companies Act, 1913 — Section 131(1), 32(3)
Companies Act, 1956 — Section 131, 161, 162, 210, 32
Evidence Act, 1872 — Section 14, 3
Penal Code, 1860 (IPC) — Section 40

Citation : AIR 1957 Mad 675 : (1957) CriLJ 1279 : (1957) 70 LW 267

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : A. Srirangachari, V.V. Radhakrishnan, for Public Prosecutor, for the Appellant;

Judgement

Ramaswami, J.—These are four connected revisions arising from prosecutions under the Indian Companies Act. 1913.

2. The revision petitioners in Crl. R. C. No. 772 of 1956 were prosecuted for not filing within-21 days after the date of the first or only ordinary

general meeting In the year 1952, a complete list of members and summary u/s 32, Clause (3) of the Indian Companies Act. The revision

petitioners in Crl. R. O. No. 773 Of 1956 were prosecuted for not filing within 21 days after "the date" of the first or only general meeting in the

year 1953 a complete list of members and summary u/s 32, Clause (3) of the Indian Companies Act. The revision petitioners in Crl. R. O. No.

773 of 1956 were prosecuted for not laying the balance sheet and profit and loss account for the year 1952 at a general body meeting held during

the year 1953 as required by Section 131 (1) of the Indian Companies Act. The revision petitioner in Crl. R. C. No. 775 of 1956 were

prosecuted for not laying the balance sheet and profit and loss account for the year 1953 at a general body meeting held during the calendar year

1954 as required by Section 131(1) of the Indian Companies Act.

3. The facts leading to the institution of these prosecution are as follows; The Arcot Citizen Bank Ltd. was registered as a public limited company

under the Indian Companies Act on 2nd November 1935. It has a registered office in Nos. 48 to 51 Bazar Street, Arcot. Sri. A.E. Chandra-

sekhara Nayagar, the second revision petitioner, was the supervising director and the other petitioners were the directors of this bank. On 18th

May 1955 the registrar of Companies appointed by the Central Govt. assumed charge of the companies in the State of Madras. A list of members

and summary made upto 22nd July 1952 which should have been submitted within 21 days after the date of the first ordinary general body meeting

held on that date, was not furnished. An incomplete list was received on 30th August 1952 by the Assistant Registrar of Joint stock Companies,

Vellore, along with a covering letter, Ex. P.2, signed by accused 2 as the supervising director of the said bank. This was returned for rectification

and complete furnishing of information, as required under law. But in spite of several reminders a completed correct list was not submitted and

there was no compliance with Section 32 of the Indian Companies Act.

4. On 21st October 1953, the first ordinary general body meeting for the year 1953 was held, A list of members and summary made upto 21st

October 1953, which should have been submitted within 21 days after the date of said meeting was not filed in spite of several reminders, A

balance sheet and profit and loss account for the year ending 31st December 1952 was not laid before the meeting as required by the Indian

Companies Act On 30th December 1954 there was a general body meeting of the bank at Arcot and in that meeting a balance sheet and profit

and loss account for the year ending 31st December 1953 was not laid as required by the Companies Act.

5. The plea of the accused persons in all these cases was nothing more than an argument drawn from misery. In the case of the bank which is

accused 1, It was urged that a correct and complete return could not be resubmitted as a number of accounts and registers of the bank were filed

in civil and criminal proceedings arising out of embezzlement cases, and auditors

could not therefore be appointed for preparation of the balance sheet and profit and loss account in time.

In the case of the Director accused, the plea was that they had not knowingly or willingly committed default. The ordinary directors blamed the supervising director and stated that he was in charge of the entire day to day administration of the company.

6. The learned Sub Divisional Magistrate-did not accept the pleas of the accused and convicted them as charged and sentenced them to pay fines.

The convicted persons have preferred these revision cases.

7. The plea, put forward viz, that the lists and summaries could not be furnished and the balance sheets and profit and loss accounts could not be

prepared on account of the accounts and registers of the company being filed in civil and criminal proceedings arising out of embezzlement cases,

was effectively repelled by learned Sub-Divisional Magistrate. According to the defence the defalcation was effected somewhere in August 1952

and it should have , taken place sometime before the accounts and registers were filed in courts.

It is not as if all the registers and records were seized and taken away. But even if the records and registers were in the custody of the court it was

the duty of the supervising director to either apply for the return of such of the registers as are required for compiling this statement or if the courts

refused to return the registers to make an application for the inspection of the accounts and registers for the said purpose.

In fact the preparation of the list of A class shareholder members alone was filed on 30th August 1952, after 21 day's and this shows that all the

registers and records could not have been in the custody of the court. The Registrar's office also sent several reminders. But the bank, the

supervising director, and the directors remained callously indifferent to these reminders. The learned Sub Divisional Magistrate therefore rightly

refused to accept this plea as exonerating each of these revision petitioners from the discharge of their plain duties.

8. It is now argued, therefore, that though this could be said of Bank and the supervising directors, this could not be said of the other directors in

regard to whom it must be further shown that they knowingly and wilfully defaulted as contemplated by the provisions of the Indian Companies

Act.

9. The fundamental principle of English Criminal Jurisprudence, to use a maxim which has been familiar to English lawyers for nearly 800 years is,

actus non facit reum nisi mens sit rea. An act does not make a man guilty without a guilty intention to do the guilty act which is made penal by the

statute or common law. But there is generally no room for the application of this doctrine in the Indian Penal Statutes as their terms are precise and

contain within themselves the precise and particular elements that go to make up the offences referred to in those statutes.

So, in the Indian Penal Statutes where the doctrine of mens rea is intended to come into operation and a guilty mind is deemed essential for the

proof of an offence, the Statute itself uses the words like "knowingly", "willingly", "fraudulently", "negligence" and so on.

10. Such knowledge can always be brought home by adducing circumstantial evidence -- in fact as pointed out by Dr. Kenny at page 396 of his

outline of Criminal Law (14th Edn) mens rea must necessarily be proved by circumstantial evidence alone (except where the accused actually

confesses and what is more in India sticks to it and which is highly problematical).

11. It may also be useful to recall that, in establishing such guilty knowledge, actual or direct knowledge is not absolutely essential, there being no

doubt that a person who deliberately shuts his eye to an obvious means of knowledge is equally liable,

12. Less certainty is felt in regard to negligence when used in the sense of blameful inadvertence. Thus Interpreted negligence describes the state of

mind of a person who ought to have known, and is obviously not so reprehensible as the state of mind of a person who wilfully shuts his eyes to the

obvious. Hitherto, strong objection has been voiced to basing criminal liability upon, mere inadvertence. But where the phrase mens rea is used to

denote a state of mind, it is possible to argue that the only state of mind which is pertinent is the positive form known as advertence, i.e., realisation

of foresight of consequences, in which even the ambit of mens rea is restricted to intention and subjective recklessness.

Conversely, it is possible to argue that although inadvertence involves the negative form of absence of realisation or foresight of consequences, it

too can justifiably be termed a state of mind and therefore, as forming, in certain conditions, part of the doctrine of mens rea. To those who would

deny the validity of this conclusion it may come as a surprise as pointed by professor Edwards on his valuable monograph mens rea in statutory

offences (English studies in Criminal Science Series (Vol VIII p. 205 and foil); to realise that there exists a wide range of Judicial dicta (Hearne v.

Carton, (1859) 28 L. J. M.C. 216 (A) Croasdill v. Ratcliffe, (1862)) 5 L.T. 834 (B); Bosley v. Davics, (1875) 1 QB 84 (C), in which the view is

expressed that if a statutory offence is based upon proof of knowledge such crimes can be committed negligently.

I respectfully agree with professor Edward's conclusion at page 206 that so far as this particular field of criminal liability is concerned that

negligence or blameful inadvertence or failure to supervise may properly be designated as mens rea. Therefore we must look to the qualifying

words used in the statutes like "maliciously", "wilfully" and "knowingly" which show that liability of a guilty mind should be based in the form of

actual knowledge or connivance or the absence of any such qualifying words making, out of case of absolute prohibition, where the doing of the act

prohibited could itself furnish the mens rea or qualifying words like "permitting" "suffering" "causing" and "allowing" constituting the intermediate

theory of liability based upon blameful inadvertence.

Of course the acceptance of negligence as a sufficient degree of mens rea would be restricted to those statutory offences in which the legislature

intends to use the criminal law as a means of securing the maintenance of certain standards of behaviour in such matters as Road Traffic, food and

Drugs, weights and measures licencing and public health.

13. To sum up, in regard to the proof of mens rea in the large class of penal Acts the state as well as Central Acts, which are really not criminal but

which are prohibited by the levy of a penalty in the Interests of the public, unless qualifying words are used, the prosecution in the language of Dr.

Kenny, need only prove the prohibited act and then must the defendant bring himself within the statutory defence (Ibid, p. 48) The absence of

qualifying words connotes that the offence is intended to be one of absolute prohibition.

On the other hand if qualifying words like "knowingly", "wilfully",

fraudulently"" and ""negligently"" are used, the prosecution must bring home to the

offender either by direct or circumstantial evidence the precise and particular elements connoted by these terms, i.e. showing liability of a guilty

mind based in the form of actual knowledge or connivance. Where the offence is intended to be dependent upon a blameworthy mind in the form

of knowledge of the facts constituting the offence the term wilfully is used to denote this requirement, it denotes the necessity for proving that the

accused had a guilty mind. If qualifying words like"" permitting ,""suffering"" ""causing"" or ""allowing"" are used, it would be enough if the evidence

makes out blameful inadvertence on the part of the offender; i.e., first the accused must be shown under this third group to have had guilty

knowledge that the forbidden event is happening. Secondly that the accused with such knowledge and being in a position to prevent the event

happening does nothing about it.

14. Bearing these principles in mind, if we examine the facts of this case, we find that the prosecution has brought home to these revision petitioners

by circumstantial evidence knowing and wilful non-compliance. The revision petitioners knew what they had to do and deliberately refrained from

complying with those obligations and that too in spite of repeated reminders from the Registrar on pretexts which cannot bear scrutiny. This

knowing and wilful default on the part of the revision petitioners cannot be better put than in the words of the Calcutta High Court in Bhagirath v.

Emperor. AIR 48 Cal 42 (D).

If directors, who are responsible for the management of a company and who presumably know the duties imposed upon them by law, make no

attempt to see that those duties are carried out there is Justification for holding, in my opinion, that they have wilfully and knowingly permitted the

company to fail to carry out those duties. The suggestion that these various directors were mere figureheads not taking any active part in the control

of the company is in my " opinion not worth of serious consideration. They were directors, they attended meetings throughout the period with

which we are concerned and they were responsible for the management of the " company.

But these provisions of the Companies Act have been deliberately enacted to

protect shareholders and in some cases to protect the general public and they impose a definite duty upon directors. It is necessary that those duties should be properly carried out and it is necessary, in my opinion, that when directors fail to do so, the penalties provided for in the Act should be imposed and the directors should be substantially penalised.

The convictions are correct and they are confirmed. Having regard to the extenuating circumstances pressed by Mr. Srirangachariar, the fines and default sentences are halved and the excess fines, if collected, will be refunded.