

(1959) 08 KL CK 0029
In the High Court Of Kerala
Case No : B.C.P. No. 5 of 1959
In Re: Bank of Deccan Ltd.

Date of Decision : 04-08-1959

Acts Referred:

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

Citation : AIR 1960 Ker 15 : (1960) 30 CompCas 284

Hon'ble Judges : Raman Nayar, J

Bench : Single Bench

Advocate : Mani J. Meenattur, for the Appellant;

Judgement

1. The petitioners are a banking company and its directors, and they seek relief, u/s 633 of the Companies Act, 1956, from apprehended prosecution for failure to comply with the provisions of Sections 159, 166, 210 and 220 of the Act, the failure being punishable under Sections 162(1) 168, 210(5), and 220(3) respectively.

2. It would appear from the affidavit filed in support of the petition that, soon after petitioners 1 to 11 became directors of the 12th petitioner company in pursuance of a scheme of reconstruction sanctioned by this court, the books of some of the branches of the company were seized by the police in connection with some criminal cases and are now in court, the cases being still pending. That being so, it was not possible for the company to prepare its balance-sheet and profit and loss account and get them audited and this was the reason why the company could not comply with the provisions referred to. I am satisfied that the default was due to reasons beyond the control of the company and its directors : Therefore it would be hard if they are to suffer criminal liability on account of the default.

3. Turning next to the application of Section 633, I might at the very outset observe that under that section it is only an officer of the company and not the company itself that can be relieved. This petition in so far as it relates to the 12th petitioner company will therefore have to be dismissed, and it is accordingly dismissed.

4. Sub-section 1 of Section 633 refers to any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, and the word "proceeding" there, is undoubtedly wide enough to cover a criminal prosecution. But under that sub-section it is for the court before which the proceeding is pending and not for this court to grant relief. This court can grant relief only under Sub-section (2) and here the word used is "claim" and not "proceeding", a word which at first sight certainly seems inappropriate if it is to comprehend a criminal prosecution. But reading the two sub-sections together it is obvious that the scope of Sub-section 2 is co-extensive with that of Sub-section 1, and no intention is apparent to confine the scope of Sub-section 2 to those only of the proceedings covered by Sub-section 1 that can properly be designated as claims.

It would therefore follow that if the word "proceeding" in Sub-section 1 is wide enough to cover a criminal prosecution, the word "claim" in Sub-section 2 must be construed as having been used in a special sense so as to include also a criminal prosecution. In other words, you are to look upon a criminal prosecution as a claim that the offender be punished in accordance with law. The wording of Sub-sections 1 and 2 of Section 633 of the Act is, for the present purpose identical with the wording of Sub-sections 1 and 2 of Section 372 of the English Act of 1929, and with reference to Sub-section 2 of that Act, it was held in *In re Barry and Staines Linoleum Ltd.* (1934) 1 Ch 227 and in *In re Gilt Edge Safety Glass Ltd.* (1940) 1 Ch 495, that the court had the power to relieve against an apprehended prosecution. The same view was taken by the Orissa High Court in *In Re: Orissa Jute and Cotton Mills Ltd. and Others*, I therefore hold that Sub-section 2 of Section 633 is wide enough for this court to grant relief against an apprehended criminal prosecution,

5. In the circumstances of this case I relieve petitioners 1 to 11 of criminal liability on account of the default referred to, but only on condition that the duties enjoined by the provisions in question are performed within a period of six months from this date. If for some unavoidable reason this time proves insufficient application may be made for further time.