

(1952) 01 MAD CK 0016

In the Madras High Court

Case No : Criminal Revision Case No's. 1019 to 1021 of 1950 and 283 and 284 of 1951 and Criminal Revision Petition No's. 952 to 954 of 1950 and 282 and 283 of 1951

In Re: Gangipati Appayya and Others

Date of Decision : 17-01-1952

Acts Referred:

Companies Act, 1913 — Section 13(1), 133(3)

Citation : AIR 1952 Mad 800 : (1952) 22 CompCas 78 : (1952) 1 MLJ 608

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : D.P. Narayana Rao, C.V. Dhikshitulu and N. Rajeswara Rao, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Ramaswami, J.—These are five connected cases filed against appeals filed against the convictions and sentences of the Additional First Class Magistrate, Vijayawada in C.C. Nos. 178 and 179 of 1949.

2. The facts are brief: The petitioners before us are the directors of Sri Gopalakrishna Motor Transport Company Ltd. and whose affair were the subject matter of investigation till recently on the original side of the High Court. How this company came into existence was as follows: These directors were originally competing bus-owners running a few buses each. The Government of Madras then insisted that groups of 20 buses should be formed into fleets and then only they would be allowed to operate as public transport vehicles. Therefore by reason of this requirement the erstwhile warring competitors were thrown together. It is not too much to say that it was more like a case of a number of wild cats being thrown into a cage and asked to live amicably thereafter. It needed therefore no astrologer to forecast the future of such a company.

The company was incorporated under the Indian Companies Act of 1913 as Joint Stock company limited by shares on 20-12-1944 having its registered office at Vijayawada. Sri Veeramachaneni Seethayya became the Managing director and the other petitioners became the directors. According to Section 131(1) of the

Indian Companies Act the first balance sheet must be placed before the General Body meeting not later than 18 months after the date of the incorporation and subsequently the balance sheet should be placed before the General Body once in every calendar year. No balance sheet was placed before the General Body meeting and not even the first balance sheet in the General Body meeting which was managed to be held in 1947. The balance sheets upto and including 14-11-1945 and from 15-11-1945 to 31-12-1945 were prepared in 1948.

I may point out for completeness of information that the petitioners became Managing Director and directors from 1-7-1946 and the first General Body meeting was held on 19-6-1946 and as I just pointed out before, no balance sheet was placed before it. The balance sheet was only adopted by the General Body only in 1948. Therefore the Assistant Registrar of Joint Stock Companies, Kistna Masulipatnam filed a complaint u/s 131(1) of the Indian Companies Act read with Section 133(3) against Seethayya and five others for their failure, being the directors of Sri Gopala Krishna Motor Transport Company Ltd., Vijayawada to place the balance sheet before the General Body meeting of the company as required by the Act.

3. The case for Seethayya is that no offence has been made out against him because, inasmuch as no General Body meeting was held within the period prescribed, no question of placing the balance sheet arose and that the charge against him, as it stands, is misconceived and that no offence has been committed by him on that footing. The case for the ordinary directors is that there has been no wilful default on their part and that owing to circumstances beyond their control the placing of the balance sheet could not be done and hence they are not guilty.

4. The learned First Class Magistrate found all these persons guilty as charged and fined the Managing Director Rs. 500 and fined the other directors Rs. 250 each. On appeal the fines and default sentences were halved by the learned Sessions Judge, Krishna at Masulipatnam.

5. The two points taken in the lower court have been taken by the petitioners before me also. They are found to be without any substance. I shall deal with them one by one.

6. As regards the case of the Managing Director, it is quite true that a decision of the Bombay High Court relied on by learned counsel for Seethayya (Managing Director) reported in -- "Emperor v. Pioneer Clay & Industrial Works Ltd.", AIR 1948 Bom. 357 lends support to the contentions of Seethayya. In that case it is laid down that what is made penal by Section 134(4) is default in complying with the requirements of the section and u/s 134(1) there is no obligation cast upon the company to file three copies of the balance sheet and the profit and loss account if no general meeting has been called. Where, therefore, no general meeting of the company was called and no balance sheet and profit and loss account laid before it, the company and its directors have made no default in

complying with Section 134 by their failure to file the copies of the balance sheet and the profit and loss account with the Registrar of the companies and they are not guilty u/s 134(4) although they might have committed an offence either u/s 76(2) or u/s 133(3), that is to say, not calling for a general body meeting within the time prescribed.

This decision itself was a clear dissent from a Bench decision of the Calcutta High Court reported in -- "Debendranath Das v. Registrar of Joint Stock Companies", 45 Cal. 486. In that decision on facts practically the same as before the Bombay High Court, the Calcutta High Court took the view that it was not open to an accused to plead in answer to a charge u/s 134 his prior default in respect of the calling of the prescribed general meeting and placing before the company at such meeting a duly prepared and audited balance sheet and they relied on a decision of the English Court in - "Park v. Lawton", (1911) 1 K.B. 588. Out of the two decisions I am inclined to follow the latter,

7. Whatever might have been the facts in the Bombay case of which we have no full account, it is clear here that this accused person Seethayya is relying on his own default and pleads his innocence. There were sufficient opportunities before him for applying to the Registrar of the Joint Stock Companies to condone the delay. In fact in a Madras case reported in - In Re: Ramanujam Appalaswamy and Others, the accused were convicted u/s 76(2) of the Companies Act for not holding a general meeting of the company of which they were the directors within 18 months of the date of the incorporation. They were also convicted u/s 131 of the Companies Act for not having laid before the general body within 18 months from the incorporation of the company a balance sheet.

It was shown that in reply to a letter from the company the Registrar of Joint Stock Companies had condoned the delay in the following terms: "The delay in holding the general meeting is condoned and the list of members and summary is filed this time." Held: Inasmuch as the letter of the Registrar condoned the failure of the accused to hold a general meeting they were not liable to be convicted u/s 76(2) of the Companies Act. Held further; As the Registrar had condoned the delay in holding the general meeting he should be deemed to have condoned the delay in filing the balance sheet before the general body at its meeting and the accused were not liable to be convicted u/s 131 of the Companies Act.

In this case it is not the contention of Seethayya that the balance sheet had been prepared at any time or that he had applied for extension of time for holding the general meeting. Therefore this is a clear case where the Managing Director is relying on his own default in order to establish his innocence and this he cannot be permitted to do. The conviction of Seethayya, the Managing director is correct. But in view of the extenuating circumstances in this case the fine is reduced to Rs. 50.

8. Turning to the case of the directors their plea is nothing more than an

argument drawn from misery that it was impossible for them to hold a general body meeting and place the balance sheet and especially so when it was the Managing Director who was entitled to call this meeting and get the balance sheet placed before the meeting and not they the directors. This kind of plea cannot be entertained in this case for several reasons. These directors had ample opportunities and time to apply to the Registrar for extension and they did not do so; secondly the explanations put forward by them and referred to in paragraph 5 of the judgment of the lower appellate court are unfounded and which need not be repeated as they were not pressed here; and thirdly the directors have got their own responsibility and cannot plead innocence on the ground of helplessness and throw the entire blame on the Managing director. In - Bhagirath Chandra Das and Others Vs. Emperor, the following observations at pages 43 and 44 are instructive :

"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 wilfully and knowingly permitted the company to fail to carry out those duties. The suggestion that these various directors were mere figure heads not taking any active part in the control of the company is in my opinion not worthy 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 these 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."

9. Therefore the plea put forward by these directors cannot be accepted. The convictions are correct but the sentences can be legitimately reduced in this case in view of the observations of Clark J. who dealt with this very company on the original side in O. P. No. 261 of 1947 and the judgment of Govinda Menon J. in O. S. A. No. 12 of 1948. The fines are reduced to Rs. 25 each.

10. The balance of fine amount if paid will be refunded to the petitioners and their L.C. if any.