

(1999) 07 GUJ CK 0037

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 2526 of 1999

Jayesh R. Mor

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-07-1999

Acts Referred:

Companies Act, 1956 — Section 159, 160, 161, 162, 220

Citation : (2000) 1 GLR 61

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Navin K. Pahwa, for the Appellant; S.P. Dave and Davawala, for the Respondent

Judgement

1. Heard Mr. Pahwa for the petitioner, Mr. S. P. Dave, learned Additional Public Prosecutor for respondent No. 1-State and Ms. Davawala for

respondent No. 2.

2. Rule. Mr. S. P. Dave waives service of rule on behalf of respondent No. 1 and Ms. Davawala waives service on behalf of respondent No. 2.

3. The petitioner happened to be a director of one Aashi Leasing & Finance Ltd. The said company failed to file three copies of the balance sheet

and profit and loss account of the company by 30th October, 1997, as required u/s 220 of the Companies Act, 1956 ("the Act") and, therefore,

the Registrar of Companies for Gujarat, Dadra and Nagar Haveli lodged complaint against the company and three directors of which present

petitioner was shown as accused No. 3, u/s 220(3).

4. The petitioner has challenged the said complaint on the ground that it is not maintainable against him. According to the petitioner, at one stage,

he was director of the company, but he resigned from the directorship by his

letter dated 23rd September, 1996 with effect from 23rd September, 1996. The said resignation came to be accepted by the Board of directors and, accordingly, the company had submitted Form No. 32 indicating that the petitioner ceased to be director with effect from 17th October, 1996 as the same was accepted by the Board of directors and therefore, on the date of the alleged commission of the offence, the petitioner was not director and he cannot be held responsible therefor. The petitioner has in support of his version, produced a copy of the resignation at annexure 6 and that of Form No. 32 at Annexure C.

5. Mr. Pahwa, learned advocate appearing for the petitioner, submitted that the offence is u/s 220(3) and, if that section is considered, it holds

responsible the company and every officer of the company, who is in default, liable to be punished. Mr. Pahwa submitted that the petitioner was

neither director nor officer of the company on 30th October, 1997 and, therefore, he cannot be held responsible for non-filing of the statement of

accounts, balance sheet, etc. He has further drawn attention of this court to section 5 of the Act which defines "officer who is in default". Mr.

Pahwa submitted that the petitioner does not fall under any of the categories stated in the said definition. Under the circumstances, criminal liability

cannot be fastened on the petitioner and the complaint lodged against him may be quashed.

6. Ms. Davawala, appearing for the Registrar of Companies respondent No. 2 as submitted that the company's head quarters is at Ahmedabad.

Out of the three accused persons, accused Nos. 2 and 4 stay at Mumbai and it is only the petitioner who is staying at Ahmedabad. He is a

chartered accountant and, therefore, an inference can be drawn that he must be looking after the affairs of the company at Ahmedabad level, more

so in relation to accounts matters and, therefore, he cannot escape from this liability.

7. Mr. S. P. Dave, learned additional public prosecutor, submitted that there is no substance in the petition and may be dismissed.

8. In reply to the argument advanced by Ms. Davawala Dave that Form No. 32 was sent on 21st July, 1997. Mr. Pahwa has drawn attention to

section 303 of the Act. If section 303 is perused, it casts duty on the company to intimate the change within 30 days of the effect of the change.

Sub-section (3) of the said section provides that in the event of default in complying with the above provision, the company and every officer of the company who is in default shall be punishable with a fine which may extend to fifty rupees for every day during which the default continues. Mr.

Pahwa, therefore, submitted that the resignation was accepted on 17th October, 1996 and, therefore, it was the duty of the company to send

Form No. 32 within one month thereof and, if there is any default on the part of the company, the petitioner cannot be held responsible even

according to provisions of sub-section (3) of section 303.

Having regard to the contention raised, the following dates become important :

(1) 23rd September, 1996 - Petitioner tendered resignation as a professional director from the company with effect from 23rd September, 1996.

(2) 17th October, 1996 - Resignation was accepted and the change was effected.

(3) 30th October, 1997 - The last date for filing of copies of balance sheet, profit and loss account, etc.

(4) 21st July, 1997 - The company sent Form No. 32 to intimate the change following resignation of the petitioner.

9. It is apparent from the above data that the petitioner ceased to be professional director of the company on 17th October, 1996. Admittedly,

according to the complaint, the accounts were to be submitted latest by 30th October, 1997. On that day, the petitioner was not connected with

the company in any manner. To put it differently, the petitioner's relationship with the company has snapped on 17th October, 1996 and on the

date of the alleged commission of the offence, he had no relation whatsoever with the company.

Section 220 of the Act runs as under :

Three copies of balance sheet, etc., to be filed with the Registrar. - (1) After the balance sheet and profit and loss account have been laid before a

company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance

sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be

filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the

provisions of this Act.

(a) three copies of balance sheet and the profit and loss account, signed by the managing director, managing agent, secretaries and treasurers, manager or secretary of the company, or if there be none of these by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account :

(b) * * *

Provided that in the case of a private company, copies of the balance sheet and copies of the profit and loss account shall be filed with the

Registrar separately :

Provided further that, -

(i) in the case of a private company which is not a subsidiary of a public company, or

(ii) in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India,

or

(iii) in the case of a company which becomes public company by virtue of section 43A, if the Central Government directs that it is not in the public

interest that any persons other than a member of the company shall be entitled to inspect or obtain copies of, the profit and loss account of the

company,

no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of the profit and loss account of that

company u/s 610.

(2) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance sheet, or is adjourned

without adopting the balance sheet, or if the annual general meeting of a company for any year has not been held, a statement of that fact and of the

reasons therefore shall be annexed to the balance sheet and to the copies thereof required to be filed with the Registrar.

(3) If default is made in complying with the requirements of sub-section (1) and (2) the company, every officer of the company who is in default,

shall be liable to the like punishment as is provided by section 162 for a default in complying with the provisions of sections 159, 160 or 161.

10. A bare perusal of the above section particularly sub-section (3) indicates that, in default in complying with provisions of sub-section (1) or (2),

the company and every officer of the company who is in default would be liable. As such, liability would arise in the instant case only on 30th

October, 1997, the day on which the petitioner had no relationship with the company. He would not fall within the definition of "officer who is in

default" as defined u/s 5, and, therefore, the complaint against the petitioner is not maintainable at all.

11. Annexure C, if perused, indicates that the change was effected on 17th October, 1996 and intimated on 21st July, 1997, which is in any case

is prior to the date of default and cause of action therefor, the complaint, therefore, could not have been filed against the petitioner.

12. The outcome of the above discussion is that, on the date on which the offence is said to have been committed, i.e., on 30th October, 1997, or

not submitting copies of the balance sheet, profit and loss account, etc., by then, the petitioner's relationship with the company was not in

existence. The petitioner cannot be held responsible even otherwise as he does not fall within the definition of officer in default as given in section 5

and sub-section (3) of section 220 holds the company and every officer in default responsible for such lapse and, therefore, the petition deserves

to be allowed. No offence against the petitioner can be said to be constituted and as a necessary consequence, the petition must succeed and

complaint qua the petitioner must be quashed.

13. The petition is, therefore, allowed. The complaint being criminal case No. 322 of 1998, lodged before the learned Additional Chief

Metropolitan Magistrate, Ahmedabad, is hereby quashed so far as it relates to the petitioner only. It is clarified that the entire complaint is not

quashed. This court expresses no opinion on merits of the complaint and that it may be taken to its logical conclusion in accordance with law. Rule

is made absolute accordingly.

14. Petition allowed.