

(1972) 07 MAD CK 0044

In the Madras High Court

Case No : Criminal Revision Case No. 1513 of 1970 and Criminal Revision
Petition No. 1502 of 1970

K. Kanagasabapathy

APPELLANT

Vs

T.M. Shanmugham

RESPONDENT

Date of Decision : 13-07-1972

Acts Referred:

Companies Act, 1956 — Section 209(1), 209(4), 209(5), 209(6)

Citation : (1972) 42 CompCas 596

Hon'ble Judges : Maharajan, J

Bench : Single Bench

Advocate : K. Gopalachari, for the Appellant; P.K. Gopalakrishnan, for the
Respondent

Final Decision : Allowed

Judgement

Maharajan, J.—This revision petition is directed against the judgment of the Sixth Presidency Magistrate, Saidapet, convicting the petitioner, who is the secretary of the Mylapore Hindu Permanent Fund Ltd. (hereinafter called " the Fund "), of the offence u/s 209(4)(a) read with Section 209(5) and (6) of the Companies Act, and sentencing him to pay a fine of Rs. 100 and, in default, to suffer simple imprisonment for one month.

2. The circumstances leading to the prosecution of the petitioner are briefly these: The capital of the Fund as shown by the memorandum and Articles of association and bye-laws is one crore of rupees, and the object of the Fund is to enable persons to save money, to secure loans at a favourable rate of interest on the security of immovable property or jewels, etc. The Fund is managed by a board of directors elected by the shareholders at the annual general meeting. At every annual general meeting, one-third of the directors have to retire by rotation, and the general body may fill up the vacancy by appointing the retiring director or some other person thereto. The 97th annual general meeting of the shareholders of the Fund was held at Radha Manram, Vepery, Madras, on the

25th April, 1970, at 2 p.m. At that meeting, the shareholders got up on the dais and snatched the minutes book. Owing to confusion and pandemonium, the meeting could not be commenced, whereupon Company Application No. 220 of 1970 was filed on the original side of the High Court and Mr. S. Venkatachala Sastri, advocate, was appointed on the 7th July, 1970, as chairman to hold and conduct the 97th annual general meeting of the Fund, to ascertain at the meeting as to the manner in which the election of the directors should take place and to conduct the election. It was in this context of excitement that one Shanmugham, the complainant in this case, in his capacity as one of the directors, sent a communication dated August 25, 1970, to the secretary (accused) for permission to inspect the office file relating to the nominations filed by candidates for election to the board of directors. Under Article 138 of the Articles of association of the Fund, all communications to the Fund shall ordinarily be addressed to the secretary and all correspondence between the Fund and the shareholders and others shall generally be carried on by the secretary under the orders of the president. The application of P.W. 1 was consequently placed by the accused before the president on August 25, 1970, with the following note :

"Sir, Sri T.M. Shanmugham, director-treasurer, requests inspection of the file relating to nominations for appointment as directors, at the office today.

His letter is submitted herewith for orders as to what reply is to be given. Submitted."

3. On August 27, 1970, the president passed the following order :

" Consult court chairman. "

4. On August 27, 1970, P.W. 1 wrote another letter to the secretary, complaining that in spite of his requests, the secretary had not shown the file relating to the nominations and that he must be allowed to see the same as well as the minutes book of the 97th annual general meeting. This letter was put up by the secretary to the president with the following note :

1" His letter in No. 12116 of date is submitted herewith.

In this connection, it is submitted that the court chairman has directed the office not to furnish copy of the proceedings to allow inspection of the minute book to anybody as the 97th annual general meeting is not yet over.

Attempts were also made to seize the minutes book by some members on April 25, 1970, when the 97th annual general meeting was scheduled to be held.

Orders are requested as to what precautions are to be taken to ensure safety of the minutes book, till the 97th annual general meeting concludes and all the proceedings is drawn, and signed by the chairman.

Submitted for orders."

5. The president passed the following orders :

" Secretary to keep the books with lock and key in safe custody. "

6. It appears that P.W. 1 continued to write to the secretary, repeating his request. On September 13, 1970, the secretary put up the following note to the president.

" Sri T.M. Shanmugam, director-treasurer, by his letters dated August 21, 1970, August 25, 1970, August 27, 1970, and September 3, 1970, wanted to inspect the file relating to the nominations filed for appointment as directors at the 97th annual general meeting. By his letter dated September 7, 1970, he has given notice that if his request is not complied with, he will take suitable legal steps u/s 209(5) of the Companies Act.

The above letters are submitted herewith. Orders are requested as to what reply is to be given to him. "

7. The president passed on September 15, 1970, the following laconic order : " Meeting ". Probably what he meant was that the matter might be placed at the meeting.

8. Meanwhile, that is to say, on September 14, 1970, T.M. Shanmugham, the complainant, instituted his complaint in the court below. The gist of his complaint was that in spite of his repeated letters, the accused failed, neglected and defaulted to take all reasonable steps to secure compliance by the company with the legitimate demand of the complainant for inspection of the abovesaid file and papers connected with the nomination and election of directors at the 97th annual general body meeting as he was entitled to do u/s 209(4)(a) of the Companies Act, and consequently the accused was punishable u/s 209(5) and (6) of the Companies Act.

9. If under Article 138 of the Articles of association of the Fund, which has been marked as exhibit P-1, all correspondence between the Fund and the shareholders like the complainant shall be carried on by the secretary under the orders of the president, and if the president did not permit the secretary to show the relevant file to the complainant in spite of the secretary having placed the complainant's letters before the president for orders, I fail to see how the accused, secretary, can be convicted of the failure to take all reasonable steps to secure compliance by the company with the requirements of Section 209(4) of the Companies Act, or of having caused any default by his own wilful act. If the secretary had shown the file to the complainant without the orders of the president, he would certainly have been guilty of disobedience of the president and of violating the provisions of Article 138 of the Articles of association of the Fund. Even assuming without conceding that the failure to show the nomination papers to the complainant is an offence under the Companies Act, the offender would be the president, who is the managing director within the meaning of Section 209(6) of the Companies Act, and not the secretary, whose non-

compliance of the requirements of the Act would be the result, not of his own wilful act, but of the omission of the president to permit him to show the nomination papers.

10. I shall next consider if the omission to keep the nomination papers open to inspection by the complainant would constitute an offence under the Companies Act. Section 209(4)(a) of the Companies Act directs that the books of accounts and other books and papers shall be open to inspection by any director during business hours. What is the legislative intent behind the expression " other books and papers" ? Can it be reasonably construed to embrace "the nomination paper " ? At page 289 of Maxwell on the Interpretation of Statutes, [1859] 28 L.J. M.C. 213, twelfth edition, the following passage occurs as to how associated words in a common sense have to be understood:

" When two or more words, which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general."

11. In the expression " books of account and other books and papers " occurring in Section 209(4)(a) of the Companies Act, the words " other books and papers" are more general, whereas the words " books of account " are less general. But the more general words take their colour from the less general and become restrictive in meaning. Even if the ejusdem generis Rule is applied, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended--vide R. v. Edmundson. It would then follow that the expression "other books and papers" must be construed as referring to other books and papers of the same kind as the books of account. The pattern of the different clauses in Section 209 of the Companies Act along with the heading " Accounts " would also point to the same conclusion. As pointed out by Maxwell at page 11 of the book cited supra, the headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections, and that though they cannot control the plain words of the statute, yet they may explain ambiguous words. It is true that while the court is entitled to look at the headings in an Act of Parliament to resolve any doubt, the law is quite clear that you cannot use such headings to give a different effect to clear words in the section where there cannot be any doubt as to their ordinary meaning. In my view, it would be dangerous to construe the words "other books and papers " to embrace every scrap of paper in the office of the company, whether it is in the nature of a book of account or not. The sub-heading to Section 209 of the Companies Act is " Books to be kept by company and penalty for not keeping proper books". This sub-heading emphasises the fact that the words " proper books " have a restricted meaning and refer only to books in the nature of accounts. Originally, Section 209(4) of the Companies Act

did not contain the words " other books and papers". These words were added by Section 20 of the Companies (Amendment) Act, 1965. The Joint Select Committee's Report explained the object of the amendment in the following words :

" It is proposed to redraft Sub-section (4) with a view to making it clear that the Registrar of Companies or any officer authorised in that behalf may inspect the books of account and other books and papers of the company without giving any previous notice to the company or any officer thereof, if sufficient cause exists for such inspection and take copies of and put identification marks on the documents so inspected. Opportunity is also taken to make it obligatory on the company and its officers to produce the necessary books of account, etc., for inspection by the Registrar or any other officer and to give them all possible assistance in connection therewith."

12. It is, therefore, clear that the object of the amendment was to cover not only books of account, strictly so-called, but also books showing such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed in the case of companies engaged in production, processing, manufacturing or mining activities, within the meaning of Section 209(1)(d) of the Companies Act. Clause (d) of Section 209(1) itself was inserted by Section 20 of the Companies (Amendment) Act, 1965, and it was to cover the records relating to the particulars mentioned in Clause (d) that the expression, " other books and papers " appears to have been used. I, therefore, hold that this expression does not extend to the nomination papers, which the complainant wanted inspection of, and that the failure of the secretary to give inspection thereof does not constitute an offence within the meaning of Section 209(5) of the Companies Act.

13. In the result, the conviction and sentence imposed upon the petitioner by the lower court u/s 209(4)(a) read with Section 209(5) and (6) of the Companies Act are set aside as illegal, and the petitioner is acquitted of the offence of which he has been wrongly convicted. The criminal revision is allowed. The fine, if collected, will be refunded to the petitioner.