

(1958) 11 KAR CK 0010
In the Karnataka High Court

K. Venkata Rao

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 02-11-1958

Acts Referred:

Companies Act, 1956 — Section 551, 622, 633 (1)

Citation : (1966) 36 CompCas 606

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant; Beemasenachari Ashrit, for the Respondent

Judgement

Narayana Pai, J.—The petitioner was appointed voluntary liquidator of a company called Rural Commercial Syndicate Ltd., by a special resolution of the company dated 2nd November, 1958. u/s 551 of the Companies Act of 1956 he had to file statements mentioned in the section with the Registrar of Companies periodically. It appears he was filing such statements regularly until he committed default in respect of a statement relating to the period May 2, 1963, to November 1, 1963, which was due to be filed with the Registrar on or before January 1, 1964. After issuing notice to him to rectify the omission, the Registrar instituted criminal prosecution against him before the First Class Magistrate, Civil Station, Bangalore.

2. The petitioner admitted his default and pleaded guilty, but placed certain circumstances before the Magistrate on the strength of which he prayed that he be pardoned. It also appears that the necessary statement was filed by him after the presentation of the complaint but before the Magistrate came to dispose of the same.

3. The Magistrate on the basis of the plea convicted the petitioner and imposed on him a fine of Rs. 434 at the rate of Rs. 2 for every day of the period during which the petitioner was in default.

4. On appeal to the Court of Session, Civil Station, Bangalore, the conviction and sentence have been confirmed.

5. In this revision petition presented against the appellate order, the grievance of the petitioner is that though he had placed before the trial court circumstances sufficient to invoke the jurisdiction of the court u/s 633(1), the Magistrate had failed to give due effect to them and that his argument in that regard has also not been properly appreciated or given effect to by the appellate judge.

6. Mr. Narayana Rao, the learned counsel for the petitioner, does not dispute that before he can seek the indulgence of the court u/s 633(1) his client should show not only that he had been honest but also that he had acted reasonably in regard to the matter under investigation in respect of which he may be said to have incurred some liability under the Act.

7. Mr. Ashrit, the learned Government Pleader, appearing for the respondent State, contends, firstly, that neither the appeal to the Court of Session nor the revision petition to this court is maintainable under the Code of Criminal Procedure and also that on the merits though the petitioner may not be said to have acted dishonestly the circumstances placed before the court by him do not make out that he had acted reasonably.

8. The preliminary objection appears to me to be unsustainable. It is no doubt true that the offence in respect of which the petitioner has been convicted is an offence created by the Companies Act and that the penalty therefore is also prescribed by the same Act. But the trial of the offences defined and punished by the Companies Act is not assigned to any special courts created by the Companies Act but to the ordinary criminal courts exercising jurisdiction under the Code of Criminal Procedure subject to the provision contained in section 622 of the Act which reads:

"No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence against this Act."

9. I am unable to accept the argument that the said section 622 constitutes either a presidency Magistrate or a First Class Magistrate mentioned therein a *persona designata* for the mere reason that the section designates magistrates of a particular description. What the section designates is not a person but a criminal Procedure. The correct view to take of the provision is that the power or jurisdiction to take cognizance of offences defined and punished by the Companies Act can be exercised only by a presidency magistrate or a magistrate of the first class and no other magistrate. A section defining the limits of the jurisdiction of a criminal court or specifying the conditions for taking cognizance of an offence created by a special court or designating a particular person to discharge a judicial function.

10. Mr. Ashrit has also referred to sections 624A and 624B of the Companies Act as provisions indicating an intention of the Companies Act to exclude altogether

the operation of the code of criminal procedure. That is too large an inference to be suggested to be drawn from the language employed in these two sections. They do nothing more than empower the Central government to appoint a separate public prosecutor to conduct prosecutions under the Companies Act and also to authorise him to present the absence of which the conduct of the prosecutions would necessarily have been within the conduct of the prosecutions would necessarily have been within the competence of an appropriate public prosecutor appointed under the Code of Criminal Procedure by the State GOvernment.

11. The ruling of this court in State V.G. L.Udayawar (I)[1963] 14 S.T.C. 628 is of no assistance to the respondent. That case dealt with not the ordinary criminal Act but with his special statutory function of assisting in the collection of arrears of sales tax. The effect of the decision is that in respect of the latter function the Magistrate to punish an offence created under the sales tax act but with his special statutory function of assisting in the collection of arrears of sales tax. The effect of the decision is that in respect of the latter function the Magistrate to punish an offence created under the sales tax Act but with the his special statutory function of assisting in the collection of arrears of sales tax. The effect of the decision is that in respect of the latter function the Magistrate was not acting as a criminal court but as a special statutory authority acting administratively and not therefore sub case of Presidency Magistrate or first class magistrate trying an offence against any of the provisions of the companies Act.

12. The preliminary objection is therefore overruled.

13. On the merits, the only point for consideration is whether the petitioner can be said to have made out a case for exercise of the jurisdiction u/s 633(1) of the Companies Act. On this point, I should state that the petitioner did not lead any evidence before the trial court and did not even place any documents or correspondence on the basis of which some inference could have been drawn. The only thing that he did was to give the following explanation u/s 242 of Criminal Procedure;

"I plead guilty to the charge. Due to circumstances beyond my control I could not submit the statement in time. I had entrusted this work to my clerk, M. R. M.P. Tunga, but he ran away in January, 1964, along with the records. He was usually preparing the statements and bringing them for my signature. Under these circumstances I may be pardoned. I am filing the statement today itself in the complainant's office."

14. As the learned appellate judge points out, the running away of the clerk, Tunga, is irrelevant because he ran away some time in January, whereas the statement in respect of which the petitioner was in default was due for filing on the 1st January, 1964.

15. Apparently, in view of these circumstances, Mr. Narayana Rao has not tried to make use of the clerk, Tunga, in his argument. His only argument is that the

company in liquidation was one with small assets, that except in regard to the default which is the subject of this prosecution he had never been in default and that the interest of either the company in liquidation or its creditors has not suffered to any extent and does not require the special protection afforded by the statute by way of prosecuting a negligent liquidator.

16. These circumstances are not converted before me by or on behalf of the Registrar of Companies who was the complainant. At the same time the previous good conduct of the petitioner does not in itself furnish sufficient basis for an inference that in regard to the matter which is the subject of discussion he can be said to have acted reasonably. Mr. Ashrit points out that the Registrar before instituting the prosecution had issued two reminders to the petitioner and had also given him a fortnight's time to complete the statement and file it and avoid prosecution.

17. While agreeing with the respondent that there is no ground for an exercise of the jurisdiction u/s 633(1) of the Companies Act resulting in total acquittal of the petitioner, I think his previous conduct should have been taken into account by the courts below in determining the nature and extent of the punishment.

18. To say that the rate of Rs. 1 per day adopted by the trial court is small compared to the maximum rate of Rs. 500 per day prescribed by the statute is not, in my opinion, a logical way of looking at the situation. The court in determining the sentence must have regard for the extent of the prejudice caused to the company in liquidation and its creditors in cases where the accused is a liquidator.

19. Examining the situation from that point of view, I think that the ends of justice will be met by imposing a nominal fine of Rs. 25.

20. The conviction of the petitioner by the courts below is confirmed, but the sentence is reduced to a fine of Rs. 25 with a default sentence of two day's simple imprisonment.

21. I find from one of the the memos filed on behalf of the petitioner in this court that, while asking for stay of operation of the sentence, he had made mention of the fact that the assets of the company are only Rs. 300 compared to which the fine imposed by the trial court is excessive. I have been assured by Mr. Narayana Rao that his client understands that the fine has to be paid by him personally and not out of the assets of the company. I make a record of that because that is the correct position.