
(1957) 08 CAL CK 0015

In the Calcutta High Court

Case No : Criminal Revision No's. 750 and 751 of 1957

Kanailal Jatia and Others

APPELLANT

Vs

Ramkrishnadas Gupta

RESPONDENT

Date of Decision : 28-08-1957

Acts Referred:

Companies Act, 1956 — Section 630, 630(1)
Criminal Procedure Code, 1898 (CrPC) — Section 204, 96
Penal Code, 1860 (IPC) — Section 424

Citation : AIR 1958 Cal 128 : (1958) CriLJ 368

Hon'ble Judges : N.K. Sen, J

Bench : Single Bench

Advocate : S. Choudhury and P.K. Ghose, for the Appellant; A.K. Dutt and N.C. Banerjee, for the Respondent

Judgement

N.K. Sen, J.—These two rules arise out of two petitions of complaint filed by the opposite party Ram Krishna Dass Gupta against the five petitioners before the Chief Presidency Magistrate, Calcutta, charging them with having committed offences u/s 630 of Companies Act and u/s 424 of the Indian Penal Code. The petitioners now pray for quashing the orders of the Presidency Magistrate issuing summonses against them.

2. As the points involved are identical in both the rules, they will be dealt with together as hereunder.

3. Revision Case No. 750 of 1957 arises out of a Case No. C-894 of 1957. In this case the opposite party Ram Krishna Gupta instituted the complaint on behalf of J. K. Eastern Industries (Private) Ltd. Revision Case No. 751 of 1957 arises out of Case No. C-895 of 1957 where the same opposite party instituted the case on behalf of Reform Flour Mills (Private) Ltd. The accused persons in both the matters are the same.

4. In Revision Case No. 750 of 1957 the opposite party Ram Krishnadas Gupta on behalf of J. K. Eastern Industries (Private) Ltd., complains against the petitioners

in substance as follows: Prior to 11th of May 1957, petitioners Nos. 1 to 4 were Directors of J. K. Eastern Industries (Private) Ltd., and petitioner No. 1 K. L. Jatia was the Chairman of the Board of Directors. On an application made by Messrs. Bengal and Assam investors Ltd., a share-holder of the Company, P. B. Mukharji, J., by an order dated the 19th of March 1957, directed the holding of an extraordinary general meeting of the said Company under the Chairmanship of Sir S. M. Bose, Advocate-General of West Bengal. At the meeting that followed several resolutions were passed by which the petitioners Nos. 1 to 4 who were Directors were removed from their offices with immediate effect and in their places other gentlemen were appointed. The complainant-opposite party was appointed an additional Director of the Company.

5. By a resolution passed by the Board of Directors of the Company on the 6th of June 1957, all powers granted to opposite party No. 5, Ram Karan Poddar, who was the Secretary of the Company were cancelled and his authority to act as such was revoked.

6. On the following day, the Company through their solicitors informed the petitioners Nos. 1 to 4 of the resolutions passed and called upon them to hand over possession of the assets of the Company to the opposite party Ram Krishnadas Gupta and another Lakshman Prosad Maitin on the 11th of June 1957, at 12 noon. Petitioner No. 5 Ram Karan Poddar was also similarly informed and asked to hand over all books, documents, papers, furniture, fixtures, pass books and cash money belonging to the Company and in his possession to the opposite party and Lakshman Prosad Maitin. It is alleged that the petitioner-Directors refused to hand over possession of the assets of the Company to Lakshman Prosad Maitin who was accompanied by an assistant of the firm of Messrs. Khaitan and Co., Solicitors. Petitioner No. 5 Ram Karan Poddar, it is stated, absented himself intentionally and later on by a letter refused to comply with the requisition.

7. In Criminal Revision Case No. 751 of 1957 the complaint was made by the opposite party on behalf of Reform Flour Mills (Private) Ltd. The petition of complaint narrates, in substance, that J. K. Eastern Industries (Private) Ltd., of which the complainant is a Director is the Managing Agent of the Reform Flour Mills (Private) Ltd., a private limited company registered under the Indian Companies Act. Petitioners Nos. 1 to 4 were, prior to the 11th of May 1957, Directors of the Reform Flour Mills (Private) Ltd., and at all material times prior to 11th May 1957, the petitioners Nos. 1 to 4 were also Directors of the Managing Agency Company. Opposite party No. 1 Kanailal was stated to be the nominee of the Managing Agents and also the Chairman of the Board of Directors of both the Reform Flour Mills (Private) Ltd. and J. K. Eastern Industries (Private) Ltd.

8. The events narrated thereafter were the same as those stated in the complaint in the other case, namely, the removal from the offices as Directors of the four petitioners as a result of the resolution passed by the extraordinary general meeting on the 11th May 1957, under the Chairmanship of Sir S. M. Bose and

their replacement by others and the revocation of all powers granted to petitioner No. 5 Ram Karan Poddar who was also the Secretary of the Reform Flour Mills (Private) Ltd. Then followed the reiteration of the events leading to the refusal to make over the assets, documents, furniture and moneys of the said Reform Flour Mills (Private) Ltd.

9. Upon these two complaints, both filed on the 8th of July 1957, the Chief Presidency Magistrate issued summonses u/s 630 of the Companies Act and u/s 424 of the Indian Penal Code in each and also search warrants for the seizure of books and documents, etc.

10. After the above orders were passed the petitioner No. 1 Kanailal Jatia on the very day made an application in each case to the Chief Presidency Magistrate giving an undertaking to produce the books of account in Court and praying further for the withdrawal of the search warrants. Upon this the learned Chief Presidency Magistrate recalled the search warrants and directed the petitioner to produce all books mentioned in the list filed with the petition of complaint by the 10th of July 1957, without fail.

11. Instead of producing the document before the Magistrate in accordance with the undertaking given before him, the petitioners moved this Court against the order passed in each case on the 8th July 1957, asking for the quashing of the same.

12. In the revision petitions, the petitioners have challenged the resolutions purported to have been passed on the 11th of May and 11th June 1957, as not having been validly and lawfully passed. They have also asserted that the said resolutions are ultra vires the Companies Act and any acts done by Messrs. Khaitan Co., Solicitors, on behalf of the newly appointed Directors in pursuance of the illegal and void resolutions, were not binding upon the petitioners. They have further stated that the petitioners Nos. 1 to 4 were immediately going to file a suit in the Original Side of the High Court challenging the validity of the said meeting. During the hearing of the rule, Mr. Choudhury appearing on behalf of the petitioners informed me that the suits have already been filed.

13. It was further stated that the opposite party was not a competent person to file a complaint under the Companies Act. (14) It will be noticed that none of the cases have proceeded beyond the stage of summonses having been issued. Save petitioner No. 1, the other petitioners have not even submitted to the jurisdiction of the Court. The applications so far as they are concerned should not ordinarily be entertained at all but since the petitioner No. 1 has by a petition undertaken to produce the books, I will consider the entire matter now before me. There can hardly be any ground to quash a complaint made in Court on which cognisance had been taken unless, of course, the petition of complaint does not disclose any offence at all. Disputed matters can never be decided at this stage when no evidence at all has been gone into.

15. Whether the extraordinary general meeting of the Company was held in

accordance with law and whether the various resolutions passed therein were void and not binding on the petitioners and similar other questions raised before me cannot be decided at this stage. The facts stated in the petition on which this Court has been moved for quashing the proceedings will constitute, I presume, the defence of the petitioners in case they have to stand their trial. These facts may be true and may be found to be a complete answer to the charges levelled against the petitioners. It is impossible for this Court to determine the cases merely on certain statements made in the petition before it. I am expressing no opinion on the merits of the petitioners' claim but I can hardly quash the proceedings on controversial facts the determination whereof is primarily the business of the trial Court if and when these are properly brought on record.

16. The only question, therefore, that calls for my consideration at this stage is whether the petitions of complaint disclose prima facie any offence u/s 630 of the Companies Act and u/s 424 of the Indian Penal Code. The relevant portion of Section 630 of the Companies Act is as follows:

"630. (1) If any officer or employee of a company (b) having any such property in his possession wrongfully withholds it...he shall, on the complaint of the company or any creditor or contributory there to be punishable....."

17. In both these cases complaint has been filed by J. K. Eastern Industries (Private) Ltd. The competency of the opposite party in instituting the complaints cannot, therefore, in the facts now before me, arise. In this connection a ground not taken in either of the petitions does probably arise and need consideration. Section 621 of the Act is a bar to taking cognisance by a Court of certain offences except at the instance of certain specified persons. There is, however, a proviso to Sub-section (1) of Section 621 which perhaps saves the cognisance already taken by the learned Magistrate. As the point has not been raised, it is not necessary for me to decide it and in any event it cannot be decided when the evidence of the complainant on the point has yet to be recorded by the Magistrate. I am not prepared to say on the present state of records that on the petitions of complaint a case u/s 630 of the Companies Act has not been made out.

18. As for the offence u/s 424 of the Indian Penal Code, the materials disclosed in the petitions of complaint are very slender. The allegations merely are that the opposite parties refused to part with their assets, books, documents, etc., of the Company. Whether this refusal, even if dishonest, will amount to fraudulent concealment or removal of property cannot also be decided now in the absence of evidence. I have no doubt that the learned Magistrate will consider the evidence before him in order to determine what offence, if any, has been committed. The mere mention of certain sections on the summonses does not mean that offences under those sections have been committed nor does it mean that evidence of the commission of other offences cannot be given.

19. Lastly, in the petition another ground has been taken, although not pressed, that inasmuch as no reasons were mentioned on the search warrants for their issue, the warrants themselves are bad. There is no substance in this ground and the point is now fully covered by the decision of Harries, C. J. and S. R. Das Gupta, J., in the case of Manicklal Mondal and Another Vs. The State, .

20. In these circumstances, the two rules are discharged. I direct that the matters be heard as expeditiously as possible.