
(1930) 11 CAL CK 0006
In the Calcutta High Court

Kumud Chandra Nandi and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 19-11-1930

Acts Referred:

Companies Act, 1956 — Section 87

Citation : AIR 1931 Cal 265a

Hon'ble Judges : Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—The two petitioners are Managing Director and Secretary respectively of a certain company and they have been prosecuted and fined Re. 1 each for neglecting to file with the Registrar a notice of the change among its directors in proper time. It would appear that one of the directors resigned his post on 6th February 1930. This resignation and the name of the new director was notified to the Registrar of Joint Stock Companies on 8th May 1930. Apparently the prosecution was lodged at the instance of the retiring director of the company. S. 87, under which the two petitioners have been convicted and fined reads as follows:

(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and file with the Registrar a copy thereof, and from time to time file with the Registrar notice of any change among its director;", or managers. (2) If default is made in complying with this section the company shall ho liable to a fine not exceeding Rs. 50 for every day during which the default continues; and every officer of the company, who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

2. It is to be noticed that no time is prescribed within which the notice is to be given to the Registrar. The only indication of any time being prescribed is to be found in the foot-note of Form :No. 26, Appx. A of the Act. In that form there is a foot-note that notices of change should be given within 30 days from the date

of occurrence. It is quite obvious however that this provision is not mandatory, the expression used not being " must " but "" should." Therefore as far as I can see. no period whatever has been prescribed within which such notice must be given, and it is extremely difficult therefore to see when a company is to be considered as in default for not complying with the section. I presume the company is entitled to the time until a new director has been appointed in the place of the retiring director to give notice to the Registrar. In the absence of any period being prescribed within which this notice must be given it is difficult to say that the petitioners have committed any offence u/s 87, Companies Act. Obviously it cannot be said that the company was in default from the very moment when the retiring director resigned. In the circumstances it does not seem to me clear that the petitioners have committed any offence u/s 87, Companies Act.

3. The convictions and sentences are therefore set aside and the petitioners are acquitted. The fines, if paid, must be refunded.