

(1999) 04 DEL CK 0075

In the Delhi High Court

Case No : Criminal M (M) 4/85 in Criminal O (CO) 2/82

Luk Auto Ancillary (India) Ltd. (In Liquidation)

APPELLANT

Vs

Laxmi Narain Raina and Others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1999) 50 DRJ 101

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : S.K. Luthra, for O.L. B.N. Nayyar, for the Appellant; K.M. Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.—By this application, Raj Kumar Goyal, Ex-Director of M/s. Luk Auto ancillary India Ltd., company in liquidation, prays for quashing of the prosecution proceedings pending against him in this Court in CrI.O.No. 2/82.

2. In the application it is stated that the applicant was co-opted as Director of the said company by the Board of Directors on 23 December, 1974 but he resigned from the Directorship on 2 December, 1975, i.e., more than five years prior to the date on which the said company was wound up by this Court, i.e., 24 April, 1981. It is asserted that the applicant had duly sent his letter of resignation to the Registrar of Companies.

3. No reply to the application has been filed on behalf of the OL.

4. I have heard Mr. Sharma, learned counsel for the applicant, respondent No. 4 herein and Mr. Luthra, learned counsel for OL. In addition to what has been pleaded in the application, it is also pointed out by Mr. Sharma that at the time of recording of evidence of the parties, when Mr. M.C. Saxena, Junior Technical Assistant, Office of the Registrar of Companies, North Zone, was examined on 18 July, 1986, he categorically admitted that an intimation about the resignation of

the applicant was received in the Office of Registrar of Companies. Further, the attention of the Court has also been invited to a circular issued by the Department of Company Affairs, stating that where Registrar receives a communication from any Director about his resignation, Registrar should enquire whether the resignation of such Director is or is not bonafide and if he finds that Director has resigned bonafide from the Directorship of the company, he should not start prosecution against such Director, irrespective of the fact whether such resignation was or was not accepted by the company. It is pleaded by Mr. Sharma that no communication was received from the Office of Registrar of Companies, rejecting his letter of resignation. It is also contended that, thereafter, no prosecution was launched against the applicant by the Registrar of Companies for any default on the part of the company, which shows that his resignation was deemed to have been accepted.

5. Mr. Luthra, on the other hand, has pointed out that in the statement of Mr. M.C. Saxena, it was stated that on receipt of intimation regarding the resignation by the applicant, he was asked to file Form No. 32 and the balance sheet etc. of the company in liquidation but it was done and, Therefore, it could not be said that the applicant's resignation had been accepted.

6. In view of the fact that letter of resignation, as sent to the Registrar of Companies, was not rejected and the fact that after the receipt of the said letter no prosecution is stated to have been launched against him, presumably in terms of the aforesaid circular issued by the Department of Company Affairs, the non-furnishing of Form No. 32 by applicant No. 2 is of no consequence.

7. Accordingly, for the foregoing reasons, the application is allowed and the applicant is discharged in Crl.O.2/82.

Crl. O (CO)2/82

List on 24 August, 1999.