
(1996) 06 AHC CK 0001

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 7642 of 1982

Neeraj Jindal and Others

APPELLANT

Vs

Registrar Companies, U.P.

RESPONDENT

Date of Decision : 04-06-1996

Acts Referred:

Companies Act, 1913 — Section 32, 5
Companies Act, 1956 — Section 159, 162
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1996) 20 ACR 732

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : Vineet Saran, for the Appellant; Ashok Mohiley, for the Respondent

Judgement

G.P. Mathur, J.—The applicants by means of the present petition u/s 482, Code of Criminal Procedure seek quashing of the proceedings of Complaint Case No. 5082 of 1981, Registrar of Companies, U.P. v. Jindal and Jindal Pvt. Ltd., which is pending in the Court of C.M.M., Kanpur.

2. The Registrar of Companies, U.P., Kanpur filed a criminal complaint dated 2.7.1981 against Jindal and Jindal Pvt. Ltd., and its ten directors for their prosecution u/s 159 read with Section 162 of the Companies Act, 1956 (hereinafter referred to as the Art). The complaint was filed on the ground that the Annual General Meeting of the Company in the year 1979 should have been held on or before 30.10.1979 and the Annual Return made up to that date should have been filed with the Registrar of Companies on or before 29.12.1979 but the accused did not file the Annual Return inspite of repeated notices and thereby knowingly and wilfully continued with the contravention of the provisions of Section 159 of the Act commencing from 30.12.1979 till the date of the filing of the complaint. It was further alleged that the Company-accused No. 1 and accused No. 2 to 11 being Officers of the Company had failed to comply with the statutory requirement of Section 159 of the Act and had committed a continuing

default. The learned Magistrate took cognizance of the offence and summoned the accused to face trial.

3. The principal submission of the learned Counsel for the applicants is that no Annual General Meeting of the Company was held in the year 1979 and, therefore, the question of filing the Annual Return with the Registrar of Companies did not arise. It is urged that in absence of any Annual General Meeting having been held, the provisions of Section 159 of the Act could not be complied with and, therefore, the prosecution of the applicants for violation of the aforesaid provision is illegal and cannot be sustained in law. The contentions raised by the applicants cannot be accepted. An identical question has been considered by the Supreme Court in *The State of Bombay Vs. Bandhan Ram Bhandani and Others*, , with reference to Section 32 of the Indian Companies Act, 1913 which is more or less similar to Section 159 of the Companies Act, 1956. In the said case, the directors of the Company were charged with offence u/s 32(5) in that they were knowingly and wilfully parties to the failure to file the summary of share capital for certain year as required by Section 32(3) and to the failure to lay before the Company in general meeting the balance-sheet and profit and loss account as required u/s 131. No general meeting of the Company had been held during the year in question as directors had been knowingly parties to the default of the Company in that respect. It was held that the fact that no general meeting of the Company was held was, in the circumstances, no defence to the charge of not complying with the requirement of Section 32. It was further held that a person charged with an offence could not rely on his own default as an answer to the charge. Similar view has been taken in *State of Andhra Pradesh and Another Vs. Andhra Provincial Potteries Ltd. and Others*, . In view of authoritative pronouncement by the Apex Court, the contention of the applicants that as no Annual General Meeting was held, there is no violation of Section 159 of the Act, cannot be accepted.

4. Learned Counsel has next submitted that the complaint does not specify as to which of the officers or directors of the Company had committed the default and, therefore, the prosecution of all the applicants is illegal, Section 162 lays down that if a company fails to comply with any of the provisions contained in Section 159, the Company and every officer of the Company who is in default shall be liable for punishment and it further lays down that the expression "Officers" and "directors" shall include any person in accordance with rules, directions or instructions, the Board of Directors of the Company is accustomed to act. Section 5 of the Act as it stood at the relevant time laid down that the expression "Officer who is in default" means any officer of the Company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision or who knowingly and wilfully authorises or permits such default, non-compliance, failure, refusal or contravention. This Section has undergone a major change by Companies (Amendment) Act (13 of 1988) with effect from 15.7.1988 and now a Managing Director or a Whole-time Director, Manager, Secretary and many others are included in the definition. The question as to who will be

covered by the expression "Officer who is in default" is a mixed question of fact and law and consequently, cannot be adjudicated upon in a petition u/s 482, Code of Criminal Procedure. The decision of this question would also depend upon evidence and, therefore, it can only be gone into in the trial. According to the allegations made in the complaint, all the directors of the company were responsible for the default. It cannot be held at this stage that the complaint against all the directors suffers from any legal infirmity. It will be for the trial court to determine as to who will be covered by the expression "Officer who is in default" after the evidence has been adduced by the parties. No other point was urged.

5. For the reasons mentioned above, the petition lacks merit and is hereby dismissed. Stay order is vacated.