
(1984) 09 GUJ CK 0023

In the Gujarat High Court

Case No : Appeal No"s. 5 and 6 of 1984 in Miscellaneous Criminal Application
No. 1279 of 1979 in Company Petition No. 37 of 1977

Niranjan Jayantilal Tolia and Others

APPELLANT

Vs

Official Liquidator, Trimurthy Agro-chemical Ltd. (In
Liquidation) and Another

RESPONDENT

Date of Decision : 04-09-1984

Acts Referred:

Companies Act, 1956 — Section 454, 454(5A), 483, 483(1)

Citation : (1984) 56 CompCas 505

Hon'ble Judges : P. Subramonian Poti, C.J;R.C. Mankad, J

Bench : Division Bench

Advocate : J.G. Shah, for the Appellant; Rajni Mehta and S.R. Divatia, for the
Respondent

Judgement

Poti, C.J.—When these appeals came up for admission before a Division Bench of this court, direction was given to register the appeals without prejudice to the rights of the other side to contend that the appeal is not competent. The other side has entered appearance and has contended that the appeal before us is not competent and, therefore, ought not to be entertained. In support of this, a decision of a Division Bench of this court in O.J. Appeal No. 15 of 1981 arising from company Application No. 178 of 1980 has been cited.

2. The appeals arise from the judgment of our learned brother A. M. Ahmadi J. in Criminal Miscellaneous Application No. 1279 of 1979 in Company Petition No. 37 of 1977, Official Liquidator, Trimurthy Agro-chemical Ltd. (In Liquidation) Vs. Niranjan Jayantilal Tolia and Others, . The company judge, by the judgment under appeal, convicted accused Nos. 1, 2 and 4 under sub-s. (5) of s. 454 of the Companies Act, 1956, and directed each of them to suffer simple imprisonment for three months and to pay a fine of Rs. 5,000 in default to suffer further simple imprisonment for three months. The accused were no the board of directors of the company, Trimurthy Agro Chemicals Co. Ltd. (In liquidation). The

charge against them was that when the notices were issued calling upon them to submit a statement of affairs of the company in the prescribed form, verified by an affidavit, as required by sub-s. (1) of s. 454 of the Companies Act, read with rule 125 of the Companies (Court) Rules, 1959, they did not, despite time being given to them, submit such statements. Evidently, this court acting in its criminal jurisdiction, took cognizance of the offence under s. 454(5A) read with sub-s. (6) and : tried the case in accordance with the procedure laid down in the CPC, 1898. According to the appellants before us, though this court acted in exercise of its criminal jurisdiction, an appeal would lie against a conviction pursuant to the power under s. 454(5A) of the Companies Act.

3. In the case to which we have adverted, viz., O.J. Appeal No. 15 of 1981, a Division Bench consisting of M. P. Thakkar C.J. (as he then was) and V. V. Bedarkar J. considered the maintainability of an appeal filed against sanction for prosecution granted in Company Petition No. 18 of 1978. It was contended in that case that an appeal will be competent under clause 15 of the Letters Patent. Clause 15 of the Letters Patent of the High Court excludes from the scope of an appeal under that clause a judgment passed in exercise of criminal jurisdiction. On that score, the learned judges in that case declined to entertain the appeal.

4. As a judgment passed in criminal jurisdiction, there is no scope for appeal against the decision of the learned single judge. But, it is contended that s. 483 of the Companies Act would enable an appeal to be entertained by the Division Bench and, therefore, apart from any appeal under the power of the Letters Patent, the court could entertain the appeal.

5. Section 484 of the Companies Act reads :

"Appeals from any order made, or decision given, in the matter of the winding up of a company by the court shall lie to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the court in cases within its ordinary jurisdiction."

6. We have noticed that s. 454 appears in the Chapter relating to "winding up by the court." Cases in which the company may be wound up by the court, the transfer of proceedings to District Court, petition for winding up, commencement of winding up, powers of court, consequences of winding up order, Official Liquidator's Committee of Inspection, general powers of the court in case of winding up by court and enforcement of and appeal from orders are the different topics with which the chapter on winding up is concerned. Section 454 appears in the topic relating to "Official liquidators". There is an obligation under s. 454(1) to make a statement to the official liquidator relating to various matters mentioned in that sub-section. The obligation to submit a statement is on the persons who are, on the relevant date, the directors and who is also, on the relevant date, the manager, secretary or other chief officer of the company. It is also open to the official liquidator to call for a statement and when such statement is called for, there is an obligation to submit such a statement under

sub-s. (3). The penal provision is in sub-s. (5), which makes any person who, without reasonable excuse, commits default in complying with any of the requirements of s. 454, liable of punishment. Sub-section (5A) deals with the procedure relating to prosecution.

7. The question for our consideration, in the context of the scheme in which s. 454 appears, is whether the proceedings under s. 454(5A) culminating in a decision can be subjected to an appeal under s. 483 of the Companies Act. There are various matters concerning winding up dealt with in Chapter II. Some of them are part of the winding up process, others are incidental to winding up. Whether s. 483 will cover all matters including a decision in a criminal prosecution, is a question which has to be considered in the light of the language of s. 483(1). That enables appeals against any order made or decision given in the matter of a winding up of a company. "In the matter", indicates not "incidental to" the winding up but is "part of" the winding up itself. While non-compliance with obligations "in the matter of winding up" have been made punishable under the provisions of the Chapter and the procedure thereof prescribed, proceedings for imposing such punishment being matters "incidental to" the winding up cannot be said to be a "part of" the winding up process itself. Evidently, orders contemplated under s. 483 are matters "in the matter of the winding up of a company", which, according to us, would exclude a decision in a prosecution under s. 454(5A). Though our attention was sought to be drawn to the Commentary of Ramaiya, Tenth Edition, 1984, wherein the learned author at page 978 mentions that the order or decision must be one pertaining to, or within the scope of, the winding-up jurisdiction, and anything outside that jurisdiction, though it may have arisen out of it, such as a prosecution sanctioned by the judge in the winding-up proceeding, will not come within the scope of this section, we are not basing our decision on this observation. We are independently coming to the same conclusion.

8. Though our attention has been drawn to the decision of the Punjab and Haryana High Court in the case of K. S. Mathura Dass v. State of Punjab [1977] 47 Comp Cas 467, showing that a similar appeal was entertained by that court, going through that judgment, we find that that question was never before the court and the court had no occasion to consider the same. As a such, the said decision may not be of much assistance.

9. In the above view, the appeal would not be maintainable under s. 483 of the Companies Act also. Therefore, the appeals are rejected. The bail bonds shall stand cancelled. Time to surrender one month.

10. Counsel for the appellants in both the cases make an oral application under s. 134A of the Constitution for certificate of leave to appeal to the Supreme Court. In view of the importance of the question and in view of the fact that there is no considered precedent on the matter, we certify this case as fit for appeal to the Supreme Court under art. 134(1)(c) of the Constitution.