
(1962) 12 AP CK 0008
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 366 of 1961

Public Prosecutor

APPELLANT

Vs

H.R. Basava Raj and Others

RESPONDENT

Date of Decision : 04-12-1962

Acts Referred:

Companies Act, 1956 — Section 116, 166, 210

Citation : AIR 1963 AP 389 : (1963) CriLJ 368

Hon'ble Judges : Sharfuddin Ahmed, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; D.S. Krishna, R. Raghavan and N. Rajeswar Rao, for the Respondent

Final Decision : Dismissed

Judgement

Sharfuddin Ahmed, J.—A complaint was filed by the Registrar of Companies of Andhra Pradesh against the respondents alleging that they were the directors of a private limited company, which had been registered on 5-12-1958 under the Companies Act, 1956. It was incumbent on the directors in accordance with the provisions of the Companies Act (Section 166) to lay before the company a balance-sheet and profit and loss account of the company for the period (958-59 and as they had failed to do so, they were liable to punishment u/s 210(5) of the Companies Act. The respondents accused pleaded not guilty and urged that as the first annual general meeting of the company could not be held for reasons beyond their control there was no question of laying before the company a balance sheet and profit and loss account as contemplated u/s 166. The learned Magistrate accepted the pica of the respondents and dismissed the complaint acquitting them of the said charge. The State has conic in appeal against this order.

2. The contention of the learned Public Prosecutor is that an offence u/s 210(5) of the Act has nothing to do with the holding of the general body meeting and is an independent offence in itself. Reliance has been placed for this purpose on the

The State of Bombay Vs. Bandhan Ram Bhandani and Others, . It was laid down therein 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 requirements of Section 32. A person charged with an offence could not rely on his own default as an answer to the charge."

The contention by the learned Counsel on the other side is that the ruling has not application as it is with reference to the provisions of Section 32 of the Old Act of 1913. The corresponding sections under the new Act having been substantially altered and that it is also distinguishable on facts.

3. Before proceeding to examine the arguments on either side some facts regarding which there is no controversy may briefly be stated.

It is admitted that the company "Messrs. Techniplant Private Limited" was registered as a private company on 5-2-1958. It consisted of the three accused-respondents as directors and shareholders, the 4th respondent being the Secretary of the Company. The 1st respondent was the Managing Director but within two months of the registration and formation of the company he was made to resign and he was succeeded by the 2nd respondent. Then there were disputes between respondent No. 1 on one side and the other respondents on the other. The 1st respondent got the books of the company sealed with the help of police. There was an application in the High Court also and finally the company went into liquidation. A separate charge-sheet was filed against the Directors for contravening the provisions of Section 166 of the Companies Act, 1956 by not holding a general body meeting within 18 months from the date of its incorporation. It was pleaded therein that the meeting could not be held for reasons beyond the control of the accused as an application under Sections 397 and 398 of the Companies Act for winding up the company itself was filed in the High Court on 18-12-1958 i.e., within the time-limit. The trial Court found the accused guilty but on appeal the sentences were set aside on the ground that there was no wilful default in non-complying with the said provisions.

In this context, it has to be determined whether the respondents could be held guilty for contravening the provisions of Section 210(5) of the Companies Act viz., for not placing before the company balance sheet and profit and loss account at its annual general meeting.

4. Section 210(5) of the Companies Act, hereinafter called the Act, provides that:

"(1) At every annual general meeting of a company held in pursuance of Section 166, the Board of Directors of the company shall lay before the Company

(a) a balance sheet as at the end of the period specified, in Sub-section (3); and

(b) a profit and loss account for that period. Sub-section (5) lays down that:

"If any person, being a director of a company, fails to take all reasonable steps to

comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty;

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully."

A plain reading of the Section will indicate that the Board of Directors of the Company has to lay a balance sheet and a profit and loss account before the company at every annual general meeting held in pursuance of Section 166. Section 166 directs for the holding of annual general meeting. It lays down that:

"Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next."

Penalty is provided in Section 168 which prescribes that

"If default is made in holding a meeting of the company in accordance with Section 166 every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees....."

From a perusal of these two Sections viz. 166 and 210(5) it is clear that the holding of annual general meeting is the pre-requisite for laying the balance sheet and profit, and loss, account. The emphasis in Section 210 is on the meeting of the company held in pursuance of Section 166, so that if no general meeting could be held in compliance with Section 166 the question of laying balance sheet and profit and loss account in accordance with Section 210(5) would not arise. This seems to be the plain and commonsense view of the matter.

5. In the present case, it has been found by a competent Court that the general meeting u/s 166 could not be held for reasons beyond the control of the directors viz., as the books had been sealed and an application was filed in the High Court for winding up the company etc. In these circumstances, the question of laying of balance sheet and profit and loss account would not arise. The opinion of the lower Court, therefore, that no case had been made out against the respondents seems to be correct.

6. The case cited on behalf of the appellant deals with Companies Act, 1913 as amended by Act XXII of 1936. The corresponding provisions in the old Act were Section 76 for holding of annual general meeting and 131 for laying the balance sheet and profit and loss account. The provisions are similar to the corresponding

provisions in the present Act though the language is somewhat different and the penalties in the new Act are more severe. I am not inclined to hold that the addition of words "meeting of a company held in pursuance of Section 166" in Section 210(5) of the new Act has in any way materially altered the position vis-a-vis Section 131 of the Indian Act, 1913.

But, it is no doubt correct that the said ruling is distinguishable on facts. There, the directors of the company were knowingly parties to default i.e.. no general meeting of the company had been held during the year in question and when they were prosecuted for not laying the balance sheet etc., they pleaded that as there was no general meeting the same could not be laid before the company. It was held that a person charged with an offence could not rely on his own default as an answer to the charge.

7. This does not seem to be the position here. On the other hand, it has been found that the directors could not hold the general meeting for the reasons beyond their control. They could, therefore, validly plead that they could not be held guilty for not laying the balance-sheet and profit and loss account. The appeal is accordingly dismissed.