

(1966) 04 AHC CK 0030
In the Allahabad High Court
Case No : Criminal Appeal No. 284 of 1964

Raghunath Swaroop Mathur

APPELLANT

Vs

Har Swaroop Mathur

RESPONDENT

Date of Decision : 21-04-1966

Acts Referred:

Companies Act, 1956 — Section 269(2), 629A
Companies Act, 1956 — Section 269(2), 629A
Companies Act, 1956 — Section 269(2), 629A

Citation : (1967) 37 AWR 336

Hon'ble Judges : Mahesh Chandra, J;Gangeshwar Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gangeshwar Prasad, J.—This is an appeal by a complainant against the appellate order of acquittal passed by the learned Sessions Judge of Saharanpur in a case which was started by Raghunath Swarup Mathur complainant against Har Swarup Mathur Respondent for the alleged contravention of Section 269(2) of the Companies Act.

2. At Saharanpur there is a company known as the Cooperative Company Limited (Distillers) Saharanpur. All the shares of the Company are held by the family of the parties who are brothers. It is admitted that Har Swarup Mathur was the managing director of the Company before the commencement of the Companies (Amendment) Act, 1960. It is also admitted that he was re-appointed as the managing director of the Company by a resolution of the general body of share holders on 30-9-1961 and began functioning as such. The complaint was that since the approval of the Central Government was necessary u/s 269(2) of the Companies Act before the re-appointment could take effect and the approval had not been received, Har Swarup Mathur committed a breach of the said section by acting as a managing director of the Company.

3. The learned Magistrate who tried the case found the accused guilty u/s 269(2)

of the Companies Act and sentenced him to a fine of Rs. 500 and also to a recurring fine of Rs. 25 per day for every day the contravention continued after the passing of the order. In default of payment of fine the accused was directed to undergo simple imprisonment for a period of one month. It was also provided in the order of the Magistrate that the complainant would receive Rs. 100 as reward including cost of litigation out of the fine, if realised. On appeal by the accused his conviction and sentence were set aside by the learned Sessions Judge and he was acquitted. The complainant has now preferred an appeal to this Court.

4. The order of acquittal passed by the learned Sessions Judge is based on the view that Section 269(2) of the Companies Act does not prohibit a person from functioning as a managing director before the receipt of the approval of the Central Government and it cannot, therefore, be said that in doing so the accused contravened the said provision. We think that the view taken by the learned Sessions Judge is perfectly correct.

5. Section 269(2) of the Companies Act reads as follows:

Whether a public company or a private company which is a subsidiary of, a public company, is an existing company, the re-appointment of a person as a managing or whole-time director for the first time after the commencement of the Companies (Amendment) Act, 1960, shall not have any effect unless approved by the Central Government.

6. Mr. Asif Ansari, learned Counsel for the complainant, has contended that in as much as the above section provides that the re-appointment of a person as a managing director shall not take effect unless approved by the Central Government there is an implied prohibition against acting as a managing director before the receipt of the approval. The contention appears to us to be manifestly untenable. All that Section 269(2) of the Companies Act does is that it prevents the reappointment of a person as a managing or whole-time director for the first time after the commencement of the Companies (Amendment) Act, 1960 from taking effect, i.e. from being operative in law, unless approved by the Central Government and there is nothing in the section which contains any prohibition directed against acting or purporting to act under such a reappointment. Before an act can be regarded as an offence there must be a specified statutory prohibition against the commission of the act and such a prohibition is entirely lacking in Section 269(2) of the Companies Act. Mr. Asif Ansari has further contended that even in the absence of such a prohibition in Section 269(2) of the Companies Act the person acting as a managing director without the approval of the Central Government on the basis of a re-appointment made for the first time after the commencement of the Companies (Amendment) Act, 1960 would be liable to punishment u/s 629-A of the Act. This contention appears to us to be equally untenable. It would be seen that Section 629-A does not create any offence and only provides penalty for such contraventions of the Act for, which no specific penalty has been, provided elsewhere. Section 629-A of the Act

presupposes a contravention of the provisions of the Act and there can be a contravention only when there is., a direction, or prohibition. As we have already observed, Section 269(2) of the Companies Act contains no direction, or prohibition and Section 629-A does not, therefore, have any application. It is obvious that the accused was not guilty pf the offence with which he was charged under the complaint.

7. We may note that it is a matter of dispute in this case whether or not the Cooperative Company Limited (Distillers) Saharanpur is a public company or a private company which is a subsidiary of a public company. Section 269(2) of the Companies Act can apply only when the Company is a company of the above description. However, even if we assume that the Company is a public company or a private company which is subsidiary of a public company, no case was made out against the accused and he was rightly acquitted by the learned Sessions Judge.

8. The appeal has no force and it is accordingly dismissed.