

(1966) 02 AHC CK 0023
In the Allahabad High Court
Case No : Criminal Appeal No. 37 of 1964

Raghunath Swarup Mathur

APPELLANT

Vs

Dr. Raghuraj Bahadur Mathur and Others

RESPONDENT

Date of Decision : 25-02-1966

Acts Referred:

Companies Act, 1956 — Section 263, 263(1), 263(2), 629A

Citation : AIR 1967 All 145 : (1967) 37 CompCas 304 : (1967) CriLJ 306

Hon'ble Judges : Lakshmi Prasad, J;Gyanendra Kumar, J

Bench : Division Bench

Advocate : M. Asif Ansari, for the Appellant; Gopal Behari, for the Respondent

Final Decision : Dismissed

Judgement

Gyanendra Kumar, J.—This is an appeal by the complainant against the appellate order of the Sessions Judge of Saharanpur, whereby he allowed the appeal of the respondents, who were sentenced by the Magistrate to pay a fine of Rs. 250 each u/s 629A of the Companies Act, hereinafter called the Act.

2. For proper appreciation of the points involved in the case it would be necessary to consider certain provisions of the Act, as amended by Act 65 of 1960. The material portions of Section 263 of the Act are in the following terms :

"263 (1) :--At a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors or the company by a single resolution unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

2. :--A resolution moved in contravention of Sub-section (1) shall be void whether or not objection was taken at the time to its being so moved."

3. Section 629A is a residuary provision for punishment for breach of the provisions of the Act, where no specific remedy is available in other sections

thereof. The material words of this Section are :

"If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five hundred rupees, and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the contravention continues."

4. The parties are share-holders of the Co-operative Company Ltd., Nawabganj, Saharanpur. At the general meeting of share-holders held on 30-9-1961, Smt. Uma Devi (one of the share-holders) made a motion for appointment of directors of the company, which v. as thus recorded in the minutes book :

"Srimati Uma Devi proposed and Sri H. S. Mathur seconded that Dr. K. I., Endley, Dr. R. B. Mathur, Sri K. S. Mathur and Sri J. S. Mathur be re-elected as Directors of the Company for another term of three years."

5. The complainant, R. S. Mathur, was present in the aforesaid meeting but he did not raise any objection regarding Smt. Uma Devi's resolution. However, well nigh nine months thereafter, he filed a complaint dated 23-6-1962 against all the respondents on the allegations that inasmuch as four names were proposed under a single resolution for election of directors, without a prior unanimous resolution to that effect, (as required by the last clause of Section 263(1) of the Act) they should all be punished u/s 629A of the Act.

6. The City Magistrate accepted the contention of the complainant and convicted all the respondents, sentencing them to pay a fine of Rs. 250 each and in default to undergo 15 days simple imprisonment each. The complainant was also awarded Rs. 200 as costs of the proceeding and Rs. 300 as reward out of the fine, if realised, as contemplated by Section 626 of the Act. The respondents went up in appeal to the Sessions Judge, who allowed the same and set aside their conviction and sentences; hence this appeal by the complainant.

7. The contention of the complainant is that inasmuch as the minute book shows that Smt. Uma Devi had simultaneously proposed the names of four persons to be re-elected as Directors of the Company and inasmuch as H. S. Mathur had seconded the same, they had directly contravened the provisions of Sub-section (1) of Section 263 of the Act. So they, along with the other accused, were punishable u/s 629A of the Act. The argument is certainly plausible. However, it has to be remembered that Section 263 has to be read as a whole and that Section 629A is a penal provision and if two interpretations are possible in the case, the one which favours the accused has to be accepted.

8. It is true that a single resolution moved to elect two or more directors of the company clearly amounts to contravention of the provisions of Section 263(1) of the Act and such a contravention would have been punishable u/s 629A of the Act, but for the existence of Sub-section (2) of Section 263. This sub-section lays

down the consequence of moving such a faulty resolution, viz. it renders void every resolution moved in contravention of Sub-section (1) of Section 263, with the result that the resolution itself becomes non est and non-existent, in the eye of law. In other words, it would be deemed that such a resolution had never been moved. If such a resolution, (being void ab initio) does not at all exist in law, there is no question of its contravening any provision of the Act, entailing punishment.

9. It is note worthy that if the resolution had not been proposed at a stretch i.e. in a single breath as it were, and the names had been proposed, each in the form of a separate resolution, there would have been no contravention of the provisions of Sub-section (1) of Section 263. The contravention in question, if any, would be only of a technical nature. At any rate the matter of the alleged breach or contravention of the provisions of the Act being highly controversial, its benefit must go to the accused. The view taken by the learned Sessions Judge does not appear to be unreasonable or illegal so as to call for interference in this appeal against acquittal, which is accordingly dismissed.