
(1938) 02 CAL CK 0010
In the Calcutta High Court

Robindra Nath Mitra

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 04-02-1938

Acts Referred:

Companies Act, 1956 — Section 91A, 91A(2)
Criminal Procedure Code, 1898 (CrPC) — Section 435

Citation : AIR 1938 Cal 440

Hon'ble Judges : Patterson, J; Jack, J

Bench : Full Bench

Judgement

Jack, J.—This is an application u/s 435, Criminal P.C. in connexion with case No. C/1423 of 1926 u/s 91-A, Companies Act, in the Court of D. J. Cohen. Esq., Presidency Magistrate, Calcutta. A rule was issued calling upon the Chief Presidency Magistrate of Calcutta to show cause why the conviction of the petitioner Pramatha Nath Bose and the sentence of fine imposed upon him should not be set aside on the ground that the facts proved do not bring the case within the provisions of Section 91-A (2), Companies Act, that the findings arrived at by the learned Magistrate do not warrant a conviction, and that the learned Magistrate has entirely misconceived the scope and intention of the section. The only point argued before us in this rule is as to the construction of the section. It has been strenuously argued on behalf of the petitioner that the only con-tracts referred to in the section are con. tracts entered into at a meeting of the directors and therefore it did not refer to the contracts in question. The section runs as follows:

Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of" the directors after the acquisition of his interest or the making of the contract or arrangement.

2. There is no such limitation in the section itself; but in connexion with the disclosing of the director's interest, the clause " shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on," no doubt refers only to contracts entered into at a meeting of the company, but the first portion of the section refers to contracts not only entered into by the company, but contracts entered into on behalf of the company. Further we find at the end of this paragraph the words

or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement.

3. If the interpretation sought to be put upon it on behalf of the petitioners is correct then the words " or the making of the contract or arrangement" would be superfluous. Moreover, once it is admitted that the contracts referred to are contracts not only made by the company at a meeting of its directors, but contracts made on behalf of the company, it stands to reason that the same principle would be applicable to contracts entered into on behalf of the company, and these would not be entered into at a meeting of the directors. So that the words " in any other case must refer not only to cases in which the interest of the director does not exist at the time of the meeting but must refer also to cases in which contracts were not made at a meeting of the directors. We think, therefore, that the plea of the petitioner as regards the interpretation of the section cannot be accepted and this being the only point raised in this Rule, the Rule must be discharged.

Revision No. 826 of 1937

4. This Rule was issued upon the Chief Presidency Magistrate of Calcutta to show cause why the conviction of and the sentence passed on the petitioner should not be set aside. The conviction is one u/s 91.A (2), Companies Act (Act 7 of 1913) and the sentence is a fine of Rs. 20 or in default one week's simple imprisonment. The case for the prosecution was that the accused as managing director of the Kamala Book Depot Ltd. entered into a contract or arrangement for the purchase of books worth Rs. 3-15-0 from Jogendra Publishing House, a firm in which the accused had an interest and which he did not disclose at the time he entered into the contract or at the next subsequent meeting. Secondly, that on or about 23rd July 1936 as managing director he purchased books worth Rs. 55 from Jogendra Publishing House without disclosing the fact that he was directly or indirectly interested in this publishing house and therefore committed an offence under the Companies Act.

5. The points urged in connexion with this Rule are : (1) that in each case there was no proof of a contract; (2) that there was no proof that the petitioner was aware of any contract; (3) that at the first meeting after these transactions, notice was given by the petitioner of his interest in this firm; and (4) that there was no express finding in the terms of Section 91-A. It has been definitely found that the accused, as managing director, had purchased books worth Rs. 3-15-0

on one occasion and books worth Rs. 55 on another occasion, from the Jogendra Publishing House after he had been appointed a managing director of the Kamala Book Depot Ltd. on behalf of the company and therefore under the terms of Section 91-A, in so far as these transactions were concerned, he was bound to disclose his interest in this firm at the next meeting of the company. In view of the findings arrived at by the learned Magistrate, it cannot be said that he was unaware of these transactions.

6. Then it is argued that these are not contracts or arrangements within the meaning of Section 91-A. There can be no doubt that these transactions or purchases were contracts. A reference is made to Clause (3) of the section to suggest that such contracts as these were never intended as they were too petty to be entered in the register. But, such transactions are obviously covered by the proviso which provides that where a director is a director or member of any specified company or firm, a general notice shall, as regards any such transaction, be sufficient disclosure within the meaning of the section and it shall not be necessary to give any special notice regarding any particular transaction. Clearly, this proviso was intended to cover such cases as the present. There is therefore no substance in either of these grounds. The third ground is that in fact the petitioner did give notice at the first subsequent meeting. In support of this ground the learned advocate for the petitioner has produced in this Court a copy of a letter addressed by the petitioner to the Chairman of the Board of directors of the Kamala Book Depot Ltd., dated 3rd October 1936, and noted over the signature B. C. Roy on 6th October 1936 as Chairman. We find that although this letter may have been included in one of the director's files of correspondence exhibited before the Magistrate, there is no reference to it in the Magistrate's judgment nor in the evidence of the witnesses. The finding on this point is that the petitioner's connexion with the firm was not disclosed in any meeting of the directors. The Magistrate states:

The prosecution has put in minutes of proceedings of the meeting of the directors of the Kamala Book Depot Ltd., showing absence of any minute stating that any disclosure has been made by the accused as managing director of Kamala Book Depot Ltd. at the time of each of the transactions with the Jogendra Publishing House or at the next subsequent meeting.

7. Further on the Magistrate says:

If the defence desire to argue that he did disclose informally to the directors outside the meetings, I consider the onus is shifted on to him to prove his assertion which is within his special knowledge.

8. The finding is therefore that such disclosure was not proved. Even if proved, it would not have complied with the terms of the section. Had the letter referred to been produced at the time of the trial before the Magistrate or referred to in the evidence, we would have expected to find some reference to it in the judgment. It is not referred to and, in itself, it does not prove that this disclosure was made

at any meeting of the directors. The Chairman has merely signed it as noted. The transactions were in July; there were meetings on 3rd August, 3rd September, 3rd October and on 6th October. But apparently this was not referred to in the minutes of any of these meetings.

9. Then as regards the absence of an express finding that these transactions are such transactions as are referred to in the section, the finding is that the transactions referred to were not disclosed at a meeting of the directors. It follows, therefore, that these transactions were treated throughout as contracts or arrangements within the meaning of the section. That fact does not appear to have been disputed at the time of the trial and it is obvious from the proviso in the section that it applies to such transactions and that the law required that the petitioner's connexion with the firm should be disclosed. There appears to be no substance in this point. The fact that the fine is only Rs. 20 shows that the Magistrate treated it as a more or less technical offence and this is what it appears to have been in the present case. This rule is accordingly discharged.

Revision No. 1031 of 1987.

10. In this case a rule was issued on the Chief Presidency Magistrate to show cause why the conviction of the petitioner u/s 91-A (2), Companies Act, and the sentence of fine of Rs. 50 should not be set aside on the same ground as in Revision Case No. 1032 of 1937. The prosecution case is that the accused, a partner of the printing business known as Sripati Press, without disclosing his interest in that business to the directors of the Kamala Book Depot Ltd. accepted large orders from that company. The charge is confined to the year 1934-1935. The accused was a director of the Kamla Book Depot Ltd. and as director he was bound to disclose the fact that he was entering into transactions with a firm in which he had an interest. There is no dispute as to the facts of this case. But it is urged that the section does not refer to transactions of this kind and the same argument has been used as in the connected case, that the Section only refers to transactions entered into by the directors at a meeting of the company. We see no reason to limit the provisions of the section to such transactions only. We think therefore that this rule also must be discharged.

Patterson, J.

11. I agree.