
(1966) 04 AHC CK 0002
In the Allahabad High Court

R.S. Mathur

APPELLANT

Vs

H.S. Mathur and Another

RESPONDENT

Date of Decision : 21-04-1966

Acts Referred:

COMPANIES ACT, 1956 — Section 197A, 626, 629A

Citation : (1967) 37 AWR 321 : (1968) CriLJ 883

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

Bench : Division Bench

Judgement

Gangeshwar Prasad J.

1. This is an appeal by a complainant against the appellate order of acquittal passed by the learned Sessions Judge of Saharanpur in a case started by the complainant in respect of an alleged contravention of Section 197-A of the Companies Act.

2. The complaint was to the following effect. The complainant R.S. Mathur and the three accused viz. Dr. K.L. Endley, H.S. Mathur and K.S. Mathur were shareholders of the Co-operative Company Limited (Distillers) Saharanpur which was said to be a public company. H.S. Mathur had been working as managing director of the Company since 1943 and K.S. Mathur had been working as its manager since 1945, u/s 197-A of the Companies Act there could be only one category of managerial personnel after 27.6.1961, but H.S. Mathur and K.S. Mathur had continued as managing director and manager respectively even after that date. At the general meeting of the Company held on 30.9.1961 Dr. K.L. Endley proposed and K.S. Mathur seconded the resolution of re-appointment of H.S. Mathur as managing director with retrospective effect from 1.4.1961 although K.S. Mathur was already functioning as Manager or Secretary of the Company on that date. Both these accused persons also voted in favour of the resolution. These acts of the three accused, according to the complainant, constituted breach of Section 197-A of the Companies Act.

3. The City Magistrate of Saharanpur who tried the case, acquitted Dr. K.L. Endley but convicted the two other accused u/s 629-A of the Companies Act for contravention of the provisions of Section 197-A of the said Act and sentenced each of them to a fine of Rs. 500 and to simple imprisonment for a period of three months in default of payment of fine. The Magistrate directed that out of the fine realised the complainant would be paid Rs. 100 for meeting the cost of litigation and Rs. 150 as reward u/s 626 of the Companies Act. H.S. Mathur and K.S. Mathur appealed against their convictions and sentences and the learned Sessions Judge allowed their appeal, set aside their convictions and sentences, and acquitted them, holding that the convicted accused had not contravened Section 197-A of the Companies Act. It is against this order of acquittal that the present appeal has been preferred.

4. Section 197-A of the Companies Act is as under: Notwithstanding anything contained in this Act or any other law or any agreement or instrument no company shall after the commencement of the Companies (Amendment) Act, 1960, appoint or employ at the same time, or after the expiry of six months from such commencement, continue the appointment or employment at the same time, or more than one of the following categories of managerial personnel, namely:

- (a) managing director,
- (b) managing agent,
- (c) secretaries and treasurers, and
- (d) manager.

5. It will be noticed that the section prohibits only a company from doing the acts specified therein and it contains no prohibition directed to anybody else. Plainly there is nothing in the section which may warrant the conclusion that the person who is appointed or employed or whose appointment or employment is allowed to continue contrary to the terms of the section is himself guilty of its breach.

6. The view taken by the learned Sessions Judge is, therefore, quite correct and the order of acquittal passed by him is perfectly justified. There is no force in this appeal and it is accordingly dismissed.