
(1995) 04 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No"s. 660 and 666 of 1994 and Criminal Revision Petition No"s. 650 and 665 of 1994

Salaam M. Bavazier

APPELLANT

Vs

Mohd. Azgaruddin and Another

RESPONDENT

Date of Decision : 24-04-1995

Acts Referred:

Companies Act, 1956 — Section 202, 203, 203(1), 203(2), 542

Citation : (1995) 1 ALT(Cri) 658 : (1998) 93 CompCas 609

Hon'ble Judges : D. Reddeppa Reddi, J

Bench : Single Bench

Advocate : S. Ravi, for the Appellant; Public Prosecutor and S. Padmanabha Reddy and T. Anil Kumar, for the Respondent

Judgement

D. Reddeppa Reddi, J.—The principal question of law which is of some general importance that arises for consideration in these two revision cases is : Whether the conviction of a director or managing director of a company, incorporated under the Companies Act, 1956 (for short "the Act"), of any offence, regardless of its nature, in connection with the promotion, formation or management of a company could form the basis to restrain him from taking part in the management of the company by virtue of clause (a) of sub-section (1) of section 203 of the Act. It arises thus : The petitioner herein is the managing director of Kohinoor Cement Limited (for short "the company"). He was prosecuted on a complaint filed by the Assistant Inspector of Factories, Nalgonda, in S.T.C. No. 30 of 1994, for offences u/s 7A read with sections 41 and 61, 21(1)(iv)(a) and 31 read with section 54 of the Factories Act, 1948, and S.T.C. No. 31 of 1994, for offences u/s 47 read with sections 72 and 41 of the Factories act, 1948, on the file of the Judicial Magistrate of the First Class, Huzurnagar. On his plea of guilty, he was convicted and sentenced to pay a fine of Rs. 300 in default to suffer rigorous imprisonment for one month on each count (total fine Rs. 900) in S.T.C. No. 30 of 1994, and Rs. 300 in default to suffer rigorous imprisonment for one month on each count (total fine Rs. 600) in S.T.C. No. 31 of 1994, by separate

orders dated April 27, 1994. Some time thereafter, the first respondent herein, a shareholder of the company, filed CrI. M.P. Nos. 1390 and 1391 of 1994, in S.T.C. Nos. 31 and 30 of 1994, respectively, under sections 203(1)(a) and 203(2)(a) of the Act for restraining the petitioner from acting as the managing director of the company, etc. Thereupon, the learned magistrate passed the impugned orders restraining the petitioner from acting as the managing director of, or taking part in any way either directly or indirectly in the promotion, formation or management of the company for a period of five years.

2. On the applicability of the provisions of section 203(1)(a) of the Act to the cases on hand, learned counsel appearing for the petitioner as well as the first respondent reiterate the respective submissions made before the learned magistrate. It is contended on behalf of the petitioner that conviction for an act of fraud is a sine qua non for invoking the provisions of section 203(1)(a) in view of the marginal note to the section. There is no element of fraud in the offences of which the petitioner was found guilty and, therefore, the impugned orders are liable to be set aside. In opposition, it is contended for the first respondent that the marginal note shall not be taken note of when the provisions of the section are clear and unambiguous. His learned counsel maintains that the provisions of section 203(1)(a) are clear and unambiguous and, therefore, reference to the marginal note to the section is unwarranted.

3. To have better appreciation of the above contentions, it is necessary to refer to the provisions of section 203(1) of the Act. It has two clauses - (a) and (b), with a common marginal note reading :

"Power to restrain fraudulent persons from managing companies -".

4. Clauses (a) and (b) read as under :

"(1) Where -

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person -

(i) has been guilty of any offence for which he is punishable (whether he has been convicted or not) u/s 542; or

(ii) has otherwise been guilty, while an officer of the company, of any fraud or misfeasance in relation to the company or of any breach of his duty to the company;

the court may make an order that the person shall not, without the leave of the court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, for such period not exceeding five years as may be specified in the order."

5. Section 542 referred to in clause (b)(i) deals with the liability of a person for

fraudulent conduct of business in the course of winding up of a company. The first limb of clause (b)(ii) also deals with a person who has been guilty of any fraud in the course of winding up of a company. Therefore, there cannot be any dispute that commission of fraud or conviction for any offence involving fraud is essential to attract the provisions of clause (b)(i) and the first limb of clause (b) (ii) of section 203(1) of the Act. To this extent, the marginal note and the provisions of the section go together. Thus, the controversy whether the marginal note to the section can be referred to for the purpose of construing the provisions of the section is confined to clause (a) where a person is convicted of any offence in connection with the promotion, formation or management of a company and the second limb of clause (b)(ii) where a person has been guilty of any misfeasance in relation to the company or any breach of his duty to the company in the course of its winding up.

6. Though the Act is nearly four decades old, it is reported by learned counsel on either side that despite thorough investigation they could find no direct decision on the point at issue. They also reported that they could not lay their hands on any useful commentary or decisions by the English courts on section 188 of the Companies Act, 1948 (U.K.), which reads almost identical to section 203 of the Act. My attempt, in this regard also proved futile. However, there is no dearth of judgment law on the subject, which I shall, presently, refer to.

7. It is interesting to note that both learned counsel place strong reliance on different observations found in paragraph 9 of the decision in *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, . While learned counsel for the first respondent lays emphasis on the observation :

"It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous ..." (para. 9)

to drive home his point that the marginal note cannot be referred to, learned counsel for the petitioner lays equal emphasis on the observation

".... it (marginal note) can certainly be relied upon as indicating the drift of the section or, to use the words of Collins MR in *Bushell v. Hammond* [1904] 2 KB 563, to show what the section is dealing with ... being part of the statute, it (marginal note) prima facie furnishes some clue as to the meaning and purpose of the section ..." (para. 9)

to sustain his submission that conviction for an act of fraud is a necessary condition for invoking the provisions of section 203(1)(a).

8. It is not only necessary but also desirable to understand the above observations with reference to the facts of that case and the context in which they have been made. The facts of that case are : An Income Tax assessee, who was the owner of a house situated in Ernakulam, which he had purchased in

1958 for a consideration of Rs. 16,500 sold the same to his daughter-in-law and five of his children for the same consideration of Rs. 16,500 on December 25, 1965. The question that arose for consideration was whether the marginal note to section 52 of the Income Tax Act, 1961, read as "consideration for transfer in cases of understatement", could be referred to while construing the provisions of section 52(2), which read as under :

"(2) Without prejudice to the provisions of sub-section (1), if in the opinion of the Income Tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than fifteen per cent. of the value declared, the full value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of its transfer."

9. It is significant to note that in the body of the section there was no reference to understatement of consideration in respect of the transfer. On that basis, it was contended by the Revenue that the marginal note should not be read into the provisions of the sub-section. P. N. Bhagwati J. (as he then was) speaking for the court, after elaborate discussion on various aspects, while rejecting the contention of the Revenue concluded as under (131 ITR 618) :

"We must therefore hold that sub-section (2) of section 52 can be invoked only where the consideration for the transfer has been understated by the assessee or, in other words, the consideration actually received by the assessee is more than what is declared or disclosed by him and the burden of providing such an understatement or concealment is on the Revenue ..." (para. 18).

10. This conclusion makes it manifestly clear that the marginal note can be relied upon to understand the object and purpose of the section.

11. Well-recognised principles of interpretation of statutes also reiterate that the object and purpose of a statutory provision should be given due weight. In this context, it is worth quoting the following illuminating observations of Bhagwati J. in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, :

"The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the Legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and, as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said :

".... it is true that the words used, even in their literal sense, are the primary and

ordinarily the most reliable source of interpreting the meaning of any writing : be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning".

It is a well-recognised rule of construction that a statutory provisions must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which would never have been intended by the Legislature ..."

12. The same is the view of the Supreme Court in Directorate of Enforcement Vs. Deepak Mahajan and another, . Therein, Ratnavel Pandian J., after an exhaustive survey of the law on interpretation of statutes, observed :

"True, normally courts should be slow to pronounce the Legislature to have been mistake in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the Legislature inane"

13. In the light of the above principles, let us examine the point set for consideration. Part VI of the Act deals with management and administration of companies. It contains eight chapters. Section 202 and 203 are in Chapter I, which deals with general provisions. At this juncture, it would be appropriate to refer to the heading of sections 202 and 203 of the Act. It reads thus :

"Prevention of management by undesirable persons."

14. To a large extent, this heading provides a clue to the purpose and object of these two sections. It is fairly well settled that the "headings and titles prefixed to sections can be referred to in construing an Act of the Legislature". (Principles of Statutory Interpretation by G. P. Singh, 2nd Edition at page 97). In Bhinka and Others Vs. Charan Singh, , Subba Rao J., as he then was, quoting with approval the following passage from Maxwell on the Interpretation of Statutes, 10th Edition at page 50 :

"The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words."

15. observed as under :

"If there is any doubt in the interpretation of the words in the section, the

heading certainly helps us to resolve that doubt"

16. It cannot be denied that a director or managing director of a company may have multifarious statutory obligations the breach of which may render them liable for criminal prosecution. It may not be possible for them to escape prosecution in one form or the other. Sometimes, it may result in their conviction for some trivial offence. Could it be a ground for their disqualification by virtue of clause (a) of sub-section (1) of section 203 ? Is it the intention of the Legislature to subject them to such disqualification ? The heading prefixed to the section and its marginal note provide ample guidance to arrive at the right answer to these questions. As already noticed, there is no bar to refer to the heading to the section and the marginal note of the section for the purpose of construing its provisions. It is also not impermissible to add the words "when an alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which derives certain existing words of all meaning ..." (Craies : Statute Law, 7th Edition, page 109).

17. Viewed from the above perspective, it is reasonable to construe that the legislative intention could not have been to apply the subject provisions against persons convicted of any offence, regardless of its nature. Any other interpretation, I am sure, would land the administration and management of companies in jeopardy. Therefore, I hold that mere conviction of a director or managing director of a company of any offence in connection with the promotion, formation or management of a company is not sufficient to invoke the provisions of clause (a) of sub-section (1) of section 203 of the Act. In other words, the said clause could be invoked only when the conviction is for an offence involving fraud.

18. There is no dispute that the petitioner was found guilty of the offences under the Factories Act, 1948. But, it is not the case of the first respondent nor was it pleaded either before the learned magistrate or before me that there is any element of fraud in the offences of which the petitioner was found guilty. Therefore, the impugned orders are liable to be set aside.

19. Even otherwise, that is, assuming that mere conviction of a director or managing director of a company of any offence, regardless of its nature, is sufficient to invoke the provisions of clause (a) of sub-section (1) of section 203, it is not mandatory that they should be restrained from taking part in the promotion, formation or management of a company. The court has the discretion, having regard to the facts and circumstances of each case, to pass an appropriate order. It is open to the court to hold that it is not necessary to restrain them from taking part in the management of the company. Or, it may pass an order restraining them from acting as such for such period, which it considers just and proper. But, in the present case, it is apparent that the learned magistrate has proceeded as if he had no option in the matter.

20. Sri Padmanabha Reddy, learned counsel for the first respondent, strenuously contends that the court has no option but to disqualify the petitioner. He also

contends that the period of disqualification (five years) is just and proper in the facts and circumstances of the case. I am unable to agree. The offences of which the petitioner was found guilty are of technical nature. I am of the view that conviction for such offences does not warrant an order restraining the petitioner from taking part in the promotion, formation or management of the company, for any period, much less for a period of five years. Thus, viewed from any angle, the impugned orders cannot be sustained.

21. For the aforesaid reasons, the impugned orders are set aside and the revisions are allowed.