(1977) 05 PAT CK 0011

In the Patna High Court

Case No : C.M. No. 673 of 1974

Sarat Chandra Ghosh (Private) Ltd. and Others APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 06-05-1977

Acts Referred:
Companies Act, 1956 — Section 162, 162(1), 220, 220(1)

Citation : (1978) 48 CompCas 94

Hon'ble Judges : D.P. Sinha, J

Bench : Single Bench

Advocate : S.C. Ghose, S.K. Sinha and K.K. Ghose, for the Appellant; Lal Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

D.P.Sinha, J.—Petitioner No. 1 is a private limited company under the Companies Act, 1956, with its registered office at Pachamba in the district of Hazaribagh (now Giridhih). Petitioners 2 and 3, namely, Srimati Amal Kumari Ghosh and Sushanta Kumar Ghosh, are the directors of the company, Srimati Amal Kumari Ghosh being the managing director. A complaint was filed against the petitioners by the Registrar of Companies (hereinafter referred to as " the Registrar") alleging that according to the provisions of Section 220 of the Companies Act, 1956 (hereinafter referred to as " the Act"), the company and its directors were under statutory obligation to file with the Registrar within thirty days of the date of the annual general meeting, the balance-sheet in the prescribed form which had been duly placed in the annual general meeting. It was further alleged that the balance-sheet of the company as on the 30th June, 1966, was required to be placed in the annual general meeting by the 30th December, 1966, and it was required to be filed in the office of the Registrar not later than the 30th January, 1967, but the balance-sheet was not filed before the Registrar within time in spite of service of notice. It was alleged that the petitioners knowingly and wilfully continued to contravene the provisions of Section 220(1) of the Act from the 3Ist January, 1967, up to the date of the filing of the complaint On the basis of that complaint, cognizance was taken and the case came on transfer to the file of Shri K. K. Prasad, Munsif Magistrate, Patna. He read over the accusation to Shri Harnana-dan Prasad, advocate, representing the petitioners u/s 205 of the Code of Criminal Procedure and he pleaded guilty on their behalf. On the basis of that plea, the trial court found the petitioners guilty u/s 220(3) read with Section 162(1) of the Act and sentenced them to pay a fine of Rs. 100 each and in default thereof to suffer simple imprisonment for fifteen days. The petitioners preferred an appeal which proved unsuccessful. They have now come up before this court for quashing the proceeding on the ground that the petition of complaint did not contain allegations on the basts of which it could be said that the offence u/s 220(3) read with Section 162(1) of the Act had been committed on account of the non-filing of copies of the balance-sheet and the profit and loss account with the Registrar.

2. Section 220 provides as follows :

" 220. Three copies of balance-sheet, etc., to be filed with Registrar.--(1) After the balance-sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance-sheet and profit and loss account were so laid--

(a) three copies of the balance-sheet and the profit and loss account, signed by the managing director, etc.....

(2) If the annual general meeting of a company before which a balance-sheet is laid as aforesaid does not adopt the balance-sheet, a statement of that fact and of the reasons therefore shall be annexed to the balance-sheet and to the copies thereof required to be filed with the Registrar.

(3) If default is made in complying with the requirements of Sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161."

3. It is quite plain from the provisions of Sub-section (1) of Section 220 that the copies of the balance-sheet and profit and loss account are required to be furnished to the Registrar only after the balance-sheet and profit and loss account have been prepared and laid before the company at an annual general meeting of the company.

4. The question for consideration is whether the balance-sheet of the company had been prepared and laid at an annual general meeting of the company. It would appear that there is no mention in the petition of complaint that the balance-sheet and the profit and loss account had been prepared and that an annual general meeting of the company had been held and that the said documents had been laid before the company in that meeting. The relevant

statements in this respect are contained in paragraphs 5 and 6 of the petition of complaint which is annexure 1 to this application. They are as follows :

"(5) That the balance-sheet of the company as at 30-6-1966 was required to be placed in the annual general meeting by 30-12-1966 and was further required to be filed in the office of the complainant not later than 30-1-1967.

(6) That the accused have not filed the said balance-sheet before the complainant in spite of service of the notice and as such are knowingly and wilfully continuing the contravention of Section 220 of the Companies Act, 1956, commencing from 31-1-1967 to the date of the complaint."

5. It is manifest that paragraph No. 5 only mentions the requirement of the law as laid down in Sub-section (1) of Section 220 of the Act. The allegation in paragraph No. 6, is to the effect that the balance-sheet was not filed before the Registrar within the time fixed by Sub-section (1). There is no allegation anywhere in the complaint that the balance-sheet and the profit and loss account had been prepared and that an annual general meeting had been held and the same had been laid before the company in that meeting. On the other hand, when the accusations were explained to Sri Harinandan Prasad, Advocate, who had been allowed u/s 205 of the Code of Criminal Procedure to represent the petitioners at the trial, he filed a petition saying that the balance-sheet could not be prepared for the reasons stated therein. In the circumstances, it is quite obvious from that statement also that the balance-sheet was neither prepared nor laid before the company at an annual general meeting. In the circumstances, the question of furnishing three copies of that document in accordance with the provisions of Sub-section (1) of Section 220 did not arise, and, as such, the petitioners cannot be said to have contravened the provisions of Sub-section (1) of Section 220 of the Act. They might have been guilty under the other provisions of the Act for not having prepared and placed the balance-sheet and profit and loss account before such meeting, but not u/s 220(1) of the Act. In this behalf, the following observations with regard to the provisions of Section 220(3) of the Act made by the Supreme Court in the case of State of Andhra Pradesh and Another Vs. Andhra Provincial Potteries Ltd. and Others, may be noticed 3

" The responsibility of sending three copies of the balance-sheet and profit and loss account or the income and expenditure account, as the case may be, arises only after they have been laid before the company at the general meeting. Without so laying, copies could not be sent to the Registrar and even if they are sent it would not be a compliance with the provisions of the section. It is possible to conceive of the law providing that the balance-sheet and profit and loss account shall be sent to the Registrar even without the necessity of their being laid before the general body meeting of the company. In that case, any failure to do so would be punishable and the question whether a general body meeting had been held and the balance-sheet and profit and loss account have been laid before it will not arise. Therefore, the condition precedent or the essential prerequisite of the balance-sheet and the profit and loss account being laid before the general meeting of the company not being fulfilled, the requirement of Section 134 cannot be complied with."

6. The above observations fully support the view I have taken. Since the petition of complaint does not disclose that the prerequisite conditions, as pointed out above, had been fulfilled for the furnishing of the copies to the Registrar, it must be held that the complaint does not indicate that the provision of Sub-section (1) of Section 220 of the Act has been contravened by the petitioners for which they may be punished under Sub-section (3) of that section read with Section 162(1) of the Act. As such, the proceeding against them must be quashed. Accordingly, the application is allowed and the proceedings against the petitioners is hereby quashed.

