

(1976) 01 CAL CK 0005

In the Calcutta High Court

Case No : Criminal Revision Case No's. 271, 272, 273, 274, 275 and 276 of 1975

Shyam Sundar Jalan and Another and Asiatic Oxygen and Acetylene Co. Ltd. and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-01-1976

Acts Referred:

Companies Act, 1956 — Section 2(24)
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Income Tax Act, 1961 — Section 2(20), 2(35), 276, 276B, 276D

Citation : (1977) 47 CompCas 61 : (1977) 106 ITR 275

Hon'ble Judges : S. Basu, J;P.K. Chanda, J

Bench : Division Bench

Advocate : N.C. Banerjee and A.K. Mukherjee, for the Appellant; B.C. Sen and J.N. Ghose, Anjan Mukherjee and Nanda Lal Pal, for the Respondent

Judgement

Sudhanmay Basu, J.—These are six rules arising out of applications made under Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973, for quashing complaints under Sections 276(b), 276B, 276(d) and 276D of the Income Tax Act, 1961, and some orders passed by the learned Chief Presidency Magistrate, Calcutta.

2. It appears that complaints were filed against the directors of the Asiatic Oxygen and Acetylene Company Limited and Asiatic Oxygen Company Limited and one Mr. K.C. Gangwal, designated as the principal officer of the said companies, for failure to deduct Income Tax from the salary of the employees, for failure to submit returns in time, for failure to deduct Income Tax and super-tax on dividends for certain period under various sections of the Income Tax Act. To be precise, the Revision Case No. 271 of 1975 relates to a complaint for delay in submitting returns u/s 276(b) of the Income Tax Act. The returns were due on April 30, 1971, but the same were filed on December 12, 1972, and the complaint was filed on the 19th of September, 1973. The complaints were made

against Shyam Sundar Jalan, H.L. Dey (since deceased) and Bal Krishna Jalan described as directors and one Mr. K.C. Gangwal, principal officer. In Revision Case No. 272 of 1975, complaint is made against Shyam Sudar Jalan, H.L. Dey and Durga Narayan Kapur as directors and one Mr. Kapur Chandra Gangwal as principal officer. The same is for failure to submit return in time u/s 276(b). The return was to be filed on April 13, 1966, but it was actually filed on November 2, 1972, and the complaint was lodged on September 19, 1973. Revision Case No. 273 of 1975 arises out of a complaint against the Asiatic Oxygen and Acetylene Company Limited, Shyam Sundar Jalan, H.L. Dey and Bal Krishna Jalan as directors and K.C. Gangwal as principal officer. It is for failure to deduct Income Tax out of salaries for the month of March, 1967, and is u/s 276B. Similarly, Revision Case No. 275 of 1975 also involves Section 276B for failure to deduct salaries for the month of December, 1967, which was actually paid on November 18, 1972. The persons complained against were M/s. Asiatic Oxygen Ltd., Shyam Sundar Jalan, H.L. Dey, Durga Narain Kapoor as directors and K.C. Gangwal as principal officer. Civil Revision No. 276 of 1975 involves a complaint u/s 276(d) for failure to deduct Income Tax out of salaries for the month of June, 1967. The same was paid on November 8, 1972, and the complaint was made on September 25, 1973. The persons complained against are the same as in Civil Revision Case No. 275 of 1975. Civil Revision No. 274 of 1975 involves complaint for failure to deduct Income Tax and super-tax on dividend for the year ending on the 31st of March, 1967, u/s 276(d). The amount was due on April 8, 1967, but was paid on October 18, 1973. The complaint was filed on 21st of May, 1974.....

3. The next point urged by Mr. Banerjee was that a company can have only one principal officer. According to him, more than one principal officer is not contemplated under the existing laws. Directors are not principal officers but under the Income Tax Act any director may be designated as a principal officer. In these cases the sanctioning authority accorded sanction against Mr. K.C. Gangwal as principal officer and against others as directors. He referred in this connection to Section 2, Sub-section (35), of the Income Tax Act which defines a principal officer. In this connection he also referred to Section 282, Sub-section 2(b), of the Income Tax Act according to which a notice or requisition under the Act may be addressed in the case of a local authority or company to the principal officer thereof. Section 2(35), which states what a principal officer means runs as follows:

" " principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means--

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income Tax Officer has

served a notice of his intention of treating him as the principal officer thereof. "

4. The said definition does not mention a director but any person connected with the management or administration upon whom the Income Tax Officer has served a notice of his intention of treating him as the principal officer can be a principal officer. No such notice was given by the Income Tax Officer to any of the directors. Moreover, Mr. Banerjee contended that a director cannot act as an agent of the company. It is only the board of directors " who collectively constitute agency. In this connection he referred to Pennington's Company Law, 3rd edition, where it has been stated that the directors have no power to act individually as agents for the company. According to Mr. Banerjee, the director means board of directors. In any event, since the proceedings were initiated on the basis of sanction but the sanction describes all the persons as directors except one it is clear that the case cannot proceed against them.

5. Mr. Ghose, on the other hand, contended with some force that as regards principal officer the definition u/s 2(35), Sub-clause (a), only was involved. Clause (b) was not attracted. Directors should be treated as agents of the company. There is no reason why the company may not have plurality of officers. Citing Palmer's Company Law, 17th edition, page 167, he stated that directors are, in the eye of law, agents of the company. What special assignment each director had in making payments of Income Tax will be a matter of evidence. We find substance in Mr. Ghosh's submissions. Without evidence the question cannot be decided here and now. It is noted that paragraph 1 of the petition of complaints itself makes a distinction between directors and the principal officers. In the case of R.K. Dalmia Vs. Delhi Administration, , it was held (para. 98) that Dalmia as a director and chairman of the company was an agent of the company. It was, inter alia, found that Dalmia got control and dominion over the funds under the powers conferred on him by the board of directors by its resolution authorising him and another person to operate on the accounts of the insurance company with the bank. It was a matter of evidence whether the directors named in this case could be treated as agents of the company. The petition before us itself shows how finance was arranged for, how the Industrial Finance Corporation was approached, how amounts were deducted from the employees' salary but the same was kept in the general fund. The petition shows that it was under the direction of the directors that the amounts were deducted. Therefore, it is not a case where the petition does not disclose a prima facie case. Whether directors could be treated as principal officers in the circumstances of the case is a matter of evidence and at this stage it would be premature to quash the proceedings on that ground alone. Again, Section 2(20) of the Income Tax Act states that the expression " director has the same meaning as is ascribed to it in the Companies Act ". Now, in the Companies Act, according to Section 2, Sub-section (13), a director would include any person occupying the position of director by whatever name called and u/s 2, Sub-section (24), an individual, (sic) the principal officer, also includes a manager or an agent. Whether the directors in these cases were in charge of the management is a matter of evidence. The

complaint, as is well known, does not usually and need not contain all material pleadings. Facts and circumstances may be proved by evidence to show that directors acted as managers. Their own appeal before this court, as Mr. Ghose pointed out, fills up some of the gaps in the petition of complaint and, inter alia, shows prima facie that deduction of Income Tax was utilised for some ulterior purposes.

6. What is after all a sanction ? u/s 279, Sub-section (1), of the Income Tax Act, a person shall not be proceeded against for an offence u/s 275A or Section 276 or Section 276A or Section 276B or Section 276C or Section 276D or Section 277 or Section 278 except at the instance of the Commissioner. It merely requires that the complaint should be at the instance of the Commissioner. There is no doubt that in the instant cases the defect to the complainant is the Commissioner (sic). Dealing with the argument of Mr. Banerjee that there was no application of mind Mr. Ghose submitted that there was initially a presumption that the official acts were done properly. Moreover, the expression " director " is only a designation or prescription to identify the particular persons. Other particulars may come in due course. The complaint, as has already been noted, is not required to disclose all of them. Moreover, even if the board of directors collectively could act on behalf of the company circumstances may make the directors as agents. Reference may be made to Halsbury, 4th edition, volume 7, for creating the position of directors. In paragraph 496, the directors are regarded as agents of the company. It is observed that the true position of directors is that of agents for the company. As such, they are endowed with powers and duties of carrying on the whole of its business subject, however, to restrictions imposed by the articles and statutory provisions. Definition of manager in Companies Act in Section 2(24) would include a director. Therefore, it is a question of evidence. The complaint makes out an offence. Evidence would only disclose who are the offenders. The word " directors " may be looked upon as designations to identify particular persons. The role they played will only appear in course of evidence. Board of directors, as such, cannot be prosecuted. Whether one or two directors or the entire board of directors acted as agents in the company would appear only through evidence. On a careful consideration of the facts and circumstances of the case we are unable to hold that the learned Magistrate had no jurisdiction or competence to issue process. We also hold that it will be premature at this stage to quash the proceedings. The point as to whether the accused persons who are designated as directors are principal officers or agents could only be determined after the witnesses were examined.

7. The result is that five of the petitions fail. The rules except in C.R. No. 274 of 1975, are discharged. The rule in C.R. No. 274 of 1975 is made absolute as the same is barred by limitation. Let the records go back at an early date so that the hearing may be expedited. It may be noted that the rules have abated with regard to H. L. Dey who has since died.

Chanda , J.

8. I agree.