
(1970) 09 AHC CK 0004
In the Allahabad High Court
Case No : Criminal Revision No. 25 of 1969

Shyam Sunder Jhunjhunwala

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-09-1970

Acts Referred:

Companies Act, 1956 — Section 166, 220
Companies Act, 1956 — Section 166, 220
Companies Act, 1956 — Section 166, 220

Citation : (1970) 40 AWR 814

Hon'ble Judges : B.N. Lokur, J

Bench : Single Bench

Advocate : V.P. Misra, for the Appellant;

Final Decision : Dismissed

Judgement

B.N. Lokur, J.—The Applicant Shyam Sunder Jhunjhunwala is a Director of Messrs Lakshmi Devi Sugar Mills Private Ltd. Under Article 64 of the Articles of Association of the Company, the number of Directors of the Company is to be not less than four and not more than thirteen until otherwise determined by a General Meeting of the Company. Article 65 provides that the four persons named therein, representing their respective families, shall be the permanent Directors of the Company, not liable to retirement by rotation. Under Article 66(a) the Directors have the power to appoint any other persons to be the Directors, subject to the maximum number of Directors fixed by Article 64. At the time relevant to the present; case, the number of Directors was twelve and the Applicant was one of those nominated Under Article 66(a).

2. The Company land its twelve Directors were prosecuted by the Registrar of Companies for non-compliance of the provisions of Section 220 of the Companies Act, 1956. The Company as well as eleven of the twelve Directors pleaded guilty and were convicted and sentenced; the Applicant, however, contended that the non-compliance of the provisions of Section 220 was not due to any wilful default

on his part and hence he was not punishable.

3. An Assistant in the office of the Registrar of Companies was examined for the prosecution to prove that three copies of the balance sheet and profit and loss account were not filed by the Company, as required by Section 220 of the Companies Act. The Applicant examined himself on oath and stated that he was reminding the Company and other Directors to call the Annual General Meeting and place the balance sheet and profit and loss account before it, but his reminders were not heeded by the other Directors and as he was himself in a poor minority, he could not press his views further.

4. Neither lower Courts has recorded a finding whether the Applicant was in fact calling upon the other Directors to hold the Annual General Meeting to place before it the balance sheet and the profit and loss account. Both of them have proceeded on the basis that the contention put forward by the Applicant is irrelevant and being a Director of the Company, he ought to be regarded as having committed default in not holding the Annual General Meeting as required by Section 166 of the Companies Act and consequently in not filing with, the Registrar of Companies three copies of the balance sheet and the profit and loss account as required by Section 220 of the Act.

5. In my opinion, there is no reason to disbelieve the statement of the Applicant that he tried to prevail upon the other Directors to hold the Annual General Meeting so that the balance sheet and the profit and loss account could be laid before it, but being in minority he was not heard and the Annual General Meeting was not held at all and hence Section 220 could not be complied with.

6. It was argued on behalf of the Applicant that the Applicant cannot be regarded as an "officer of the Company who is in default" within the meaning of Section 220(3) and hence he cannot be held guilty of non-compliance of the provisions of Section 220. The meaning of the expression "officer who is in default" has been given in Section 5; the expression means "any officer of the Company who is knowingly guilty of the default, noncompliance, failure, refusal or contravention mentioned in that provision or who knowingly and wilfully authorises or permits such default, non compliance, failure, refusal or contravention". It is contended that the copies of the balance sheet and the profit and loss account to be sent to the Registrar of Companies have to be signed u/s 220(1)(a) by Managing Director, Managing Agent, Secretaries and Treasurers, Manager or Secretary of the Company. The four permanent Directors are the Managing Directors Under Article 92 of the Articles of Association of the Company and the balance sheet and profit and loss account are to be signed by them and forwarded to the Registrar of Companies and the other nominated Directors cannot be responsible for compliance with Section 220. It was, on the other hand, urged on behalf of the State that the balance sheet and the profit and loss account were not laid down in any Annual General Meeting as no such meeting was held and the Applicant, a Director, was in default in not holding the Annual General Meeting and therefore, the question of the Managing Directors filing the copies of the

balance sheet and the profit and loss account did not arise. In my opinion, if at all, the Applicant, in his capacity as a Director can be said to have violated the provisions of Section 166 of the Act and to have become punishable u/s 168 of the Act, but he cannot be punished for non-compliance of Section 220 also, even though a Director. He cannot be held to be an officer of the Company in default for the purposes of that section as that section places the obligation to file the copies of the balance sheet and profit and loss account on the Managing Directors and since the Applicant was pressing the other Directors to hold the Annual General Meeting, he cannot be said to have willfully permitted or authorised non-compliance of Section 220 within the meaning of Section 5. Accordingly, the conviction of the Applicant cannot be maintained.

7. Even otherwise, the Applicant having reminded the other Directors to hold the Annual General Meeting, he ought to be regarded as having acted honestly and reasonably within the meaning of Section 633(1) of the Act and he ought fairly to be excused and relieved of the liability for default in holding the Annual General Meeting which default resulted in non-compliance of the provisions of Section 220. Hence also the Applicant deserves to be acquitted.

8. Accordingly, the application is allowed. The conviction and sentence of the Applicant are set aside. The fine, if paid or recovered, shall be refunded to the Applicant.