
(1959) 06 CAL CK 0016
In the Calcutta High Court
Case No : Govt. Appeal No. 8 of 1958

State of West Bengal

APPELLANT

Vs

United Rubber Works Ltd. and Others

RESPONDENT

Date of Decision : 04-06-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 403
Evidence Act, 1872 — Section 101, 102, 103, 104
Industrial Disputes Act, 1947 — Section 29, 32

Citation : AIR 1959 Cal 759 : (1959) CriLJ 1431

Hon'ble Judges : N.K. Sen, J; D.N. Das Gupta, J

Bench : Division Bench

Advocate : A.C. Ray, for the Appellant; Ajit Kumar Dutt and Madan Mohan Ghose for Bijan Behari Das Gupta, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sen, J.—This appeal is by the Superintendent and Remembrancer of Legal Affairs, Government of West Bengal on behalf of the State of West Bengal and is directed against an order of acquittal passed on appeal by the Additional Sessions Judge, Alipore, by which he acquitted the respondents who had been convicted u/s 29 read with Section 32 of the Industrial Disputes Act, 1947 by a Magistrate, 1st class, Sealdah.

2. The prosecution case was that there was an award made by the 2nd Industrial Tribunal. West Bengal on the 29th December, 1953 published in Calcutta Gazette on the 28th January, 1954. The respondent Company, i.e., United Rubber Works Ltd., was directed by this award to pay bonus at a certain rate for the years 1951 and 1952 and the payment of certain monthly emoluments to certain workers of the respondent Company. It was alleged that in spite of the existing award the respondents who were all Directors of the Company or concerned with the management of the Company had committed an offence by not implementing the Award.

3. The defence of the respondents at the trial was that the Award had been fully implemented. The special defence of the respondents Sm. Momtaz, Md. Omar and Md. Basir was that they having joined the Company as Directors long after the date when the Award was made, were not in any way responsible for carrying out the terms of the Award. It may be stated here that notice of this appeal could not be served on respondent No. 6 Sm. Momtaz and so it was decided that so far as she is concerned the appeal preferred by the Government against her acquittal should remain pending till the notice had been served on her. As such we are not concerned in the present appeal with the case of Sm. Momtaz. Respondent S.K. Chatterjee pleaded that he was merely chief accountant of the Company and not being concerned with the management of the company, he was not responsible for any acts of omission for which the Directors and persons concerned with the management were responsible.

4. The learned Magistrate who tried the case found on evidence that the terms of the Award had not been, implemented. We have gone through the evidence adduced in this case and it appears that from the evidence that was the only inevitable conclusion that could be drawn. The learned Magistrate further found that there was not even an attempt made by the respondent Directors to show that the offence had been committed without their knowledge or consent. Accordingly the learned Magistrate held that the respondent Directors had not discharged the onus that lay upon them. So far as respondent S.K. Chatterjee is concerned the learned Magistrate found that Chatterjee has been concerned with the management of the Company and as such he was also responsible for the non-implementation of the Award.

5. The learned Magistrate having convicted the respondents an appeal was taken by the respondents to the Sessions Judge, Alipore which was later on heard by Sri R.N. Dutt, Additional Sessions Judge with the result that the respondents were acquitted.

6. The main grounds on which the orders of conviction and sentence were set aside were that three of the respondents, namely, Sm. Momtaz, Md. Omar and Md. Basir having joined as directors long after the date for the implementation of the Award were not responsible for its implementation because the prosecution did not prove that they had joined the Company with the Knowledge of the, existence of the Award.

7. Another point that weighed with the appellate court in passing the order that he passed was that in view of a previous complaint made against the respondents alleging the same offence which had to be withdrawn, the order passed in that case amounted to an order of acquittal u/s 248 Cr. P. C. and hence this prosecution of two of the respondents, namely, M. A. Saigal and S.K. Chatterjee, who were accused in the previous case was barred u/s 403 Cr. P. C.

8. Next the learned Additional Sessions Judge thought that a company could not be considered as a person for a criminal conviction.

9. The learned D.L.R. appearing on behalf of the State of West Bengal has challenged all the relevant findings of the learned Addl. Sessions Judge which induced him to set aside the conviction made by the learned Magistrate as illegal.

10. It appears that on the 10th April, 1956, a petition of complaint was filed against M.A. Saigal and S.K. Chatterjee before the Police Magistrate, Sealdah, with respect to this offence. Cognizance of this offence was taken on the 18th April, 1956 and the two accused named therein were summoned. No evidence was taken in this case. Upon a petition filed by the Public Prosecutor, the learned Magistrate passed the following order on the 5th December, 1956:

"Seen the petition filed. Heard the learned Public Prosecutor. The case was instituted without proper sanction. I have no jurisdiction to try this case. I consider the proceedings void ab initio. I do not think I am competent to pass any order of discharge or acquittal in this case as I have no jurisdiction to try this case. As, however, there is no case against the accused persons in my court they are directed to be released forthwith from the bail bonds."

In para 4 of the memorandum of appeal filed in this court on behalf of the State Government it is stated as follows:

"(a) That thereafter Government of West Bengal by an order No. 1152-Dis/D/11L-416/55 dated 16th March, 1956 purported to give authority to Sri Himansu Kumar Biswas, Assistant Labour Commissioner, West Bengal to make a complaint before the Police Magistrate, Sealdah against Sri M.A. Saigal and Sri S.K. Chatterjee, present Respondents No. 2 and 3 in respect of an offence punishable u/s 29 read with Section 32 of the Industrial Disputes Act, and on 12-4-56 a complaint was preferred and Case No. 965 of 1956/T.R. 298/56 was started on 18-4-1956 in the court of Sri A.C. Sarbajna, Magistrate, 1st Class, Sealdah, and summons was issued on the two accused persons on 18-4-56.

(b) That the said authority to file a complaint did not contain material particulars of the offence for which prosecution was to be initiated and was not a legally valid and/or sufficient authority and consequently cognizance taken in the case based on such authority was illegal and without jurisdiction. In such circumstances a fresh authority, being order No. 2619-Dis D/11L-416/55 dated 14th June, 1956 was filed in the said proceedings furnishing the particulars which were not mentioned in the first authority dated 16th March, 1955."

Mr. Dutt appearing for the respondents argued that since according to the prosecution a proper authority was filed on the 14th June, 1956 there was no occasion for the Public Prosecutor to file the application before the court which he did on the 3rd December, 1956 on which the order of the learned Magistrate was passed on the 25th December, 1956. We have examined the order sheet of the case and we do not find that any such authorisation dated the 14th June, 1956 was filed before the learned Magistrate or was considered by him. Although there has been a sort of admission made in the petition that such a fresh-authority furnishing the particulars which were not mentioned in the first authority dated

the 16th. March, 1955 was filed in the case, we are not satisfied that the same was in fact filed before the learned Magistrate. In my view of the matter the application was filed by the Public Prosecutor before the case was actually taken up for hearing and the learned Magistrate was satisfied that he had no jurisdiction to try the case and in our opinion the order that the learned Magistrate had passed that he had no jurisdiction to try the case and as such could pass no order except the order of discharge of the accused from the bail bond, was the proper order that could have been made in the circumstances of this case. It appears thereafter that on the 11th December, 1956 a fresh complaint with a fresh authorisation was filed against not only the two persons, mentioned above out against the other respondents mentioned in this appeal. In para 6 of the petition, of complaint the following averment was made:.

"That it may be mentioned that a complaint dated 12-4-56 u/s 29, Industrial Disputes Act, 1947, was previously filed by me only against (1) M.A. Saigal, General Manager and (2) S.K. Chatterjee. Chief Accountant of the Company before the Police Magistrate, Sealdah under the purported order of authorisation (sanction) from Government No. 1152-Dis D/11L 416/55 dated 16-3-56 and summonses were issued upon those accused. The said purported authorisation having been subsequently found to be defective amounting to no authorisation (sanction) Government issued fresh order of authorisation (sanction) with instructions to file a fresh complaint, on 3-12-56. Public Prosecutor for the case, moved a petition before Sri A. C. Sarbajna, Magistrate, Sealdah before whom the previous complaint was pending intimating the above position and the learned Magistrate was pleased to drop the proceedings as being ab initio void on 5-12-1956."

It appears therefore that the learned Judge's conclusion, that the previous order amounted to an order of acquittal and as such Section 403 Cr. P. C. was a bar to the institution of the present proceedings, was not correct. It has now been held by the Privy, Council in the case of AIR 1949 264 (Privy Council) that an order of acquittal passed without jurisdiction would be no bar to a subsequent prosecution. In the present instance no order of acquittal was passed and the case was not even tried. In the view we take the learned Additional Sessions Judge was clearly confused in his mind that the withdrawal of the previous prosecution amounted to an acquittal.

11. Reference in this connection may be made to the case of Jiwan Das Vs. Rabin Sen and Others, where it was pointed out by Das Gupta (as he then was) and Guha, JJ. that the whole scheme of the legislation in Section 34 of the Industrial Disputes Act is that there may not be indiscriminate complaints. It was the intention of the Legislature that if an offence had been committed Government was to decide whether it would make the complaint itself or whether it would authorise somebody else to make the complaint. The authority that may be given must refer to the particular offence. To speak of an authority being given in general terms without any reference to any particular offence was to ignore the

whole intention of the Legislature in the matter. In view of the decision cited above the Public Prosecutor rightly thought that the authorisation dated the 16th March, 1956 was not a proper authorisation and therefore the cognizance taken by the learned Magistrate was not a proper cognizance and the whole trial was accordingly void ab initio.

12. It appears that the learned Judge was conscious of the provisions of Section 19(6) of the Industrial Disputes Act which provides as follows;

"Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

With this consciousness he came to the finding that there was no evidence of any such notice and as such u/s 19(6) the Award continued to be binding on M/s United Rubber Works Ltd. Again the learned Judge seems to have been aware of the provisions of Section 32 of the Act by which it was the duty of every director, manager, secretary, agent or any other officer or person concerned with the management to prove that the offence was committed without his Knowledge or consent. With this knowledge, the learned Judge thought it was for the prosecution to prove that the respondents who had joined the company after the award had been passed, had the knowledge of the existence of the Award. In our view this is a wrong proposition of the law and the onus had been wrongly shifted. All that the prosecution was required to prove was that there was a valid Award which had not been implemented and that the respondents were directors and managers or persons concerned with the management of the company. Once the prosecution discharges the initial onus, it is for the persons concerned to discharge the statutory obligation imposed upon them by Section 32 of the Act in order to avoid liability. On this point therefore the learned Judge also went wrong. It cannot be disputed that the respondents Md. Omar and Md. Basir are directors of the company and that the Award had not been implemented. It is of no consequence whether they became directors after the passing of the Award.

13. The company is juristic person. The provision of Section 32 makes it clear that an offence is primarily committed by a company for which not only the company but every director, manager or person concerned with the management of the company are responsible. The view taken by the learned Judge so far this point is concerned also appears to be erroneous.

14. We have therefore come to the conclusion that the order of acquittal passed by the learned Judge must be set aside which we accordingly do. We restore the order of conviction and the sentence as passed by the learned Magistrate. The appeal is accordingly allowed. The respondents will now be called upon to pay up the amount of fine imposed upon them.

D.N. Das Gupta, J.

15. I agree.