(1944) 01 PAT CK 0001

In the Patna High Court

Sudhir Ranjan Roy Chowdhury APPELLANT

Vs

N.K. Mazumdar RESPONDENT

Date of Decision : 17-01-1944

Acts Referred:
Companies Act, 1956 — Section 136(2), 136(4)
Criminal Procedure Code, 1898 (CrPC) — Section 69(3)

Citation : AIR 1944 Patna 210

Hon'ble Judges : Reuben, J

Bench : Division Bench

Judgement

Reuben, J.—The prosecution in this case was started by the District Magistrate of Palamau on the basis of a letter of complaint, dated 23rd January 1943, from the Registrar of Joint Stock Companies, Bengal, asking for the prosecution of the Eastern National Bank Limited, which is said to be a limited Banking Company registered under the Companies Act with its head office in Bengal, and of the local manager of its branch at Daltonganj in the District of Palamau, for contravention of the provisions of Sub-section (2) of Section 136, Companies Act. On receipt of this letter the District Magistrate recorded the following order:

Complaint filed by the Registrar of Joint Stock Companies Bengal perused. Cognizance taken. Summon Mr. S.R. Roy Chaudhari the Magaging Director and Mr. Saroj Kumar Bhattacharya the Local Agent of the Eastern National Bank Ltd. Daltonganj u/s 136(4), Companies Act.

2. The present petition has been filed by Mr. Roy Chowdhury challenging the legality of the order of the Magistrate so far as it relates to him. No cause has been shown by the Magistrate in reply to the rule issued by this Court.

3. It is urged, first of all, that there being no complaint against Mr. Roy Chowdhury the Magistrate had no jurisdiction to summon him. In this proceeding I do not think it is necessary to consider this point. The ordinary rule is that when a Magistrate takes cognisance of an offence he takes cognisance of the case as a whole, and is empowered to summon all persons against whom there

appears to be any reason for their prosecution, even though their names are not mentioned for this purpose in the petition of complaint. It may be that special considerations arise in a prosecution under fee Companies Act; but the point has not been gone into before me. Under Sub-section (4) of Section 136 Mr. Roy Chowdhury, as Managing Director, can only be personally liable if he knowingly or wilfully authorised or permitted the default. In the letter of complaint there is nothing to suggest that he did this.

4. It, therefore, does not appear possible that the District Magistrate can have intended to proceed against Mr. Roy Chowdhury in his personal capacity. The intention seems to have been to proceed against the Banking Company, and it is probable that Mr. Roy Chowdhury in his capacity as Managing Director was summoned for this purpose. I may mention here that Mr. Roy Chowdhury is said to be no longer the Managing Director or even an ordinary Director of the Banking Company. There is nothing in the order of the District Magistrate or in the summons to show that Mr. Roy Chowdhury was summoned as representing the company, or that any proceedings were being taken against the company as such. I think the procedure followed is clearly incorrect. Sub-section (4) of Section 136 provides for a penalty against the company. The company is a legal entity (Section 23, Companies Act). There is nothing to prevent the issue of a summons against the company itself. Sub-section (3) of Section 69, Criminal P.C., provides for the service of such a summons.

5. On the above grounds, I would set aside the order of the District Magistrate so far it concerns Mr. Roy Chowdhury, and direct that as regards the prosecution of the company, the Magistrate take such action as he may consider proper in accordance with law.

