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**(1941) 08 CAL CK 0026**  
**In the Calcutta High Court**

Surendra Nath Sarkar

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision :** 01-08-1941

**Acts Referred:**

**Citation :** AIR 1942 Cal 225

**Hon'ble Judges :** Henderson, J

**Bench :** Division Bench

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### **Judgement**

Henderson, J.—This rule raises an interesting point with regard to a prosecution u/s 32, Companies Act. It is said that the petitioner was the managing director. At any rate, he has been convicted and fined u/s 76 of the Act on an allegation that he was wilfully a party to a default by which no general meeting was held during the year which commenced on 14th February 1937. He was then further prosecuted u/s 32. I cannot help saying that this second prosecution seems rather pointless after the first. I can understand that if the defence of the petitioner had been that a general meeting was held and if it was found to be true, then there would be some point in prosecuting him u/s 32. But, in view of his conviction on the former charge, the latter might very well have been dropped. Now, the first ground upon which the rule was pressed was that the failure to hold a public meeting made it impossible to comply with this section. This section requires a list of persons and certain information to be submitted as to the affairs of the company on a certain day. The certain day is the day upon which the first or the annual general meeting is held. Now I asked Mr. Bannerjee to tell me out of the 365 available days which ought to have been selected by the petitioner for the purpose of submitting this report. He was unable to give any answer and, as far as I can see, the petitioner has been punished for his failure to do something which it was impossible, for him to do. In support of the conviction, Mr. Bannerjee relied upon the decision of the Court of appeal in *Park v. Lawton* (1911) 1 KB 588. That case is concerned with the interpretation of a similar provision in the English Act. If I have understood it correctly, the decision amounts to this that a person cannot put forward the impossibility as a defence,

if the impossibility has been due to his own default. If it had been necessary to decide whether in view of that decision the present conviction is proper, I should have most certainly sent the case to a Division Bench.

2. The rule, however, was also pressed with regard to a question of fact. On the principle of the English decision, it is doubtful whether the petitioner could be convicted without the Magistrate coming to an independent finding that he was responsible for the default in connexion with the failure to hold the meeting. But at any rate he had to decide whether the conduct of the petitioner amounted to knowingly or wilfully authorising or permitting the default. He approached the case as though it was one in which the meeting had been held and the petitioner wilfully or knowingly permitted the default u/s 32. But it was in fact impossible to comply with that section. The only way in which the conviction could be upheld is to accept the decision to which I have already referred and then carry back the default to the failure to call a general meeting. Now, that matter was not dealt with in this case and it raises a question of fact. The learned Magistrate delivered his judgment ten months after he had heard the evidence. Ordinarily a retrial might be directed in such circumstances. But, in view of the fact that the petitioner has already been convicted of something else, I do not think that it would be worth putting the parties to the expense of a further trial. The rule is accordingly made absolute. The conviction and sentence are set aside and the fine, if paid, will be refunded.