
(1941) 08 MAD CK 0023
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

B.V.A. Lury Company and Another

RESPONDENT

Date of Decision : 14-08-1941

Acts Referred:

Companies Act, 1956 — Section 32, 76

Citation : AIR 1942 Mad 75 : (1941) 54 LW 726 : (1941) 2 MLJ 487

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—u/s 32 of the Companies Act a company has to draw up a list of the members of the company and of the persons who have

ceased to be members since the date of the last return. That list has to be completed within 21 days after the ordinary general meeting and a copy

has to be sent, signed by a director or the manager or the secretary, to the Registrar. In this case, whereas the list should have been sent to the

Registrar on or before 20th November, 1939, it was not in fact filed until 3rd January, 1940. A case was therefore filed against the company and

its directors for not complying with the requirements u/s 32 of the Act. The Sub-Divisional Magistrate of Cocanada held that there was no reason

to think that the failure to submit this return was due to anything but negligence and that as the delay was not due to any wilful default, they were

not guilty of any offence. He therefore acquitted them. The Crown has preferred an appeal with regard to the acquittal of the company.

2. The words "knowingly" and "wilfully", which are found to be the necessary ingredients of the offence by the learned Magistrate, cannot be

applied to a company at all. A company, as a corporate body, cannot either "know" or "will". That the Legislature did not personify companies

and impute to them minds is made clear by the wording of the relevant sections. The punitive clause of Section 32, for example, reads:

If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding Rs. 50 for every day during

which the default continues, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the

like penalty,

3. It is to be noted that the words "knowingly" and "wilfully" are used with reference only to the officers of the company and? not to the company

itself, obviously for the reason I have given above. The company is always liable where the return is not sent in; but the officers of the company are

liable only if they knowingly or wilfully authorise or permit the default.

4. Mr. Narasaraju for the respondent has quoted *Dorte v. South African Super-Aeration Ltd.* (1904) 20 Times Law Reports 425 in which,

referring to the English Act, the Alderman held that:

... the word "default" in Section 27 implied a continued neglect to do an act required.

5. The English Act has not been shown to me; and so I do not know to what extent, if at all, that case can safely be applied in India; but even if it

could, it can be distinguished from the case before me by the fact that a prosecution had been launched apparently against the officers of the

company as well as against the company, and also by the fact that in that case the omission was one which it was impossible to remedy. It may be

noted that the company had already been fined for not having submitted the required return on the due date, and a daily penalty was also imposed

on the company for its subsequent default. It was only when a prosecution was launched after the omission was impossible to remedy that the

lower Court refused to impose a further penalty.

6. The only Indian case that has been cited to me is a judgment of Burn, J., in *Crl. R.C. No. 601 of 1937, The Sree Meenakshi Mills Co. Ltd.* and

Others Vs. The Assistant Registrar of Joint Stock Companies, which is a case in which the company and the directors had been fined u/s 76 of the

Companies Act. Burn, J., acquitted the officers of the company because in the circumstances of that case he held that it could not be said that they

had been "knowingly parties to the default"; but he upheld the penalty imposed

on the company. Precisely the same conditions exist in this case.

The learned Magistrate has found that there was no wilful default on the part of the officers of the company and the learned Public Prosecutor is

not prepared to dispute that finding. So while the officers of the company were rightly acquitted, the company should have been punished. As far

as the company is concerned the order of the Magistrate is set aside and the company is ordered to pay a penalty of Rs. 50.