

(1966) 07 PAT CK 0014

In the Patna High Court

Case No : Government Appeal No. 51 of 1964

The State of Bihar

APPELLANT

Vs

Sitaram Jhunjhunwala

RESPONDENT

Date of Decision : 26-07-1966

Acts Referred:

Companies Act, 1956 — Section 220(3)

Citation : AIR 1967 Patna 433

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : B.D. Singh, for the Appellant; S.B. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—This appeal has been preferred by the State Government against the acquittal of the respondent of an offence alleged to have been committed by him u/s 220(3) of the Companies Act, 1956.

2. The prosecution case is that the respondent was one of the Directors of Bihar Cable and Wire Industries Ltd. Bihar and that he had been in default in the matter of filing copies of balance-sheets and profit and loss account of the company as required by Sub-sections (1) and (2) of Section 220 of the Companies Act. The due date for filing these documents was the 25th May, 1962; but they were not filed even a long time thereafter in spite of reminders. Accordingly, a complaint was made by the Registrar of the Companies, on the basis of which the present prosecution was started against the respondent.

3. The defence put forward by the respondent was that he was not a Director of the company at the relevant time, inasmuch as he had resigned his office as such on the 3rd February, 1962. The resignation was conveyed to the company by means of a post card, Exhibit B.

4. The learned trying magistrate referred to the articles of association of the company, Clause 96 relating to the vacation of office of a Director in so far as it

is relevant to our purposes, is in the following terms: --

"96 (1) The office of a Director shall ipso facto be vacated if :--

* * * * *

(1) by notice in writing to the company he resigns his office

* * * * *

(2) Notwithstanding any matter or thing in Sub-clauses (d), (e) and (j) of the Clause (1), the dis-qualification referred to in these sub-clauses shall not take effect:--

(a) for thirty days from the date of adjudication, sentences or order; or

(b) Where an appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where within the seven days aforesaid any further appeal or petition is preferred in respect of the adjudication, sentence, conviction or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of."

In view of the above provision, the learned magistrate came to the conclusion that the respondent was not a Director of the company on the date of the occurrence; and, as such he could not be convicted u/s 220(3) of the Companies Act.

5. It will appear from the 96th clause of the articles of association extracted above that the office of a Director is vacated ipso facto by notice in writing to the company saying that the Director has resigned his office in other words, upon the plain terms of the articles of association, the respondent vacated his office as a Director of the company as soon as he gave the notice of resignation by the post card, Exhibit B, dated the 3rd February, 1962.

6. On behalf of the State the argument put forward was that the resignation of the respondent came to be accepted by the Board of Directors with effect from the 9th March, 1963; and in this view, the respondent must be deemed to be liable for the default in the filing of the balance-sheet and other connected papers, which took place on the 25th May, 1962. In support of this contention, the learned Additional Standing Counsel, Mr. B. D. Singh, relied upon certain annexures appended to the petition of appeal filed in this Court purporting to be copies of proceeding of the meeting of the Board or Directors of the company held on four different dates, viz.; the 4th April, 1962, the 23rd July, 1962; the 5th October, 1962, and the 9th March, 1963. On behalf of the respondent it was urged that it was not to refer to these documents at this stage since they were not produced at the trial.

In my opinion, there is force in this contention. It appears that in a connected case the prosecution had made an attempt to bring on record these papers with a view to showing that despite his letter of resignation dated the 3rd February, 1962, the respondent had attended the meetings of the Board of Directors until his resignation came to be accepted on the 9th March, 1963; but in the trial, giving rise to the present appeal, no such step was taken by the prosecution. In such circumstances, it will be improper to refer to the annexures appended to the memorandum of appeal in this Court. The present case must be decided upon the materials already brought on the record.

7. Even assuming that the annexures to the petition of appeal may be referred to, it does not at all improve the case of the prosecution. I have already referred to the relevant clause of the articles of association. It will be noticed that the vacation of the office of a Director under the various sub-clauses of Clause 96(1) is not dependent upon the acceptance of the resignation. It takes effect ipso facto. In other words, the Director ceases to hold the office ipso facto upon giving the notice in writing to the company that he resigns his office. Therefore, even assuming for the sake of argument that the respondent had attended the meetings held after he had served the notice, Exhibit B, upon the company, that would not affect the operation of the ipso facto clause contained in the relevant articles of association.

8. In my opinion, the acquittal of the respondent in this case is amply justified and this appeal is accordingly dismissed.