

(2009) 05 RAJ CK 0132
In the Rajasthan High Court

Union of India (UOI)	Vs	APPELLANT
Arpit Fabrics Pvt. Ltd. and Others		RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Companies Act, 1956 — Section 159, 162

Citation : (2010) 3 RLW 2016

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This criminal appeal has been filed by the appellant-Union of India, through Registrar of Companies, Ministry of Finance & Company Affairs, against the Judgment of acquittal dated 19.6.2002 passed by learned Special Judge Magistrate (Economic Offences) Jaipur City, (Hereinafter to be referred in short "the learned trial Court") Jaipur in case No. 146/2002, whereby it acquitted the accused respondents for the offence u/s 159/162 of the Companies Act, 1956.

2. Brief facts of the case are that the Assistant Registrar, Companies, Rajasthan, Jaipur filed a complaint in the Court of Special Judicial Magistrate (Economic Offence) Rajasthan, Jaipur u/s 159/162 of the Companies Act, 1956 to the effect that according to Section 166 and its subsections the company was required to hold its Annual General Meeting for the year 2000 by 30.9.2000 and further to submit its annual return within 60 days of the holding of the meeting in terms of provisions of Section 159 of the Company Act and its sub-sections. However, the accused company failed to submit the return and even after expiry of 439 days up-to the date of the filing of the complainant i.e. 14.2.2002 the accused company failed to submit the -annual return. Although default notices were issued and served upon the accused persons but still they failed to submit the return and thus, committed default in terms of the provisions of Section 159 read with 162 of the Act and thus, made themselves liable for prosecution and

punishment under the provisions of Section 159 read with 162 of the Act. It was also averred that pending decision upon the complaint, the accused persons be directed to submit annual return in accordance with the provisions of Section 614-A and 611(2) of the Act. Cost of the proceedings were also demanded along-with the request that the offence made out against the accused persons be treated as an offence continuous in nature.

3. On the basis of this complaint the learned trial Court took cognizance against the accused respondents for the offence u/s 159/162 of the Companies Act, 1956. Thereafter, the substance of the offence was read over to them. They denied the charges, pleaded not guilty and claimed to be tried in the matter.

4. From the side of complainant statement of PW1 Shri Prakash Rawat was recorded.

5. Thereafter, the statements of the accused respondents under Sections 313 Cr.P.C. were recorded.

6. After conclusion of the trial, the learned trial Court vide its judgment dated 19.8.2002 acquitted the accused-respondents from the aforesaid offence.

7. Aggrieved with the impugned judgment of acquittal dated 19.8.2002 passed by learned trial Court, the appellant Union of India has preferred the instant appeal.

8. I have heard learned Counsel for both the parties and carefully gone through the impugned material made available to me.

9. In this appeal Mr. K.K. Sharma, Addl. Solicitor General for Union of India submits that the learned trial Court completely misconstrued the statement recorded by the departmental representative. The accused respondents also admitted regarding non-filing of the annual return, as the trial Court found the complaint within limitation. The learned trial Court misread the statement of Mr. Rawat. The provisions of Section 200 and 202 Cr.P.C. have not been followed. Thus, the impugned judgment of acquittal dated 19.8.2002 passed by the trial Court be quashed and set-aside and the accused respondents be convicted and sentenced for the aforesaid offences.

10. Per contra Mr. Dinesh Kala, counsel for the accused respondents controverted the aforesaid submissions of Mr. Sharma and submits that the trial court has acquitted the accused respondents after considering all the material which was made available to him. Lastly, he submits that elaborate discussion has been made by the learned trial Court in its judgment at page 3 of the Judgment, which runs as under:

i=koyh ij miyC/k ifjoknh i{k dh lk{; mlds IEcU/k esa mHk;i{k ds vfHkHkk"kdX.k ds rdksZ dk fo"ys"k.kkRed foospu djus ds mijkUr U;k;ky; ggtk dk fu"d"kZ bl izdkj gS fd tgka rd vfHk;qDr i{k dh vksj ls fuosnu fd;k gS fd ifjoknh ,d l{ke O;fDr ugha gS A bl ij ifjokn [kkfjt fd;k tkuk pkfg;s ijUrq ;g lgh ugh gS D;ksfd /kkjk 2 mi/kkjk

40 dEiuh vf/kfu;e ds vUrZxr jftLV?kj "kCn esa lgk;d jftLV?kj "kCn Hkh lekfgR gS A /kkjk 200 n.M izf?;k lafgrk ds izko/kkuksa ds vuqlkj ;fn ifjokn fdlh ljdkjh vf/ kdkjh@deZpkjh ds }kjk izLrqr fd;k tkrk gS rks izlaKku ls iwoZ c;ku fy;s tkuk Hkh vko;"d ugha gS A bl izdkj izlaKku fof/k ds vuqlkj fy;k x;k gS A ifjokn i{k dh vksj ls tks xokg ih-MCyw- 1 ds c;ku gS mlesa flQZ ;g dgk gS fd vfHk;qDr dEiuh o vfHk;qDrx.k us izR;sd o"kZ dh fu/kkZfjr vof/k rd okf"kZd cSBd djds 60 fnol esa fooj.kh dk;kZy; eas is"k djuh pkfg;s Fkh tks is"k ugh dh A i=koyh ij ifjokn i{k dh vksj ls dsoy ek= bl xokg dh lk{; gS fd fdlh izdkj dh dksbZ nLrkosth lk{; i=koyh ij is"k ugha gS A rFkk vfHk;qDrx.k ij yxk;s x;s vkjksi dh bl xokg us Li"V "kCnks ls lkfcr ugh fd;k gS A xokg ds vuqlkj okf"kZd cSBd izR;sd o"kZ gksus ds mijUr 60 fnol dh vof/k esa fooj.kh is"k gksuh pkfg;s Fkh is"k ugha fd;k ysfdu mlds }kjk ;g ugh crk;k x;k fd ifjokn dh vksj ls bl lECU/k daiuh dks fdlh izdkj dh dksbZ dk;Zokgh dh gks vFkok ukSFVI fn;k x;k gks A bl izdkj bl xokg dh lk{; ds vk/ kkj ij vfHk;qDrx.k ij yxk;s x;s vkjksi i=koyh ij fof/kd lhekVks ds vuq:Ik lkfcr ugha gS A vfHk;qDrx.k dks nks"keqDr fd;k tkuk fof/klaxr gksxkA

11. Having gone through the impugned judgment 19.8.2002 passed by the trial Court, I find that the trial Court has given cogent reasons for not finding the case of the prosecution proved against accused respondent.

12. The court attention was drawn on the following judgment of the Hon"ble Supreme Court:

Umrao v. State of Harayana and Ors. AIR 2006 SC 136 Page 136 in which the Lordships of the Supreme Court has observed in para 26 that "it is now well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below."

13. Looking to the evidence just discussed above, it can easily be said that the prosecution has not been able to prove its case against the accused respondent for the offence for which he has been convicted and the learned trial Court was right in acquitting the accused respondent. I have no reason to dissent from the finding of acquittal recorded by the learned trial Court as the same appears to be reasonable and plausible in the facts and circumstances of the case.

14. It may be stated that in appeal against acquittal though powers of the High Court to reassess the evidence and to reach its own conclusions are as extensive as in appeal against an order of conviction, yet as a rule of prudence, it should always give proper weightage and consideration to the views of the trial judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, right of the accused to the benefit of any doubt and thus, High Court should not ordinarily disturb the order of acquittal. Therefore, this Court does not want to interfere with the impugned judgment passed by the learned trial Court and this appeal is liable to be dismissed.

15. Accordingly, this appeal filed by the State of Rajasthan fails and the same is hereby dismissed, after confirming the judgment of acquittal dated 19.8.2002 passed by the Special Judicial Magistrate (Economic Offence) Jaipur in case No.

146/2002.