
(2008) 08 RAJ CK 0055
In the Rajasthan High Court

Union of India (UOI)

APPELLANT

Vs

Suman Distributor Ltd. and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Companies Act, 1956 — Section 159, 162

Citation : (2009) 149 CompCas 358 : (2009) 96 SCL 363

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—Both the criminal appeals arise out of a common judgment as also common facts and questions of law, hence the same are being decided by this common judgment.

2. Both the criminal appeals have been filed by the appellant-Union of India, through Registrar of Companies, Ministry of Finance and Company Affairs, against the judgment of acquittal dated August 14, 2002, passed by learned Special Judicial Magistrate (Economic Offence), Jaipur City, Jaipur (hereinafter to be referred in short "learned trial court") in Criminal Case No. 549 of 2000, whereby it acquitted the accused respondents for the offence u/s 159/162 of the Companies Act, 1956.

3. Brief facts of the case are that the Assistant Registrar of Companies, Rajasthan, Jaipur, filed a complaint in the court of Special Judicial Magistrate (Economic Offence), Rajasthan, Jaipur, u/s 162 of the Companies Act, 1956, to the effect that according to Section 166 and its sub-sections the company was required to hold its annual general meeting and further to submit its annual return within 60 days of the holding of the meeting in terms of the provisions of Section 159 of the Companies Act and its sub-sections. However, the accused company failed to submit the return and even after expiry of limitation period up to the date of filing of the complaint that is August 19, 2000, 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 Section 162 of the Act and thus, made themselves liable for prosecution and punishment under the provisions of Section 159 read with Section 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 614A and 611(2) of the Act. The 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.

4. 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.

5. From the side of complainant statement of PW1 Ajay Kumar Meena (JTA) was recorded.

6. Thereafter, the statements of the accused-respondents u/s 313 of the Code of Criminal Procedure were recorded.

7. After conclusion of the trial, the learned trial court vide its judgment dated August 14, 2002, acquitted the accused-respondents from the aforesaid offences.

8. Aggrieved with the impugned judgment of acquittal dated August 14, 2002, passed by learned trial court, the appellant, Union of India has preferred the instant appeal.

9. In this appeal Mr. Shyam Kant Sharma appearing on behalf of Mr. Kamlakar Sharma, for Union of India, submits that the prosecution could not muster sufficient evidence to prove the charges. The statement recorded by the prosecution witness is not clearly worded (sic). The statement recorded by the prosecution witness was not only clear but also categorical inasmuch as it was clearly stated that the accused are the directors of the company and despite of the statutory liability to submit annual return same were not filed. The accused respondents did not cross examine the veracity of the statement of PW1 Ajay Kumar Meena. Thus, interference is required to be made in the impugned judgment of acquittal dated August 14, 2002, passed by learned trial court.

10. Per contra Mr. O.P. Mishra, learned Counsel for the accused respondents submits that learned trial court has rightly appreciated the statement of PW1 Ajay Kumar Meena. The statement of this witness does not clarify/confirm the contents of the complaint filed by the Union of India and the aforesaid statement is only in four lines. This witness has failed to prove ingredients. Thus, no interference is required to be made in the impugned judgment of acquittal dated August 14, 2002, passed by learned trial court.

11. The court attention was drawn on the following judgment of the Hon?ble

Supreme Court:

Umrao Vs. State of Haryana and Others, , in which the Lordships of the Supreme Court has observed in paragraph 26 (page 145) that: "It is now well-settled that if views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below".

12. 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-respondents for the offence for which they have been convicted and the learned trial court was right in acquitting the accused-respondents. I have no reason to dissent from the finding of acquittal recorded by the learned appellate court as the same appears to be reasonable and plausible in the facts and circumstances of the case.

13. It may be stated that in an appeal against acquittal though powers of the High Court to reassess the evidence and to reach its own conclusions are as extensive as in an 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, the 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 thus appeal is liable to be dismissed.

14. Accordingly, both the appeals filed by the Union of India fail and the same are hereby dismissed, after confirming the judgment of acquittal dated August 14, 2002, passed by learned Special Judicial Magistrate (Economic Offence), Jaipur City, Jaipur in Cases Nos. 549 of 2000 and 551 of 2000.