
(1978) 11 KL CK 0009

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 240 of 1977

V.M. Thomas

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 13-11-1978

Acts Referred:

Companies Act, 1956 — Section 159, 161(1), 162, 5

Citation : (1978) 11 KL CK 0009

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : Varghese Kalliath and Joseph A. Vadakkal, for the Appellant; Public Prosecutor, for the Respondent

Judgement

K. Bhaskaran, J.—The petitioner has been convicted and sentenced u/s 162 of the Companies Act, 1956 (Act 1 of 1956), shortly, the Act, for the company, of which he was alleged to have been a director, having committed default in filing the annual return due u/s 159 of the Act for the year 1975. In the complaint, as originally filed, the petitioner was arrayed as the third accused ; therein the company was the first accused and its managing director was the second accused. The aforesaid accused 1 and 2 having pleaded guilty, the case against the petitioner, who pleaded not guilty, was split up and renumbered.

2. The court below on a consideration of the materials placed before it found the petitioner guilty. The counsel for the petitioner contended that it was by overlooking the provisions of Sections 45 and 73 of the Evidence Act and without putting to the petitioner the evidence appearing against him on this particular aspect when questioned u/s 313 of the Cr.P.C. that the court below concluded that the petitioner was a director of the company during the material time. The further contention of the counsel for the petitioner is that even assuming without conceding that the petitioner was a director during the material time, he was not liable to be convicted under Sections 162 of the Act unless he was also found to be an officer who was in default. Section 162 of the Act reads as follows :

" Penalty and interpretation.---(1) If a company fails to comply with any of the provisions contained in Section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(2) For the purposes of this Section and Sections 159, 160 and 161, the expressions " officer " and " director " shall include any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act. (Emphasis supplied.)

3. We have noticed that the company and the managing director had already pleaded guilty ; and they had also been convicted and sentenced. In this case, what we have to consider is whether the petitioner, on the assumption that he was a director during the material time, was an officer who was in default to render him liable to be punished u/s 162 of the Act. From the wording in Sub-section (1) of Section 162, it is clear that while the company is liable to be punished for failure to comply with any of the directions contained in Section 159, 160 or 161, it is not every officer, but only those officers of the company who are in default who would be liable to be punished. The meaning of "officer who is in default" is as given in Section 5 of the Act which reads as follows :

" For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression " officer who is in default means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision, or who knowingly and wilfully authorises or Permits such default, non-compliance, failure, refusal or contravention." (Emphasis supplied).

4. To be treated as an officer who is in default the petitioner ought to have been one who was knowingly guilty of the default or who knowingly and wilfully had authorised or permitted such default. The counsel for the respondent submitted that from Ex. F-2, it could be seen that the company had only two directors, the petitioner and the managing director who was the second accused in the original complaint, others having already resigned, and the annual returns could have been filed only after getting the signatures of the petitioner and the managing director. This is stressed to emphasise that when his signature was not obtained in the annual returns to be filed, he had known that the returns were not filed, and, therefore, he had knowingly and wilfully authorised or permitted the default or non-compliance. This argument could be upheld only if the correct position was that without the signature of the petitioner the company could not have filed the return, and when the petitioner did not subscribe his signature to the return, impliedly at least, he knowingly and wilfully authorised or permitted such default. To decide this question, it would be useful to make a reference to Sub-section (1) of Section 161 of the Act which reads as follows :

" (1) The copy of the annual return filed with the Registrar u/s 159 or 160, as the

case may be, shall be signed both by a director and by the managing agent, secretaries and treasurers, manager or secretary of the company, or where there is no managing agent, secretaries and treasurers, manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one."

(The effect of insertion of Section 324A of the Act by Act 17 of 1969 also may be noticed.)

5. The return could be signed by a director and the manager or secretary of the company. It is, therefore, evident that the return in the present case could have been signed by the managing director and the manager or secretary of the company to comply with the requirements of Section 159 of the Act. PW-1, the clerk in the office of the respondent, examined in court has not stated that the company had no manager or secretary. The learned Chief Judicial Magistrate appears to have been under an erroneous impression that it was absolutely necessary that at least two directors ought to have signed the annual return. There is nothing to show that the petitioner had known that the annual return which should have been filed with the signature of the managing director and the manager or the secretary had not been filed in time in compliance with Section 159 of the Act. No doubt, after the time was over, the original of Ex. P-4 letter was addressed by the respondent to the petitioner, but as disclosed by Ex. P-5 it had come back without being served". It cannot, therefore, be said that in spite of the petitioner having been cautioned in time the default took place and, therefore, he had knowingly and wilfully authorised or permitted the default or non-compliance. On a proper construction of the provisions contained in Section 159, Sub-section (1) of Section 161, Section 162 and Section 5 of the Act, it could be seen that the prosecution has not succeeded in establishing that the petitioner was an officer of the company who was in default. That being the position, the conviction and sentence of the accused-petitioner by the court below u/s 162 of the Act are without any legal basis. Accordingly, I allow this revision, setting aside the conviction and sentence passed by the court below. Fine, if any, paid shall be refunded to the petitioner.