

# SUPREME COURT OF INDIA

Popular Bank Ltd.

Vs.

J. K. Madhava Naik

C.A.Nos.603 to 608 of 1961

(A. K. Sarkar, Raghubar Dayal and J. R. Mudholkar, JJ.)

17.08.1964

## JUDGEMENT

### **SARKAR, J.:**

1. On December 19, 1956, the Popular Bank Ltd. was ordered by the High Court of Kerala to be wound up. A liquidator of the bank was also appointed. In the winding up proceedings that followed on the application of the liquidator an order was made by a learned single Judge of the High Court under S. 478 of the Companies Act, 1956 and S. 45G of the Banking Companies Act, 1949 directing the public examination of nine officers of the bank. Six appeals were filed by the officers concerned against that order to an appellate bench of the High Court and these appeals were allowed. The liquidator has filed the present six appeals against the orders of the appellate bench. There were several other persons against whom orders were sought by the liquidator in that application but with them we are not concerned in these appeals.

2. The application by the liquidator to the learned single Judge on the face of it stated that it had been made under Ss. 478, 531, 538, 539 and 541 to 545 of the Companies Act and Ss. 45G, 45H and 45J of the Banking Companies Act. Various allegations of misfeasances and malfeasances were made against the nine officers in that application and in the end it was stated in paragraph 19 that "From the facts stated above, it appears that counter-petitioners 1 to 8 and 12 to 16 are guilty or privy to acts of fraud, misfeasance, breach of trust and misappropriation and falsification of accounts in relation to the affairs of the Company under Sections 538 (i) and (j), 539(b), 542 and 543 of the Companies Act I of 1956". The counter-petitioners 1 to 8 and 12 are the nine officers against whom the impugned order for public examination had been made. It is necessary to set out two of the prayers in the application as arguments have been based on them. They are, "(a) By virtue of the powers under Ss. 477 and 478 of the Companies Act 1 of 1956 and S. 45(g) of the Banking Companies Act, to summon before it the counter-petitioners and publicly examine them as to the conduct of the business of the Company and as to their conduct and dealings as officers thereof" and "(d) By virtue of the powers under S. 545 of the Companies Act to refer the matter to the Registrar of Companies for prosecuting the offenders or by virtue of the powers conferred on the High Court by S. 45J of the Banking Companies Act 1949 as amended by Act 52 of 1953 to take cognizance of and try in a summary way the offences committed by the Counter-petitioners."

3. It appears that on June 13, 1958 the learned single Judge before whom the application had been moved made an order stating that it was not proper to make an application combining together so many different sections of the two Acts and directing that the application "be treated as a report

under S. 455(2) of the Companies Act and S. 45G of the Banking Companies Act and the Court Liquidator will be at liberty to make separate applications for such other reliefs as he seeks. " It does not appear from the record whether any such separate application had been made. The effect of the order was to confine the application to prayer (a) only and it was in terms of it that the impugned order was made.

4. The only question argued at the bar was whether the order for public examination was void as offending Art. 20(3) of the Constitution which says that "No person accused of any offence shall be compelled to be a witness against himself". On this question the learned single Judge held that the Article was not violated as the persons directed to be publicly examined had not been accused of any offence. The learned Judges of the appellate bench allowed the appeals taking the view that the nine officers must be said to have been accused of various offences under Sections 538, 539 and 541 of the Companies Act as in spite of the order of June 13, 1958 the application containing allegations of commission of such offences by them as also prayer (d) asking for their prosecution and trial in respect of them, remained on the record of the Court and that prayer could be pressed as soon as the public examination was over. They however expressly left open the question whether an order for public examination under S. 478 of the Companies Act or S. 45G of the Banking Companies Act would offend Art. 20(3) even in the absence of such accusation.

5. We think that the matter is concluded by the recent judgment of this Court in K. Joseph Augusthi v. M. A. Narayanan, S. C. C. A. No. 254 of 1963 : (Since reported in AIR 1964 SC 1552). It was there held that S. 45G of the Banking Companies Act did not offend cl. (3) of Art. 20 of the Constitution and no order for public examination under it could violate that clause as there could be no accusation in a proceeding under the section resulting in an order for public examination. This judgment would appear to answer the question which the learned Judges of the appellate bench intended to keep open. The effect of this decision on the present case will become clearer if the terms of two sub-sections of S. 45G are considered. Subsec. (1) provides, "Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission ('whether or not a fraud has been committed by such act or omission') of any person in the promotion or formation of the banking company or of any director or auditor of the banking company"; (underlining (here into' ') is ours). Sub-section (2) provides that if on a consideration of the report submitted under sub-sec. (1) the High Court so thinks fit, it can direct the public examination of the person concerned as to matters mentioned in it. It would appear from the underlined (here into' ') portion of sub-s. (1) that the person contemplated in it can include an allegation of fraud committed by a person mentioned in it if the liquidator is of opinion that such fraud was committed. There is no doubt that the decision in K. Joseph Augusthi's case, S. C. C. A. No. 254 of 1963 D/- 11-3-1964 : (AIR 1964 SC 1552) would apply even to a case where there is such an allegation of fraud because it applies to all cases coming u/S. 45G including such a case. Since K. Joseph Augusthi's case S. C. C. A. NO. 254 of 1963, D/- 11-3-1964 : (AI R 1964 SC 1552) has held that no order under S. 45G of the Banking Companies Act can offend cl. (3) of Art. 20 of the Constitution, an order under that section cannot do so even where it is made on an allegation of fraud. It has therefore to be held that there is no accusation within the meaning of Art. 20(3) of the Constitution of the person whose public examination is sought and against whom allegations of fraud have been made. Whatever allegations are material within S. 45G for justifying an order for public examination, they cannot in view of that decision be accusations for as was said, "The whole object of the enquiry is to collect evidence and decide whether any act or omission caused loss to the banking company".

The object of the section was not to consider any accusation of an offence. In so far as an application under that section contains allegations of the commission of an offence which are immaterial for the purpose of an order under it, such allegations cannot amount to accusations because they are idle and have no effect at all. It would follow that even if the application in the present case had contained allegations of the commission of offences under ss. 538, 539 and 541 of the Companies Act, as the appellate bench thought it did, that would not amount to an accusation within Art. 20(3). We, therefore, think that the view taken by the appellate bench was erroneous and cannot be supported. We should point out that the learned Judges of that bench did not have the judgment in K. Joseph Augusthi's case, S. C. C. A. No. 254 of 1963 : (AIR 1964 SC 1552) before them when they decided the matter.

6. Learned counsel for the respondents sought to distinguish K. Joseph August his case, S. C. C. A. No. 254 of 1963 : (AIR 1964 SC 1552) from the present one on two grounds, First he said that K. Joseph Augusthi's case, supra, was concerned with S. 45 G of the Banking Companies Act only whereas in the present case the order had been made under S. 478 of the Companies Act also. This no doubt is true. But that does not in our opinion make any difference. We think that for the present purpose, that is to say, for deciding whether an accusation was made or not, the two sections are indistinguishable. Under S. 478 of the Companies Act where a report made by the liquidator ---- which is done under S. 455 states that a fraud has been committed by any person in regard to the affairs of the company, the Court may direct the person alleged to have committed the fraud to be publicly examined. The reasons which led this Court to hold in K. Joseph Augusthi's case. S. C. C. A. No. 254 of 1963 : (AI R 1964 SC 1552) that an application under S. 45G of the Banking Companies Act resulting in a public examination can never amount to accusation within the meaning of Art. 20(3) are equally applicable for holding that there is no accusation in a proceeding under S.478 of the Companies Act also.

7. The second ground on which learned counsel for the respondent sought to distinguish K. Joseph Augusthi's case, S. C. C. A. No. 254 of 1963 :(AIR 1964 SC 1552) was based in prayer (d) in the application which we have earlier set out. It was said that that prayer amounted to an Accusation as it asked the Court to refer the matter under S. 545 of the Companies Act for prosecuting the nine officers, and also asked the Court to take cognisance of and try in summary manner these officers under S, 45J of the Banking Companies Act of certain offence,

8. We are unable to accept this contention, First we think it extremely doubtful if the appellate bench was right in stating that the prayer (d) remained in the application in spite of the order of the learned Single Judge of June 13, 1958 to which we have earlier, referred. It seems to us that the correct view to take is that as a result of that order a relief on the terms contained in prayer (d) could not be asked on that application and the liquidator had to make an independent application for it. If the prayer was not there, K. Joseph Augusthi's case, S.C. C.A No. 254 of 1963 : (AIR 1964 SC 1552) cannot be distinguished on the basis of it. Secondly that prayer was, in any event, not under S. 45G of the Banking Companies Act nor under S. 478 of the Companies Act and, for proceedings under either of those two sections that prayer was of no effect. It can be treated as if it had not been made. For the purpose of action under S. 545 of the Companies Act and S. 45J of the Banking Companies Act it is not essential that a public examination should first be held either S. 478 of the Companies Act or S. 45G of the Banking Companies Act. Therefore public examination under S. 478 of the Companies Act and S. 45G of the Banking Companies Act have no concern with proceedings under S. 545 of the Companies Act and S. 45J of the Banking Companies Act. A prayer for action under S. 545 of the Companies Act and 45J of the Banking Companies Act cannot hence amount to accusation under Art. 20(3) for the purposes of orders for public examination under S.

478 of the Companies Act or S. 45G of the Banking Companies Act. We think it right also to express our doubt if an application for orders under S. 545 of the Companies Act or S. 45G of the Banking Companies Act can be said to be accusation at all. It is at least arguable that it is only after orders under them have been made that the accusation, if any, comes.

9. We think for the reasons above-mentioned these appeals must succeed and we accordingly, allow them with costs. There will be one set of hearing fees. The order of the appellate bench is set aside and that of the Single Judge restored.

Appeals allowed.

</html