SUPREME COURT OF INDIA

State of A.P.

Vs.

Andhra Provincial Potteries Ltd.

Crl.A.No.34 of 1970

(H. R. Khanna and A. Alagiriswami, JJ.)

17.08.1973

JUDGEMENT

ALAGIRISWAMI, J.:-

1. This is an appeal against the judgment of the Full Bench of the Andhra Pradesh High Court reported in AIR 1970 Andh Pra 70. It arises out of a complaint filed against the 1st respondent company and its directors for failure to file with the Registrar of Companies on or before 30-10-1967 the balance-sheet and profit and loss account of the company as required under Section 220 (1) of the Companies Act, 1956, which is punishable under sub-section (3) of that section. Admittedly no general body meeting had been held and, therefore, the balance-sheet and profit and loss account had not been laid before a general body meeting nor could it be so laid.

2. The Full Bench speaking through Jaganmohan Reddy, C. J., as our learned brother then was, held that if no balance-sheet is laid before a general body, there can be no question of that balance-sheet not being adopted nor of complying with the requirements of Section 220 and though wilful omission to call a general body meeting and to lay the balance-sheet and profit and loss account

before it may expose the person responsible to punishment under other provisions of the Act, it certainly does not make him liable under the provisions of Section 134 (2) of the Companies Act, 1913 or Section 220 of the Companies Act, 1956. In this the Bench was taking a view contrary to that of most of the High Courts after the decision of this Court in State of Bombay v. Bandhan Ram Bhandani, (1961) 1 SCR 801 = (AIR 1961 SC 186). In that case this Court had taken the view that a person charged with an offence cannot rely on his default as an answer to the charge and so, if he was responsible for not calling the general meeting, he cannot be heard to say in defence to the charges brought against him that because the general meeting had not been called, the balance-sheet and profit and loss account could not be laid before it. In that case the directors of a company were prosecuted under Sections 32 (5) and 133 (3) of the Companies Act, 1913, for breaches of Sections 32 and 131 of that Act, for having knowingly and wilfully authorised the failure to file the summary of share capital for the year 1953 and being knowingly and wilfully parties to the failure to lay before the company in general meeting the balance-sheet and profit and loss account as at March 31, 1953.

3. The Bombay High Court, however, following its earlier decision in Emperor v. Pioneer Clay and Industrial Works Ltd., ILR (1948) Bom 86 = (AIR 1948 Bom 357) had upheld the acquittal of the directors by the Presidency Magistrate. Referring to the decision of the Bombay High Court in that case this Court pointed out that that decision turned on Section 134 of the Companies Act, 19l3 the language of which was to a certain extent different from the language used in Sections 32 and 131 and refrained from going into the question whether the difference in language in Section 134 on the one hand and Sections 32 and 131 on the other made any difference to the decision of the case. After referring to the decisions in Gibson v. Barton, (1875) 10 QB 329; Edmonds v. Foster, (1875) 45 LJ MC 41 and Park v. Lawton, (1911) 1 KB 588, where it was held that a person charged with an offence could not rely on his own default as an answer to the charge, and so, if the person charged was responsible for not calling the general meeting, he cannot be heard to say in defence to the charge that the general meeting had not been called, and that the company and its officers were bound to perform the condition precedent if they could do that, in order that they might perform their duty, this Court considered that as the correct view to take.

4. As we have noticed, this Court was not dealing there with the provisions of Section 134 of 19l3 Act which corresponds to Section 220 of the 1956 Act. That question now directly arises for decision in this case. As we said earlier, most of the High Courts which have considered this question after the decision of this Court have proceeded on the basis that the decision necessarily led to the conclusion that even in a prosecution under Section 134 of the 1913 Act (corresponding to Section 220 of the 1956 Act) the company and its directors could not rely upon their failure to call the general body meeting as a defence to the prosecution. Under this category fall the decisions in Dulal Chandra v. State of West Bengal, (1962) 32 Com Cas 1143 (Cal) and Gopal Khaitan v. State, (1969) 39 Com Cas 150 = (AIR 1969 Cal 132) of the Calcutta High Court, Ramachandra and Sons (P.) Ltd. v. State, (1967) 2 Com LJ 92 = (1966) 36 Com Cas 585 (All) of the Allahabad High Court, State v. T. C. Printers (P.) Ltd., AIR 1963 Raj 134 of the Rajasthan High Court, India Nutriments Ltd. v. Registrar of Companies, (1964) 34 Com Cas 160 (Mad) and P. S. N. S. A. Chettiar and Company v. Registrar of Companies, AIR 1966 Mad 415 of the Madras High Court. The Orissa High Court had taken a similar view in Registrar of Companies v. H. Misra, AIR 1969 Orissa 234, but in a later decision in Vulcan Industries (P.) Ltd. v. Registrar of Companies, Orissa, ILR (1972)

Cut 373 = (1972 Tax LR 2264) it has taken a contrary view and followed the decision of the Andhra Pradesh High Court in the judgment under appeal. That decision is also pending in appeal before this Court. The Patna High Court in State v. Linkers Private Ltd., AIR 1968 Pat 445 = 40 Com Cas 17 and the Kerala High Court in Registrar of Companies v. Gopala Pillai, 1961 Ker LJ 490, have also taken a similar view.

5. We may now refer to some of the earlier decisions on this point. The earliest decision is the one in Debendra Nath Das Gupta v. Registrar of Joint Stock Companies, ILR 45 Cal 486 = (AIR 1917 Cal 1). In that case the principle laid down in (1911) 1 KB 588 was applied and it was held that it is not open to the petitioner to plead in answer to a charge under Section 134 his prior default in respect of the calling of the prescribed general meeting and of placing before the company at such meeting a duly prepared and audited balance-sheet. The decision in Ballav Dass v. Mohan Lal Sadhu, (1935) 39 Cal WN 1152, did not refer to the wording of the section but merely stated that the provisions of Section 134 were not complied with. The same Court in Bhagirath v. Emperor, AIR 1948 Cal 42, took the same view. In re Narasimha Rao, AIR 1937 Mad 341 a learned Single Judge of the Madras High Court took the view that the same persons cannot be charged in respect of the same years with offences punishable both under Sections 131 and 134, Companies Act because Section 134 clearly contemplates the sending of a copy of the balance-sheet only after it has been placed before the company at a general meeting under Section 131 and that where in a case there is no such placing of the balance-sheet before the company at a general meeting, the offence under Section 134 cannot be committed. In re Appayya, AIR 1952 Mad 800, a view contrary to the one taken earlier by a Judge of that High Court was taken.

6. We may now set out the reasoning which weighed with the Andhra Pradesh High Court in the decision under appeal:

"The reference to Section 210 by the use of the word "aforesaid" and the emphasis indicated by the words "were so laid" make the filing of copies of those balance-sheets and the profit and loss accounts which are laid before the general body meeting an essential prerequisite. If no general body meeting is held, it is obvious that no copies of the balance-sheet and profit and loss account can be filed even though the default may be wilful. Both under Section 134 of the old Companies Act and S. 220 of the Act, the laying of the balance-sheet and the profit and loss account before an annual general meeting is a condition precedent to the requirement that copies of such documents so laid should be filed before the Registrar. The intention is made further clear by the provision under sub-section (2) of the respective sections of both the Acts that if the balance-sheet is not adopted at the general meeting before which it is laid, a statement of that fact and of the reasons therefor have to be annexed to the balance-sheet and to the copies thereof required to be filed with the Registrar. If no balance-sheet is laid before a general body, there can be no question of that balance-sheet not being adopted nor of complying with the requirements of the sub-section (2) of Section 134 of the old Companies Act or Section 220 of the Act as the case may be, while wilful omission to call a general body meeting and omit to lay the balance-sheet and profit and loss account before it may expose the person responsible to punishment under other provisions of the Act, it certainly does not make him liable under aforesaid provisions. The punishment under these sections is for default in

filing copies of the balance-sheet or the profit and loss account which are laid before a general body and for not sending a statement of the fact that the balance-sheet was not adopted. It may be that copies of the balance-sheet so laid before the general body may have been forwarded under sub-section (1) of Section 134 of the old Companies Act or sub-section (1) of Section 220 of the Act but nonetheless if the requirements of sub-section (2) of the respective sections have not been complied with even then, the persons concerned would be liable for punishment for that default.

In our view, these provisions unmistakably indicate, as we said earlier, that the holding of the annual general meeting and the laying before it of the balance-sheet and the profit and loss account is a sine qua non for filing of the copies thereof before the Registrar. If no general body meeting is held, the persons concerned cannot be said to have committed a default in complying with those provisions."

7. In this state of difference of opinion among the various High Courts and the absence of a decision of this Court on Section 134 this appeal has been filed. Though the respondent was not represented before this Court the learned Addl. Solicitor General who appeared for the State of Andhra Pradesh and the learned Solicitor General who appeared for the Advocate General of Andhra Pradesh fairly placed before this Court all the decisions for and against, which we have already referred to, and also placed before us all the relevant considerations. It was urged before us that the principle accepted by this Court in (1961) 1 SCR 801 = (AIR 1961 SC 186) (supra) that a company or its directors in a prosecution under Section 32 and Section 133 of the 1913 Act could not in defence to such prosecution rely upon their own failure to call the general body meeting, applies with equal force to a prosecution under Section 134 of the Act. But it appears to us that there is a very clear distinction between Sections 32 and 133 on the one hand and Section 134 on the other. Section 32 relates to the preparation of a list of members of the company and of persons who have ceased to be members as well as a summary, and also provides that it shall be completed within 21 days after the day of the first or only ordinary general meeting in the year. It also provides that the company shall forthwith file with the registrar a copy of the list and summary, and any default in complying with the requirements of the Section is made punishable Under Section 131 the laying of a balance-sheet and profit and loss account before the company in the general meeting is made obligatory. Under Section 133 the failure to comply with Section 131 is made punishable. But Section 134 lays down that after balance-sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before the company at the general meeting three copies thereof shall be filed with the registrar, and a failure to do so is made punishable under sub-section (4) of that section. The difference in language is very clear and pointed. The responsibility of sending three copies of the balance-sheet and profit and loss account or the income and expenditure account, as the case may be arises only after they have been laid before the company at the general meeting. Without so laying copies could not be sent to the Registrar and even if they are sent it would not be a compliance with the provisions of the section. It is possible to conceive of the law providing that the balance-sheet and profit and loss account shall be sent to the registrar even without the necessity of their being laid before the general body meeting of the company. In that case any failure to do so would be punishable and the question whether a general body meeting had been held and the balance-sheet and profit and loss account have been laid before it will not arise. Therefore the condition precedent or the essential prerequisite of the balance-sheet and the profit and loss account being laid before the general meeting of the company not being fulfilled, the requirement of Section 134 cannot be complied with. While the appeal to a question of principle might be attractive we

cannot ignore the clear words of the section. Where the words of the section are very clear it is unnecessary to consider whether it embodies any principle and whether that principle is consistent with the principle as embodied in certain other sections which are differently worded. In interpreting a penal provision it is not permissible to give an extended meaning to the plain words of the section on the ground that a principle recognised in respect of certain other provisions of law requires that this section should be interpreted in the same way.

8. We may also point out that in (1911) 1 KB 588 (supra) the principle laid down which has been adopted in this Court's decision in (1961) 1 SCR 801 = (AIR 1961 SC 186) (supra) it is realised that there might be circumstances where the principle laid down in that decision will not apply. The court there observed :

"If it were the case that everything required to be inserted in the list was dependent on the fact of the general meeting having been held, it might perhaps have been contended with some force that it is impossible to calculate a continuing penalty from a day which has never come into existence, but when one sees that S. 26 requires a number of most important matters to be included in the list of members which are entirely independent of the holding of a general meeting, this very much weakens the contention that no list need be compiled if, owing to the failure to hold a general meeting, it is impossible to say what day is the fourteenth day thereafter."

This observation may provide no defence to a prosecution under S. 133 but it might well do so in a prosecution under Section 134. This was what the learned Solicitor General was fair enough to point out with regard to the difficulty of working out the daily penalty under Section l 62 after the thirtieth day mentioned in Section 220 (1) of the 1956 Act. He pointed out that where no meeting has been held it was not possible to calculate the period of 30 days specified in that section and it would not be possible to give effect to the provisions of that section. The Bombay High Court pointed out in ILR (1948) Bom 86=(AIR 1948 Bom 357) that the decision in Park v. Lawton (supra) is based on Section 36 (it is a mistake for Section 26) of the English Act, which in its scheme and terms is entirely different from the section with which they (the Bombay High Court) were concerned, and that the section in the English Act is a composite one which lays down various requirements which are to be complied with by the company under its first four sub-clauses and sub-cl. (5) is the penal sub-section which penalises the failure to comply with any of the requirements contained in any of the four preceding sub-sections. In our Act various stages have to be gone through before we reach the stage of a copy of the balance-sheet and the profit and loss account being filed with the Registrar and the failure to reach any one of the stages within the time prescribed is made penal by the Act. The court pointed out that this is not a case where an accused person relies on his default and pleads his innocence. What he says is, I may have committed an offence, but the offence that I have committed is not the one with which I am charged. On the facts proved by the-prosecution an offence is not disclosed under Section 134 (4) A different offence might have been, committed either under Section 76 (2) or under Section 133 (3).

9. It is interesting to note that it was argued in Park v. Lawton that the fact that Section 26 makes the offence a continuing one also shows that the obligation to file the list is independent of the holding of a general meeting. The observations which we have extracted earlier will show that the submission on behalf of the prosecution that provisions of Section 26 show that the obligation to file the list is independent of the holding of the general meeting was accepted. But under Section 134 of the 1913 Act the obligation to send a copy of the balance-sheet and profit and loss account is dependent completely on its being laid before a general meeting. It is clear, therefore, that on principle and authority it should be held that no offence was committed by the directors in this case under Section 134. They might have been guilty of offences under Sections 76 and 133 but not under Section 134. We say nothing about Section 32 about which this Court has already laid down the law.

10. The appeal is dismissed.

Appeal dismissed.