

CALCUTTA HIGH COURT

Ballav Dass

Vs

Mohan Lal Sadhu

(R.C Mitter ,J.)

12.06.1935

ORDER

R.C. Mitter, J.

1. In this case the petitioner Ballav Das who is a Director of the Cash Insurance Bank Ltd. has been convicted under Clauses (4) of Section 32, Cl, 6 of Section 77 and CI (4) of Section 134, Indian Companies Act, and sentenced to pay a fine. The Company commenced business under a commencement certificate on 16th May 1933. The statutory meeting of the Company ought to have been held on or before the 15th November 1933. Admittedly this was not held, and there can be no doubt that the petitioner knew that the statutory meeting had not been held within the time mentioned in Section 77 of the Act. The statutory report required to be forwarded under Clause (2) of Section 77 was not forwarded to any member of the Company, and there can be no doubt that the petitioner knew of the said fact. Although the prosecution was started on 14th April 1935, the register of shareholders was not prepared in accordance with the provisions of Section 32, and there cannot be any doubt on the evidence that the petitioner also knew of the fact. The balance-sheet of the Company was not prepared and placed at a general meeting nor filed with the Registrar of Joint Stock Companies. In fact the General Meeting was never held, and the petitioner also knew of the fact. The provisions of Section 134 were therefore not complied with. It appears that he took no steps to have the abovementioned requirements under the Companies Act complied with. Under the circumstances, it can be safely held that he permitted the defaults to continue. In order that a conviction, under these sections, of an officer of the Company may be sustained, the only thing the prosecution has to prove is that that particular officer knowingly and wilfully authorised or permitted these defaults.

2. The sections speak also of authorization of those defaults, but it is not necessary to prove that as the offence is also complete if the officer of the Company knew of the defaults and permitted the defaults. Although in the judgment of the learned Chief Presidency Magistrate these points are not fully stated, the evidence amply supports the conclusion which I have stated above. In this view of the matter, I uphold the conviction of and sentence passed on, the petitioner, and discharge this Rule. In the order of the learned Magistrate the conviction is stated to be under Section 34, Clause (4) and Section 73, Clause (3). Obviously there is a mistake here and for Sub-section 34 (4) and 73 (3) it should be read as Sub-section 32 (4) and 77 (6).