

CALCUTTA HIGH COURT

Bhagirath Chandra Das

Vs

Emperor

(Lodge, J.)

09.01.1947

ORDER

Lodge, J.

1. These four Rules arise out of a prosecution Under Sections 82 and 134, Companies Act. The four petitioners were tried jointly by the Chief Presidency Magistrate, Calcutta, the allegation against them being that they were directors of a company known as the City Commercial Bank Ltd., that that company held an annual general meeting on 29-10-1944 and that that was the only general meeting of the company held during the year 1944. The further allegation was that no list of share-holders and summary were submitted within 21 days of that meeting as required by Section 32, Companies Act; and that the accused persons, as directors, knowingly and willfully authorized and permitted the company to commit the default and that they thereby committed an offence punishable Under Section 32(5), Companies Act. The other charge was that they omitted to file with the Registrar three copies of the balance sheet and profit and loss account made up to a date not earlier than the date of the meeting by more than nine months as required by Section 134, Companies Act, and that they as directors of the company knowingly and willfully authorized or permitted the company to make this default and that they thereby committed an offence punishable under Section 134 (4), Companies Act.

2. One witness was examined and a large number of documents were produced. The learned Magistrate held that of the present petitioners, B.C. Das was guilty only Under Section 134 but not guilty under Section 32(5) of the Act and sentenced this petitioner to pay a fine of Rs. 200 and in default to undergo simple imprisonment for three months. The remaining three petitioners were found guilty on both charges, they were sentenced Under Section 134(4), Companies Act, each to pay a fine of Rs. 100 and in default to undergo one month's simple imprisonment. No separate sentence was imposed Under Section 32(5), Companies Act.

3. It has been argued before me on behalf of all the petitioners that there was no material before the Court to show that the present petitioners knowingly and willfully authorized or permitted the default in these cases. It is suggested that these petitioners were directors with no real control of the affairs, were mere figure, heads who did not know that the law had not been complied with and who did not willfully authorize or permit the default. It is true that apart from the evidence to show that Mr. B.C. Das was the Chairman of the Managing Committee, there is no evidence to

show that any particular duties were assigned to the various directors, but the Articles of Association and the Companies Act make it perfectly clear that all directors of a company are responsible to see that the duties imposed upon a company by the Companies Act are properly carried out. It is clearly the duty of all directors to see that the particular returns, the list and summary Under Section 32 and the copies of the balance sheet and profit and loss account are submitted Under Section 134. There is nothing on record to show that these directors made any attempt to see that these returns, list and statement, were properly submitted or that they were prevented in any way from seeing that the proper list, statement and returns were submitted. The presumption of law is that these directors knew their duties. The Articles of Association set out in some detail the duties imposed upon the directors by the Companies Act and it is obvious that the directors must have known what were the duties imposed upon them by the Articles of Association and presumably by the Companies Act. If directors, who are responsible for the management of a company and who presumably know the duties imposed upon them by law make no attempt to see that those duties are carried out, there is justification for holding in, my opinion, that they have willfully and knowingly permitted the company to fail to carry out the duties. The suggestion that these various directors were mere figureheads not taking any active part in the control of the company, is in my opinion, not worthy of serious consideration. They were directors, they attended meetings throughout the period with which we are concerned and they were responsible for the management of the company. There was nothing so far as we know to prevent them seeing that the duties imposed upon the company were properly carried out. It has been argued in the case of Mr. B.C. Das that he submitted his resignation on 10-11-1944, that is, before the date on which The default complained of had occurred and that, therefore, he at all events cannot be held to have knowingly and willfully permitted the default. The general meeting held in 1944 was held on 29th October that year. 21 days from that date elapsed on 19.11.1944. Mr. B.C. Das submitted a resignation of his post as director to the Board of Directors on 16-11-1944. That letter of resignation was considered apparently at a meeting held on 24-11-1944 and accepted on that date. From this it is clear, therefore, that Mr. B.C. Das continued to exercise his functions as a director until 24-11-1944, that is until some days after The expiry of the period within which the list of share-holders and summary required by Section 32 and the copies of balance sheet and profit and loss account required to be submitted by Section 134 had to be submitted. It cannot, therefore, be said that Mr. B.C. Das was not a director at the time when the default occurred.

4. It has been argued that even after the default occurred the Registrar of Joint Stock Companies carried on correspondence with the company and extended the time within which they should comply with the provisions of Sections 32 and 134 and that therefore, the Registrar of Companies condoned the default. My attention has been drawn in particular to two communications from the Registrar of Joint Stock Companies. The first of these letters is dated 8-12-1944, in which an Assistant Registrar acknowledged receipt of the balance sheet as at 31-12-1942, and the corresponding profit and loss account and directed the company to send the summary of share capital and the annual list of members as required by law. The letter proceeds: With regard to para. 2 of your letter under reply I have to say that in the circumstances stated therein, the time for placing the balance sheet for the year 1943 at the general meeting is extended till 31-12-1944.

5. From this it is argued that the Registrar condoned the default. The power of the Registrar to extend, the period within which returns and statements are to be made is contained in the proviso

to Section 131(1), Companies Act. Section 131(1) provides that the directors of the company shall lay before the company at the general meeting a balance sheet and profit and loss account made up to a date not earlier than the date of the meeting by more than 9 months in the case of companies trading in British India. The proviso reads: Provided that the Registrar may for any special reason extend the period by a period not exceeding 3 months.

6. The effect of this is merely to enable the directors of a company to lay before the general meeting of a particular year the balance sheet and profit and loss account made up to a date not earlier than the date of the meeting by more than 12 months. It does not authorise the Registrar to condone the failure to hold the meeting in any particular year; it does not authorise the Registrar to condone the failure to lay before the general meeting a balance sheet and profit and loss account made up to a date (not?) earlier than the date of the meeting by more than 12 months. Therefore, the letter of the Registrar to which I have referred at best extended the period laid down in Section 131 and permitted the company to hold a general meeting on 31-12-1943, and to present a balance sheet and statement of account made up to 31-12-1943 at that meeting. The other letter to which my attention has been drawn is a Post Card, Ex. N. from the Registrar addressed to the Managing Directors of the City Commercial Bank Ltd., dated 20-12-1945. In this letter it is a printed reminderreference was made to the letter of 8th December to which I have already referred and a warning was given that failure to submit the documents in question mentioned therein within 7 days would result in prosecution with out further reference. It is suggested that by this correspondence the Registrar condoned the default at least until 8-12-1944 and that, therefore, the persona who ceased to be directors earlier than 8-12-1944, ought not to have been prosecuted. I am unable to find any provision in the Companies Act authorising the Registrar to condone default.

7. It was suggested tentatively that the Registrar was the only person entitled to institute a prosecution for contravention of any provision of the Companies Act. But no authority in support of this view was shown to me. Reference was made to a Punjab case and to a Nagpur case, but both these cases turned upon the effect of Regulations made Under Section 248(2), Companies Act. No such Regulation has been made in Bengal and these rulings are, therefore, of no assistance. There is nothing whatever in Companies Act, so far as I have been able to discover, to suggest that the complaint of the Registrar, Joint Stock Companies, is necessary before a prosecution of a company or of a director can be entertained, nor is there any thing to suggest that the Registrar, Joint Stock Companies, can condone defaults other than as provided for by the proviso to Section 131, Companies Act.

8. I am unable to hold, either that the Registrar condoned the default, or that if he did, that would be any defence to the present petitioners.

9. It is next argued that after this prosecution was instituted, the company went into liquidation and therefore by virtue of the provisions of Section 171, Companies Act the proceedings against the directors ought to have been dropped. Section 171, merely provides that when a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose. It does not require the leave of the Court for institution of proceedings against directors as such and there is no bar whatever in Section 171, to proceeding with the case against the directors and officers of the company for

defaults of the kinds with which we are concerned. In my opinion, Section 171, is no bar whatever to the prosecution in the present case.

10. Mr. Talukdar on behalf of three of the petitioners before me pointed out that the balance sheet and profit and loss account as at 31-12-1913, was not placed before the general meeting on 20-10-1944, and that, therefore, copies thereof could not be filed with the Registrar as required by Section 134(1) and he argued that as it was impossible to comply with the provisions of Section 134(1) the directors should not be held guilty Under Section 134 (4) or at all events they should not be held guilty Under Section 134(1) until an enquiry had been held into the reasons for their failure to lay the balance sheet and profit and loss account as at 31-12-1943, before the meeting and it had been found that they were knowingly a party to the default in respect of laying the balance sheet and profit and loss account before the meeting. This very argument has come before the Court on a number of occasions. In England it has been consistently held that a director who is prosecuted, for knowingly and willfully permitting a company to default respect of filing the balance sheet and profit and loss account with the Registrar, cannot plead the impossibility of doing so when that impossibility is due to his own previous default. The same view has been taken in India, and the latest case in this Court to which reference has been made is that of Ballav Das v. Mohan Lal (35) 39 C.W.N. 1152. In view of the reported decisions I have no hesitation in holding that the directors can be held liable Under Section 134(4) for knowingly and willfully permitting the default even though owing to their previous default it was impossible for them to comply with the provisions of Section 134(1).

11. Lastly, Mr. Talukdar argued in this case that the default if any was of a technical nature, that there was no suggestion of fraud and that even if the accused be found guilty it would be sufficient to impose a nominal sentence on them. I am unable to accept this view. There is no suggestion in this case of any dishonesty or fraud on the part of directors. But these provisions of the Companies Act have been deliberately enacted to protect share-holders and in some cases to protect the general public and they impose a definite duty upon directors. It is necessary that these duties should be properly carried out and it is necessary, in my opinion, that when directors fail to do so, the penalties provided for in the Act should be imposed and the directors should be substantially penalized. It was never intended, in my opinion, that these sections should only be enforced in cases where fraud or dishonesty was suspected or proved. I am unable to hold that a mere nominal sentence would meet the ends of justice in this case.

12. I am of opinion, after considering all the arguments before me that I have no justification whatever for interfering with the convictions and sentences imposed by the Chief Presidency Magistrate. I, therefore, order that these Rules be discharged.

