

KERALA HIGH COURT

Registrar of Companies Kerala

Vs

K R Gopala Pillai

(M.A. Ansari, C.J.)

15.03.1961

JUDGEMENT

M.A. Ansari, C.J.

- (1.) THESE three criminal appeals are filed by the State against the acquittal of the Directors of a Company of offences under the indian Companies Act, 1913 (Act VII of 1913). The accused who are the same in all the three cases were the Directors (one of them was the Managing Director)of the Bharat Ayurvedic Works Ltd. , a company having its registered head office at Vaikom. Of the three cases charged against them before the Stationary First class Magistrate, Vaikom, the first (C. C. No. 4 of 1957) was for an offence under S. 134 (4), in that the accused failed to file before the Registrar of companies copies of the annual balance-sheet of the company for the year 1953 the second case (C. C. No. 5 of 1957) was for an offence under S. 76 (3) for failing to hold a general meeting of the company during the year 1955 while the third case (C. C. No. 6 of 1957) was for an offence under S. 32 (5) in that they failed to prepare and file before the Registrar of Companies the list and summary specified in S. 32 for the year 1955. It was not disputed that the accused were the directors of the company at the relevant time and that the defaults alleged by the prosecution had been committed. However the learned magistrate acquitted the accused on the ground that the prosecution had failed to prove the main ingredient of the offences charged viz. , that the defaults were authorised or permitted by the accused knowingly and wilfully. It was further held in C. C. 4 of 1957 that a charge under S. 134 (4) for the offence of failure to file copies of the balance-sheet after it had been laid before the general body meeting of the company will not lie where such a meeting itself has not been held. (It was found in this case that no general meeting of the company was held for the year 1953).

(2.) OUR learned brother Raman Nayar, J. before whom the appeals came up for hearing found that both the grounds taken by the lower court raised questions of considerable importance and as there was divergence of judicial opinion on these matters the learned judge felt it desirable to have the cases decided by a larger Bench. Of the two questions posed by the learned judge, the first is "whether it is sufficient answer to a charge under S. 134 (4) or one under S. 32 (5) to say

that no general meeting was held in the year in question and that therefore no question of the compliance with the requirements of either section could arise. " The problem so far as S. 32 (5) is concerned may be taken as settled by the decision of the Supreme Court in *State of Bombay v. Bhandan Ram* (AIR. 1961 Supreme Court 186) 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 therefore where the general body meeting of the company was not held due to the default of the accused then the fact that the meeting was not held was no defence to the charge of not complying with the requirements of S. 32.

(3.) THE contention of the learned counsel for the respondents however is that in view of the difference in the language of the two sections the principles governing S. 32 cannot be applied to S. 134. According to the learned counsel the position as regards S. 134 is what has been laid down by the Bombay High Court in *Emperor v. Pioneer Clay & Industrial works*¹ In that case Chagla C. J. , holding that the obligation cast upon the company by S. 134 will arise only if a general meeting has been held observed: "what is made penal is default in complying with the requirements of the section & the requirements of S. 134 (1) are that there is an obligation cast upon the company to file three copies of the balance-sheet and the profit and loss account after they have been laid before the company at the general meeting. THERE is no obligation cast upon the company to file any such copies if no general meeting has been called. " Now this decision itself was referred to by the Supreme court in *State of Bombay v. Bhandan Ram* and in considering the question whether the principles on which that case was decided had any application to S. 32 or s. 131 it was observed: "as regards ILR. (1948 (Bom) 86: (AIR. 1948 Bom. 357) on which the courts below held that the respondents must be acquitted, we find that it turned on S. 134 of the Companies Act, 1913. THE language of that section is to a certain extent different from the language used in S. 32 and 131. THE S. 134 (1) says, "after the balance sheet and profit and loss account have been laid before the company at the general meeting, three copies thereof shall be filed with the Registrar. " Sub- section (4) of this section provides a penalty for breach of S. 134, in terms similar to those contained in sub-sec. (5) of S. 32. If the language of S. 134 (1) makes any difference as to the principle to be applied in ascertaining whether a breach of it has occurred or not- -as to which we say nothing in this case- - then that case can be of no assistance to the respondent. If however no such difference can be made, then we think that it was not correctly decided. " So, the question before us resolves itself to this, namely, what is the effect of the difference in the language of S. 32 and 134. S. 32 (1) reads: "every company having a share capital shall within eighteen months from its incorporation and thereafter once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the day the last return or (in the case of the first return) of the incorporation of the company. " A copy of this list and a summary of the items specified in Sub-section (2) are required by Sub-section (3) to be filed with the registrar. S. 134 (1) provides: "after the 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

signed by the manager or secretary of the company shall be filed with the Registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of S. 32. " The important difference between the sections seems to be the absence in S. 32 of a provision corresponding to the one reading. "after the balance-sheet and have been laid before the company at the general meeting" found in S. 134. This difference according to the learned defence counsel, would mean that the requirement under S. 134 of filing copies of the balance-sheet is impossible to be complied with unless and until a general meeting is held and the balance-sheet placed before it, whereas the filing of the returns under S. 34 is not dependent on the holding of such a meeting. We do not think that such a distinction can be drawn. A reading of S. 32 will show that the list and summary specified therein can be prepared only with reference to a general meeting. S. 32 requires to be filed a copy of the list of the persons "who, on the day of the first or only ordinary general meeting in the year are members of the company". It is difficult to see how a list of the members of the company as on the day of the general meeting can be made if no general meeting is held. Sub-section 3 of S. 32 reads: "the above list and summary shall be contained in a separate part of the register of members, and shall be completed within twenty-one days after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the Secretary of the company, together with a certificate from such director, manager or Secretary that the list and summary state the facts as they stood on the day afore aid" Here again, it is hard to imagine how a director or officer of the company can truthfully certify that the list he is filing, correctly shows the persons who on the day of the general meeting were members of the company, unless such a meeting was in fact held. No doubt, if we take the words "on the day the general meeting" to have besides their plain meaning "on the day the general meeting is held" also the meaning "the day the general meeting was fixed to be held" or "the day the general meeting ought to have been held" then it is possible to argue that a list can be prepared even without a general meeting being actually held. However we do not find anything in the section that would justify such an interpretation. The provision in S. 32 (3) that the list and summary are to be completed within 21 days after the day of the general meeting clearly indicates that the section does not envisage a list or summary prepared without actually holding the general meeting. ;

Cases Referred.

1 AIR. 1948 Bom 357