

ORISSA HIGH COURT

Registrar of Companies

Vs

Haribansha Misra

Criminal Appeal No. 151 of 1966

(S. Acharya, J.)

28.03.1969

JUDGMENT

S. Acharya, J.

1. This is an appeal against the judgment of the Additional Sessions Judge in Criminal Appeal No. 262C of 1965, acquitting the accused persons who in the trial court were convicted and sentenced to payment of fine under Section 220 (3) of the Companies Act, 1956.
2. The accused persons were prosecuted on the undisputed fact that they did not file three copies of the balance sheet and the other papers for the financial year ending 31-3-1963 till 12-11-1963 before the Registrar of Companies, as required under Section 220 (1) of the Companies Act, 1956.
3. The defense took the plea that as the required balance sheet could not be prepared for reasons beyond their control, it could not be laid before the Annual General Meeting of the Company, and as such the question of filing the copies of the balance sheet before the Registrar of Companies according to Section 220 of the said Act would not arise.
4. The sole reasoning of the appellate court which occasioned the judgment of acquittal is as follows :

"Thus, before the required copies of the balance sheet could be filed before the Registrar of Companies, law made it obligatory that the balance sheet and the profits and loss account must have been laid at an Annual General Meeting of the Company. When there was no Annual General Meeting of the Company held at all, the copies of the balance sheets could not be submitted to the Registrar of Companies. D. W. 1 positively asserted that there was no Annual General Meeting of the Company and such assertion appears to have not at all been challenged during the cross-examination. That being so, I fail to understand how the accused persons could be said to have defaulted in making compliance with the requirements of sub-section (1) (b) of the Companies Act, in order to

make them criminally liable under Section 220 (3) of the said Act"

On this it was held that as the Annual General Meeting of the Company was not called, the Directors and other concerned might be hauled up and punished under other provisions of the Act, and this prosecution under Section 220 of the Act was unjustified. The learned Additional Sessions Judge has gone wrong in appreciating the law on this matter in its proper perspective.

5. The law on the subject is now well settled by their Lordships of the Supreme Court in *State of Bombay v. Bandhan Ram Bhandani*¹, On the principle laid down in this decision the accused charged for non-compliance with the requirements of Section 220 of the Companies Act could not in defense plead their own default of not calling on holding the Annual General Meeting, which they were obliged to call under the law. Their Lordships observed "If the person charged with the failure to carry out the requirements of the section could have called the Meeting, he cannot defeat the provisions of the section simply by not calling the meeting willfully. Identical questions as in the present case were involved in *Ambalavana Chettiar and Co.* AIR 1966 Madras 415 and *Tonk Calico Printers (Pt.) Ltd.*, AIR 1963 Rajasthan 134; and both the High Courts in following the above decision of the Supreme Court, decided the question of law on the same line. Their Lordships of the Supreme Court also disapproved the view similar to the one taken by the appellate court that a person charged with the failure to file the balance sheet, as required under Section 220 of the Act, where the annual general meeting had not been held, could only be prosecuted for not holding the meeting according to other provisions of the Act and not under Section 220 (3) of the said Act.

6. As the law on the question has been settled as above, I am not inclined to follow the decisions reported in AIR 1948 Bombay 357 and AIR 1937 Madras 342, which were relied upon by Mr. Rao, the learned counsel for the accused respondents, to support the impugned judgment of acquittal.

7. Thus the judgment of acquittal passed by the learned Additional Sessions Judge, being founded on incorrect appreciation of the law on the question, is liable to be set aside.

8. It was at last submitted by Mr. Rao that it is apparent from the impugned judgment that the appellate court did not consider the merits of the case on facts. Mr. Rath, the learned counsel for the appellant did not oppose the above submission of Mr. Rao. That being so, it is hereby ordered that Criminal Appeal No. 262-C of 1965 be again heard on proper notice to the parties and the Registrar of Companies, Orissa, who was the complainant in the trial court in Criminal Case No. 284-C-2/64, and the appeal be disposed of in accordance with law within six weeks from the date of receipt of the L. C. R. by the said court. The judgment of acquittal is hereby set aside, and the appeal is partly allowed with the direction as given above. The L. C. R. be sent back immediately.

Appeal partly allowed.

Cases Referred.

¹ AIR 1961 SC 186