

Hindustan Biologicals Ltd. vs Jagat Narain on 26 June, 1952

Equivalent citations: AIR1953ALL715, [1953]23COMPCAS58(ALL), AIR 1953 ALLAHABAD 715

ORDER

Beg, J.

1. This is a reference by the learned Additional Sessions Judge, Lucknow, recommending that the order of Sri C. P. Srivastava, City Magistrate, Lucknow, refusing to entertain the complaint filed by the applicant under Section 282A, Indian Companies Act should be set aside.

2. On 14-3-1950 the complainant applicant, The Hindustan Biologicals Limited through Amaresh-war Ghosh filed a complaint against the opposite party Sri Jagat Narain Rohatgi purporting to be under Section 282A, Indian Companies Act. The allegations in the complaint inter alia are that from September, 1946 to 12-4-1949 the accused opposite party was the managing agent and managing director of the complainant company, that in such capacity the accused wrongfully obtained possession of properties of the company detailed in the complaint, that by dishonest and fraudulent representation (including express assurances that the accused would return all properties held by him on behalf of the company) the accused induced the directors of the complainant-company to accept the accused's resignation, that the accused was refusing to deliver to the company the said articles in spite of demand and was wrongfully and wilfully withholding and dishonestly retaining them to the detriment of the company for his unlawful gain and that the accused as an employee and director of the company had committed the aforesaid offence and he be punished for that according to law.

3. After the accused was summoned, he filed a petition raising objection to the maintainability of the complaint in the Court of the city Magistrate. This objection was based on Section 3, Indian Companies Act read with Section 282A of the same Act. The learned Magistrate after hearing the arguments on this point allowed the objection of the accused-opposite-party and held that he had no jurisdiction to entertain the complaint.

4. The applicant filed a revision application which came up for hearing before the learned Additional Sessions Judge Lucknow who disagreed with the view taken by the trial Court and referred the case to this Court with the above recommendation.

5. Having heard the learned counsel for the parties I am of opinion that this reference must be accepted. The complaint purports to have been lodged under Section 282A, Indian Companies Act according to which wrongful withholding of property by a director, managing agent, manager or other officer or employee of a company is made punishable. Section 3 (1) of the same Act lays down

that:

"that Court having Jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate."

The learned counsel appearing for the opposite-party has placed strong reliance on the words "under this Act" and has argued that the effect of the use of these words in Section 3, Indian Companies Act is to make prior sanction of the High Court a condition precedent to the cognisance by a Magistrate of case relating to an offence under the Indian companies Act. I can find no warrant whatsoever for this interpretation of Section 3, Indian Companies Act. He has not argued that the Magistrate has no jurisdiction to try the case. The argument advanced by him is that the jurisdiction arises only after the necessary direction or sanction is given by the High Court. In order to bar the right of a private individual to lodge a complaint the restriction on such a right should be clear and unambiguous. I find no such restriction on the right of a person to institute a complaint under the aforesaid section.

In this connection it will be relevant to refer to Section 237, Indian Companies Act which deals with the prosecution of delinquent directors. Under Section 237 (2) of the said Act it is laid down that if it appears to the liquidators in the course of voluntary winding up that any past or present director, manager or other officer has been guilty of any offence in relation to the Company for which he is criminally liable he would forthwith report the matter to the Registrar. Sub-section (4) of Section 237 lays down the procedure for the prosecution of such persons in the following words:

"If on any report to the Registrar under Sub-section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender."

The use of the words "subject to previous sanction" is noteworthy.

6. It is, therefore, quite evident that where under the Companies Act the legislature thought that prior sanction of the Court was necessary for launching prosecution of the offenders, the said condition was laid down explicitly and clearly. No such condition with regard to the prosecution of persons under Section 282A of the Companies Act seems to have been laid down either under Section 3, Indian Companies Act or in any other section of the Act. This argument of the learned counsel, therefore, seems to be devoid of all merit.

7. Section 282A, Indian Companies Act is only a declaratory section specifying the ingredients constituting an offence under the Indian Companies Act. The proceedings relating to the trial of such offences are not proceedings under the Indian Companies Act but they are proceedings under the Criminal P. C. Section 3, Indian Companies Act was interpreted by the Allahabad High Court in a Full Bench case reported in -- 'Harish Chandra v. Kavindra Narain Sinha', AIR 1936 All 839 (A). It was laid down in that case that:

"the jurisdiction of the High Court referred to in Section 3 (1) of the Companies Act is obviously the jurisdiction exercised by virtue of the specific provisions of the Act and not a jurisdiction which may be invoked where merely a criminal offence is declared. This section does not say that the High Court would be the Court of first instance to try persons who are guilty of offences committed by breaches of the statutory provisions of the Act."

8. Section 3, Companies Act is found in Part 1 of the said Act, the heading of which is "Preliminary". Section 1 of the said Act relates to short title, commencement and extent. Section 2 deals with definitions. Section 2A relates to provisions as to companies registered in Burma or Aden before their separation from India. Section 3 deals with jurisdiction of the Court. The above sections are the only sections constituting Part I of the said Act. It would appear that the said part merely contains some general provisions relating to Company matters which are specifically dealt with by the Indian Companies Act. The provisions relating to legal proceedings and offences are contained in Part 11 of the Companies Act under the heading "Supplemental" and sub-heading "Legal proceedings, offences, etc." Section 278 deals with the cognizance of offences and Sub-clauses (1) and (2) of the said section run as follows:

"(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

2. If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court of a judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held."

9. It is no doubt correct that the said section does not clearly specify the Court by which the offences against the Companies Act are to be tried but they do indicate that the legislature at any rate contemplated their trial by the Court of a Presidency Magistrate or a Magistrate of the First Class. In an indirect way they are indicative of the intention of the legislature. Sub-clause (3) of Section 278 further states as follows:

"Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act shall, for the purpose of the said Code, be deemed to be non-cognizable."

The above section also indicates that the Companies Act contemplated the trial of offences according to the Criminal Procedure Code except in so far as the said Code was specifically modified by the Companies Act. In this connection reference may also be made to Section 5, Criminal P. C., 1898, Sub-sections (1) and (2) of which run as follows:

"(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with, such offences."

10. In the Full Bench case of the Allahabad High Court mentioned above it was laid down that "Section 29, Criminal P. C. merely empowers the High Court, when no Court is mentioned for any offence under any law other than the Indian Penal Code, to try such offences. Reading it with Section 5(2) of the Code, it is clear cognizance of the offence straight off and try the accused itself, without following the procedure laid down in the Code."

In view of the law laid down in the said case I am unable to see any force in the arguments of the learned Counsel for the applicants.

11. The learned Counsel for the opposite-party has also raised certain other points which according to him, are legal points and go to the root of the matter. He has argued that according to the complaint itself no ingredients of any offence either under the Indian Companies Act or under the Indian Penal Code have been made out. Further he has submitted that Section 282A, Indian Companies Act ceases to be applicable as soon as the property is taken into 'custodia legis'. He has also argued that in order to make out an offence under Section 282A, Indian Companies Act the accused must be holding the post of director, managing agent, manager, officer or other employee of a company at the date of the complaint. At this state I am not concerned with the merits of these objections and I do not express any opinion on them. It is open to him to urge these points when the case goes back to the trial Court for proceedings according to law or bring this matter to the notice of the Court by means of a proper application stating the grounds on which he bases his prayer for quashing these proceedings.

12. I am of opinion that the order of the Magistrate refusing to entertain the complaint is clearly wrong and must be set aside.

13. I accordingly accept this reference, set aside the order of the trial Court refusing to entertain the complaint and direct that the case shall be sent back to the Court concerned for disposal according to law.