

Official Liquidator, Popular Bank Ltd. vs K. Madhava Naik And Ors. on 17 August, 1964

Equivalent citations: AIR1965SC654, [1965]35COMPCAS174(SC), 1965(0)KLT469(SC), AIR 1965 SUPREME COURT 654, 1965 35 COM CAS 174, 1965 (1) SCJ 495, 1965 (1) SCWR 375, 1965 KER LJ 537, 1965 KER LT 469

Bench: A.K. Sarkar, Raghuvar Dayal, J.R. Mudholkar

JUDGMENT

Sarkar, J.

1. On December 19, 1956, the Popular Bank Ltd. was ordered by the High Court of Kerala to be wound up. A liquidator of the bank was also appointed. In the winding up proceedings that followed, on the application of the liquidator, an order was made by a learned single judge of the High Court under Section 478 of the Companies Act, 1956, and Section 450 of the Banking Companies Act, 1949, directing the public examination of nine officers of the bank. Six appeals were filed by the officers concerned against that order to an appellate bench of the High Court and these appeals were allowed. The liquidator has filed the present six appeals against the orders of the appellate bench. There were several other persons against whom orders were sought by the liquidator in that application but with them we are not concerned in these appeals.

2. The application by the liquidator to the learned single judge on the face of it stated that it had been made under Sections 478, 531, 538, 539 and 541 to 545 of the Companies Act and Sections 450, 45H and 45J of the Banking Companies Act. Various allegations of misfeasances and malfeasances were made against the nine officers in that application and in the end it was stated in paragraph 19 that "From the facts stated above, it appears that counter-petitioners Nos. 1 to 8 and 12 to 16 are guilty or privy to acts of fraud, misfeasance, breach of trust and misappropriation and falsification of accounts in relation to the affairs of the company under Sections 538(1) and (j), 539(h), 542 and 543 of the Companies Act (1 of 1956)". The counter-petitioners Nos. 1 to 8 and 12 are the nine officers against whom the impugned order for public examination had been made. It is necessary to set out two of the prayers in the application as arguments have been based on them. They are : "(a) By virtue of the powers under Sections 477 and 478 of the Companies Act (1 of 1956) and Section 450 of the Banking Companies Act, to summon before it the counter-petitioners and publicly examine them as to the conduct of the business of the company and as to their conduct and dealings as officers thereof" ; and "(d) By virtue of the powers under Section 545 of the Companies Act to refer the matter to the Registrar of Companies for prosecuting the offenders or by virtue of the powers conferred on the High Court by Section 45J of the Banking Companies Act, 1949, as amended by Act 52 of 1953 to take cognizance of and try in a summary way the offences committed by the

counter-petitioners". It appears that on June 13, 1958, the learned single judge before whom the application had been moved made an order stating that it was not proper to make an application combining together so many different sections of the two Acts and directing that the application "be treated as a report under Section 455(2) of the Companies Act and Section 450 of the Banking Companies Act and the court liquidator will be at liberty to make separate applications for such other reliefs as he seeks." It does not appear from the record whether any such separate application had been made. The effect of the order was to confine the application to prayer (a) only and it was in terms of it that the impugned order was made.

3. The only question argued at the bar was whether the order for public examination was void as offending Article 20(3) of the Constitution which says that "No person accused of any offence shall be compelled to be a witness against himself." On this question the learned single judge held that the article was not violated as the persons directed to be publicly examined had not been accused of any offence. The learned judges of the appellate bench allowed the appeals taking the view that the nine officers must be said to have been accused of various offences under Sections 538, 539 and 541 of the Companies Act as in spite of the order of June 13, 1958, the application containing allegations of commission of such offences by them as also prayer (d) asking for their prosecution and trial in respect of them, remained on the record of the court and that prayer could be pressed as soon as the public examination was over. They (however) expressly left open the question whether an order for public examination under Section 478 of the Companies Act or Section 450 of the Banking Companies Act would offend article 20(3) even in the absence of such accusation.

4. We think that the matter is concluded by the recent judgment of this court in *K. Joseph Augusthi v. M. A. Narayanan*, [1964] 34 Comp. Cas. 546. It was there held that Section 450 of the Banking Companies Act did not offend Clause (3) of article 20 of the Constitution and no order for public examination under it could violate that clause as there could be no accusation in a proceeding under the section resulting in an order for public examination. This judgment would appear to answer the question which the learned judges of the appellate bench intended to keep open. The effect of this decision on the present case will become clearer if the terms of the two sub-sections of Section 450 are considered. Sub-section (1) provides, "Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the banking company or of any director or auditor of the banking company" (underlining is ours). Sub-section (2) provides that if on a consideration of the report submitted under Sub-section (1) the High Court so thinks fit, it can direct the public examination of the person concerned as to matters mentioned in it. It would appear from the underlined portion of Sub-section (1) that the person contemplated in it can include an allegation of fraud committed by a person mentioned in it if the liquidator is of opinion that such fraud was committed. There is no doubt that the decision in *K. Joseph Augusthi's* case would apply even to a case where there is such an allegation of fraud because it applies to all cases coming under Section 450 including such a case. Since *K. Joseph Augusthi's* case, [1964] 34 Comp. Cas. 546 has held that no order under Section 450 of the Banking Companies Act can offend Clause (3) of Article 20 of the Constitution, an order under that section cannot do so even where it is made on an allegation of fraud. It has therefore to be held that there is no accusation

within the meaning of Article 20(3) of the Constitution of the person whose public examination is sought and against whom allegations of fraud have been made. Whatever allegations are material within Section 450 for justifying an order for public examination, they cannot in view of that decision be accusations, for, as was said, " The whole object of the enquiry is to collect evidence and decide whether any act or omission caused loss to the banking company ". The object of the section was not to consider any accusation of an offence. In so far as an application under that section contains allegations of the commission of an offence which are immaterial for the purpose of an order under it, such allegations cannot amount to accusations because they are idle and have no effect at all. It would follow that even if the application in the present case had contained allegations of the commission of offences under Sections 538, 539 and 541 of the Companies Act, as the appellate bench thought it did, that would not amount to an accusation within Article 20(3). We, therefore, think that the view taken by the appellate bench was erroneous and cannot be supported. We should point out that the learned judges of that Bench did not have the judgment in K. Joseph Augusthi's case before them when they decided the matter.

5. Learned counsel for the respondents sought to distinguish K. Joseph Augusthi's case from the present one on two grounds. First he said that K. Joseph Augusthi's case was concerned with Section 450 of the Banking Companies Act only whereas in the present case the order had been made under Section 478 of the Companies Act also. This no doubt is true. But that does not in our opinion make any difference. We think that for the present purpose, that is to say, for deciding whether an accusation was made or not, the two sections are indistinguishable. Under Section 478 of the Companies Act where a report made by the liquidator--which is done under Section 455--states that a fraud has been committed by any person in regard to the affairs of the company, the court may direct the person alleged to have committed the fraud to be publicly examined. The reasons which led this court to hold in K. Joseph Augusthi's case, that an application under Section 450 of the Banking Companies Act resulting in a public examination can never amount to accusation within the meaning of Article 20(3) are equally applicable for holding that there is no accusation in a proceeding under Section 478 of the Companies Act also.

6. The second ground on which learned counsel for the respondent sought to distinguish K. Joseph Augusthi's case was based on prayer (d) in the application which we have earlier set out. It was said that that prayer amounted to an accusation as it asked the court to refer the matter under Section 545 of the Companies Act for prosecuting the nine officers and also asked the court to take cognisance of and try in summary manner these officers under Section 45J of the Banking Companies Act of certain offences.

7. We are unable to accept this contention. First we think it extremely doubtful if the appellate bench was right in stating that the prayer (d) remained in the application in spite of the order of the learned single judge of June 13, 1958, to which we have earlier referred. It seems to us that the correct view to take is that as a result of that order a relief on the terms contained in prayer (d) could not be asked on that application and the liquidator had to make an independent application for it. If the prayer was not there, K. Joseph Augusthi's case, [1964] 34 Comp. Cas. 546. cannot be distinguished on the basis of it. Secondly, that prayer was, in any event, not under Section 450 of the Banking Companies Act nor under Section 478 of the Companies Act and, for proceedings under

either of those two sections, that prayer was of no effect. It can be treated as if it had not been made. For the purpose of action under Section 545 of the Companies Act and Section 45J of the Banking Companies Act it is not essential that a public examination should first be held either under Section 478 of the Companies Act or Section 450 of the Banking Companies Act, Therefore, public examination under Section 478 of the Companies Act and Section 450 of the Banking Companies Act have no concern with proceedings under Section 545 of the Companies Act and Section 45J of the Banking Companies Act. A prayer for action under Section 545 of the Companies Act and Section 45J of the Banking Companies Act cannot hence amount to accusation under Article 20(3) for the purposes of orders for public examination under Section 478 of the Companies Act or Section 450 of the Banking Companies Act. We think it right also to express our doubt if an application for orders under Section 545 of the Companies Act or Section 450 of the Banking Companies Act can be said to be accusation at all. It is at least arguable that it is only after orders under them have been made that the accusation, if any, comes.

8. We think that for the reasons above-mentioned these appeals must succeed and we accordingly allow them with costs. There will be one set of hearing fees. The order of the appellate bench is set aside and that of the single judge restored.