

REVISIONAL CRIMINAL.*Before Sir Shadi Lal, Chief Justice.*

SUNDAR DAS AND OTHERS, Petitioners

versus

THE CROWN, Respondent.

Criminal Revision No. 654 of 1928.

Indian Companies Act, VII of 1913, section 32—Annual list and summary—prosecution of Director—default—not wilful.

Held that, for an officer of a Company to be convicted under section 32 (4) of the Companies Act, there must be a finding that he authorised or permitted the default knowingly and wilfully.

Case reported by Dewan Bahadur Dewan Somnath, Sessions Judge, Lyallpur, with his No. 66 of 20th March 1928.

R. C. MANCHANDA, for Petitioners.

CARDEN-NOAD, Government Advocate, for Respondent.

The accused, on conviction by H. K. Trevaskis, Esquire, exercising the powers of a Magistrate of the 1st Class in the Sheikhpura District, was sentenced, by order, dated the 22nd December, 1927, under section 32, Act VII of 1913 of the Indian Companies Act, to pay a fine of Rs. 200 each.

The facts of this case are as follows :—

Five Directors and the Manager of a private company styled The Gopal Trading Co., Ltd., carrying on business at Sangla, district Sheikhpura, were prosecuted on the complaint of the Public Prosecutor, under sections 76 and 32 of the Indian Companies Act, VII of 1913. It was alleged that they had failed to hold a general meeting of the

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company in the year 1926 and had thus contravened the provisions of section 76 of the Indian Companies Act. It was further alleged that though a general meeting of the company was held on the 24th April in the year 1927 yet the accused as officers of that company had failed to file with the Registrar a summary of capital and list of share-holders within seven days from the date of the holding of the general meeting and had thus infringed the provisions of section 32 of the said enactment.

The learned District Magistrate tried the six accused persons summarily. He does not appear to have convicted any of them under section 76 of the Indian Companies Act. He has let off the Manager on his plea of ignorance but has convicted the five Directors under section 32 of the Indian Companies Act and sentenced them to a fine of Rs. 200 each. He has remarked that it was no business of the Directors to appoint a bad manager.

Reasons for report.

It has been laid down in section 32, clause 4, of the Indian Companies Act of 1913, that every officer of the company who knowingly and wilfully authorised or permitted the default shall be liable to a fine not exceeding Rs. 50 for every day during which the default has continued. The words knowingly and wilfully connote an intentional default in my opinion. In the present case the only evidence on the record is to the effect that the requisite summary of capital and list of shareholders was not received in the office of the Registrar. In my opinion it rested on the prosecution to prove something more than that. The Manager was let off on his plea of ignorance and it cannot be said that the shop-

keepers who have been convicted were less ignorant of the provisions of the Indian Companies Act on the point. The petitioners who had filed this revision petition have put in a letter No. 1217, dated the 1st December, 1926, to the address of the Manager of their company from the Director of Industries, Punjab. A perusal of that letter would show that the company was given to understand that it was not required to file a copy of the statutory report as provided for in section 77 of the Indian Companies Act. It was further added in the letter that no copy of the proceedings of the general meeting were required to be filed with the Registrar. Probably this letter had to some extent mis-informed the Manager and the Directors about the responsibilities of a private company.

I would for the above reasons recommend that the conviction of and the sentences passed upon the Directors be set aside.

In any event, the fines awarded to individual Directors of this private company appear to be excessive in the circumstances of the case. Probably it was an inadvertent default. The company was neither prosecuted nor fined. In my opinion it would have been sufficient to award a fine of Rs. 50 each to the five petitioners.

I have suspended the realization of fines. Announced in open court. The counsel for the petitioners to be informed.

ORDER OF THE HIGH COURT.

SIR SHADI LAL C.J.—The evidence on the record does not prove that the five directors, who have been convicted by the District Magistrate, knowingly and wilfully authorised or permitted the Company to make

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a default in filing, with the Registrar of the Joint Stock Companies, a copy of the list of the shareholders and of the summary described in section 32, sub-section (2) of the Indian Companies Act. Indeed the learned Government Advocate admits that the guilt of the petitioners had not been established.

I accordingly accept the recommendation made by the Sessions Judge and setting aside the conviction and the sentence direct that the fines, if realised, be refunded to the accused.

N. F. E.

Revision accepted.

REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

KEHR SINGH, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 1564 of 1928.

Punjab Excise Act, I of 1914, section 61 (1)—Accused in possession of a small quantity of cocaine for his personal use—Sentence—Considerations which should weigh with the Courts in inflicting punishment.

Four packets of cocaine weighing about 8 grains were found in the inner pocket of the petitioner's coat and he was convicted under section 61 (1) of the Punjab Excise Act, I of 1914, and sentenced to rigorous imprisonment for two years, the maximum term of imprisonment laid down in the section.

Held, that having regard to the fact that the small quantity of cocaine was for the petitioner's personal use, that he was a first offender, and that the section lays down the same penalty for much more serious offences, the period of imprisonment (nearly 5 months) already undergone by the petitioner would meet the ends of justice.

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