Registrar of Companies, Kerala Vs Gopala Pillai and Others

Court: High Court Of Kerala

Date of Decision: March 15, 1961

Acts Referred: Companies Act, 1913 â€" Section 134(4), 32(5)

Citation: (1961) KLJ 490

Hon'ble Judges: S. Velu Pillai, J; Anna Chandy, J

Bench: Division Bench

Advocate: K.K. Mathew A.G, for the Appellant; T.K. Narayana Pillai, D. Narayanan Potti, T.S. Krishnamurthy Iyer, G. Rajasekhara Menon, P.C. Chacko and V.S. Moothathu, for the Respondent

Final Decision: Dismissed

Judgement

Anna Chandy, J.
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 u/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 u/s 76(2) 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 u/s 32(5) in that they failed to prepare and file before the Registrar of Companies the list and summary

specified in Section 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 authorized or permitted by the accused knowingly and

willfully. It was further held in C. C. 4 of 1957 that a charge u/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). 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.

2. Of the two questions posed by the learned Judge, the first is ""whether it is sufficient answer to a charge u/s 134(4) or one u/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"".

3. The problem so far as Section 32(5) is concerned may be taken as settled by the decision of the Supreme Court in The State of Bombay Vs.

Bandhan Ram Bhandani and Others, 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 defense to the charge of not complying with the requirements of Section 32.

4. 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 Section 32 cannot be applied to Section 134. According to the Learned Counsel the position as regards Section 134 is what

has been laid down by the Bombay High Court in Emperor v. Pioneer Clay and Industrial Works (A. I. R. 1948 Bom 357). In that case Chagla

C. J. holding that the obligation cast upon the company by Section 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 and 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 Section 32 or Section 131 it was observed:-

As regards I. L. R. (1948) Bom. 86; (A. I. R. 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 Ss. 32

and 131. The section 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-section (5) of S. 32. It 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

respondents. 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 Sections 32 and 134. Section 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.

6. Section 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 Section 32.

The important difference between the sections seems to be the absence in Section 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 Section 134. This difference according to the

learned defense counsel, would mean that the requirement u/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 whereas the filing of the returns u/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 Section 32 will show that the list and summary specified therein can be

prepared only with reference to a general meeting. Section 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 Section 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 aforesaid.

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 Section 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.

6. Another argument advanced by the learned defense counsel is that the provisions of Section 134(2) whereby the directors have to append to

the copy of the balance-sheet a statement showing whether or not the balance sheet was adopted by the general meeting makes it impossible for

the directors to file the balance-sheet unless certain things are done by the general meeting i.e., the general meeting has to consider the balance-

sheet and then adopt it or reject it. In other words, the contention is that Section 134(2) creates a condition precedent which has to be complied

with by persons other than the directors before the directors'' obligation u/s 134(1) will arise. We are not impressed by this argument. The

statutory duty is to file copies of the balance-sheet. The placing of the balance-sheet before the general meeting and obtaining its verdict are only

the preliminaries to be observed by the directors before sending the copies and it is the failure to hold a general meeting that has resulted in their

inability to follow the procedure prescribed.

7. The question that needs to be decided in this case, however, is whether the obligation u/s 134(1) or Section 32(3) can be fulfilled only if a

general meeting is held, but whether, the failure to hold a general meeting being due to the accused''s own default, he can hold up that circumstance

as an excuse for not fulfilling his obligations under Sections 134 and 32. In the Supreme Court case, the plea of the accused was that since the

general meeting of the company was not held, he could not comply with the requirements of Sections 32 and 131. The plea was rejected on the

ground that a person charged with an offence could not rely on his own previous default as an answer to the charge. In the present case also the

plea is the same, viz., that the accused could not discharge his obligation under Sections 32 and 134 because no general meeting of the company

was held. If the plea is to be rejected with regard to Section 32 we find no reason why it should be accepted with regard to Section 134.

8. To sum up, the plea that a general meeting of the company was not held during the year in question, will not be a sufficient defense to a charge

u/s 32(5) or Section 134(4) if it was due to the accused''s own default that the general meeting was not held.

9. The second question is as to the precise import of the words ""knowingly and willfully authorizes or permits the default"" appearing in Section

32(5) and Section 134(4) and which with a slight modification which is hardly material appear also in Section 76(2). As the wording of the three

Sections are materially the same it will be sufficient to quote only one of them. Section 32(5) reads:-

If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day

during which the default continues and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to

the like penalty.

It will be noticed that the directors as distinct from the company itself are made liable only if they are knowingly and willfully parties to the default.

The trial court held that all that was proved against the accused was that they were directors of the company, one being the managing director,

when the defaults occurred and as the prosecution had failed to prove that the accused had knowingly and willfully authorized or permitted defaults

they were entitled to an acquittal. In coming to this conclusion the learned Magistrate relied on the decision of this Court reported in Assistant

Registrar v. Krishnan Nambiar (1958 K. L. T. 173:1958 K. L. J. 52). That was a case where the directors of a company were charged with

offences under Sections 76(2) and 133(3) of the Companies Act. The only witness examined by the prosecution besides asserting that the accused

were the directors of the company when the defaults alleged were committed ""was unable to speak to any fact or circumstance which would lead

to a legitimate inference that the respondents were knowingly and willfully parties to the default complained of,"" Acquitting the accused Sankaran J.

held:-

It is clear from these sub-sections that for every default in complying with the requirements of the respective sections, the officers of the company

are not liable to be punished. In this respect, a clear distinction is maintained between the company and its officers. As against the company it is

enough to prove that there has been a default as contemplated by the sections. But as against the officers of the company, something more has to

be proved. It must be shown that the officer concerned was knowingly and willfully a party to the default and then only he will be liable to be

punished.

10. Now the position advanced by the learned Government Pleader is quite different. His argument is that since the business of a company is to be

managed by its directors (vide Regulation 71 of Table A of First Schedule) and they must be presumed to know the duties cast upon the company

by law, every default of the company must be deemed to be the default knowingly and willfully authorized or permitted by the directors. The

Learned Counsel cited Bhagirath Chandra Das and Others Vs. Emperor, which seems to afford considerable support to such a view. It was

observed in that case:

It is clearly the duty of all directors to see that the particular returns, the list and summary under S. 32 and the copies of the balance-sheet and

profit and loss account are submitted under S. 134. There is nothing on record to show that these directors made any attempt to see that these

returns, list and statement, were properly submitted or that they were prevented in any way from seeing that the proper list, statement and returns

were submitted. The presumption of law is that these directors knew their duties. The Articles of Association set out in some detail the duties

imposed upon the directors by the Companies Act and it is obvious that the directors must have known what were the duties imposed upon them

by the Articles of Association and presumably by the Companies Act. If directors, who are responsible for the management of a company and

who presumably know the duties imposed upon them by law, make no attempt to see that those duties are carried out, there is justification for

holding, in my opinion, that they have willfully and knowingly permitted the company to fail to carry out those duties.

If, as is claimed by the Learned Counsel for the State, this case takes the position that the defaults of a company are the defaults of its directors

and for a conviction u/s 32 or Section 134 nothing more need be shown than that the accused were the directors of the company when the defaults

occurred, then with great respect, we wonder whether it does not go too far. That the directors, do not automatically become liable for the defaults

of the company is quite clear from the purposeful distinction drawn in the section between the liability of a company and the liability of its officers.

The distinction is made clear by the Section itself when it says:

If a company makes default in complying with the requirements of this section, it shall be liable..... and every officer of the

company who knowingly and willfully authorizes or permits the default shall be liable.....

The company''s liability is absolute while that of its officers is made dependent on whether they were knowingly or willfully parties to the default.

No doubt a company has to act through its officers and the officers may be presumed to know the duties cast on the company by law, but if that

alone were, sufficient to saddle the officers with liability for every default of the company, then it is quite unlikely that the section would have made

express mention of the element of knowledge and willfulness as the requisite condition for making the officers liable for the default of the company.

Indeed the object of these qualifying words seems to be to distinguish between innocent defaulters and those who consciously and intentionally

become parties to the default and in our opinion unless there is some evidence to show that the officers were involved in the default ""knowingly and

willfully"" they do not become liable to be punished for every default of the company.

11. The word ''knowingly'' is defined in Ballentine Law Dictionary as follows:

Knowingly:-The word is sometimes construed to be used in the sense of ""intentionally"", in which case it must be made to appear that the party

charged was aware of the illegality or his conduct. A more general construction is that the word so employed imports a knowledge of the essential

facts, from which the law presumes a knowledge of the legal consequences arising therefrom.

The significance of the word ''willfully'' as occurring in penal provisions have been considered in a number of cases. In re City Equitable Fire

Insurance Company, Limited (L. R. (1925) 1 Ch. 407) the scope of the expression ""willful neglect or default"" was explained thus by Romer J.:

An act, or an omission to do an act, is willful, where the person who acts, or omits to act, knows what he is doing and intends to do what he is

doing, but if that act or omission amounts to a breach of his duty, and therefore to negligence, he is not guilty of willful neglect or default unless he

knows that be is committing, and intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or

omission is or is not a breach of his duty.

The Allahabad High Court interpreting the expression ""willfully failed"" as used in Section 3(a) in the U. P. (Temporary) Control of Rent and

Eviction Act observed:

The words are "willfully failed" and to our minds they must mean not an unintentional failure or a failure by inadvertence but a deliberate failure,

where the mind has been brought into play and a man has, after taking the facts into consideration, refused to make the payment-(Vide Radhey

Mohan v. Har Narain-(A. I. R. 1952 All 502).

12. The Madras High Court interpreted ""willful default"" as contemplated in Section 7(2) of the Madras Buildings (Lease and Rent Control) Act

thus:

Willful default is indicative of some misconduct in the transaction of business or the discharge of duties or omitting to do something either

deliberately or by reckless disregard of the fact whether the act or omission was or was not a breach of duty.-Vide Bhogilal M. Davay Vs. S.R.

Subramania Iyer, .

13. In another case Ramalinga Ayyar v. Seetharama Ayyar ((1954) II M. L. J. 763) which also dealt with "willful default"" under the Madras

Buildings (Lease and Rent Control) Act it was observed:

In order to constitute "willful default" three elements must concur, viz., first of all the doer or abstainer of the act or omission must be a free agent;

secondly, he must be conscious of what he is doing or not doing and the probable result which will arise from his act or omission; and thirdly this

default may range from the state of mind all the way from supine indifference to conscious violation as a result of deliberation.

It therefore seems that the words ""knowingly and willfully authorizes or permits the default"" signify that the gist of the crime is conscious and

deliberate action (or omission). Defaults caused unintentionally or by inadvertence have to be excluded. Even if we presume, as we justifiably can,

that a director of a company knows the obligations cast on the company by law, the question will still remain whether he participated in the breach

of these duties deliberately. It seems to us that he can be held liable for his company"s default only if it is shown that he, aware that his act or

omission will result in the default, authorizes or permits the default by a deliberate act or omission on his part or by his reckless disregard to the fact

whether his act or omission will result in such default.

14. We may mention here that the learned Government Pleader urged us most strongly to lay down some general principles regarding the duties of

the directors under these sections, principles Which will be of help in ascertaining whether a particular act or omission on the part of a director will

constitute knowing and willful default. The question whether in a particular case a director was a knowing and willful party to the default will

depend on the facts of that case. The internal working of a company and the distribution of the responsibilities among its directors are matters that

might vary from company to company so that general rules regarding what constitutes knowing and willful default on the part of the directors will

not be of much help. To borrow the words of Lord Macnaghten in Dovey v. Cory ((1901) A. C. 477, 488):

I do not think it desirable for any tribunal to do that which Parliament has abstained from doing-that is, to formulate precise rules for the guidance

or embarrassment of business men in the conduct of business affairs. There never has been and I think there never will be, much difficulty in dealing

with any particular case on its own facts and circumstances; and, speaking for myself, I rather doubt the wisdom of attempting to do more.

15. We shall now advert to the facts and evidence in each case. In C. C. No. 4 of 1957 the appeal from which is numbered as Criminal appeal

184 of 1959 there were nine accused, accused 1 to 8 being the directors and accused 9 being the managing director. In C. C. Nos. 5 and 6 the

appeals from which are Criminal Appeals 185 and 186 of 1959 respectively though originally the case was filed against all the nine the complaint

against five of the directors was withdrawn as they did not continue as directors at the relevant time. As mentioned earlier the charge against the

accused in C. C. No. 4 is that they did not file before the Registrar of Companies a balance-sheet for the year ending with 31st December, 1953.

Accused 1 to 8 pleaded that it was the duty of the ninth accused to prepare the balance-sheet and the ninth accused stated that he prepared and

submitted the balance-sheet to the Board but as the Board did not approve it, the balance-sheet could not be placed before the general body. The

only witness examined for the prosecution is a clerk in the office of the Registrar of Companies. He admitted that he had no knowledge of the

internal working of the company and was not in a position to enlighten the court as to whether the balance-sheet was prepared and placed before

the Director Board. The records on which the prosecution seeks to establish the case that the accused were knowingly and willfully responsible for

the default are Exts. P. 5 and P. 6 two notices sent by the Registrar of Companies to the Managing Director dated 19--8-1955 and 24-2-1956

respectively calling upon them to file the balance-sheet on or before 15-9-1955 and 24-3-1956 and warning them that failure to do so will result in

the company and its officers being prosecuted for the default. It is noted in Exts. P. 5 and P. 6 that copies of the letters were forwarded to the

Directors of the Company also. Accused 1 to 8 do not admit having received it. P. W. 1 stated that he is not in a position to say whether copies of

the notices have been issued to the directors and no record is produced to show that they were sent to or received by the directors.

16. Accused 9, the Managing Director and accused 1, 3 and 5 in C. C. No. 5 are the only respondents in Criminal Appeal No. 185 of 1959. The

charge against them in that case is that they failed to hold a general meeting of the company during the year 1955. In this case the prosecution

seeks to prove knowing and willful default by means of Ext. P. 8. That is a copy of a letter sent by the Registrar of companies to the Managing

Director on 24-2-1956 calling upon him to show cause why action under Sections 76(2) and 32(5) should not be taken for not holding a general

meeting and not forwarding the list of members and summary during the year 1954. It is also noted in the letter that a copy is forwarded for

information and action to the directors. Accused 1, 3 and 5 do not admit having received it. No records were produced to show that the letters

were sent and P. W. 1 admits he has not verified whether any such records were available in this office. The ninth accused admitted having

received the letter but he added that as four of the directors had already resigned he could not get the requisite quorum to hold a board meeting

and as per the practice and rules he could call together a general body meeting only after the board of directors fixed the date and the agenda.

Accused 1 further stated that within the period specified for holding the general body meeting and after that with the permission of the Registrar, he

had made special efforts to call together a general meeting but it was not possible to do so because three of the directors had resigned from the

board and the company was not functioning properly. Accused 3 stated that the managing director was specially authorized to call together the

general meetings and it became impossible to hold the meeting because the company was not functioning properly and there was a proposal to

liquidate the company. The fifth accused also contended that it was the duty of the managing director as per the terms of Ext. D1 agreement to call

together the general body meeting that in spite of his best efforts he was not able to hold the meeting. P. W. 1 stated that he is not sure whether an

explanation was sent by the Managing Director in reply to the notice as stated by him. Exts. D2, D3 and D4 the proceedings of the board meetings

dated 10-7-1954, 6-11-1955 and 26-5-1956 bear out the truth of the contentions put forward by the accused that the company was not

functioning properly and that there was a proposal to wind up the company.

17. In C. C. No. 6 the charge was that the directors of the company failed to file a list of the members and a summary containing the details

specified in Section 32 of the Act for the year 1955. The only respondents in this appeal are the managing director and accused 1, 3 and 5. In this

case also the main item of evidence relied on by the prosecution in support of the charge of knowing and willful default is Ext. P. 5 a letter dated

24-2-1956 from the Registrar of Companies to the Managing Director asking him to show cause why the company and its officers should not be

prosecuted under Sections 76(2) and 32(5) of the Companies Act for not sending up a list and summary. Accused 1, 3 and 5 do not admit having

received the copy of the letter and the managing director states that he has made all possible efforts to call a general body meeting, and having

failed he sent a reply to that effect to the Registrar. Here also the prosecution has not produced any records to prove that copies of Ext. P. 5 have

been, sent to the directors.

18. In all the cases the directors attempt to disown liability by contending that it was the duty of the managing director to call the general meeting

while the managing director in his turn pleads innocence by claiming that in spite of his best efforts, he could not do anything effective because even

the quorum necessary for a director board meeting was not available. While we wish to make it dear that a director cannot escape liability for his

default by trying to throw the blame on other directors it seems to us quite possible that some of the directors had indeed made honest attempts to

avoid or rectify the defaults but failed due to the confusion in the working of the company. The learned Magistrate has not considered the case as

against each of the accused and the scanty evidence on record does not enable us to come to the conclusion whether all or any of the respondents

knowingly and willfully occasioned the defaults. Nor do we feel that in the circumstances of this case the interests of justice demand a re-opening

of the case. The company has already been wound up and the order of acquittal itself was passed as early as 1958. Hence we do not interfere

with the order of acquittal. The orders are confirmed and the appeals are dismissed.

Vein Pillai J:

19. I agree, but desire to add a few words. As I understand, the Supreme Court has settled two principles in State of Bombay v. Bhandhan Rani

(A. 1. R. 1961 S.C. 186) firstly, that a person cannot rely on his own default in answer to a criminal charge for a subsequent default, though

dependent on the earlier, and secondly, that a default which constitutes a criminal offence and is punishable, does not cease to be so, for the

reason, that a prior default on which it is dependent or of which it is the inevitable outcome, is itself an offence and is punishable independently. But

the case is authority only u/s 32(5) and u/s 133(3) of the Indian Companies Act, 1913, and not u/s 134(4). However, Emperor v. Pioneer Clay

and Industrial Works Ltd. (A. I. R. 1948 Bom 357) was decided by the Bombay High Court u/s 134(4), but the reasoning in it, of Chagla C. J. in

support of the acquittal, is considerably shaken by the second principle referred to above. In view of the pronouncement of the Supreme Court, it

is only necessary to see, whether the language of Section 134 is such, as to take a case under it, outside the two principles. This must depend on

whether the expression, ""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,"" which finds a place in Section 134(1), creates a condition precedent to the fastening of penal

liability on a company and every officer thereof u/s 134(4) or simply indicates the procedure to be followed, or qualifies the balance-sheet and

profit and loss account or the income and expenditure account, as the case may be, three copies of which are required to be filed with the

Registrar. If it is the former, no offence could be committed u/s 134(4) unless the general meeting is held, but if it is the latter, the two principles

come into play, and the failure or omission to hold the general meeting is of no relevance.

20. There is of course a difference in the language of Section 134(1), and the argument based on such difference is perhaps rendered more

plausible, by the prescription in Section 134(2), requiring a statement, of the fact, if that be so, that the general meeting does not adopt the

balance-sheet, and of the reasons therefor, to be annexed to the balance-sheet and to the copies to be filed with the Registrar. Notwithstanding the

different language employed in Section 32 of the Act, the Supreme Court has observed in the case cited, that

it is no less necessary to call a meeting for performing the obligations imposed by Section 32 because u/s 76, there is an obligation to call a

meeting, the breach of which entails an independent penalty.

There is a prescription in Section 32(3) also, on more or less similar lines as in Section 134(2), requiring ""a certificate from such (the) director,

manager or secretary, that the list and summary, state the facts as they stood on the day aforesaid"" which, in my view, means the day on which it

was intended to be held, the emphasis in both Sections 32(3) and 134(2) being, on the holding of the general meeting, and not on the form or the

contents of the annexures in each case to the parent document. If the expression in Section 134(1) extracted above is intended to lay down a

condition precedent and not to formulate a procedure or to qualify the balance sheet or other document required to be filed before the Registrar, I

venture to think, that plainer language might be employed, as it is possible to provide, that if a general meeting is held as provided by Section

76(1), and the balance sheet or other document, is laid before the company at such general meeting as provided by Section 131(1) and is adopted

three copies of such balance-sheet or other document as adopted or if it is not adopted, three such copies as laid at the meeting, together with the

statement as prescribed by Section 134(2) shall be filed with the Registrar. I do not think, that on the mere difference in the language of Section

134(1), it can be held, that the raiding of a general meeting is a condition precedent. I may mention here, that in Saraswati Printers Ltd. v. The

State ((1960) 30 CC 523) decided u/s 134 of the Act, before the Supreme Court rendered its decision in Bhandhan Rani''s Case, Modi J. of the

Rajasthan High Court has taken the same view, differing from Chagla C. J. in the Bombay case.

21. On the second question, as observed by my learned brother, the Statute itself makes a clear distinction between the company and its officers,

by prescribing the mens rea as ""knowingly and willfully"" authorizing or permitting the default, in the case of the latter, and none at all, in the case of

the former; this is conclusive. But I find it difficult to define the mens rea in precise terms, and its application has to be left to individual cases; a

general explanation is all that can be attempted. Directorship in a company is not an ornament for adorning, or a mere source of profit and

patronage, but is an office, which carries with it appropriate duties and responsibilities. What they are and how they are to be discharged may vary,

depending also on the nature of the business of the company and on the articles of association governing it. It is true, that some of them might

perhaps do well to remember, that, as directors, they owe a duty to the shareholders and in certain instances, also to the general public. It is

therefore fair to raise a presumption against directors that they know the duties that the law imposes on them; this indeed is the minimum. Saraswati

Printers Ltd. v. The State, already cited, is in favor of this presumption and other cases need not be cited. But this is not to say, that every breach

of duty can be made a criminal offence regardless of an appropriate mens rea. This is where, speaking with respect, the dictum of Lodge J. in

Bhagirath Chandra Das and Others Vs. Emperor, quoted by my learned brother, seems to me to require qualification.

22. Starting from this presumption, which reason and policy alike demand, and which, neither on principle nor on authority, I find reason to relax,

the term ""knowingly"" may be explained. What the prosecution has to establish, apart from ""willfulness"", is that the director ""knowingly.....

authorized or permitted the default"". It will be a straight case indeed, where in order to establish an authorizing or permitting the default

knowingly"", the prosecution need do no more, than rely on the above presumption, which it may be recalled, relates but to the director''s

knowledge of the duties that the law has cast on him. Often, this may be only one link in the chain that the prosecution has to produce, in order to

establish knowledge as an ingredient of the offence. The weight of the presumption would depend on facts of the particular case, or it may be, that

the presumption would not arise at all, or would stand rebutted, in the special circumstances of the case. It has also to be remembered, that the

onus of proof never shifts in a criminal trial. Bearing these in mind, it may be laid down, that knowledge which forms part of the requisite mens rea,

must be of all those essential facts constituting the default, including those which may be presumed. Knowledge need not necessarily be actual or

constructive, but may, to adopt the words of Ramaswami J. In Re: Arcot Citizen Bank Ltd., Arcot by A.E. Chandrasekhara Nayagar, Arcot and

Others, be imputed from deliberate shutting one''s eyes to an obvious means of knowledge.

23. The term ""willful"" means, according to Ballentine''s Dictionary as applied to the omission of a statutory duty, what ""is not mere inadvertence,

but intentional failure to comply with law, and evil extent is not necessary."" In Ardeshir Bhicaji Tamboli v. Agent, G, P. I. Ry Co., Bombay (A. I.

R. 1928 P. C. 24) a case under the Railways Act, the Privy Council defined ""willful neglect"", as an act ""done deliberately and intentionally and not

by accident or inadvertence, but so that the mind of the person who does the act, goes with it"". The term ""willfulness"" thus excludes the element of

accident or inadvertence or forgetfulness and does not necessarily involve dishonesty, or fraud, or other forms of moral blameworthiness. In the

words of Romer J. in re City Equitable Fire Insurance Co. (1925)1 Ch. 407 at 434, ""an act or an omission to do an act is willful where the

person..... knows what he is doing and intends to do what he is doing"". The terms ""authorize"" or ""permit"" in their practical application to

concrete facts may not present much difficulty, but it is useful to remember, that the former imports a positive or active, and the latter, a negative or

inactive, state of mind, both of which are alike blameworthy, in the particular context. The prescribed mens rea comprehends both ingredients,

knowingly and willfully"" and not one of them only, and they must relate to either authorizing, or permitting, the default. In the circumstances of the

present case, although the Court below has not made a correct approach to the questions to be decided, I agree with my learned brother, that the

acquittal need not be interfered with, and that these appeals may be dismissed.