

(1917) 01 CAL CK 0003

Calcutta High Court

Case No: None

Raj Kumar Kusari

APPELLANT

Vs

Registrar of Joint Stock
Companies

RESPONDENT

Date of Decision: Jan. 17, 1917

Citation: 38 Ind. Cas. 437

Hon'ble Judges: Teunon, J; Chaudhuri, J

Bench: Division Bench

Judgement

1. In this case the petitioner, who was the Secretary and is also described as the Manager of the Darjeeling Press Company, Limited, has been convicted u/s 134(4) of Act VII of 1913, that is to say, the Indian Companies Act, on the footing that he is an officer of the said Company and had knowingly and wilfully authorized or permitted default to be made in submitting to the Registrar of Companies the balance sheet laid before the Company at its general meeting. The balance sheet in question is the balance sheet for the year ending on the 31st of March 1914; and part of the defence of the petitioner was or appears to have been that it was in fact impossible for him to comply with the requirements of Section 134, inasmuch as in fact there had been no general meeting before which any balance sheet for the year 1914 could be laid. From the proceedings before the fourth Presidency Magistrate it is impossible for us to say on what findings of fact the Magistrate has acted in convicting the petitioner, and it is also impossible for us to ascertain whether the defence of the petitioner as summarized above has at all been considered. Assuming that the defence was correct in fact that no such general meeting had been held, and that would seem to be the case from the explanation submitted to us by the Trial Magistrate, in order to bring the petitioner within the Rule laid down in *Park v. Lawton* (1911) 1 K.B. 588 : 80 L.J.K.B. 396 : 104 L.T. 184 : 75 J.P. 163 : 18 Mans. 151 : 27 T.L.R. 192 it was necessary in the first instance to show with reference to the provisions of Section 76 of the Act that the petitioner who was an officer of the Company was knowingly a party to the default in holding the general

meeting. That question has not been inquired into at all. That being so, we cannot hold that this case has been properly tried.

2. We, therefore, set aside the conviction and sentence and direct that the petitioner be re-tried under the provisions of Section 76 and Section 134(4) of the Indian Companies Act, and we further direct that the re-trial be held in the Court of the Chief Presidency Magistrate. In these terms this Rule is made absolute.

3. This Rule is analogous to Revision No. 125 of 1916 and the order made in that case will govern this also.

4. In this case the petitioner, who was described as the Secretary and Manager of the Darjeeling Press Company, Limited, has been convicted u/s 32(4) of the Indian Companies Act. The default of which he has been convicted is alleged to be in respect of the list of share-holders and summary of capital. In all other respects it is similar to revision cases? Nos. 1125 and 1127 of 1916 which we have just disposed of. The order made in those cases will govern this case also.