

(1935) 11 CAL CK 0026

Calcutta High Court

Case No: Government Appeal No. 5 of 1935

The Supdt. and Remembrancer
of Legal Affairs, Bengal

APPELLANT

Vs

The Bengal Salt Co., Ltd. and 3
Ors.

RESPONDENT

Date of Decision: Nov. 25, 1935

Judgement

Bartley, J.

This is an appeal by the Legal Remembrancer, Bengal, against the acquittal of the Respondents on a charge under sec. 92(5) of the Companies Act. The facts are that the Respondents filed a prospectus in English in the office of the Registrar, Joint Stock Companies on the 12th July, 1934. This prospectus fulfilled all the requirements of law.

2. Subsequently they issued a prospectus in Bengali, substantially identical with the English prospectus, but which did not contain certain particulars required by sec. 93 of the Act. A copy of this document was forwarded by a private person, to whom it had been sent, to the Registrar, who, thereupon, filed a complaint under sec. 92 (5) of the Act before the Chief Presidency Magistrate on the ground that the Bengali prospectus had been issued without having been filed before him. The learned Magistrate held that in effect the Bengali copy had been filed, that the offence was purely technical, and that the omission was not culpable. He acquitted the accused.

3. We are of opinion that the view taken by the learned Magistrate was wrong. What was filed before the Registrar was a prospectus in English. The prospectus on which this prosecution is based was in Bengali and was not a verbatim translation of the English document. It did not, in fact, contain certain particulars specified in the English prospectus, and required by law under sec. 93 of the Act to be included in every prospectus issued on behalf of a Company. The issue of such a document was clearly in contravention of sec. 92 of the Act.

4. It was urged before us that this is not a case in which the High Court would interfere with an acquittal, in that the proceedings were initiated by a private individual.

5. This of course is not strictly true, as the complaint was made by the Registrar though the information reached him from a person to whom the prospectus was sent. Moreover the question involved in this case is one of great importance in view of the scope of the Act under consideration and of the necessity, in the interests of the community, of the strictest observance of its provisions. We, therefore, consider that we ought not to give effect to any such argument, or refuse to interfere when, in our opinion, there has been a contravention of the law.

6. We must, therefore, set aside the order of acquittal and direct the conviction of the Respondents under sec. 92 (5) of the Companies Act.

7. We do not, however, think it necessary to impose any further penalty on the Respondents. The offence was undoubtedly technical in that a prospectus had been filed, and that the Bengali prospectus issued was except for the omission of certain particulars a translation thereof. The Respondents are accordingly warned and discharged.

Guha, J.

I agree.