

(1980) 04 CAL CK 0029

Calcutta High Court

Case No: Criminal Rev. 1689 of 1979

Narinder Nath Budani and  
Others

APPELLANT

Vs

Registrar of Companies

RESPONDENT

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**Date of Decision:** April 21, 1980**Acts Referred:**

- Companies Act, 1956 - Section 233(2A), 266, 270, 272, 283
- Criminal Procedure Code, 1973 (CrPC) - Section 31, 469(c), 482

**Citation:** 84 CWN 557**Hon'ble Judges:** N.C. Mukherji, J**Bench:** Single Bench**Advocate:** D.P. Chowdhury and Debabrata Mukherji, for the Appellant; J.N. Ghosh and Anjan Kr. Mukherji and Bhudeb Bhattacharjee for the State, for the Respondent

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**Judgement**

N.C. Mukharji, J.

This Rule arises on an application u/s 482 of the Code of Criminal Procedure and is for quashing the Case No, 270 of 1978 pending in the court of the learned 14th Metropolitan Magistrate, Calcutta, under sections 272 and 283(2A) of the Companies Act, 1956. The facts of the case may briefly be stated as follows That Messrs Apeejay Steamship Co. Ltd. was incorporated in 1960 and was duly registered under the Companies Act. The petitioners are the Directors of the above Company, being appointed as such at an Annual General Meeting held on 28.6.75. That the Articles of Association required that any member to be a Director of the said Company must have ten paid-up shares as qualification shares and in the event that one did not hold the said shares one must acquire the same within a period of two months. It is the case of the petitioners that although the Company was incorporated in 1960 but ceased to function since 1964. By a notice dated 3.3.77 the Directors called an Extra Ordinary General Meeting which was held on 26.3.77. At the said Meeting held on 26.3.77 the Articles of Association were altered. The alteration was to the effect that

a Director shall not be required to hold any qualification share. On 30.3.77, a copy of the said Special Resolution was filed with the Registrar of Companies. By a letter dated May 5/17,1977, the Company requested the Registrar of Companies to strike off the name of the firm (sic) under the provisions of section 560 of the Act. Sometime after, in answer to a letter dated 5th August, 1977 to show-cause, the Company by a letter dated 22nd August, 1977 explained the facts and circumstances as stated aforesaid to the Registrar of Companies. On the 6th February, 1978, the opposite party filed the petition of complaint against the petitioners alleging the commission of offence under sections 272 and 233(2A) of the Companies Act. The petitioners on 27. 4. 79 filed an application for discharge on the ground that the complaint does not make out a prima facie case, and the same was filed beyond the period of limitation. The application was opposed by the opposite party. The learned Magistrate, after hearing both the parties, negatived the contentions raised by the petitioners and hence the present Rule.

2. Mr. Deba Prosad Chowdhury, learned advocate appearing on behalf of the petitioners, contends that as the petition of complaint was filed only on 6th February, 1978, the same is hopelessly barred by limitation. Mr. Chowdhury submits that as the offences, complained of, are punishable with fine only, the prosecution, if any, must be launched within six months of such alleged offences as required u/s 468(2) of the Code of Criminal Procedure. In this connection, Mr. Chowdhury submits that the fact of the alleged offences was known to the opposite party in March, 1977 when the inspection held by the opposite party to the books of account and other articles of the Company was finished. It is not correct to say that the opposite party came to know about the alleged offences only on 22. 8. 77 and that being so, the provisions of Section 469(c) of the Code of Criminal Procedure is not available to the opposite party. In the next place, Mr. Chowdhury contends that long before the institution of the proceeding the Company, by Special Resolution, amended the Articles of Association. According to the provisions of section 31 (2) of the Companies Act, the amended (sic) resolution will have retrospective effect. It has been provided in of section 31 (2) that any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution. Mr. Chowdhury contends that the provisions referred to above very clearly indicates that this sub-section has retrospective operation. That being so, the amended (sic) resolution will be deemed to have been already in the original Articles of Association and in such circumstances, it cannot be said that the petitioners committed any offence. Lastly, Mr. Chowdhury contends that assuming that sub-section (2) of section 31 has no retrospective effect even then the alleged offence ceased to be an offence from the date when the articles were amended. The prosecution having been launched long after the articles were amended, the learned Magistrate ought to have found that the complaint was barred by limitation and as such, ought not to have taken cognizance.

3. Mr. J.N. Ghosh, learned advocate appearing on behalf of the opposite party, submits that it is true that inspection was held in March, 1977. But, it has been stated in paragraph 11 of the complaint that after the inspection it was subject to a close scrutiny by the Central Government and New Delhi Head-Quarters and by the Calcutta Office of the Company Law Board by concerned authorities and some conclusions were reached. The Central Government gave permission by their letter dated 30th July, 1977 to show-cause. Notices were issued to all the Directors on 23. 8. 77. The identity of the offenders was established on 23. 8. 77 and as such, the complaint is well within time. In the absence of evidence, it cannot be said with certainty that as soon as the inspection was finalised, the opposite party came to know about the alleged offences. If the opposite party fails to establish that only on 22. 8. 77 they came to know about the alleged offences and identity of the offenders, then the petition will be barred by limitation. I find much substance in the submission made by Mr. Ghosh and as such, it cannot be said that provision of section 469(c) of the Code of Criminal Procedure is not available to the opposite party. In the next place, Mr. Ghosh contends that sub-section (2) of section 31 does not indicate that it has any retrospective operation. If that would have been so, then every violation of the provisions contained in the Articles of Association constituting an offence under the Act could be nullified by the stroke of pen by amending the Articles of Association after the commission of offences. In this particular case the inspection was finalised in March, 1977 and the Extra Ordinary General Meeting was held on 26th of March, 1977 and then the Articles were amended. Mr, Ghosh draws my attention to the provisions of section 270 of the Act which provides that "without prejudice to the restrictions imposed by section 266, it shall be the duty of every Director who is required by the Articles of the Company to hold a specified share qualification and who is not already qualified in that respect, to obtain the qualification within two months after his appointment as Director." In this case, it is clear that the petitioners did not hold specified share qualification and did not obtain qualification within two months after the appointment as Directors. Mr. Ghosh, next draws my attention to the provisions of section 283(1)(a) which provides that "The office of a Director shall become vacant if he fails to obtain within the time specified in sub-section (1) of section 270, or at any time thereafter ceased to hold, the share qualification, if any, required of him by the Articles of the Company." Thus, the office of the petitioners became vacant as per provisions of section 283. Mr. Ghosh submits that it cannot be said without evidence that a proper resolution was passed by which the articles were amended. Even then, as the Directors had no qualification share at the time of appointment and did not apply for qualification share within two months and as the post of Directors became vacant by amendment of the Articles of Association, it cannot be said that the petitioners were continuing as Directors and there has been no fresh appointment of the petitioners as Directors.

4. After considering the arguments advanced on behalf of the parties I agree with the submissions made by Mr. Ghosh and negative the contentions raised by Mr." Chowdhury. In my opinion, at the present moment it cannot be said that the application is barred by limitation and that from the date when the Articles of Association were amended, the petitioners did not commit any offence. In the result, the Rule is discharged. Let the records go down early. The learned Magistrate is directed to proceed with the case in accordance with law.