

A ASSTT. REGISTRAR OF COMPANIES, WEST BENGAL

v.

STANDARD PAINT WORKS (P) LTD. & ORS.

March 1, 1971

B [C. A. VAIDIALINGAM AND A. N. RAY, JJ.]

Code of Criminal Procedure (Act 5 of 1898), s. 417 and Companies Act (1 of 1956), s. 624B—Scope of.

C The appellant filed complaints before the Chief Presidency Magistrate alleging that the officers of the respondent had committed an offence under the Companies Act, 1956. They were acquitted on April 4, 1968. On July 1, 1968, appeals were filed in the High Court by the appellant (complainant) but the High Court held that they were barred by art. 114 of the Limitation Act, 1963. In appeal to this Court, it was contended that the appeals were filed not under s. 417 Cr.P.C. but under s. 624B of the Companies Act.

D HELD: (1) Section 404, Cr.P.C., provides that no appeal shall lie from any order of a criminal court except as provided by the Code or by any other law for the time being in force. But s. 624B does not confer any right of appeal from an order of acquittal passed by a criminal court in respect of an offence under the Companies Act. It only empowers the Central Government to present appeals through persons mentioned in that section. [861 E-G]

E (2) Section 417, Cr.P.C., provides right of appeal in cases of acquittal, and, if the order of acquittal is passed in a case instituted upon complaint, an application for special leave to appeal from such order should be filed within 60 days from the date of the order of acquittal, and under art. 114 of the Limitation Act, 1963, the appeal should be filed within 30 days from the date of the grant of special leave. The appeals were not rightly entertained in the present case, because (a) there was no application for grant of special leave under s. 417(3), Cr.P.C., (b) the appeals were incompetent without grant of special leave; and (c) they were barred by limitation. [860 G-H; 861 H; 862 A-D]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 248 to 251 of 1968.

G Appeals from the judgment an order dated August 13, 1968 of the Calcutta High Court in Criminal Appeals Nos. 425 to 428 of 1968.

L. M. Singhvi and S. P. Nayar, for the appellant (in all the appeals).

The respondent did not appear.

H The Judgment of the Court was delivered by

Ray, J. These appeals are by certificate from the judgment dated 13 August, 1968 of the High Court at Calcutta holding that

the memorandum of appeals from an order of acquittal were barred by Article 114 of the Limitation Act, 1963. A

The appeals were directed against orders of acquittal passed by the Presidency Magistrate, Calcutta on 4 April, 1968. The four petitions of appeal were presented in the High Court on 1 July, 1968 by the learned Advocate authorised by the Vakalatnama executed by the Assistant Registrar of Companies, West Bengal described as the appellant in all the petitions. B

The Assistant Registrar of Companies, West Bengal filed petitions of complaint before the Chief Presidency Magistrate, Calcutta alleging that the certain officers/directors of the Standard Paint Works (P) Ltd. of 44 Beadon Row, Calcutta mentioned therein were guilty of offence for non-compliance with provisions contained in the Companies Act, 1956 by reason of default in filing Annual Return of the Company together with the Annual Accounts and Balance sheet. Section 210 of the Companies Act requires annual accounts and balance sheet of the company to be filed within the time mentioned in the section. If any person being a director of the company fails to take all reasonable steps to comply with the provisions of section 210, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The complainant in filing the petitions of complaint prayed for exemption of personal appearance under proviso to section 247 of the Code of Criminal Procedure read with section 621(1)A of the Companies Act. C
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The Presidency Magistrate passed the orders of acquittal in all the cases.

Section 417 of the Code of Criminal Procedure speaks of appeal in case of acquittal. Sub-section (3) of that section is as follows :— F

“If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court”. G

Section 417(4) of the Code of Criminal Procedure states that no application under sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of 60 days from the date of the order of acquittal. No application was made to the High Court in compliance with section 417(3) of the Code of Criminal Procedure. H

(Ray, J.)

A On behalf of the appellant it was contended both in the High Court and in this Court that the appeals were preferred under section 624B of the Companies Act, 1956. Section 624B is as follows :—

B “Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may, in any case arising out of this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court”.

C

The contention on behalf of the appellant that the right of appeal is conferred by section 624B of the Companies Act is unacceptable. Section 624B only speaks of the Central Government directing or authorising any person to present an appeal from the order of acquittal.

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Section 417(1) of the Code of Criminal Procedure enacts that in case of acquittal the State Government may direct the Public Prosecutor to present an appeal to the High Court. Section 624B of the Companies Act empowers the Central Government to present appeals through persons mentioned in that section. Presentation of appeal by the Central Government is a similar provision to section 417(1) of the Code of Criminal Procedure.

E

Chapter XXXI of the Code of Criminal Procedure relates to appeals. Appeal is a creature of statute. The right to appeal is governed by the Code of Criminal Procedure. Section 404 of the Code of Criminal Procedure states that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by the Code of Criminal Procedure or by any other law for the time being in force. Section 624B of the Companies Act does not confer any right of appeal from any order passed by a Criminal Court in respect of any offence under the provisions of the Companies Act. The right to appeal to the High Court in the present cases of acquittal is governed by section 417 of the Code of Criminal Procedure.

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Article 114 of the Limitation Act, 1963 requires appeal under sub-section (3) of section 417 of the Code of Criminal Procedure to be filed within 30 days from the date of the grant of special leave. No application for the grant of special leave to appeal from an order of acquittal was made within 60 days from that order of acquittal. The orders of acquittal were passed on 4 April, 1968.

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The petitions of appeal were presented on 1 July, 1968. The appeals were rightly not entertained by the High Court because first there was no application for grant of special leave under section 417(3) of the Code of Criminal Procedure; secondly, the appeals were incompetent without grant of special leave, and thirdly these were barred by limitation. An appeal under section 417(3) against acquittal is competent only when there is special leave granted by the High Court. On obtaining special leave the appeal is thereafter filed within 30 days of the grant of leave to escape the mischief of the period of limitation under Article 114 of the Limitation Act, 1963.

A provision in the Companies Act which confers right of appeal is section 483. It speaks of appeals from orders made and the decisions given in the matter of winding up of the companies by the Court and it enacts that such appeals shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. Section 624B is not such a section which can be said to be conferring a right of appeal. Section 624B only mentions as to the person through whom appeal is presented.

The appeals therefore fail and are dismissed.

V.P.S.

Appeals dismissed.