

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% DATE OF RESERVE: January 23, 2009
DATE OF DECISION: April 08, 2009

+ **CRL.REV.P.Nos. 1004/2002 to 1013/2002**

B.N. KAUSHIK

..... Petitioner

Through: Mr. Vijay Kumar Gupta, Advocate

versus

THE REGISTRAR OF COMPANIES

..... Respondent

Through: Ms. Maneesha Dhir and Ms. Preeti Dalal,
Advocates

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

1. By way of this common judgment, it is proposed to dispose of Crl. Rev. P. Nos.1004/2002 to 1013/2002 for quashing of the judgment dated 17.08.2002 passed in Crl. A. Nos.3/2002 to 12/2002 by the Additional Sessions Judge, Delhi.

2. The case of the petitioner in a nutshell is as follows.

3. The respondent instituted complaints under Section 162 read with Section 220(3) of the Companies Act, 1956, bearing Complaint Case Nos.238/1993 to 242/1993 before the Additional Chief Metropolitan Magistrate, Delhi against the petitioner resulting in the petitioner being convicted and sentenced for commission of offences

punishable under Section 162 read with Section 220(3) of the Companies Act in Complaint Case Nos.238/93, 239/93, 240/93, 241/93 and 242/93 as well as complaints under Section 159 read with Section 162 resulting in the petitioner being further convicted and sentenced for the offences under the aforesaid Sections in Complaint Case Nos.235/93, 236/93, 237/93, 244/93 and 283/93. The petitioner's contention is that the petitioner never joined M/s. Toyo Lamps Pvt. Ltd. and that he was an Honorary Secretary in the year 1968 for name sake. He was not doing any work in the Company, as he was a public servant with the Delhi Electricity Supply Undertaking (DESU). In any case, he had resigned from the accused No.1 – Company on 27.07.1971 by sending a letter at the registered office of the Company at 4751/1, Lakshmi Bhai Cloth Market, Delhi. The copy of the said resignation letter was also sent to the respondent – Registrar of Companies, Delhi and Haryana. Therefore, the petitioner ceased to be Honorary Secretary of the accused Company with effect from 27.07.1971.

4. The learned counsel for the petitioner contends that apart from the fact that Section 468 of the Criminal Procedure Code bars taking cognizance in the present case as the complaint was instituted beyond the period of limitation prescribed in law, the complaint does not disclose sufficient ground or material to proceed against the petitioner and ought to have been dismissed under

Section 203 of the Criminal Procedure Code. He further contends that the learned trial court as well as the learned appellate court completely erred in not appreciating Circular No.42(400)-CL-II-59 dated 29.12.1959 whereunder sending of letter of resignation to the Registrar of Companies is stated to be sufficient resignation. The said Circular, he submitted has statutory force, having been issued pursuant to the powers conferred on the Registrar of Companies. The relevant portion of the said Circular pertaining to the communication of resignation of a Director, reads as follows:-

“COMMUNICATION OF A RESIGNATION OF A DIRECTOR

Department's view I.—Although a director is required by section 264 of the Act to file with the Registrar his consent to act as such director, there is no provision in the Act under which the director can communicate his resignation from the directorship to the Registrar. The responsibility for the communication of such resignation has been cast by section 303(2) of the Act on the company. The omission of the company to notify the resignation of the director, therefore, puts such director in an embarrassing position. It has, therefore, been decided that where a Registrar receives any communication from any director about his (director's) resignation the Registrar should enquire whether the resignation of such director is or is not bona fide and if he finds that such director has bona fide resigned from his directorship of the company, he should not start any prosecution against such director, irrespective of the fact whether such resignation was or was not accepted by the company. (Circular Letter No.42(400)-CL-II/59, dated the 29th December, 1959.)”

5. In the instant case, the learned counsel for the petitioner submitted that

the complaint initiated on behalf of the respondent is ex-facie contrary to the facts deposed by the respondent before the High Court in CA No.606/1984 in CP No.109/1984, that is, in the proceedings for winding up of the company titled **Ram Kishore Sharma vs. Toyo Lamps Pvt. Ltd.** In the said proceedings, an affidavit had been filed by the respondent categorically admitting the receipt of the resignation letter dated 27.07.1971 from the petitioner No.1. Paragraph 12 of the said reply by way of affidavit clearly admits that the petitioner addressed the said resignation letter to the Board of Directors and a copy was forwarded to the office of the respondent, which reads as follows:-

“The averments made in para 16 are admitted to the extent that Shri B.N. Kaushik, Secretary of the company addressed a letter dated 27th July, 1971 to the Board of Directors and copy forwarded to the Office of the respondent stating his inability to remain as honorary Secretary of the Company w.e.f. 27-7-1971. However, Form No.32 has not been filed by the company in respect of the resignation of Sh. B.N. Kaushik as Secretary of the company w.e.f. 27-7-1971 and the other averments made in the aforesaid para are denied for want of knowledge.”

6. Reliance is placed by the learned counsel for the petitioner upon the judgment of a learned Single Judge of this Court (Hon'ble Mr. Justice D.K. Jain as His Lordship then was) in **Luk Auto Ancillary (India) Ltd. (In Liquidation) vs. Laxmi Narain Raina & Ors., 1999 (50) DRJ 101**, the relevant portion of which reads as follows:-

“I have heard Mr. Sharma, learned counsel for the

applicant, respondent No.4 herein and Mr. Luthra, learned counsel for OL. In addition to what has been pleaded in the application, it is also pointed out by Mr. Sharma that at the time of recording of evidence of the parties, when Mr. M.C. Saxena, Junior Technical Assistant, Office of the Registrar of Companies, North Zone, was examined on 18 July, 1986, he categorically admitted that an intimation about the resignation of the applicant was received in the Office of Registrar of Companies. Further, the attention of the Court has also been invited to a circular issued by the Department of Company Affairs, stating that where Registrar receives a communication from any Director about his resignation, Registrar should enquire whether the resignation of such Director is or is not bonafide and if he finds that Director has resigned bonafide from the Directorship of the company, he should not start prosecution against such Director, irrespective of the fact whether such resignation was or was not accepted by the company. It is pleaded by Mr. Sharma that no communication was received from the Office of Registrar of Companies, rejecting his letter of resignation. It is also contended that, thereafter, no prosecution was launched against the applicant by the Registrar of Companies for a default on the part of the company, which shows that his resignation was deemed have been accepted.

Mr. Luthra, on the other hand, has pointed out that in the statement of Mr. M.C. Saxena, it was stated that on receipt of intimation regarding the resignation by the applicant, he was asked to file Form No.32 and the balance sheet etc. of the company in liquidation but it was done and, therefore, it could not be said that the applicant's resignation had been accepted.

In view of the fact that letter of resignation, as sent to the Registrar of Companies was not rejected and the fact that after the receipt of the said letter no prosecution is stated to have been launched against him, presumably in terms of the aforesaid circular issued by the Department of Company Affairs, the non-furnishing of Form No.32 by applicant No.2 is of no consequence.

Accordingly, for the foregoing reasons, the

application is allowed and the applicant is discharged in Crl.O.2/82.”

7. Reliance is also placed by the learned counsel for the petitioner upon a Division Bench Judgment of the Bombay High Court in **Saumil Dilip Mehta vs. State of Maharashtra** reported in **(2002) 39 SCL 102 (Bom.)**, wherein, in paragraph 6, it has been held as follows:-

“6. The submissions advanced by the litigating parties are touching an important point involved in this matter which make us to express our views on the point whether a director of a public or private limited company can resign unilaterally and that too by writing a letter to the chairman of the said company or its secretary. It is necessary for such a director to fill up Form No.32 and is obliged to give a notice or intimation to that effect to the Registrar of Companies ('ROC')? The question arises for our adjudication is whether that particular director is obliged to give such information to the ROC and whether he cannot retire without complying with the said requirement. Keeping in view the provisions of the Companies Act, 1956, the relevant articles of the Constitution of India, we come to the conclusion that a director of the public limited company or private limited company can tender his resignation unilaterally and without filling in Form 32 and without sending a notice to the Registrar of Companies. It is clear that the filling in of the said Form and the giving of due intimation and information to the Registrar of Companies is the duty of the company secretary and not of an individual director. Suffice it to say that what he has to do is to send in writing a letter informing either the chairman or the secretary of the company, as the case may be, his intention to resign from the post of the director of the said company. Thereafter the said letter has to be moved in the meeting of the directors of the company, it may be ordinary meeting or may be extraordinary or special meeting, as the case may be, and the board of directors have to take a decision

whether the Board is accepting his resignation or not. An intimation should be sent to such director and after such resolution is passed, the company secretary is under the obligation to comply with the legal formalities for giving a finishing touch to the resolution which has been passed in the said meeting of the board of director. It is for the company secretary to fill in the forms as prescribed and to give due information and intimation to the ROC, as the law requires. Thereafter, it has to be so mentioned in all prescribed registers of the company, accounts and balance sheet of the company and thereafter the said fact is to be brought to the notice of the members of the company as early as possible and at the latest in annual general meeting.”

8. A similar view, the learned counsel urged, had been taken by the Madras High Court in ***T. Murari vs. State*** reported in **(1976) Vol.46 Company Cases 613**, wherein it was laid down that in the absence of anything to the contrary in the Articles of Association of the Company, a resignation once made will take effect immediately when the intention to resign is made clear. Accordingly, in such cases, the resignation tendered by a Director or a Managing Director unequivocally in writing will take effect from the time when such resignation is tendered.

9. The learned counsel pointed out that the violations under the Companies Act of non-filing of balance-sheet and annual returns were for the years pertaining to 1982 to 1986 whereas the petitioner had tendered his resignation in 1971, which fact is admitted by the respondent. The said resignation was accepted by the respondent and no objection against the same was ever

communicated to the petitioner. Also, the complaints dated 16.07.1993 filed by the respondent do not allege any violation or default on the part of the respondent, except for mentioning his name at serial No.4 in the memo of parties.

10. Per contra, the learned counsel for the respondent relied upon the judgment of a learned Single Judge of this Court (Hon'ble Mr. Justice Anil Dev Singh) in **Anita Chadha vs. Registrar of Companies** reported in **1999 Company Cases Vol.59 Page 265** to contend that a perusal of the Section 5 of the Companies Act shows that even after retirement, a Director of a Company would come under the definition of “officer in default”.

11. The aforesaid judgment in **Anita Chadha (supra)**, in my view, has no application to the facts of the present case for the reason that the facts of the said case are clearly distinguishable. The petitioner in the instant case had tendered his resignation on 27.07.1971, i.e., 11 to 15 years prior to the alleged violations which pertained to the years 1982, 1983, 1984, 1985 and 1986. The receipt of the said resignation is specifically admitted by the respondent and no material has been placed on record by the respondent to show that the same was not accepted or was objected to either by the accused Company or by the Registrar of Companies. The complaints are dated 16th July, 1993, which goes to show that the same were initiated more than 22 years after the Registrar of

Companies had admittedly been communicated the letter of resignation of the petitioner and had accepted the same in terms of its own Circular.

12. In view of the aforesaid and relying upon the decision of this Court in ***Luk Auto Ancillary (supra)***, the petitions are allowed by setting aside the order of conviction and sentence dated 17th August, 2002 passed in Crl. A. Nos.3/2002 to 12/2002.

CRL.REV.P. 1004/2002 to 1013/2002 stand disposed of accordingly.

REVA KHETRAPAL, J.

APRIL 08, 2009

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