H. P. GUPTA

v.

HIRALAL

February 24, 1970

[J. M. SHELAT AND G. K. MITTER, JJ.]

Indian Companies Act (of 1956), s. 207—Jurisdiction to try complaint for failure to pay dividend—Whether at place where company's registered office or shareholder's registered address.

The respondent filed complaints before the Magistrate at Meerut under s. 207 of the Companies Act, 1956 on an allegation of failure on the part of appellant, the director-in-charge of a Company whose registered office was at Delhi, to pay the respondent dividends on shares held by him, although the dividends were declared by the company for the respective years. The appellant contended that the Magistrate at Meerut had no jurisdiction to try the complaints and that the Magistrate at Delhi where the registered office of the Company was situated had the jurisdiction. The Magistrate rejected the appellant's contention on the ground that as the dividends had to be paid at the registered address of the respondent, which was at Meerut, the Court, at Meerut had jurisdiction. This view was upheld in appeal by the Sessions Judge and in revision by the High Court. In appeal on certificate, this Court :

HELD : The Court at Delhi and not at Meerut was competent to try the offences.

It is clear from s. 205(5) that the company could pay dividend either in cash or by posting a cheque or a warrant at the registered address of the respondent. Article 132 of the Articles of Association also authorises the Company to pay dividend either in cash or by posting a cheque or a warrant to the shareholder at his registered address. The effect of Art. 132 is that when a dividend warrant is posted at the registered address of the shareholder that would be equivalent to payment. Once a warrant is so posted the company is deemed to have paid and discharged its obligation. The Articles of Association constitute an agreement between the company and the shareholders, and the latter are entitled to the payment of dividend in the manner laid down in the Articles and in that manner alone. Article 132 thus not only authorises the company to make the payment in the manner laid down therein but amounts to a request by the shareholders to be paid in the manner so laid down. When, therefore, the company posts the dividend warrant at the registered address of a shareholder, that being done at the shareholder's request, the post office becomes the agent of the shareholder, and the loss of a dividend warrant during transit thereafter is the risk of the shareholder. [793 F]

That being the position, the place where a dividend warrant would be posted, is the post office at such place being the agent of the shareholder, is the place where the obligation to pay the debt is discharged in the present case at Delhi where the company has its registered office. It follows that the offence under s. 207 of the Act would also occur at the place where the failure to discharge that obligation arises, namely, the failure to post the dividend warrant within 42 days. The venue of the offence, therefore, would be Delhi and not Meerut, and the court competent to try the offence would be that court within whose jurisdiction the

A offence takes place, *i.e.*, Delhi. This should be so both in law and common sense, for, if held otherwise, the directors of compaines can be prosecuted at hundreds of places on an allegation by shareholders that they have not received the warrant. That cannot be the intention of the legislature when it enacted s. 207 and made failure to pay or post a dividend warrant within 42 days from the declaration of the dividend an offence. [794 C]

B *Indore Malwa United Mills Ltd.* v. *Commissioner of Income-tax,* [1966] 59 I.T.R. 738, followed.

Hickman v. *Kent or Rommey Marsh Sheep Breeders' Association,* [1951] 1 Ch. 881, *Beattie* v. *Beattie,* [1938] Ch. 708, *Thairlwall* v. *The Great Northern Railway Co.,* [1910] 2 K.B. 509, *Norman* v. *Ricketts,* 3 T.L.R. 182 and *Regina* v. *James Milner,* 175 E.R. 128, referred to.

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 225 to 232 of 1966.

Appeals from the judgment and order dated April 1, 1966 of the Allahabad High Court in Criminal Revision Nos. 895, 894, 876, 877, 897, 899 and 898 of 1964.

H. R. Gokhale, K. K. Jain, Bishamber Lal and *H. K. Puri,* for the appellant (in all the appeals).

D The respondent did not appear.

The Judgment of the Court was delivered by

Shelat, J. All those appeals, founded on a certificate granted by the High Court of Allahabad, raise a common question as to jurisdiction. The appeals arise from complaints filed by the E respondent in the Court of First Class Magistrate at Meerut under s. 207 of the Companies Act, 1956 on an allegation of failure on the part of the appellant, the director-in-charge of M/s Iron Traders (Private) Ltd., to pay to him dividends on shares held by him, although the dividends were declared by the company for the respective years. The question being common, all these F appeals are disposed of by a common judgment.

The appellant contended that the Magistrate at Meerut had no jurisdiction to try the complaints and that the Magistrate at Delhi, where the company's registered office is situate, who would have the jurisdiction. The Magistrate rejected the contention and held that as the dividend had to be paid at the registered address G of the respondent, which was at Meerut, it was the Meerut Court which had the jurisdiction. The Sessions Judge, on appeal, upheld the order of the Magistrate and in revision the High Court, rejecting the appellant's contention, confirmed the view taken by the Magistrate and upheld by the Sessions Judge. The High Court in taking the aforesaid view observed :

H "The object behind the statute is to ensure prompt payment of dividend to a shareholder. That payment may be made to him directly or it may be made by sending a cheque or warrant to his registered address. If a

shareholder complains that he has not received payment he is entitled to proceed against the company and its Directors by filing a complaint at the place where he resides because the law demands that payment should have been made to him there."

The High Court's reasoning was clearly based on the premise that payment of dividend has to be made at the place where the shareholder resides, and therefore, it is the Magistrate within whose jurisdiction the shareholders registered address is situate who has the jurisdiction. The contention in these appeals is that such a view is not in accord with sec. 207. The question is of some importance, for, if the view taken by the High Court is correct, it would mean that directors of companies would be liable to be prosecuted at hundreds of places where the registered addresses of their shareholders are on allegations that dividends are not paid to them.

Section 205 deals with dividends and the manner and time of payment thereof. Sub-sec. 1 provides that no dividend shall be declared or paid by a company for any financial year except out of the company's profits for that year arrived at in the manner therein set out. Sub-sec. 3 provides that no dividend shall be payable except in cash. Sub-sec. 5(b), however, empowers payment of dividend by cheque or dividend warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend or in the case of joint shareholders to the registered address of that one of them who is first named in the register of members or to such person or to such address as the shareholder or the joint shareholders may in writing direct. Sec. 206 provides that no dividend shall be paid by a company in respect of any share therein except to the registered holder of such share or to his order or to his bankers, or where a share warrant has been issued to the bearer of such warrant or to his bankers. Sec. 207 lays down the penalty for failure to distribute dividends declared by the company and provides that where a dividend has been declared by a company but has not been paid or a cheque or a warrant in respect thereof has not been posted within 42 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company, its managing agent or secretaries and treasurers shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to 7 days and shall also be liable to fine. But the section further provides that no offence shall be deemed to have been committed within the meaning of the foregoing provision in the cases therein set out.

A dividend once declared is a debt payable by the company to its registered shareholders. It is clear from s. 205 that although

A under sub-s. 3 no dividend shall be payable except in cash, sub-s. 5 authorises a company to pay the dividend by a cheque or a warrant. Therefore, dividend can be said to have been paid either when it is paid in cash or when a cheque or a warrant is sent through the post directed to the registered address of the shareholder entitled to payment thereof. Indeed, sec. 207 B itself lays down that the offence thereunder is committed when dividend is either not paid or a cheque or a warrant in respect thereof has not been posted within the time prescribed therefor. Once, therefore, a dividend warrant is posted at the registered address of the shareholder, dividend is deemed to have been paid.

The section casts an obligation on the company to pay the C dividend, which is declared, to the shareholder entitled thereto within 42 days from its declaration. The offence under the section takes place when there is failure to pay or a cheque or a warrant therefor is not posted to the registered address of the shareholder. It will be noticed that the section makes the failure to post within the prescribed period and not the non-receipt of D the warrant by the shareholder an offence. Therefore, the obligation to pay within the prescribed period is satisfied once the dividend is paid or a cheque or a warrant therefor is posted at the registered address of the shareholder. *Prima facie,* both the obligation to post the dividend warrant and the failure to satisfy that obligation would occur at the place where the obligation is to be performed and that would be the registered office of the E company and not the address at which the warrant is to be posted.

But the question is since the dividend, when declared, becomes a debt payable by the company to the shareholder and the company becomes a debtor, does the common law rule that the debtor must seek out the creditor apply? There are two con- F siderations which must not be lost sight of before that rule is applied. The first is that s. 207 does not make the non-receipt of the dividend warrant by the shareholder within 42 days an offence. The offence consists in the failure to post the dividend warrant within the prescribed period. The provisions of s. 205 empower payment of dividend by a cheque or a warrant and treat the posting of a cheque or a warrant as payment. Therefore, G payment in cash or the posting of a cheque or a warrant are equivalent and the obligation to pay is discharged when either of them is done. The second consideration is that the power to pay dividend by posting a cheque or a warrant provided in sec. 205(5) is- incorporated in the Articles of Association of the company by Art. 132. That article reads:

H "Unless otherwise directed by the company in General Meeting any dividend may be paid by cheque or warrant sent through the post to the registered add-

ress of the member entitled or in the case of joint holders to the registered address of that one whose name stands first on the register in respect of the joint holding and every cheque so sent shall be made payable to the order of the person to whom it is sent." A

Section 36 of the Act, which is in the same terms as sec. 20 of the English Companies Act, 1948, provides that subject to the provisions of the Act the Memorandum and Articles of Association, when registered, bind the company and the members thereof to the same extent as if they respectively have been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles. It is well established that the Articles of Association constitute a contract between a company and its members in respect of their ordinary rights as members. [see *Hickman* v. *Kent* or *Romney Marsh Sheep Breeders' Association*(1) and *Beattie* v. *Beattie*(2)]. If under a contract, a promisee prescribes the manner in which the promise is to be performed, the promisor can perform the promise in the manner so prescribed. (see s. 50 of the Contract Act). Thus, if A desires B, who owes him Rs. 100/- to send him a note for that amount by post, the debt, is discharged as soon as B puts into the post a letter containing the note duly addressed to A. (see illustration (d) to s. 50 of the Contract Act.) In this connection the decision in *Thairlwall* v. *The Great Northern Railway Co.*(3) shows how the problem is dealt with by the English Courts. The plaintiff there, who held certain stocks of the defendant company, filed an action to recover dividend payable on those stocks. The defence was that the dividend was paid having been sent by post to the registered address of the plaintiff. The question was looked at from the point of view whether there was any agreement by or obligation on the plaintiff to accept the dividend warrant as payment. If there was any such agreement, the principle laid down in *Norman* v. *Ricketts*(4) would apply, namely, that a debtor or a creditor can agree to make and accept payment of the debt in some form other than cash and that when the creditor asks his debtor to send the amount by post, then if the debtor sends a cheque for the amount by post the risk of loss in transit falls on the creditor and the posting is equivalent to payment. Further the stock certificates had upon the back of them a clause that dividend would be payable by warrant which would be sent by post to the proprietor's registered address, or to any person duly authorised to give a receipt for the same. Sec. 9 of the Act of 1890, under which the defendant-company was incorporated, also provided that the B C D E F G H

(1) [1915] 1, Ch. 881.
(2) [1938] Ch. 708.
(3) [1910] 2, K.B. 509.
(4) 3 Times L. R. 182.

A terms and conditions on which the stock was issued shall be stated on the certificate thereof. In the six monthly report of accounts issued by the directors to the stock-holders there was a statement that the profits of the company had enabled the directors to declare a dividend and there was at the back of that report a notice that the dividend warrants would be payable on a certain date and B would be sent by post to the stockholders on the previous day. Under s. 90 of the Companies Act, 1845 it was within the power of the directors to fix the date at which and the mode in which dividends should be paid, subject of-course to the control of a general meeting. The stockholders of the company at their general meeting had declared the amount of dividend as proposed by C the directors but had passed no resolution as to how payment was to be made. It was held that though no such resolution was passed by the stockholders, they had notice as to how the directors proposed to pay the dividends and as no alteration was made in those proposals, the stockholders were held to have decided among themselves by a proper resolution that the dividend should be paid on a certain day and in the manner proposed by the directors. D Such a conduct was equivalent to a request, and therefore, the stockholders became entitled to payment in that way and in that way alone. Consequently, when the dividend warrant had been sent by post the dividend was paid and the company's obligation to pay stood discharged.

E It follows, therefore, that once a mode of payment of dividend is agreed to, namely, by posting a cheque or a warrant, the place where such posting is to be done is the place of performance and also the place of payment, as such performance in the manner agreed to is equivalent to payment and results in the discharge of the obligation.

F It is clear from s. 205(5) that the company could pay dividend either in cash or by posting a cheque or a warrant at the registered address of the respondent. Art. 132 of the Articles of Association also authorises the company to pay dividend either in cash or by posting a cheque or a warrant the shareholder at his registered address. The effect of Art. 132 is that when a G dividend warrant is posted at the registered address of the shareholder that would be equivalent to payment. Once a warrant is so posted the company is deemed to have paid and discharged its obligation. As aforesaid, the Articles of Association constitute an agreement between the company and the shareholders, and the latter are entitled to the payment of dividend in the manner laid H down in the Articles and in that manner alone. Art. 132 thus not only authorises the company to make the payment in the manner laid down therein but amounts to a request by the shareholders to be paid in the manner so laid down. When, therefore,

the company posts the dividend warrant at the registered address of a shareholder, that being done at the shareholder's request, the post office becomes the agent of the shareholder, and the loss of a dividend warrant during transit thereafter is the risk of the shareholder. In *Indore Malwa United Mills Ltd.* v. *Commissioner of Income-tax*(1) this Court, on a question arising whether on the facts there payment was made in taxable territory, held that if by an agreement, express or implied, between the creditor and the debtor, or by a request, express or implied, by the creditor, the debtor is authorised to pay the debt by a cheque and to send the cheque to the creditor by post, the post office is the agent of the creditor to receive the cheque and the creditor receives payment as soon as the cheque is posted to him. That being the position, the place where a dividend warrant would be posted, the post office being the agent of the shareholder, is the place where the obligation to pay the debt is discharged—in the present case at Delhi where the company has its registered office. It follows that the offence under sec. 207 of the Act would also occur at the place where the failure to discharge that obligation arises, namely, the failure to post the dividend warrant within 42 days. The venue of the offence, therefore, would be Delhi and not Meerut, and the court competent to try the offence would be that court within whose jurisdiction the offence takes place, *i.e.*, Delhi. This should be so both in law and common sense, for, if held otherwise, the directors of companies can be prosecuted at hundreds of places on an allegation by shareholders that they have not received the warrant. That cannot be the intention of the legislature when it enacted sec. 207 and made failure to pay or post a dividend warrant within 42 days from the declaration of the dividend an offence.

This view is also in accord with the principle laid down by Maule J. in *Regina* v. *James Milner*(2) that the felony of not surrendering at a district court to a fiat in bankruptcy, under Stat. 5 and 6 Vict. c. 122, s. 32 is committed at the place where the district court is situate; and an indictment for the offence cannot be sustained in a different county from that in which the person was a trader or in which he committed an act of bankruptcy. On the same principle the High Court of Calcutta has also held in *Gunanand Dhone* v. *Lala Santi Prokash Nanley*(3) that it is the court within the local limits of whose jurisdiction the accused is liable to render accounts and fails to do so by reason of having committed a breach of trust alleged against him that has the jurisdiction.

(1) (1966) 59 I.T.R. 738.
(2) 175 E.R. 128.
(3) 29 C.W.N. 432.

A The offence under s. 207 is the failure to pay dividend or to post a cheque or a warrant for the dividend amount. Since the obligation to post the warrant arose at the registered office of the company, failure to discharge that obligation also arose at the registered office of the company. Therefore, the alleged offence must be held to have taken place at the place where the B company's registered office is situate and not where the dividend warrant, when posted, would be received.

In that view, the High Court was in error in holding that the Magistrate at Meerut had the jurisdiction to try the said complaints. The appeals must accordingly be allowed and the High Courts orders set aside. Order accordingly.

Y.P. *Appeals allowed.*