

The Official Liquidator attached to Punjab and Haryana High 169
Court *v.* Surjit Singh and others (Ashok Bhan, J.)

production of evidence shall not apply to the official witnesses who have to appear with the official record.

There will be no order as to costs.

R.N.R.

Before Hon'ble Ashok Bhan, J.

THE OFFICIAL LIQUIDATOR ATTACHED TO PUNJAB AND
HARYANA HIGH COURT,—*Complainant.*

versus

SURJIT SINGH AND OTHERS,—*Accused.*

Company Petition No. 32 of 1991.

In Company Petition No. 49 of 1987.

February 2, 1995.

Companies Act, 1956—S. 545—Non-compliance of S. 454(1)—Company wound up under orders of Court—Statement of Affairs not filed within 21 days by ex-directors of Company—Such statement could not be filed as all assets taken over by Punjab Financial Corporation prior to winding up order—Whether liable for prosecution—Under section 454(1) of the Act—Held that there was a reasonable excuse u/s 454(5) for not filing statement of affairs by accused—No case made out.

Held, that it has not been proved that the books of accounts were available with the directors which they had failed to produce before the Official Liquidator. Section 454 of the Act provides that the statement of affairs has to be in the prescribed form verified by an affidavit.

(Para 12)

Further, held that it has to be on solemn affirmation saying that the statement made and the several lists annexed with it are true and complete statements as to the affairs of the company to the knowledge and belief of the person filing the same. Company was ordered to be wound up on 15th July, 1988 and the Official Liquidator took over on 3rd August, 1988. On this date, possibly the accused could not file the statement as prescribed in Form 57 read with Section 454 of the Act and Rule 127 of the Rules as the Assets of the Company had already been taken over by the PFC and the property of the company in liquidation having been already sold. In my view, there was a reasonable excuse with the accused not to file the statement of

affairs of the company. Under the circumstances, no case is made out for awarding any punishment to them.

(Para 12)

Anand Chhibbar, Advocate with M. K. Kapoor, O.L., for the Complainant.

Anupam Gupta, Advocate for accused Respondent No. 1.

Raman Mahajan, Advocate for accused Respondent No. 2.

R. L. Sharma, Advocate, for accused Respondent No. 3.

JUDGMENT

Ashok Bhan, J.

(1) This petition has been filed under Section 454(5) of the Companies Act, 1956 (hereinafter referred to as 'the Act') read with Rule 125 of the Companies (Court) Rules, 1959 (hereinafter referred to as 'the Rules') with a prayer that the accused-respondents be summoned and directed to prepare, verify and submit the statement of affairs, in duplicate, in the prescribed Form No. 57 together with an affidavit in Form No. 58 and further that they be tried and sentenced for violating the provisions of Section 454 of the Act. This petition arises out of the following facts :-

(2) M/s Bhatinda Heavy Allied Chemicals Limited (in liquidation) (hereinafter referred to as 'the company in liquidation') was incorporated on 24th August, 1976 at Bombay. Registered office of the company in liquidation was shifted to the State of Punjab on 1st October, 1982.

(3) On 3rd April, 1987, C.P. 49 of 1987 was filed under Section 433 read with Section 434 of the Act on the ground that the company in liquidation was unable to pay its due debts. The company in liquidation was ordered to be wound up on 15th July, 1988. Official Liquidator attached to this Court was appointed as the Liquidator of the Company. Official Liquidator took over the charge as Liquidator on 3rd August, 1988. On 29th August, 1988, Official Liquidator wrote letter Annexure P-1 to the Ex-Directors of the company in liquidation i.e. Sarvshri Surjit Singh, R. R. Chawla and S. P. Bansal, respondents No. 1 to 3, respectively, for filing of the statement of affairs. Since no statement of affairs was filed, the present petition has been filed for the reliefs sought for referred to in the opening paragraph of this judgment.

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(4) In reply to the charge, the three accused did not plead guilty to the charges levelled against them and to the question whether they would like to produce evidence in defence, the answer was in the affirmative.

(5) Official Liquidator produced two witnesses namely; H. S. Bawa, CW-1, Official Liquidator attached to this Court and Joginder Pal Singh, CW-2. Clerk from the office of the Registrar of Companies, Jalandhar. As against this, the accused stepped into the witness box; Surjit Singh as DW-1, R. R. Chawla as DW-2 and S. P. Bansal as DW-3.

(6) Counsel for the parties have been heard at length.

(7) So far as S. P. Bansal, accused, is concerned, it has come in the statement of Joginder Pal Singh, CW-1, that he had resigned as Director prior to the passing of the winding up order. Since S. P. Bansal had resigned prior to the passing of the winding up order, charges against him were not pressed.

(8) Placing reliance upon the provisions of Section 454 of the Act, counsel for the parties argued that where the Court has appointed an Official Liquidator, then it is the duty of the persons who are at the relevant date the directors or officers of the company to submit and verify the statement. This person can either be in actual control or working of the company or who may have been an officer of the company and if such a person fails to comply with any of the requirements of this Section without any reasonable excuse, then he becomes liable for punishment for a term extending to two years or fine or both. There is no dispute with this proposition.

(9) In his statement in the Court DW-1 Surjit Singh had stated that in 1984, the Punjab Financial Corporation Limited (hereinafter referred to as 'PFC') took over the assets of the company under Section 31 of the State Financial Corporation Act. The properties of the company were attached by the District Judge, Bhatinda in November 1984 and on an application filed by the PFC, the District Judge, Bhatinda ordered the sale of the properties of the company on 15th April, 1986. Properties of the company were sold in open auction in January 1987 and the PFC purchased the same. Since the property had already been attached and sold in pursuance to the order passed under Section 31 of the State Financial Corporation Act prior to the passing of the winding up order, the statement of affairs could not be filed by the accused.

(10) Sub-Section 5 of Section 454 of the Act states that if any person, without reasonable excuse, makes default in complying with any of the requirements of this section, then he would be liable to be punished either with imprisonment for a term extending to two years, or with fine or with both. In this case, the assets of the company were taken over by the PFC in the year 1984 and the property belonging to the company was sold in the year 1987 prior to the passing of the winding up order and at that time the accused were not in possession of any of the particulars referred to in Clause (1) of Section 454, regarding which the statement of affairs could be filed. Under Section 454 of the Act, statement of affairs of the company has to be filed in the prescribed form verified by an affidavit and containing the following particulars :—

- (a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company ;
- (b) its debts and liabilities ;
- (c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given ;
- (d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof ;
- (e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(11) A perusal of the particulars referred to above would show that the same could be filed by a person who was in actual control of the affairs of the company at the relevant time. The assets of the company, cash balance in hand and in the bank, debts and liabilities, names, residences and occupations of the creditors of secured and unsecured debts and debts due, to the company along with the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof can only be furnished by a person who had the knowledge at the relevant date. Sub Clause (2) of Section 454 of the Act also provides that the statement has to be submitted and verified by one or more persons who

are at the relevant date, the directors and by the persons who are at that date the manager, secretary or other chief officer of the company. Under Sub Clause (8) of Section 454 of the Act, the relevant date, means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order. Winding up order was passed on 15th July, 1988 and at the relevant date, the accused were not in charge or in any way concerned with the affairs of the company. There is no doubt that under Sub Clause (2) of Section 454 of the Act. a person who has been an officer of the company could also be asked to submit and verify the statement but the Official Liquidator instead of proceeding against the person who was in actual control of the assets and liabilities of the company chose to proceed against the Ex-Directors of the company in liquidation. The assets of the company stood sold prior to the passing of the winding up order. Under the circumstances of the case, it would be a reasonable excuse for the Ex-Directors not to file the statement of affairs. It cannot be held that their act was *mala fide* or contemptuous in order to avoid the rigour of Section 454. This Court in *M/s Pawanta Sahib Cement Works (P) Ltd. (In Liqn.) v. Mr. Anil Saini and others* (1), held that where the books of accounts etc. had been stolen regarding which a First Information Report was filed, was a reasonable excuse for not filing the statement of affairs.

(12) In the present case, it has not been proved that the books of accounts were available with the a directors which they had failed to produce before the Official Liquidator. Section 454 of the Act provides that the statement of affairs has to be in the prescribed form verified by an affidavit. Rule 127 of the Rules provides that the statement as to the affairs of the company is to be submitted in Form 57, made in duplicate, along with an affidavit of concurrence in the statement of affairs in Form 58. Form 57 prescribes that statement of affairs of the company as on the date of winding up order or the order appointing a Provisional Liquidator or the date directed by the Official Liquidator has to be filed. It has to be on solemn affirmation saying that the statement made and the several lists annexed with it are true and complete statements as to the affairs of the company to the knowledge and belief of the person filing the same. Company was ordered to be wound up on 15th July, 1988 and the Official Liquidator took over on 3rd August, 1988. On this date, possibly the accused could not

file the statement as prescribed in Form 57 read with Section 454 of the Act and Rule 127 of the Rules as the assets of the company had already been taken over by the PFC and the property of the company in liquidation having been already sold. In my view, there was a reasonable excuse with the accused not to file the statement of affairs of the company. Under the circumstances, no case is made out for awarding any punishment to them.

(13) There is no merit in this petition and the accused are acquitted

J.S.T.

Before Hon'ble V. S. Aggarwal, J.

GANGA HIRE PURCHASE (P) LTD. NEAR B.M.C. CHOWK,
G.T. ROAD, JALANDHAR.—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Appeal No. 432-SB of 1992

3rd February, 1995

Narcotic Drugs and Psychotropic Substances Act, 1985—S. 60(3)—Vehicle confiscated—Owner/appellant seeking release of vehicle on ground that poppy seeds were not recovered from his possession but from accused—Trial Court rejected plea of owner,—vide impugned order—Held that S. 60(3) of Act enacted primarily to stop illegal activity to claim exception owner to prove his & his agents innocence—Not enough to simply allege that he had no hand in vehicle's illegal use—Appeal dismissed.

Held, that Sub-section (3) to Section 60 has been enacted primarily to stop illegal activities of transporting narcotic drugs and psychotropic substances. To give relief to such owners, who are innocent in the matter, facility has been provided and an exception has been drawn. The exception must relate to innocence not only of the owner but also of his agent and the person, who has been put in charge of the conveyance. If one has to come within the exception i.e. Sub-section (3) to Section 60, he will have to prove not only his innocence but also that all such possible precautions against wrongful user of the vehicle had been taken by each person or persons. It would not be enough simply to allege that he had no hand in the illegal use. The enactment of the Legislature in this regard is purposeful. If that was not