Background

"XYZ Private Limited" (hereinafter referred as "the company") proposed a fast-track merger under Section 233 of the Companies Act, 2013. The Registrar of Companies alleged that the statutory threshold prescribed under Section 233 had not been satisfied and initiated criminal prosecution for making a false statement and for fraud against the Company Secretary (hereinafter referred as "the petitioner") who had signed and filed the declaration.

Facts

1. In connection with the proposed amalgamation, meetings of the members and creditors of the transferor and transferee companies were convened for obtaining their approval to the scheme in accordance with Section 233 of the Companies Act, 2013.

2. A declaration in Form CAA-11 was filed with the Registrar of Companies, where the Company Secretary certified that the scheme had been approved by the requisite majority of members in accordance with Section 233(1)(b).

3. Upon scrutiny of the records, the Registrar of Companies formed a view that the statutory requirement of approval by members holding at least ninety per cent of the total number of shares had not been satisfied, and therefore the declaration made in Form CAA-11 was false.

4. On this basis, the Registrar of Companies filed a criminal complaint before the Special Court alleging commission of offences under Sections 447 and 448 of the Companies Act, 2013 for fraud and making a false statement in a statutory document.

5. The petitioner was impleaded as an accused in the complaint. However, neither the company nor its directors or other persons responsible for the day-to-day affairs of the company were made accused in the criminal proceedings.

6. The petitioner therefore approached the High Court seeking quashing of the criminal proceedings.

Arguments on behalf of the Petitioner

- The declaration contained in Form CAA-11 was made on the basis of a bona fide interpretation of Section 233(1)(b) of the Companies Act, 2013 considering 90% threshold for approval applies to members present and voting. The petitioner genuinely understood that the statutory requirement had been complied with. Even assuming that such interpretation was ultimately found to be incorrect, the same could not give rise to criminal prosecution.

- The fraud under Section 447 necessarily requires dishonest intention, wrongful gain, wrongful loss or an intention to deceive. For invoking Section 447, the prosecution must establish dishonest intention, deceit, wrongful gain, or wrongful loss on the part of the petitioner.
- Mere assertion by the Registrar that the declaration was incorrect is insufficient to constitute an offence under Section 448 unless it is shown that the petitioner knew the statement to be false or deliberately omitted material facts.
- The petitioner signed the statutory form purely in his capacity as Company Secretary while discharging official functions. The declaration was based upon corporate records and resolutions passed by the company.
- The controversy essentially concerns the interpretation of Section 233 regarding the manner in which the 90% approval requirement is to be computed. Such interpretational disputes cannot be converted into criminal offences.
- The company, being the principal entity which submitted the statutory filing, has not been prosecuted. Initiating criminal proceedings only against the Company Secretary without prosecuting the company is legally unsustainable.
- The continuation of the criminal proceedings would amount to abuse of the process of Court since the complaint, even if accepted in its entirety, fails to disclose the commission of offences punishable under Sections 447 and 448 of the Companies Act, 2013.

Arguments on behalf of the Registrar of Companies

- Section 233(1)(b) clearly mandates that the scheme must be approved by members holding at least ninety per cent of the total number of shares. The voting records revealed that the prescribed statutory threshold had not been achieved. Consequently, the declaration certifying compliance with Section 233(1)(b) was false.
- Once a person makes a statement in any statutory return, report, certificate or other document required under the Companies Act, knowing such statement to be false or omitting a material fact, the provisions of Section 448 are attracted. Form CAA-11 being a statutory declaration, any false certification therein constitutes an offence under the Act.
- Section 448 expressly provides that a false statement made knowingly shall be treated as fraud within the meaning of Section 447. Therefore, once the declaration is found to be false, prosecution under Section 447 is legally maintainable.
- The petitioner was not a mere signatory. Being the Company Secretary and Key Managerial Personnel under Section 203 of the Companies Act, 2013, he was under a statutory obligation to verify the correctness of the contents of the declaration before authenticating and filing the same with the Registrar of Companies.
- The petitioner knowingly made a false declaration or possessed the requisite mens rea is a matter to be established during trial. Such disputed questions of fact cannot be adjudicated in proceedings seeking quashing of the complaint at the threshold.

Core Legal Issues

1. Whether a statutory declaration filed under Section 233 based on a particular interpretation of the shareholder approval requirement can attract criminal liability under Sections 447 and 448 of the Companies Act, 2013?
2. What is the extent of due diligence expected from a Company Secretary while authenticating statutory filings under the Companies Act, 2013?

Now Decide

Now decide the above legal issues in light of the facts and submissions.

Disclaimer

The case study has been framed based on publicly available legal principles with necessary modifications and fictionalisation of names to enable professionals to apply their analytical skills. Any resemblance to actual cases is purely coincidental.

Winner of Case Study – June 2026

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