

CRIMINAL REVISION.

Before Henderson and Akram JJ.

SURENDRA NATH SARKAR

1940

Feb. 8, 15.

v.

KALI PADA DAS.*

Jurisdiction—*Private complainant, if can maintain prosecution under the Companies and Insurance Acts—Indian Companies Act (VII of 1913), ss. 137, 138, 141A—Insurance Act (IV of 1938), s. 107.*

A Magistrate has jurisdiction to take proceedings for offence under the Indian Companies Act on a private complaint.

Section 141A of the Indian Companies Act casts a duty upon the Advocate-General or the Public Prosecutor to cause proceedings to be instituted in certain circumstances. But unlike ss. 196 and 198 of the Code of Criminal Procedure, this section places no bar upon the jurisdiction of criminal Courts.

Queen v. Cubitt (1) and *Anderson v. Hamlin* (2) referred to.

Section 137 of the Indian Companies Act is intended to facilitate the investigation of the affairs of a company and has no reference to actual proceedings in Court.

If, however, a complainant wishes to prosecute for an offence under the Insurance Act, he must obtain the sanction of the Advocate-General under s. 107 of the Act.

If the same acts constitute offences under both the Companies and Insurance Acts, it would be trifling with the law to prosecute under the former instead of under the latter.

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The material facts of the case and arguments in the Rule appear sufficiently from the judgments.

*Criminal Revision, Nos. 823 and 825 of 1939, against the order of S. N. Chatterji, Subdivisional Magistrate of Suri, dated July 28, 1940.

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Santosh Kumar Basu and Ajoy Kumar Basu for
Surendra Nath Sarkar the petitioner.
 v.
Kali Pada Das. *Probodh Chandra Chatterjee and Bireswar*
Chatterjee for the Crown.

Cur. adv. vult.

HENDERSON J. These are two Rules calling upon the District Magistrate of Birbhum to show cause why certain proceedings taken against the petitioners for alleged offences against certain provisions of the Indian Companies Act and of the Indian Penal Code should not be quashed. The complainant is a policyholder of a company known as Nabasakti Insurance Company which has been incorporated both under Act VII of 1913 and Act V of 1912. The petitioner Surendra Nath Sarkar is the manager of the company. The ground upon which the Rule was issued is that the Magistrate has no jurisdiction to take proceedings in these matters on a private complaint.

Mr. S. K. Basu appeared in support of the Rule. I may note that in Case No. 823 the allegation is one of falsification of accounts and in Case No. 825 various offences are alleged to have been committed against the provisions of the Indian Companies Act.

Mr. Basu contended that the new Indian Companies Act has made elaborate provisions for the investigation of offences in connection with companies and for prosecution by the Advocate-General or the Public Prosecutor. He asked us to say that, in view of these elaborate provisions, the intention of the legislature was that prosecutions by private persons should not be allowed. The relevant sections are s. 141A of the Indian Companies Act and s. 107 of the Insurance Act.

There is nothing in the actual terms of s. 141A to justify any such inference. That section casts a duty upon the Advocate-General or the Public

Prosecutor to cause proceedings to be instituted in certain circumstances. It also casts a duty upon the officers of the company to render assistance in connection with any such prosecution. The terms of the section are quite different from those, for example, of ss. 196 and 198 of the Code of Criminal Procedure, by which a bar is placed upon the jurisdiction of criminal Courts.

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Mr. Basu, however, based his argument not so much upon the terms of the section as upon the fact that there is no section containing provisions similar to those of s. 368 of the English Companies Act of 1929. That section is in these terms—

Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

It is thus clear that, even apart from that section, it does not follow that a private prosecution would be barred under the English Act. The section was merely inserted to put the matter beyond doubt.

In this connection Mr. Chatterjee on behalf of the Crown drew our attention to certain decisions in connection with the Fishery Acts: *The Queen v. Cubitt* (1); *Anderson v. Hamlin* (2). It was there held that private prosecutions under these Acts were barred. It is true that those decisions were based upon the actual words used in the relevant statutes. But it may well be that s. 368 was inserted in the English Act to place the matter beyond doubt. At any rate, in the absence of any specific provision in the Act itself, we cannot infer from the mere omission of a similar provision in the Indian Act that the intention of the legislature was to bar private prosecutions. There was no doubt at all that such prosecutions were permitted by the old Act.

In the second place, s. 141A only comes into force after a report has been made under s. 138. There is,

(1) (1889) 22 Q.B.D. 622.

(2) (1890) 25 Q.B.D. 221.

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at any rate, up to the present, no such report in this case. In this connection it is necessary to consider the effect of s. 137. Under sub-s. (6) a representation may be made by any contributor or creditor to the Registrar; then if the Registrar makes a report to the Local Government an investigation may be ordered under s. 138. Of course, as a result of such an investigation proceedings might be taken under s. 141A.

We find it impossible to read into this sub-s. any prohibition of private prosecutions. It is not merely that there are no words containing any such prohibition. The subject-matter of s. 137 is an investigation rather than a prosecution. Sub-s. (6) is confined to cases in which there are allegations of fraud and many prosecutions under the Act would be entirely outside it. In matters, however, involving allegations of fraud a private prosecutor would be almost helpless, as without an investigation it would be very difficult to establish the existence of fraud. The Registrar is, however, given powers of investigation. Officers and ex-officers of the company are bound to supply him with information and explanations. On his application, the Court can compel the production of documents. On his report, the local Government may order an inspector to investigate. We are quite satisfied that the intention of the section is to facilitate the investigation of the affairs of a company and it has no reference to actual proceedings in Court.

Section 107 of the Insurance Act requires the sanction of the Advocate-General before a private prosecution could be started. On behalf of the Crown, Mr. Chatterjee contended that that section relates only to a prosecution under sub-s. (2) of s. 41. Section 107 is in these terms:—

Except where proceedings are instituted by the Superintendent of Insurance, no proceedings under this Act against an insurer or any

director, manager or other officer of an insurer or any person who is liable under sub-s. (2) of s. 41 shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General.

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Section 41 deals with prohibition of rebates. Policy-holders are forbidden to accept any rebate unless it is allowed in accordance with the published prospectus of the insurer. In my judgment, the words "who is liable.....section 41" qualify the words "any person". Otherwise, the words "no proceedings under this Act" would have no real meaning. We are, therefore, of opinion that if the complainant wishes to prosecute for an offence under the Insurance Act, he must obtain the sanction of the Advocate-General.

We have not examined the allegations in detail nor have they been put before us in the course of the argument. It may be that some of them amount to offences under both the Acts. In such circumstances, it would be trifling with the law to prosecute under the Companies Act instead of under the Insurance Act. We are, therefore, of opinion that in Case No. 825 the prosecution should be confined to matters which are offences under the Indian Companies Act only, unless in the meantime the complainant obtains the sanction of the Advocate-General.

With these observations, the Rules are discharged.

AKRAM J. I agree that these Rules Nos. 323 and 825 of 1939 should be discharged. In Rule No. 825 of 1939, I desire to say a few words in connection with the argument advanced by the learned advocate for the petitioner that, having regard to the provisions of ss. 137 and 141A, the Companies Act contemplated only a Crown prosecution and not a prosecution by a private individual.

Looking into the Companies Act, I find that s. 137 deals with "Investigation by the Registrar" in certain circumstances. There may, however, be a complaint by a contributory or a creditor for failure to comply

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with the requirements of the Act, without alleging any fraud mentioned in s. 137 (6); in such a case, apparently, no investigation under s. 137 and no report under s. 138 will be made; consequently s. 141A will not come into operation as a bar to the proceeding.

I am, therefore, of opinion that the learned Sub-Divisional Magistrate should proceed with the trial on the lines indicated in the judgment that has been delivered by my learned brother.

Rules discharged.

A. C. R. C.