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EMPEROR  
v.  
MAIKU.

idle to call the attention of the Magistrate to this grave irregularity when this Court has on several previous occasions called attention to it without any effect. I can only again point out that for a police officer or a Magistrate to detain an accused person when orders have been passed by the Sessions Judge for his immediate release, is a most grave irregularity and might expose a Magistrate and police officer to very serious results. The proceedings taken after the orders of the release of the accused are entirely without jurisdiction. I allow the application and set them aside.

I again draw the attention of the District Magistrate of Farukhabad to the direction that Maiku is to be released forthwith without any bond or recognizance or limitation of any kind until such can be taken under any warrant of law.

*Application allowed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

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March, 3.

JAGAN NATH (APPELLANT) v. GANGA DAT DUBE (RESPONDENT)\*  
*Act No. III of 1907 (Provincial Insolvency Act), sections 5, 6, 15, 16 and 43—  
Insolvency—Petition by debtor—Debtor's right to order of adjudication—  
Dismissal of petition on ground of alleged misappropriation of property  
belonging to a creditor.*

It is no ground for the rejection of a petition to be declared insolvent filed by the debtor that the petitioner may perhaps have been guilty of criminal misappropriation in respect of property belonging to one of his creditors. *Chhatrapat Singh Dugar v. Kharag Singh Lachmiram (1)* and *Triloki Nath v. Badri Das (2)* referred to.

ONE Jagan Nath, having been arrested in execution of a decree obtained against him by Ganga Dat Dube, applied to be declared an insolvent. In a civil suit brought against him by Ganga Dat it had been alleged that Jagan Nath had misappropriated certain diamonds which had been delivered to him for sale upon commission. That suit was dismissed by the first court; but on appeal a decree for Rs. 800 was passed against Jagan Nath. No

\* First Appeal No. 159 of 1918, from an order of W. F. Kirton, District Judge of Benares, dated the 28th of June, 1918.

(1) (1916) J. L. R., 44 Cal., 535. (2) (1914) I. L. R., 36 All., 250.

second appeal was preferred against this decree, and the Judge of the Insolvency Court on the strength of the decree, which was apparently looked upon as evidence that Jagan Nath had committed criminal misappropriation of the diamonds, the court rejected his application to be declared an insolvent. Jagan Nath appealed to the High Court.

Pandit *Radha Kant Malaviya*, for the appellant.

Munshi *Gokul Prasad*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of insolvency proceedings. Panda Jagan Nath, the appellant here, presented a petition to be declared an insolvent. He had been arrested in execution of a decree obtained by Ganga Dat Dube. It is quite clear that on the admitted facts Panda Jagan Nath was entitled to have an order declaring him an insolvent. It appears that a civil suit had been brought against Panda Jagan Nath by Ganga Dat Dube in which it was alleged by the latter that Panda Jagan Nath had misappropriated certain diamonds which had been delivered to him for sale on commission. The first court had dismissed the suit. On appeal, however, the decree of the court of first instance was set aside and a decree for Rs. 800 and odd was made against Panda Jagan Nath. The learned District Judge in dismissing the petition of Jagan Nath to be declared an insolvent seems to have considered that the decree against him at the instance of Ganga Dat Dube must be taken as an adjudication that the diamonds had been criminally misappropriated by Panda Jagan Nath, particularly having regard to the fact that Panda Jagan Nath did not file a second appeal. This we think was quite wrong. Very little weight can be attached to the fact that no second appeal was filed, because in all probability the appeal would at once have failed upon the ground that it was a finding of fact behind which the High Court cannot go in second appeal. In any event if there was any just reason for thinking that Panda Jagan Nath had committed an offence punishable under the Insolvency Act, the proper course for the court would have been to have proceeded under section 43, after having first made a declaration of insolvency and after also having framed a charge in analogy to the provisions of the Code of Criminal Procedure. See

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*Chhatrapat Singh Dugar v. Kharag Singh Lachmiram* (1), and also *Triloki Nath v. Badri Das* (2). We think that the order dismissing the application of Panda Jagan Nath was wrong. We allow the appeal, set aside the order of the court below and adjudicate Panda Jagan Nath an insolvent. The case will now be sent back to the court below to proceed with the insolvency matter in due course of law. The appellant will have his costs in this Court.

*Appeal allowed.*

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

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March, 3.

SHIAM NARAIN TIKKOO AND OTHERS (PLAINTIFFS) v. THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY (DEFENDANT).\*

*Railway Company—Death of passenger alleged to have been caused by negligence—Suit for damages by representative of deceased—Nature of liability of Company—Verus—Act No. XIII of 1855 (Indian Fatal Accidents Act.)*

An action against a Railway Company for damages on account of the death of a passenger alleged to have been caused by the negligence of the Company's servants is not an action *ex contractu*, but is an action based on tort and on the provisions of the Indian Fatal Accidents Act, 1855. Such an action, therefore, cannot be brought at the place where the deceased person's ticket was taken.

There is no general obligation upon a Railway Company to carry passengers who have taken tickets "safely." *Austin v. The Great Western Railway Company* (3) and *The East Indian Railway Company v. Kalidas Mukherji*, (4) referred to.

THIS was an appeal against an order of the Subordinate Judge of Agra returning a plaint for presentation to the proper court. The suit was a suit brought against the Bombay, Baroda and Central India Railway Company in the following circumstances. There were four plaintiffs, one adult and three minors. The allegation is that the first plaintiff, his wife and three children (the other three minor plaintiffs) were travelling from Agra to Kuchaman Road and purchased tickets at Agra. The party changed their carriage at Bandikui Station and got into another train. It is alleged that in the course of this part of the journey the carriage door opened through the neglect

\* First Appeal No. 68 of 1918, from an order of Kauleshar Nath Rai, Subordinate Judge of Agra, dated the 25th of April, 1918.

(1) (1916) I. L. R., 44 Calo., 595.

(3) (1867) L. R., 2 Q. B., 442.

(2) (1914) I. L. R., 38 All., 250.

(4) (1901) I. L. R., 28 Calo., 401.