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IN THE
MATTER
OF THE
SARASWATI
TRADING
CORPORA-
TION,
LIMITED.

on the case of *Brighton Arcade Company Ltd., v. Dowling* (1), though it supports my view. In my opinion the reading of section 215 leaves little room to doubt the voluntary liquidator's power to enforce the calls by a suit.

Such being the case, the suit of 1918 was not incompetent and the suit was maintainable. The result is that the present petition must fail as against Pandit Subhkaran Upadhiya. The name of Pandit Subhkaran Upadhiya will be removed from the list of contributories and he will receive his costs from the liquidators. The question of limitation does not require determination. The costs paid by the liquidators may be recouped by them from the assets of the company.

REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR *v.* NEUR AHIR.*

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August, 3.

Criminal Procedure Code (as amended by Act No. XVIII of 1923), sections 109, 436—Discharge under section 119—Further inquiry by District Magistrate—Jurisdiction—“Offence.”

A District Magistrate has no jurisdiction under section 436 of the Criminal Procedure Code (as amended by Act XVIII of 1923) to take up in revision, and order further inquiry into, the case of a person against whom proceedings under section 109 were taken and who was discharged under section 119. Such a person is not a “person accused of any offence” within the meaning of section 436. *Velu Taji Ammal v. Chidambaravelu Pillai* (2) and *Emperor v. Roshan Singh* (3) followed. *King-Emperor v. Fyaz-ud-din* (4), not followed.

*Criminal Revision No. 593 of 1928, from an order of H. H. Shaw, District Magistrate of Ghazipur, dated the 3rd of July, 1928.

(1) (1868) L.R., 3 C. P., 175. (2) (1909) I.L.R., 33 Mad., 65.
(3) (1923) I.L.R., 46 All., 235. (4) (1901) I.L.R., 24 All., 148.

Munshi *Kumuda Prasad*, for the applicant.

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The Crown was not represented.

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DALAL, J. :—One Neur Ahir was called upon by a Deputy Magistrate of Ghazipur under section 109 of the Code of Criminal Procedure to show cause why he should not be bound over under section 109 of the Code of Criminal Procedure to be of good behaviour for a certain period of time. After inquiry he was discharged under section 119 of the Code of Criminal Procedure. Subsequently the District Magistrate of Ghazipur took up the case in revision under section 436 of the same Code and directed further inquiry to be made in the case by another Deputy Magistrate. It is submitted here in revision that the District Magistrate had no jurisdiction to interfere. A District Magistrate is empowered to direct a subordinate Magistrate to make a further inquiry into the case of any person accused of an offence who has been discharged. It is argued here that Neur was not a person accused of an offence. In section 4(o) of the Criminal Procedure Code “offence” is defined as an act or omission made punishable by any law for the time being in force. The conduct of a person called upon to give security under part IV of the Criminal Procedure Code relating to the prevention of offences would consist of a number of acts or omissions and would not be described as one act or omission to come within the definition of “offence”. The act or omission further has to be punishable by any law for the time being in force. The word “punishable” is not defined in section 4 of the Criminal Procedure Code, where however it is indicated that words and expressions used therein and defined in the Indian Penal Code, and not thereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code. Referring to that Code for a definition of punishment, it appears that punishment is

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described in section 53 of the Indian Penal Code by an enumeration which, it may be taken, is considered exhaustive. The giving of security is not included in the list of punishments given in section 53.

This Court, in conflict with the opinion of some other High Courts, has held the opinion that under section 436 of the Criminal Procedure Code a District Magistrate had jurisdiction to revise the case of a person who had been called upon to give security and was discharged. *King-Emperor v. Fyaz-ud-din* (1) is one of a series of cases. In 1923, however, by Act No. XVIII of 1923 the provisions of section 436 of the Criminal Procedure Code have been amended and the words "any accused person" have been replaced by the words "any person accused of an offence." The editor of Sohoni's Criminal Procedure Code has not given it as his opinion that the law as it previously existed has been altered by the amendment. He has quoted conflicting authorities and made note of the disagreement between this Court and the Madras High Court. It appears, however, that when conflict of authority existed in 1923 the Legislature must have made the amendment with a view to removing the conflict and adopting one of the two conflicting views. For reasons given above I am of opinion that the view of law taken by the Madras High Court has been preferred: *Velu Tayi Ammal v. Chidambaravelu Pillai* (2). The learned CHIEF JUSTICE of this Court held the view in one case that the provisions of section 436 do not cover a discharge under section 119 of the Code of Criminal Procedure: *Emperor v. Roshan Singh* (3). It is true that in that case the law was not discussed, as the learned Government Pleader accepted the contention of the applicant in revision in that case. As, however, I am of the opinion that the law

(1) (1901) I.L.R., 24 All., 148.

(2) (1909) I.L.R., 33 Mad., 85.

(3) (1923) I.L.R., 46 All., 235.

has been altered to bring it in conformity with the view of the Madras High Court, that view should now be accepted by this Court. I direct that no further proceedings shall be taken against Neur Ahir and that the order of his discharge of the 11th June, 1928, be maintained.

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FULL BENCH.

Before Mr. Justice Boys, Mr. Justice Kendall and Mr. Justice King.

RAM SARAN DAS (DEFENDANT) v. BHAGWAT PRASAD
(PLAINTIFF) AND RAM SARUP (DEFENDANT).*

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March, 2.
June, 12.

Act (Local) No. XI of 1922 (Agra Pre-emption Act), sections 19, 20—Pre-emption—Vendee becoming co-sharer after suit and before decree—Defeatance of plaintiff's suit—Marginal notes to sections of Act—Authority thereof—Interpretation of statute.

Under the provisions of section 19 of the Agra Pre-emption Act, 1922, a defendant vendee can, by obtaining a gift to himself of a share in the mahal subsequent to the institution of the suit and prior to the passing of the decree, defeat the plaintiff's right to a decree for pre-emption.

Section 20 of the Act is not concerned with the effect of the acquisition of interest subsequent to the date of the suit, but applies only to such acquisition before the institution of the suit.

Marginal notes to sections of an Act can be referred to for the purpose of interpretation if they can be regarded as inserted by, or under the authority of, or assented to by the legislature.

The marginal notes to the sections of the Agra Pre-emption Act, 1922, are to be regarded as inserted in the Act with the assent and authority of the Legislative Council, and can be referred to for the purpose of interpreting the sections.

*Second Appeal No. 804 of 1926, from a decree of P. C. Plowden, Additional Judge of Meerut, dated the 2nd of March, 1926, confirming a decree of Ratan Lal, Munsif of Baghpat, dated the 21st of May, 1925.