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 ELECTRIC  
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 LTD.

*per se* a ground for winding up, but the cumulative effect of the facts stated above does demonstrate that the company is insolvent; that its affairs have been mis-managed from the very outset; that debts have been recklessly incurred and never paid; that the machinery requisite for uninterrupted supply of electricity has not been provided for; that the provisions of the Companies Act as regards the maintenance and publication of true balance sheets have been deliberately contravened, and the information necessary to keep the shareholders cognizant of the true state of affairs has been studiously concealed from them all through. I, therefore, hold that the petitioner is entitled to succeed. Accordingly I order that the company be compulsorily wound up.

### FULL BENCH

*Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Thom and Mr. Justice Rachpal Singh*

1936  
 September, 7

HARISH CHANDRA (APPLICANT) v. KAVINDRA NARAIN  
 SINHA AND OTHERS (OPPOSITE-PARTIES)\*

*Companies Act (VII of 1913), section 85(3)—Director acting in contravention of section and being liable to fine—Whether an "offence"—Court for trial of such offence—Whether High Court can take cognizance of and try such offence—Companies Act, section 3—Jurisdiction—Criminal Procedure Code, sections 29, 194—Letters Patent, clauses 16, 17—Original Criminal Jurisdiction.*

Contraventions of the provisions of the Companies Act which have been made punishable with fine, e.g. section 85(3), are "offences".

The High Court has no jurisdiction itself to take cognizance, in the first instance, of any such offence and to try it and impose the fines prescribed by the provisions of the Companies Act. If the case was committed to the High Court under section 194(1) of the Criminal Procedure Code, or proceedings were started on an application of the Advocate-General under section 194(2), or were transferred to it under section 526, then the High Court would have jurisdiction to try the

accused; but it would not have jurisdiction to try the accused merely on an application made under section 85 or any similar section of the Companies Act.

The jurisdiction of the High Court referred to in section 3(1) of the Companies Act is obviously the jurisdiction exercised by virtue of the specific provisions of the Act and not a jurisdiction which may be invoked where merely a criminal offence is declared. This section does not say that the High Court would be the court of first instance to try persons who are guilty of offences committed by breaches of the statutory provisions of the Act.

Section 29 of the Criminal Procedure Code merely empowers the High Court, when no court is mentioned for any offence under any law other than the Indian Penal Code, to try such offences. Reading it with section 5(2) of the Code, it is clear that section 29 does not intend that the High Court can take cognizance of the offence straight off and try the accused itself, without following the procedure laid down in the Code.

Clauses 16 and 17 of the Letters Patent also do not show that the High Court has any such original criminal jurisdiction.

Mr. *B. Malik*, for the applicant.

Dr. *K. N. Katju*, Messrs. *N. Upadhiya*, *A. Sanyal* and *Govind Das*, for the opposite parties.

SULAIMAN, C.J., THOM and RACHHPAL SINGH, JJ.:—  
In this case an application was filed purporting to be under section 85 of the Indian Companies Act making allegations against several directors of the Bharat Dharma Syndicate, Ltd., of Benares. The allegation *inter alia* was that the opposite party, who is one of the directors, had contravened the provisions of section 85 of the Indian Companies Act inasmuch as he had acted as a director without possessing qualification shares in accordance with article 56 of the Articles of Association. A question arose as to whether his prosecution could be ordered or whether he could be tried by the High Court. Accordingly the following questions have been referred to this Full Bench for answers:

(1) Are contraventions of the provisions of the Companies Act "offences"?

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(2) If so, has the High Court jurisdiction to take cognizance of and try such offences and to impose the fines prescribed by the provisions of the Act?

Section 85(3) of the Indian Companies Act, like numerous other sections of the Act, makes any unqualified person who acts as a director of a company "*liable to a fine* not exceeding Rs.50 for every day", etc. It is noteworthy that this section does not say that the court hearing an application can impose such a fine on the person, but merely declares that such a person shall be liable to a fine. Similar words have been used in other sections of the Act. There can be no doubt, therefore, that a contravention of the provisions of section 85 of the Companies Act is an offence which is punishable with fine. The answer to the first question referred to us must therefore be in the affirmative.

The second point referred to us raises the question as to whether the High Court has not only jurisdiction to try a person for an offence committed under any of the sections of the Indian Companies Act, but also whether the High Court can itself in the first instance take cognizance of the offence and try the accused and convict him and punish him. The learned advocate for the applicant has urged before us that the High Court is the Court which has been specifically mentioned in section 3 of the Indian Companies Act as being empowered to try such persons. But section 3(1) merely provides that the court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate. The jurisdiction of the High Court referred to in section 3 is obviously the jurisdiction exercised by virtue of the specific provisions of the Act and not a jurisdiction which may be invoked where merely a criminal offence is declared. It is very difficult to say that section 3 has specifically mentioned that the High Court would be the Court which should as a court of first instance try persons who have been guilty of an offence committed on

account of breaches of the provisions of the sections of the Act.

On behalf of the opposite party it was first suggested that section 278(1), which lays down that no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against the Act, shows that Magistrates are mentioned as courts which should try such offences. We are unable to accept this contention. All that section 278 lays down is that no court of a grade inferior to that of certain Magistrates shall have power to try such offences. It does not say that any particular Magistrate or the sessions court or the High Court shall try such offences. Sub-section (2) of that section refers to the Presidency towns of Calcutta, Madras and Bombay and has no application to this High Court. It therefore follows that the Indian Companies Act does not mention any particular court which would have jurisdiction to try offences under section 85 and other sections of the Act.

Great reliance has been placed by both the learned counsel on section 29 of the Code of Criminal Procedure. Mr. *Malik* has contended before us that under section 29(2) the High Court has been declared to be one of the courts which is to try such an offence and that there are no restrictions in it. On the other hand, Dr. *Katju* has contended that the High Court cannot take cognizance of such an offence, unless and until there has been a commitment to it.

It seems to us that there is absolutely no conflict between the provisions of section 5 and those of section 29 of the Code of Criminal Procedure. Section 29 merely empowers the High Court, when no court is mentioned for any offence under any law other than the Indian Penal Code, to try such offences. Section 5(2), on the other hand, lays down that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, etc. The mere fact that section 29 empowers the High

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Court to try such an offence does not show that the High Court can take cognizance of the offence straight off, try the accused and convict him and punish him without following the procedure laid down in the Code.

Indeed we are of opinion that there are elaborate rules of procedure laid down in the Code regulating the trial of accused persons, and it is imperative that they should be followed. Ordinarily under section 177 every offence is to be inquired into and tried by a court within the local limits of whose jurisdiction it was committed. Then a Magistrate is empowered to take cognizance of an offence under section 190. Section 193 lays down how a court of session can take cognizance of an offence when the accused has been committed to it by a Magistrate. Section 194(1) then provides that the High Court may take cognizance of any offence upon a commitment made to it in the manner hereinafter provided. The word "may" has obviously been used to give to the High Court a discretion to take cognizance of such an offence when a commitment has been made to it or to direct that a commitment may be made to the sessions court. It does not imply that the High Court can, without any commitment made to it, take cognizance of an offence straight off. The reason why the language of section 193 has not been reproduced in section 194 is that there is another method by which the High Court can take proceedings, namely on an application made by the Advocate-General.

There would be considerable difficulties if we were to lay down that an application of this kind can be filed in the High Court and the accused person tried straight off here. In the first place, the High Court ordinarily tries accused persons with the aid of a jury, though in certain other cases the procedure may be different. In the next place, an accused person is entitled to a right of appeal when he has been convicted and punished and a large fine imposed upon him. If he is convicted by a Judge of this Court there would be no further appeal.

Clauses 16 and 17 of the Letters Patent also do not show that the High Court has any such original jurisdiction as is suggested on behalf of the applicant. We are, therefore, of opinion that the application made to this Court has been misconceived. It was not a case of the winding up of a company where in the course of the inquiry the company Judge came to the conclusion that an offence has been committed, in which event he may order an inquiry under section 237 of the Indian Companies Act. The matter is not pending before the High Court at all and the Court has been moved for the first time by the applicant. We therefore think that if the case were committed to the High Court under section 194(1) of the Criminal Procedure Code or proceedings were started on an application of the Advocate-General under section 194(2) or were transferred to it under section 526 of the Criminal Procedure Code, then the High Court would have jurisdiction to try the accused; but that it would not have jurisdiction to try the accused merely on an application made under section 85 of the Indian Companies Act.

The answer to the second question referred to us is therefore in the negative.

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### APPELLATE CIVIL

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Bennet*

CHHOTAY LAL (PLAINTIFF) *v.* SUDARSHAN LAL AND  
ANOTHER (DEFENDANTS)\*

1936  
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*Benefit conferred on another's estate—Payment of money due by another person—Re-imbusement—Same property sold successively to two vendees—Vendee under invalid sale paying off mortgage on the property—Suit for possession by lawful vendee—Whether the discharged mortgage can be held up as a shield—Transfer of Property Act (IV of 1882),*

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\*Appeal No. 24 of 1935, under section 10 of the Letters Patent.

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