

this matter. The remaining arguments were directed to questions of fact. I see no reason to interfere thereon. I, therefore, dismiss this application with costs.

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*Application dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan.*

S. C. MITRA (PETITIONER) v. RAJA KALI CHARAN AND OTHERS (OPPOSITE-PARTY).\*

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ber, 21.

*Criminal Procedure Code (Act V of 1898), sections 439, 423 and 561A—Criminal proceedings in a subordinate court, whether constitute process of court—Process of court, abuse of—“Quashing of proceedings”, meaning of—Chief Court, whether a High Court—Companies Act (VII of 1913), sections 235 and 237—Liquidator not complying with order of court and filing criminal complaint against certain officers of the company—High Court’s power to quash proceedings.*

Criminal proceedings in a subordinate court constitute process of the court, and if the High Court comes to the conclusion that the process is being abused, the new section 561A introduced by the Code of Criminal Procedure Amendment Act, 1923, invests the court with the jurisdiction of passing an order to set aside those proceedings so as to prevent the abuse. But though the jurisdiction exists and is wide in its scope it is a rule of practice that it will only be exercised in exceptional cases.

The Chief Court of Oudh being expressly included in the definition of a High Court in clause (j) of section 4 of the Code of Criminal Procedure has, in the exercise of its powers conferred by section 439, read with section 423 sub-section 1, clause (c) Criminal Procedure Code, jurisdiction to quash criminal proceedings pending in the court of a Magistrate. Quashing of proceedings is a term of compendious connotations, and the practical result is the setting aside or refusal of the order initiating the proceedings.

\* Commercial Case No. 14 of 1927 (Miscellaneous applications Nos. 555, 562, 629 and 639 of 1927).

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Where an official liquidator applied under section 235 of the Indian Companies Act for the examination of certain officers of the company and for ordering them to make good the sum misappropriated or misapplied by them, and he was ordered to state particulars of charge against each of such persons, but instead of complying with the order of the court and allowing the law to take its normal course, the official liquidator instituted a criminal complaint charging them with offences punishable under sections 102B, 409 and 420, Indian Penal Code, the conduct of the official liquidator in disregarding the order of the court and making the criminal complaint during the pendency of the proceedings in the court was a clear attempt to divest the court of its jurisdiction possessed under section 237 of the Indian Companies Act. Such a case was exceptional in its nature and justified the exercise by the High Court of its jurisdiction of quashing the proceedings. *Nripendra Bhusan Roy v. Gobunda Bandhu Majumdar* (1), *Emperor v. E. H. Parakh* (2) and *In re London and Globe Finance Corporation, Limited* (3), referred to.

Mr. *E. A. Labanti* in person.

Mr. *S. D. Saksena*, with Mr. *Harish Chandra*, pleader, who appears for Brij Bahadur Srivastava, Mahedhar Sharma and Radhe Saran also.

Mr. *Ghulam Hasan*, for Balgobind and Jagmohar Lal.

Mr. *H. N. Misra*, for Jai Lal.

Mr. *S. N. Roy*, for Mr. S. C. Mitra, Liquidator.

Mr. *K. C. Bhalla*, in person.

Mr. *J. Jackson*, for Captain Cursetji.

HASAN, J. :—Madho Narain Shukla, Brij Bahadur Sajjad Husain, Cursetji, Swami Dayal Saksena and Mahedhar Sharma have made applications in writing to this Court, and during the progress of the hearing of those applications the following persons also appeared and made oral applications :—

(1) Jai Lal,

(2) E. A. Labanti,

(1) (1924) 25 Cr. L. J., 1258.

(2) (1926) I.L.R., 1 Luck., 133.

(3) (1903) 1 Ch. D., 728.

- (3) Brijmohan Lal,
- (4) Balgobind,
- (5) Jiwan Nath Hukla,
- (6) Puran Chand Kapur,
- (7) K. C. Bhalla,
- (8) Chaudhri Ram Narain,
- (9) Jagmohan Lal,
- (10) Radhe Saran, and
- (11) Lal Bahadur.

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The prayer of these applications, both in writing and oral, invokes the jurisdiction of the court with which it is vested under the provisions of sections 439 and 561A of the Code of Criminal Procedure, 1908. The basic foundation is proceedings under the Indian Companies Act, 1913, taken by me in the matter of the liquidation of the United India Industrial Trust, Limited. The applications have, therefore, been entrusted to me by the Hon'ble the CHIEF JUDGE for disposal.

On the 8th of March, 1927, Mr. S. C. Mitra, who was appointed official liquidator of the company mentioned above under the order, dated the 30th of September, 1924 of the late court of the Judicial Commissioner of Oudh, presented a complaint to the District Magistrate of Lucknow, charging the persons mentioned above and Sri Krishna, P. D. Gour, Madan Mohan Lal Bhatnagar and Chandra Bhan Shukla with offences punishable under sections 120B, 409 and 420 of the Indian Penal Code. The learned District Magistrate thereupon transferred the complaint to the court of the City Magistrate of Lucknow for trial. The applicants are accordingly being prosecuted in the court of the City Magistrate for the offences just now mentioned. Except some evidence under section 202 of the Code of Criminal

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Procedure no evidence has so far been recorded in the Magistrate's court mainly for the reason that the proceedings therein were stayed by an *ad interim* order of this Court.

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The substance of the prayer of these applicants is that the criminal proceedings pending against them in the court of the City Magistrate be quashed. I have no doubt that this Court has jurisdiction to quash the proceedings in the exercise of its powers conferred by section 439 of the Code of Criminal Procedure. I was entertained at the Bar with the argument that the Code of Criminal Procedure does not provide for any "quashing of proceedings" of a subordinate court by the High Court. The argument, it seems to me, is a piece of pure pedantry. The word "quash" is not a banned word—see sections 215 and 232 of the Code of Criminal Procedure. "Quashing of proceedings" is a term of compendious connotation, and the practical result is the setting aside or reversal of the order initiating the proceedings. The power of so doing is clearly vested in the High Court under section 439, read with clause (c) of sub-section (1) of section 423 of the Code of Criminal Procedure. Section 439 in term says that the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by section 423. Clause (c) mentioned above is as follows:—

"in an appeal from any other order, alter or reverse such order."

The power under clause (c), therefore, is the power of altering or reversing an order. Clause (d) also gives jurisdiction to make any consequential or incidental order that may be just or proper.

The Code of Criminal Procedure, 1898, has recently been amended by section 156 of the Code of Criminal Procedure Amendment Act, 1923. This amendment has

introduced a new section in the Code. Section 561A is the new section, and is as follows:—

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561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or prevent abuse of the process of any court or otherwise to secure the ends of justice."

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The language of the new section is wide and comprehensive. According to that section the High Court has inherent jurisdiction to make an order as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. There can be no doubt that criminal proceedings in a subordinate court constitute process of the court, and if the High Court comes to the conclusion that the process is being abused the new law invests the court with the jurisdiction of passing an order to set aside those proceedings so as to prevent the abuse. Reference in this connection may be made to a decision of three Judges in *Nripendra Bhushan Ray v. Gobunda Bandhu Majumdar* (1). This Court has never been driven off that jurisdiction and has frequently exercised it. The case of *Emperor v. E. H. Parakh* (2) decided by the Hon'ble SIR LOUIS STUART, C. J., is a recent illustration.

Having reached to the conclusion that the High Court has jurisdiction, it follows that any single Judge of this Court can exercise the said jurisdiction. "High Court" according to the definition in clause (j) of section 4 of the Code of Criminal Procedure, 1898, means the highest court of criminal appeal or revision for any local area. According to section 9 of the Oudh Courts Act, 1925, the Chief Court shall be the highest court of crimi-

(1) (1924) 25 Cr. L. J., 1258.

(2) (1926) I.L.R., 1 Luck., 153.

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nal appeal and revision, and according to section 10 of the same Act the jurisdiction of the Chief Court may be exercised by a single Judge of the court. Besides this, the Chief Court of Oudh is expressly included in the definition of a "High Court" in clause (j) of section 4 of the Code of Criminal Procedure.

The limits of the jurisdiction are very wide indeed as the language employed by the Legislature in enacting sections 439 and 561A of the Code of Criminal Procedure shows; but though the jurisdiction exists and is wide in its scope, it is a rule of practice that it will only be exercised in exceptional cases. I have come to the conclusion that the case before me is exceptional in its nature, and that I should exercise my jurisdiction in respect thereof.

The circumstances are as follows:—

The United India Industrial Trust, Limited, was put under compulsory liquidation under an order, dated the 30th of September, 1924, of the late court of the Judicial Commissioner of Oudh, and, as already stated, Mr. S. C. Mitra was appointed official liquidator. Among other things, the "official liquidator shall have power, with the sanction of the court to institute any criminal prosecution in the name and on behalf of the company"—(section 179 of the Indian Companies Act, 1913). One of the arguments in the case is that the official liquidator, not having obtained the sanction of the court, has acted *ultra vires* of his powers in instituting criminal prosecution mentioned above. In reply to this argument, the official liquidator shows an order of the 18th of November, 1924, of the late court of the Judicial Commissioner of Oudh granting him sanction to institute a criminal prosecution. It is contended on behalf of the applicants that the sanction purporting to have been granted by the order of the 18th of November,

1924, is not enough in law, and that it should be specific as to the charge for and as to the person against whom it is granted.

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Having regard to the opinion which I have formed as to the merits of the case after protracted hearing and prolonged consideration, I do not think it is necessary to decide this pure question of law, and I decline to do so. The fact remains that the sanction which the official liquidator obtained under the order of the 18th of November, 1924, was not availed of until after circumstances, grave in their character and which have a serious bearing on the case, had come to happen as I shall presently state.

On the 3rd of January, 1925, the official liquidator through his Counsel, Mr. S. N. Roy, made an application under section 196 of the Indian Companies Act, 1913, for the public examination of 11 persons connected with the company under liquidation. Their names are as follows:—

- (1) P. D. Gour,
- (2) Sri Krishna,
- (3) E. A. Labanti,
- (4) Balgobind,
- (5) J. N. Mukerji,
- (6) Ram Narain,
- (7) Jai Lal,
- (8) K. C. Bhalla,
- (9) N. K. Shavakshaw,
- (10) Puran Chand, and
- (11) K. S. Sajjad Husain.

On the 11th of February, 1925, a Bench of the late court of the Judicial Commissioner of Oudh consisting of Mr. (now Mr. Justice) DALAL and myself passed an order that the official liquidator should file a list of questions which he desires to be answered by the persons

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mentioned in his application. When those questions are placed before the court then the court shall decide whether they should be served on those persons, or whether they should be summoned to appear in court for open examination. One month's time was allowed to the liquidator to comply with this order. Afterwards the time was extended on several occasions. Finally on the 16th of September, 1925, I ordered issue of summonses for public examination under section 196 of the Indian Companies Act, 1913, to the following persons :—

- (1) P. D. Gour,
- (2) Shri Krishna,
- (3) E. A. Labanti,
- (4) Balgobind,
- (5) K. C. Bhalla, and
- (6) N. K. Shavakshaw.

In pursuance of the above order E. A. Labanti, Balgobind and one other person, with whom we are not concerned, were examined in open court on the 25th of January, 1926. On the 16th of September, 1926, the official liquidator made another application. In this application he repeated the prayer for summonses for public examination of certain officers of the company, and also "that the opposite parties or such of them as may be found to be liable for having misappropriated or misapplied the funds of the company be ordered to make good the sums misappropriated or misapplied by them." This last-mentioned prayer was in accordance with the provisions of section 235 of the Indian Companies Act. On the 28th of September, 1926, the order made by the court on the application just now mentioned was as follows :—

"I order the liquidator to state particulars of charge under section 235 of the Indian Companies Act as against each of such



persons and to support that statement by an affidavit. Until this is not done I decline to issue summonses. Fifteen days' time is allowed for this purpose."

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The time granted under this order was subsequently extended on the application of the official liquidator. In spite of this, the order was never complied with. Had it been complied with, the procedure according to the provisions of the Indian Companies Act would have been the institution of proceedings under section 235, and on the determination of those proceedings the court would then have proceeded under section 237 of the Indian Companies Act to inquire as to whether "any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible." In the event of the inquiry yielding result in the affirmative the court would have directed "the official liquidator to prosecute for the offence." Instead of complying with the order of the court and allowing the law to take its normal course the official liquidator institutes the criminal complaint mentioned above.

*Hasan, J.*

The file of the criminal case is before me. It shows no trace of any intimation having been conveyed to the District Magistrate of the fact that proceedings under section 235 of the Indian Companies Act which may result in criminal prosecution under section 237 of the same Act were pending in this Court. The official liquidator and his Counsel both stated before me that no such information was given to the District Magistrate. I am convinced that had this information been given to the District Magistrate he would certainly have awaited the result of the impending inquiry in proceedings before this Court. Be that as it may, the conduct of the official liquidator in disregarding the order of the 28th of Sep-

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tember, 1926, and making the criminal complaint during the pendency of the proceedings in this Court is a clear attempt to divest this Court of its jurisdiction possessed under section 237 of the Indian Companies Act. For reasons of public policy, the High Court cannot permit such an attempt to succeed.

This, therefore, reveals the exceptional nature of this case.

The principle upon which I propose to act in this case was enunciated by BUCKLEY, J. (afterwards Lord Justice BUCKLEY) *In re London and Globe Finance Corporation, Limited* (1). That was a converse case where the Crown had refused to institute a criminal prosecution and BUCKLEY, J. proceeded to act under section 167 of the Companies Act, 1862 (25 and 26 Vict., c. 89), (this section is the same as section 237 of the Indian Companies Act, 1913); and ordered the official receiver to institute a criminal prosecution. He said: "Under these circumstances it seems to me that I ought not to allow my judgment to be influenced even by the fact that the highest authority at the Bar, and the first law officer of the Crown, has thought proper to decline to put the public prosecutor in motion. I must accept the responsibility of determining the question before me for myself."

Therefore I have heard arguments on the merits of the case of these applicants for five days. Documentary evidence in possession of the liquidator and in possession of the several applicants was read to me in the course of the arguments. On behalf of the official liquidator, statements of witnesses whom he proposes to produce in support of the criminal prosecution were also read, and the conclusion at which I have arrived will now be stated.

(1) (1903) I. Ch., D., 728.

Having regard to the criminal prosecution now pending in the court of the City Magistrate of Lucknow, it will not be in the interest of justice that I should state my reasons for quashing this prosecution in favour of some and allowing it to continue as against others, but this is the conclusion at which I have reached. I accordingly quash or set aside the pending prosecution against the following persons :—

- (1) K. S. Sajjad Husain,
- (2) Cursetji,
- (3) Ram Narain,
- (4) Madho Narain Shukla,
- (5) Swami Dayal Saksena,
- (6) Mahedhar Sharma,
- (7) Lal Bahadur Mathur, and
- (8) Jiwan Nath Hukku.

I further direct that the said criminal prosecution shall proceed in accordance with law against the following persons :—

- (1) Shri Krishna,
- (2) Balgobind Rastogi,
- (3) E. A. Labanti,
- (4) Jagmohan Lal Rastogi,
- (5) Jai Lal,
- (6) P. D. Gour,
- (7) K. C. Bhalla,
- (8) Brij Bahadur Srivastava,
- (9) Brij Mohan Lal,
- (10) Chandra Bhan Shukla,
- (11) Puran Chand,
- (12) Madan Mohan Lal Bhatnagar, and
- (13) Radhe Saran Agarwal.

This order should at once be communicated to the City Magistrate, Lucknow, for compliance.

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