

MISCELLANEOUS CRIMINAL.

Before Bhide J.

1938
July 12.

IN THE MATTER OF INSTRUCTIONS IN THE
NATURE OF A *HABEAS CORPUS* AND OF
HAKIM, SON OF WASAN.

Criminal Miscellaneous No. 193 of 1938.

Co-operative Societies Act (II of 1912), S. 42 (3) — Rule 26 (e) of the Rules framed by the Provincial Government under the Act — Liquidator appointed under the Act — Summoning a debtor and asking him to furnish security for his appearance — Sentencing him to imprisonment or fine on his failure to do so — Order passed by him whether intra vires.

The petitioner, a debtor of the Co-operative Society under liquidation, was summoned by the Liquidator appointed under the Co-operative Societies Act and asked to furnish security for his appearance, and on his failure to do so, was sentenced to one month's imprisonment and a fine of Rs.200.

Held, that the powers given to the Liquidator under s. 42 (3) of the Co-operative Societies Act for summoning and enforcing the attendance of witnesses and to compel the production of documents as provided in s. 32 of the Code of Civil Procedure, are restricted by rule 26 (e) framed by the Punjab Government under the Act. And all that the Liquidator can do is to issue a summons or, if necessary, a warrant to a person who is required to attend or produce documents; therefore the Liquidator had no power either to ask for security or to impose a sentence of imprisonment or fine for the petitioner's failure to furnish security and the sentence passed on the petitioner was *ultra vires*.

Application of Hakim, son of Wasan, under section 491 of the Code of Criminal Procedure, praying for issue of directions in the nature of a habeas corpus and for orders that the petitioner be set at liberty forthwith.

M. M. ASLAM KHAN, for Petitioner.

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KHURSHAID ZAMAN for Advocate General, for Respondent.

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BHIDE J.—This is a petition under section 491, Criminal Procedure Code, by one Hakim, son of Wasan, who was sentenced to one month's imprisonment and a fine of Rs.200 by *Sardar Sant Singh Cheema*, a liquidator, appointed under the Co-operative Societies Act.

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It appears that the petitioner, who is a debtor of the Society under liquidation was summoned by the liquidator and asked to furnish security for his appearance, but the petitioner being unable to do so, was sentenced as above.

It is contended on behalf of the petitioner that *Sardar Sant Singh* had no power to sentence the petitioner to imprisonment or fine as he did and the order passed by him is wholly *ultra vires* and illegal. On behalf of the Crown attempt was made to support the order under the provisions of Section 42 (3) of the Co-operative Societies Act, which runs as follows:—

“ Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section have power to summon and enforce the attendance of witnesses and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.”

It will appear from the above that the above subsection gives the same power to the liquidator to enforce attendance of witnesses or production of documents as is given under the Civil Procedure Code.

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but that power is subject to the rules framed under the Act. The Provincial Government has framed rules under the Act and the relevant rule in connection with the powers of the liquidator in this respect is sub-rule (e) of Rule No. 26, which runs as follows :—

“ The liquidator may issue a summons to any person whose attendance is required either to give evidence or to produce documents. He may compel the attendance of any person to whom a summons is issued and for that purpose issue a warrant for his arrest through the civil court exercising jurisdiction in the area in which the society operates.”

(*Vide* Rules published under Punjab Government Notification No. 13819, dated 23rd June, 1917, as amended).

The learned counsel for the petitioner has contended that the above rules restrict the powers given by sub-section 3 of section 42 of the Co-operative Societies Act and all that a liquidator appointed under the Co-operative Societies Act can do is to issue a summons or if necessary a warrant to a person who is required to attend or produce documents. The learned counsel for the Crown relied on the powers given to a Civil Court by section 32 of the Civil Procedure Code. Even these powers do not seem to authorise a sentence of imprisonment. All that is permitted by that section is committal to civil prison, pending examination of the witness or furnishing of the security for attendance or production of documents as the case may be. But apart from this, it seems to me that Rule 26 (e) quoted above does restrict the powers given by section 32. For, if this were not the intention, it would not have been necessary to frame any rule authorising the liquidator to issue a summons or a warrant of arrest only—that

power having been already given by section 32. Evidently the intention was to restrict the powers of the liquidators to those given in the sub-rule. This view receives some support from the commentary on sub-section 3 of section 42 in Calvert's Law relating to Co-operative Societies in India (see Fourth Edition, page 176).

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It is not clear from the record, whether the petitioner was summoned as a debtor of the society or as a witness. But in whatever capacity he may have been summoned, it seems to me that in view of Rule 26 (e) cited above the liquidator had no power either to ask for security or to impose a sentence of imprisonment or fine for the petitioner's failure to furnish security. I accordingly hold that the sentence passed on the petitioner was *ultra vires* and direct him to be set at liberty forthwith.

Under section 439, Criminal Procedure Code, I also set aside the sentence of fine which was also illegal.

The petitioner is already on bail. He is released from the bail bond.

A. N. K.

Petition accepted.