

in this Court. No order as to costs of the cross-objections.

The order passed by the lower Court appointing a receiver shall continue.

ABDUL RASHID J.—I agree.

A. K. C.

*Appeal and cross-objections
partly accepted.*

APPELLATE CRIMINAL.

Before Young C. J. and Sale J.

MOHAMMAD TAHIR—Appellant.

versus

THE CROWN, THROUGH SPECIAL OFFICIAL
RECEIVER, LAHORE,—Respondent.

Criminal Appeal No. 725 of 1940.

Criminal Procedure Code (Act V of 1898), S. 476 — Prosecution ordered by Court under S. 476 — Without preliminary enquiry — Legality of.

Held, that according to s. 476 of the Code of Criminal Procedure, a preliminary enquiry is not essential in law and the proceedings under that section without such enquiry are not illegal.

Imam Ali v. Emperor (1), referred to.

Appeal from the order of Mr. Justice Monroe, Liquidation Judge, High Court, Lahore, dated 10th May, 1940, sanctioning prosecution under section 476, Criminal Procedure Code.

JOWALA PARSHAD, for Appellant.

NAZIR AHMAD, Special Official Receiver and
R. L. ANAND, for Respondent.

1940

GHULAM
MOHAMMAD

v.

RAJESHWAR.

TEK CHAND J.

ABDUL
RASHID J.

1940

June 10.

1940

MOHAMMAD
TAHIR
v.
THE CROWN,
THROUGH
SPECIAL
OFFICIAL
RECEIVER,
LAHORE.

The judgment of the Court was delivered by—

YOUNG C. J.—This is an appeal from the order of Mr. Justice Monroe ordering the prosecution of K. S. Saadat Ali Khan and Mohammad Tahir under sections 192, 193, 465, 471 and 477, Indian Penal Code. *Rai Bahadur Jowala Parshad* appears for Mohammad Tahir and *Khwaja Feroze-ud-Din* appears for *Khan Sahib Saadat Ali Khan*.

It appears that the Kanwal Movietone Co., Ltd., was ordered to be wound up by the Court. In proceedings under section 195 of the Indian Companies Act, evidence was led before the learned Company Judge that these two officers of the Company had forged a resolution appearing in the minute book of the Directors. The original resolution was to the effect that the Managing Agent, that is, Mohammad Tahir, could accept advances from *the share-holders only* at six per cent per annum. It is alleged that in order to support a claim for Rs.20,000 on behalf of Mohammad Tahir's firm, namely, the Soho House Ltd., the words "*or their firms*" were inserted in this resolution after the words "shareholders". In addition to the documents in the case, there was before the learned Company Judge the evidence of K. S. Saadat Ali Khan himself taken before the Official Liquidator of the Company to the effect that the resolution originally dealt only with 'shareholders' and not with 'their firms'. There was other evidence also, and on this evidence the learned Company Judge thought fit to act under section 476 of the Criminal Procedure Code.

In the grounds of appeal it is alleged that the learned Company Judge was not a Court within the meaning of section 476. In our opinion there is no

force in this ground and counsel on behalf of Mohammad Tahir or K. S. Saadat Ali Khan has not pressed this ground of appeal.

It was next argued that the learned Company Judge should have ordered a preliminary enquiry before making an order under section 476. The terms of section 476, however, are perfectly clear. The relevant words are "such Court may, after such preliminary inquiry, if any, as it thinks necessary". It is quite clear from the words of the section itself that the Court need not order a preliminary enquiry if it does not think it necessary to do so. Counsel for the appellants relied on the authority reported as *Imam Ali v. Emperor* (1), a decision by Mr. Justice Sulaiman, in which he says an enquiry under the circumstances of that particular case might be desirable. There is no authority which lays down that a proper construction of this section makes an enquiry essential in law, and that the proceedings under section 476 without such enquiry would be illegal. In our opinion, any such decision would be impossible in view of the clear wording of the section itself. We therefore find there is no force in this argument. Further, we do say in this case that we agree with the learned Company Judge that the material on which he ordered the prosecution was ample to establish a *prima facie* case and that we also agree with him that in the circumstances of this case a preliminary enquiry was not necessary.

As regards the case of Mohammad Tahir, therefore, we find that the action of the learned Company Judge was entirely proper and justified and we dismiss his appeal.

1940

MOHAMMAD
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SPECIAL
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With regard to *K. S. Saadat Ali Khan*, it is argued by counsel on his behalf that he had no interest whatever in the Soho House Ltd., or in their claim and that he was probably deceived into initialling this alteration by his relative Mohammad Tahir who benefited by the alteration. Counsel asks that his client should appear before this Court and be allowed to explain his action in initialling this alteration. We are influenced by the fact that *K. S. Saadat Ali Khan* on the face of it obtained no benefit by this alteration. We therefore allow the prayer of his counsel and give an opportunity to *K. S. Saadat Khan* to appear before this court on Monday the 1st July, 1940 at 10 o'clock in the morning. His appeal is kept pending meanwhile. The proceedings against *K. S. Saadat Ali Khan* will in the meantime be stayed.

A. K. C.
