

CRIMINAL REVISION.

Before Sir Lallubhai Shah, Kt., Ag. Chief Justice, and Mr. Justice Crump.

In re P. D. SHAMDASANI^c.

1923.

October 18.

Indian Companies Act (VII of 1913), section 136, Third Schedule—Limited banking company—Publication of statements.

Under the Indian Companies Act, a limited banking company is under an obligation to publish the statement prescribed in the Third Schedule on the dates mentioned in section 136, sub-section 1. A company cannot excuse itself for delay in publication on the ground that the closing date of its financial year had changed.

THIS was an application in revision against an order passed by G. R. Khairaz, Acting Third Presidency Magistrate of Bombay.

The respondent bank, the Union Bank of India, Limited, was registered under the Indian Companies Act under section 136 of the Act. The bank was under a statutory obligation to prepare statement of its assets and liabilities as on December 31, 1921, and to publish it on February 6, 1922. The bank failed to do so. It, however, prepared the statement as on March 31, 1922 and published it on May 5, 1922. The delay was explained by the fact that the bank's annual accounts were made up on March 31, every year.

The applicant, a share-holder, in the bank, lodged an information against the bank under section 136 of the Indian Companies Act; but the Magistrate dismissed the complaint on the ground that there was no case for process.

The applicant applied to the High Court.

The applicant in person.

Kanga, Advocate General, with *Kemp* and *B. J. Desai* instructed by *Captain & Vaidya*, for the bank.

^cCriminal Application for Revision No. 252 of 1923.

1923.

SHAMDASANI,
In re.

S. S. Patkar, Government Pleader, with *A. Kirke Smith*, acting Public Prosecutor, for the Crown.

SHAH, AG. C. J. :—This application arises out of the information filed by the present petitioner in the Court of the Third Presidency Magistrate in respect of a default said to have been committed by the Union Bank of India, Limited, and by their Managing Director and Agent under section 136 of the Indian Companies Act. The default alleged was that in accordance with the requirements of section 136, sub-section (1), this limited Banking Company failed to publish a statement on the first Monday in February 1922, on the first Monday in August 1922, and on the first Monday in February 1923. The learned Presidency Magistrate after hearing the parties made this order :—
“There is no case for process. Complaint dismissed under section 203, Criminal Procedure Code.”

The present application is made by the original complainant for a revision of this order praying for a further inquiry. We have heard the parties in connection with the point arising in this application. The learned Government Pleader for the Crown contends that the order of the Magistrate is wrong, but he informs the Court that under the circumstances he is instructed not to press for any further inquiry into this matter. The learned counsel for the opponents, the Company and its officers is unable to satisfy us that the provisions of section 136 have been complied with. The explanation offered is that as there was a change in their financial year, in the sense that in 1922 the financial year ended on March 31, 1922, they put up a statement as required by section 136 on the first Monday in May 1922, on the first Monday in November 1922, and then lastly, on June 5, 1923. It is conceded, however, by the counsel on behalf of his

clients, and quite properly conceded, that it is not possible to justify this kind of departure from the provisions of section 136, whatever be the good faith of the officers of the Company in acting upon the view that a change in their financial year as indicated above would justify their action. The words of section 136 are clear, and the only complaint in the present case is that at the proper dates indicated in that section these statements had not been put up. There is no complaint that the statements as put up do not otherwise satisfy the requirements of that section. We are wholly unable to appreciate the reasons which led the Magistrate to make the order. In fact there is no defence to this information, and we cannot understand how this complaint could have been dismissed under section 203, Criminal Procedure Code, or how it could be said that there was no case for process. It is quite clear that the Company and their officers have rendered themselves liable to the penalty provided in sub-section (4) of section 136 of the Act. This is the first case of its kind brought to our notice; and having regard to the facts stated on behalf of the Company, to the fair attitude taken up on behalf of the Company and its officers and to the fact that the Crown has not pressed for any further orders, we think that it will be sufficient, under the circumstances of this case, to note that the Company and its officers have been guilty of a default under section 136 of the Indian Companies Act and have rendered themselves liable to be dealt with under section 136, sub-section (4). Beyond this we do not consider it essential, under the special circumstances of this case, to make any further order.

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Order accordingly.

R. R.