

CALCUTTA HIGH COURT

Mrityunjoy Chakravartti

Vs.

Provat Kumar Pal

Criminal Revn. No. 509 of 1951

(Roxburgh, J.)

12.07.1951

JUDGMENT

Roxburgh, J.

1. This is a Rule against an order of Mr. A. Mukherjee, Magistrate, First Class, Nadia, rejecting a contention by an accused, who has been prosecuted under Section 409, Penal Code, that, as the provisions of Section 237, Companies Act, had not been observed, the complaint by the liquidator was not valid and the complaint should be dismissed.

2. This matter was before me on a previous occasion. A complaint had then been filed by, another person, and an objection had been taken to his complaint. On that occasion I found it not necessary to pass any specific order, as it was stated that there would be no difficulty in getting a complaint filed by the Official Liquidator of the Bank in question, namely, the Bengal Bank Ltd., who had been appointed after the order of winding up had been passed. The present complaint, therefore, was filed by the Official Liquidator who has been given by the Court general power under Section 179, Companies Act, by an order, dated 16.1.1951. The power includes power "to institute any suit or prosecution or other legal proceeding civil or criminal in the name and on behalf of the said Bank."

3. It is contended that this power relates only to prosecution of what may be called outsiders, and that Section 237, Companies Act, relates to offences committed by officers of the Bank. It is further contended that under Section 237, no prosecution can be made unless the court has given a direction, for one to be started. In my opinion, this contention is not valid. I cannot, however, agree with the view expressed by the learned Magistrate, which is to the effect that Section 237 relates only to offences punishable under the Indian Companies Act.

4. In my opinion, the power that can be given under Section 179, and apparently the power given

in the present case, is unlimited, and covers all prosecutions which might have been conducted by the Bank before winding up. The Official Liquidator has been invested with the powers which were the powers of the Bank before the winding up. He can now institute proceedings in the name of and on behalf of the Bank. A court might pass a restricted order and say that such prosecutions should only be instituted after explicit sanction had been given in each case, or the court might limit the power given under Section 179, to the prosecutions of all persons other than managers and directors of the Bank. The discretion as to what powers are to be given to the Official Liquidator is entirely with the court. If the court, as in the present case, gives an unrestricted power under that section, then, in my opinion, the liquidator is entitled, without any further reference to the court, to institute any prosecution such as the present. I may add that if any person is of opinion that the action of the liquidator is not proper, there is nothing to prevent him from moving the court which has control over the acts of the liquidator and having a suitable order made by the court in the matter. This appears to be provided for in Section 183(5), of the Act. I would point out further that neither in Section 179, nor in Section 237, is there anything to indicate that if the liquidator takes action without a direction of the Court, this action would be in any way illegal or invalid. It might mean, however, that any costs incurred in such a proceeding might have to be paid by the liquidator personally. At any rate, neither Section in express terms limits the liquidator's power which he has in common with any other citizen, to file in court a complaint that another person has committed a criminal offence. Whether a Court should on its discretion take cognizance in such a case is another matter.

5. A similar view with regard to the effect of Sections 237 and 179 was taken in the case of - *'Emperor v. Bishan Sahai Vidyarathi'*¹,

6. The result is that this Rule is discharged.

Rule discharged.

¹ ILR 1937 All 779