

# CALCUTTA HIGH COURT

Sailendra Nath Sinha

Vs.

State

Criminal Revn. No. 1055 of 1954

(Guha Ray and Sen, JJ.)

31.01.1955

## JUDGMENT

### **Guha Ray, J.**

1. This Rule was obtained by two petitioners, the first of whom was one of the Directors and the second the Managing Director of the Bank of Commerce Ltd., Calcutta, against an order dismissing their prayer for staying criminal proceedings pending against them under Sections 406, 467 and 477, Penal Code, in the Court of a Presidency Magistrate and also against an order directing their specimen writings to be taken.

2. It appears that the criminal proceedings against these petitioners were started on a complaint filed by the Official Liquidator with the permission of the Company Judge of the High Court. Thereafter, there was an appeal from the order of the Company Judge which gave sanction to the Official Liquidator and the proceedings were held up. When that appeal was disposed of, the proceedings began once again. There was another prayer for stay on grounds, first, that the proceedings under Section 237, Companies Act, were pending against these petitioners and second that they have obtained special leave to appeal to the Supreme Court from the order of this Court in the appeal from the order of the Company Judge permitting the prosecution of these petitioners. The mere fact that proceedings are pending under Section 237 of the Companies Act is no argument for staying the criminal proceedings.

3. Mr. Banerjee refers to Sections 45 (L) and 45(G), sub-sections 6 and 8 of the Banking Companies Amendment Act and argues that these petitioners are liable to be examined publicly in these proceedings. Mr. Sen on behalf of the State replies that no proceedings are pending against them under Sections 45 (L) and 45(G) of the Banking Companies Amendment Act and the proceedings pending against them are under Section 237, Companies Act and they are not liable to public examination in these proceedings. Even if it be assumed For the sake of argument that these petitioners are liable to public examination in these proceedings and that the record of that public examination can be used as evidence against them that is really no argument for staying the criminal proceedings for that might be an argument for staying the proceedings under Section 237, Companies Act. The further fact that the petitioners have obtained special leave to

appeal to the Supreme Court from the order of this Court in the appeal from the order of the Company Judge is also no ground for staying the criminal proceedings which have been already delayed for more than a couple of years. The learned Magistrate was therefore fully justified in refusing to stay the criminal proceedings any further.

4. The other order against which this Rule is directed is, as already stated, the order directing specimen writings of these two petitioners to be taken. It is argued that this direction really amounts to a direction of the Court compelling the petitioners to give evidence against themselves and so offends against Article 20(3) of the Constitution. In support of this proposition, reliance is placed on the Supreme Court decision in the case of - '*M.P. Sharma v. Satish Chandra*<sup>1</sup>',

This was a case in which their Lordships interpreted the Article as meaning (1) that it is a right pertaining to a person accused of an offence, (2) that it is a protection against compulsion to be a witness and (3) that it is a protection against such compulsion resulting in his giving evidence against himself and while they also said that broadly stated the guarantee in Article 20(3) is against testimonial compulsion, they could not go to the length of holding that the issue of a search warrant for production of documents amounted to such testimonial compulsion. The decision therefore is not, in our opinion, any authority for the proposition that the direction to take specimen writings of a person who is accused of an offence amounts to a direction compelling him to give evidence against himself. Section 73 of the Indian Evidence Act entitles a Court to direct any person present in Court to write any words, or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person and these provisions according to Mr. Bannerjee go against the fundamental right laid down in Article 20(3) of the Constitution. But, as already stated, a mere direction to a person accused of an offence to give his specimen writings does not amount to compelling him to give evidence against himself.

5. Mr. Banerjee further argued that "any person" in Section 73 does not include a person accused of an offence and for this he relies on the observation of Lord-Williams J. in the case of - '*Kishori Kishore Misra v. Emperor*<sup>2</sup>', at pp.309-310 (B). His Lordship undoubtedly said that he had considerable doubt whether Section 73 refers to an accused person at all but Jack J. expressed a contrary opinion and their Lordships left the point undecided. In our opinion, there are no words limiting that portion of the section to persons other than a person accused of an offence and in the absence of any such limiting words it is hardly open to the Court to read them into the section. In this connection we refer to the decision of the Privy Council in the case of - '*Narayana Swami v. Emperor*<sup>3</sup>', where their Lordships decided that the words "any person" in Section 162 included an accused person.

6. Mr. Banerjee further argued that the terms of S.73, Evidence Act, did not permit a Magistrate to allow specimen writings of an accused person to be taken for the purpose of their examination by an expert but they can be taken only for their examination by the Court itself. It does not appear from the order of the learned Magistrate for what purpose he has directed the specimen writings to be taken and if he has directed the specimen writings to be taken for the purpose of their examination by an expert we do not see

<sup>1</sup> AIR 1954 SC 300

<sup>3</sup> AIR 1939 PC 47

<sup>2</sup> AIR 1935 Cal 308

anything in the terms of the section precluding him from doing that. There is thus nothing wrong with even this part of the order of the learned Magistrate.

7. The petitioner must accordingly stand dismissed and the Rule discharged.

**Sen, J.**

8. I agree.

Petition dismissed.