THE INDIAN LAW REPORTS

LAHORE SERIES.

PRIVY COUNCIL.

Before the Lord Chancellor (Viscount Simon), Lord Porter. Lord Simonds, Lord Goddard and Sir Madhavan Nair.

THE KING EMPEROR—Appellant,

versus

KHAWAJA NAZIR AHMAD—Respondent.

1944

Oct. 17.

Privy Council Appeal No. 55 of 1943.

Appeal from the High Court of Judicature at Lahore.

Criminal Procedure Code (Act V of 1898), Sections 154, 155, 156, 157, 161, 162, 197, 438, 491 and 561—Indian Penal Code (Act XLV of 1860), Section 409, 417 and 420.

In the case of a cognisable offence the police may hold an investigation irrespective of any order of any Court. Courts have no control in such cases over the investigation, or over the action of the police in holding such investigation. In a case of the prosecution of a public servant for an offence while acting or purporting to act in the discharge of his official duty no sanction is required prior to the police holding an investigation although the subsequent initiation of such prosecution may require such sanction.

M. M. S. T. Chidambaram v. *Shanmugan Pallai*, (1) *Chatrapat Singh Dugar* v. *Kharag Singh Lachmiram* (2) followed.

Appeal from a judgment of the High Court of Lahore (Blacker and Sale JJ) quashing all proceedings taken in an investigation by the police as to actions of the Respondent as the Special Official Receiver of the High Court Lahore who had been appointed Receiver of the large estate of the late Lala Harkishan Lal. The investigation by the police was in pursuance of two first information reports by one S. M. Saleh, one relating to a charge under Section 420, Indian Penal Code, the other to a charge under Section 409, Indian Penal Code, both cognisable offences.

It was suggested that the charges were as regards non-cognisable offences and therefore a magistrate's order authorising an investigation by the police was required. It was pointed out by their Lordships of the Privy Council that the receipt and recording of an information report is not a condition precedent to the setting in motion by the police of a criminal investigation, who may of their own motion undertake an investigation into the truth of the matters alleged.

These matters had been previously enquired into by a Civil Court which decided emphatically in favour of the Official Receiver. The properties having, pending the police investigation, got into

(1) 1938 A. I. R. (Mad.) 129. (2) I. L. R. (1917) 44 Cal. 535 (P. C.).

1944

THE KING EMPEROR. v. KHWAJA NAZIR AHMAD.

the hands of the Official Receiver, one K. L. Gauba, a barrister, filed a complaint to the District Magistrate accusing the Official Receiver of serious crimes including those alleged by S. M. Saleh, and an investigation having been ordered by the District Magistrate, certain records were seized by the police. Under the orders of the High Court these records were subsequently released, the proceedings were quashed, and the investigation prohibited. The High Court held that the matters complained of by Mr. Gauba concerned the actions of the Respondent in his official capacity as Receiver, and that being a public servant not removable from his office without the sanction of the local Government, and having been accused of an offence as such public servant, Section 197, Criminal Procedure Code precluded any Court from taking cognizance of the offence without the previous sanction of the Local Government. The complaint was therefore dismissed and the District Magistrate's order for an investigation quashed.

Their Lordships in the judgment of the Privy Council point out that, while accepting the view that no findings in a civil proceeding are binding in a subsequent prosecution founded on the same or similar allegations, the stage for the production of the Local Government's sanction to the prosecution had not been reached and there has been a serious interference with the statutory rights of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities.

G. D. ROBERTS *K. C.*, *W.* WALLACH and B. MCKENNA, for Appellant.

REWCASTLE K. C., and S. A. KYFFIN, for Respondent.

Their Lordships' judgment was delivered by LORD PORTER:

This appeal is brought from a judgment and order of the High Court of Judicature at Lahore dated the 24th October 1941 (Criminal Revision Side). The question raised is stated, and their Lordships think correctly stated, in the case presented by the respondent to be whether the High Court had power, under section 561A of the Code of Criminal Procedure, to quash all proceedings taken in pursuance of two first information reports.

The complainant in each case was one S. M. Saleh: the earlier report was made on the 31st August, 1941, and the later on the 5th September of the same year.

The offence in the first is stated to be in breach of section 420 of the I. P. C. The facts are set out in a loose and solvenly manner and condescend on little exact detail. The result is that it is at least doubtful whether the offence should not have been described as committed in breach of section 417 instead of section 420, the vital difference between the two being that whereas an offence against the latter section is a cognisable one, that against the former is non-cognisable and investigation of it can only be undertaken by the police on the instructions of a magistrate, whereas in

the other case the police can act on their own motion under sections 154 and 156 of the Cr. P. C.

However this may be and however the offence may be described in the report itself, their Lordships are satisfied that there can rightly be spelt out of it an offence against section 409 which is also a cognisable offence and possibly also one against section 420.

Apart from this, the later report though again it condescends upon rather meagre particulars, plainly indicates an accusation of an offence against section 409 and the offence is so described.

In their Lordships' view therefore, both information reports charge the accused man with cognisable offences under which the police are entitled to enquire without a magistrate's order.

Their Lordships think it right to set out these matters because it was strenuously argued before them on behalf of the respondent that the only accusation of which account could be taken was that contained in the first of the two reports, that the offence there charged was a non-cognisable offence and therefore the police were precluded under section 155 of the Cr. P. C. from enquiring into it without a magistrate's order.

The argument as their Lordships understood it was that the only information report under section 154 to 156 of Cr. P. C. was that recorded on the 31st August 1941, that the allegations recorded at a later stage of the 5th September were not an information report, but a statement taken in the course of an investigation under sections 161 and 162 of the Code, that there was therefore no reported cognisable offence into which the police were entitled to enquire, but only a non-cognisable offence which required a magistrate's order if an investigation was to be authorised.

Their Lordships cannot accede to this argument. They would point out that the respondent in his case treats each document as a separate information report and indeed, on the argument presented on his behalf, rightly so, since each discloses a separate offence, the second not being a mere amplification of the first, but the disclosure of further criminal activities. But in any case the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases, criminal prosecution are undertaken as a result of information received and recorded in this way, but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognisable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157 of the Cr. P. C., when directing that a police officer, who has reason to suspect *from information or otherwise* that an offence which he is empowered to investigate under section 156 has been committed shall proceed to investigate the facts and circumstances, supports this view.

In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons.

1944

THE KING EMPEROR. v. KHWAJA NAZIR AHMAD.

Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to be remembered that the report can be put in evidence when the informant is examined if it is desired to do so.

As has already been pointed out, the respondent himself speaks of two information reports in the case presented for their Lordships' consideration. Though the High Court in their judgment discussed the question whether the only crime formally disclosed was not cognisable and if so whether the investigation based upon the information report of the 30th August should not be quashed, they gave no decision on the matter, saying only that it raised a difficult point of law which they found it unnecessary to decide. They then proceeded to determine the point at issue upon other grounds which are those raised in the cases presented to their Lordships. These it is now necessary to discuss.

It appears that S. M. Saleh was the son of Sheikh Rahmatullah who died in 1924 and that some time after his death disputes arose between his children including S. M. Saleh as to the partition of his property. In this dispute arbitrators were originally appointed but their authority to act was afterwards withdrawn. One of the assets was a business which had been carried on by the father and after his death was continued by the wife and children as a single partnership concern according to the respective shares in the property left by the deceased man, and in 1937 a suit was begun by Saleh against his brothers and sister for partition of the family property and for dissolution of the partnership and rendition of accounts. The respondent is the Special Official Receiver of the High Court, Lahore, and was in that capacity appointed on the 17th August 1937, as receiver in this suit.

The criminal charge which the police were investigating concerns his activities in the receivership and his alleged behaviour in seeking the appointment. According to Saleh he was persuaded by the respondent by means of various fraudulent representations to undertake the suit and to ask that the respondent should be appointed receiver of the property. If this story is true there is no doubt but that Saleh was a party to an appointment made for the purpose of overreaching his brothers and sister. At a later stage, however, Saleh became dissatisfied with the activities of the respondent as receiver and on the 27th June 1939, applied to have him removed from the receivership and supported his application by an affidavit sworn on the 9th of June. The grounds of the application were substantially the same as those put forward in the two information reports as criminal acts calling for a prosecution.

The Subordinate Judge refused to accede to the application, but the receiver voluntarily resigned and Saleh and one of his brothers S. A. Mannan were appointed in his place. In order to clarify the position however, the Subordinate Judge, a short time afterwards, viz., on the 30th August 1939, directed the respondent to continue in possession of certain property, the subject matter of

the suit, notwithstanding that he had ceased to be receiver. From these two orders Saleh appealed to the High Court which on the 4th April, 1940, dismissed the appeal with costs, observing: "It appears that the charges are baseless and that no loss attributable to the conduct of Khwaja Nazir Ahmad can be shown. The charges it is clear from the record have been made recklessly and without any attempt to examine the history of the case, a proper consideration of which would have prevented any reasonable person from using such terms as fraud and dishonesty. It is most improper that such charges should be made without any justification."

The next step appears to have been taken by one K. L. Gauba, a barrister who had represented Saleh in certain of the proceedings. This gentleman on the 7th August 1941, made a written complaint to a District Magistrate charging the respondent with a number of crimes and amongst others referred to the charge made by Saleh and enclosed his client's affidavit of the 9th June, 1939, in support of his application for the dismissal of the respondent from his receivership.

The District Magistrate made an order for investigation into the charges and under this order the respondent's records were seized by the police on the 27th August. Thereupon the respondent petitioned the High Court on the 28th August, 1941, for their release and for stay of the investigation on the ground that he was a public servant within the definition of the Indian Penal Code, and therefore under section 197 of the Cr. P. C. exempt from interference by any Court without the previous sanction of the Government.

A day later the Crown presented a petition to the Court of Sessions Judge, Lahore, for revision of the magistrate's order, asking that the record might be forwarded to the High Court under section 438 of the Code with a recommendation that the proceedings might be quashed as being void *ab initio* having been held without jurisdiction, and that pending the finel decision of the petition by the High Court further proceedings might be stayed and the Senior Superintendent of Police, Lahore, ordered not to take any further action by way of investigation.

It appears that some application was also made by the respondent to the then Chief Justice who on the 28th August sent a telegram to the District Magistrate ordering him to stop all proceedings until further orders from the Chief Justice and to return all records immediately which had been taken by the police.

The District Magistrate acted in accordance with the instructions contained in the telegram and issued the necessary orders to the police who complied with them. Thereupon Mr. Gauba filed a revision petition against the order of the District Magistrate staying further proceedings.

Both matters came before the learned Sessions Judge who felt that he was bound by the order of the then Chief Justice and on the 3rd September stayed further proceedings, and forwarded the revisions to the High Court to be disposed of at the same time as the connected revision already pending there.

1944

THE KING EMPEROR. v. KHWAJA NAZIR AHMAD.

Meanwhile Saleh had lodged the two information reports already referred to and as a result the police again demanded the papers which they had originally seized under Mr. Gauba's complaint and began an investigation into the crimes alleged.

The immediate consequence was a further petition by the respondent submitting that the registration of the information report of the 31st August and the proceedings taken on it were illegal and unwarranted by law and requesting the High Court to order the magistrate to direct that the books should be returned by the police and that the investigation might be stayed and depend upon the result of the petition filed by Mr. Gauba.

An interim stay was granted during the vacation and the hearing before the High Court took place on the 24th October, 1941.

Two matters were then considered, firstly the Court's right to take cognizance of Mr. Gauba's petition which was opposed by both the respondent and the Crown and in respect of which there were cross petitions asking that the proceedings be quashed, and secondly what, if any, order should be issued by way of interfering with the investigation begun by the police on Saleh's information reports.

As to the first, the High Court held that the matters complained of by Mr. Gauba concerned the action of the respondent in his official capacity as receiver and therefore that he being a public servant not removable from his office without the sanction of the local Government, and having been accused of an offence as such public servant, section 197 of the Cr. P. C. precluded any Court from taking cognizance of the offence without the previous sanction of the Government having power to order his removal. They accordingly dismissed the complaint and quashed the order of the District Magistrate.

In that case Mr. Gauba had petitioned the Court. The prohibition contained in section 197 is against action by any Court and in these circumstances the decision of the High Court was accepted and its order is not the subject of any appeal. The action of the police in investigating Saleh's charges is a different matter. The position in and the time at which a court is required to take cognizance of the matter has not yet been reached and the only question arising upon this part of the case or discussed before their Lordships is whether the Court which in its inherent jurisdiction under section 561A of the Cr. P. C. has power to make such orders as may be necessary to prevent abuse of the process of the Court or otherwise secure the ends of justice, is, in the present case justified, in using their powers to quash the police investigation.

The High Court decided that it was entitled to quash the proceedings and prohibit the investigation. Their grounds appear to have been that similar charges were levelled against the respondent four years earlier. Some of these charges they said were then actively disproved and the rest held to be unfounded in an enquiry held as a consequence of the application to remove the respondent from his post of receiver of the property. In those and in these proceedings as the High Court points out Saleh accused himself of having been a party to a corrupt conspiracy to defeat the ends of justice. The Judges appear to have made a careful examination of

the previous record, to have come to the conclusion that Saleh's evidence was unacceptable, and to have searched the records of the police investigation until it was stopped, in order to see if any information beyond that contained in the earlier proceedings was forthcoming. In the result they found none.

All this may be good ground for a rejection of Saleh's accusation and a dismissal of any prosecution launched upon his information if such a prosecution ultimately takes place and if the Courts are then satisfied that no crime has been established. But that stage has not been reached. It is conceded that the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Moreover the police investigation was stopped and it cannot be said with certainty that no more information could be obtained. But even if it were not it is the duty of a criminal court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision which is not binding upon it.

In their Lordships' opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.

In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under section 491 of the Cr. P. C. to give directions in the nature of *habeas corpus*. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Cr. P. C. and that no inherent power had survived the passing of that Act.

No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed the police would have no authority to undertake an investigation and for this reason Newsam J. may

1944

THE KING EMPEROR. v. KHWAJA NAZIR AHMAD.

well have decided rightly in *M. M. S. T. Chidanbaram* v. *Shanmugam Pallai* (1). But that is not this case.

In the present case the police have under sections 154 and 156 of the Cr. P. C. a statutory right to investigate a cognizable offence without requiring the sanction of the Court, and to that extent the case resembles *Chhatrapat Singh Dugar v. Kharag Singh Lachmirant* (2) in which as the High Court has pointed out their Lordships Board expressed the view that to dismiss an application on the ground that it would be an abuse of the powers of the Court might be to act on treacherous grounds.

Of course, in the present case as in the petition brought by Mr. Gauba no prosecution is possible unless the necessary sanction under section 197 of the Cr. P. C. has first been obtained. But that stage like the stage at which the Court may legitimately intervene has not in their Lordships' opinion yet been reached. The question so far is one of investigation not prosecution.

In accordance with their view, their Lordships will humbly advise His Majesty that the appeal should be allowed the decree and order of the High Court quashed and the investigation permitted to proceed.

FULL BENCH.

1943

May 12.

Before Harries C. J., Din Mohammad and Abdul Rahman JJ.

MANAGING COMMITTEE SUNDAR SINGH MALHA SINGH RAJPUT HIGH SCHOOL, INDORA. (DECREE-HOLDER) Appellant,

versus

SUNDAR SINGH MALHA SINGH SANATAN DHARAM RAJPUT HIGH SCHOOL TRUST, INDORA,—Respondents.

Letters Patent Appeal No. 2 of 1942.

Civil Procedure Code (Act V of 1908), S. 144—Indian Limitation Act (IX of 1908), Arts 181, 182—Application for restitution under S. 144 of the Code of Civil Procedure— Whether an application for execution of decree within the meaning of Art. 182—Article of Indian Limitation Act applicable thereto.

Held, that an application for restitution under s. 144 of the Code of Civil Procedure is not an application for the execution of decree within the meaning of art. 182 of the Indian Limitation Act. Such an application is governed by art. 181 of the Indian Limitation Act.

Case-law reviewed.

Letters Patent Appeal from the judgment of Abdul Rashid J., dated 6th November, 1941, affirming that of Lala *Tek Chand Sethi, Senior Subordinate Judge, Kangra at Dharmsala, dated 19th August, 1940, dismissing the suit.*

TEK CHAND, for Appellant,

RATAN LAL CHOWLA, for Respondents.

(1) 1938 A. I. R. (Mad.) 129. (2) I. L. R. (1917) 44 Cal. 535 (P. C.).