

Khosla Fans (India) Private Ltd. (in liquidation) v. Ramesh  
Khosla and others (B. S. Dhillon, J)

Government which could be exercised in a general manner or in order to meet a particular situation. It is further observed that the intention of the framers of the rule was to give some power to the Government to do justice in an exceptional case when by the applicability of a particular rule some grave injustice was being caused to a particular person. From the above observations it is evident that under the aforesaid rule the power of relaxation can be exercised in any particular case to reduce hardship and not generally. The State counsel has referred to the order by which relaxation was given regarding departmental revenue examinations. It is said there that in view of the non-availability of the candidates, the condition for departmental revenue examinations would be relaxed. It appears that the order has been passed in general terms and not in accordance with the said clause. Therefore, the part of the order granting the relaxation regarding departmental examinations to respondent Nos. 10 to 12 is not good.

(13) For the aforesaid reasons, I accept both the writ petitions with costs, quash the impugned orders so far as these relate to the respondents and direct the State Government to decide the matter afresh after taking into consideration the observations made above. Counsel fee Rs. 200 in each case.

H. S. B.

Before B. S. Dhillon [and M. R. Sharma, JJ.

KHOSLA FANS (INDIA) PRIVATE LTD. (IN LIQUIDATION),  
Petitioner.

versus

RAMESH KHOSLA and others,—Respondents.

C. P. No .220 of 1976.

November 26, 1980.

*Companies Act (1 of 1956)—Sections 2(11), 10, 446, 454 (5A) and 538—Companies (Court) Rules 1959—Rule 9—Company ordered to be wound up—Officers of the liquidated Company failing to*

*deliver properties and records of the Company to the liquidator—Liquidator filing a complaint against such officers for offences under sections 538 and 478 read with section 446 (2)—High Court—Whether has jurisdiction to try the complaint—Words “any proceeding” in section 446 (2)—Whether include criminal proceedings.*

*Held*, that the provisions of sections 2(11), 10, 446 and 454 (5A) of the Companies Act, 1956 have to be interpreted keeping in view the scheme of the Act and the main object for which the Act was enacted. It is, no doubt, true that with respect to any matter relating to a Company, other than any offence against the Act, jurisdiction under the Act has been vested in the High Court under section 10 of the Act, whereas the jurisdiction with respect to any offence against the Act has been vested in the Magistrate 1st Class, but the fact remains that section 446 is a special provision which has vested the High Court with jurisdiction to entertain or dispose of any suit or proceeding by or against the Company. The prosecution sought to be launched by the official liquidator on behalf of the Company is certainly a proceeding by the Company against the acts of the office bearers. The jurisdiction to try causes with respect to any matter relating to a Company vests in the High Court. The scheme of the Companies Act would suggest that the provisions of sub-section (2) of section 446 of the Act have been enacted to clothe the High Court with wide jurisdiction to entertain and dispose of any suit or proceeding by or against the Company when a winding up order has been passed. This provision would therefore clothe a High Court with the jurisdiction to try criminal proceedings if it so chooses. It is the discretion of the High Court to transfer or allow institution of the said proceedings, but to say that the High Court has no jurisdiction would be going against the provisions of section 446 of the Act which is a special provision vesting jurisdiction in the High Court in connection with any suit or proceeding by or against the Company. The provisions of sub-sections (1) to (4) of section 454 of the Act are procedural, non-compliance of which is an offence under sub-section (5) and sub-section (5A) was enacted by the Legislature to give special jurisdiction to the High Court. Provisions of section 446(2) are general in character and deal with the vesting of jurisdiction to entertain or dispose of any suit or proceeding by or against the Company. The provisions of section 454, (5A) of the Act are special in nature, in addition to the jurisdiction vested in the High Court under the provisions of sub-section (2) of section 446 of the Act, which are general in nature.

(Paras 4 and 5).

*Official Liquidator, R. C. Abrol & Co. (P.) Ltd. v. R. C. Abrol & others* (1977) 47 Comp. Cases 537 **DISSENTED FROM.**

*Complaint under section 538, 478 read with section 446 of the Companies Act, 1956 and read with Rule 5 of the Companies (Court)*

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*Rule 1959 praying that the respondents may kindly be suitably punished as in accordance with law.*

J. S. Narang, Advocate, for the Petitioner.

Bhagirath Dass, Advocate with S. K. Hirajee, Advocate, for the Respondents.

### JUDGMENT

*Bhopinder Singh Dhillon, J.*

1. Khosla Fans India (Private) Limited was ordered to be wound up by this Court. The Official Liquidator attached to this Court filed complaint against the respondents under Sections 538, 478 read with Section 446 of the Companies Act, 1956 (hereinafter referred to as the Act) and read with Rule 9 of the Companies (Court) Rules, 1959 (hereinafter referred to as the Rules), *inter alia*, alleging that the respondents being officers of the liquidated company failed to deliver to the Liquidator, as desired by him, all the moveable and immovable property of the company, which was in their custody and control, which in law they were enjoined upon to deliver after the company was ordered to be wound up. It has been alleged that the respondents have intentionally not handed over the records and books of the company and thus have violated the provisions of Section 538 of the Act. An objection has been taken on behalf of the respondents that this Court has no jurisdiction to try the complaint and in-fact the complaint should have been filed before the Judicial Magistrate 1st Class. This matter came up before me sitting singly and I referred the same to a larger bench for the reasons recorded in the reference order. This is how the question whether this Court has the jurisdiction to try the complaint filed by the Official Liquidator against the respondents has been placed before us.

2. With a view to appreciate the respective contentions raised by the learned counsel for the parties, the relevant provisions of the Act may be referred to Section 2(11) of the Act as follows :—

“2(11) “the Court” means,—

(a) With respect to any matter relating to a company (other than any offence against this Act), the Court

having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

- (b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;"

Section 10 of the Act reads as under:—

"10(1) *Jurisdiction of Courts.*

The Court having jurisdiction under this Act shall be—

- (a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2), and
- (b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred in respect of companies having their registered offices in the district.
- (2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred—
- (a) in respect of companies generally, by sections 237, 391, 394, 395 and 297 to 407, both inclusive;
- (b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

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- (3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up."

Section 446 of the Act is as follows:—

*"Suits stayed on winding up order.*

446(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company (including claims by or against any of its branches in India);
- (c) any application made under section 391 by or in respect of the company;
- (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or

after the commencement of the Companies (Amendment) Act, 1950.

- (3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of—by that Court.
- (4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

The relevant portion of Section 454(1) is reproduced hereunder:—

“454(1) \* \* \* \* \*

(5A) The Court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898, for the trial of summons cases by magistrates.”

3. Reference may also be made to the provisions of Sections 162, 165, 210, 293A, 299, 300 to 304 of the Act, wherein provisions have been made for prosecuting the company and its office bearers for violation enumerated in the said sections. It may be observed that complaint for prosecuting the company or its office bearers for violation of the above-mentioned sections has to be filed by the Registrar of Companies. There are certain other offences as provided in Sections 538, 539, 540, 541, 542, 543 and 545, which offences are supposed to have been committed during the pendency or after the finalisation of the winding up proceedings before the High Court and the prosecution for commission of said offences has to be at the instance of the Official Liquidator appointed by the High Court.

4. It has been vehemently contended by Mr. Narang, the learned counsel for the Official Liquidator, that the jurisdiction vested in this

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Court under the provisions of Section 446(2) of the Act is wide enough to exercise jurisdiction to entertain or dispose of any suit or proceeding by or against the company. It has been contended that the words "any suit or proceeding by or against the company" are wide enough to include the criminal proceedings launched by way of complaint at the instance of the Official Liquidator. On the other hand, it has been contended by Mr. Bhagirath Dass, learned counsel for the respondents that the provisions of Section 446(2) of the Act, do not vest any special jurisdiction in this Court to entertain or dispose of complaints which are filed for the violation of the offences committed under the Act. It may be observed that for deciding the question in issue, we have to give meaning to all the relevant provisions of the Act, including Sections 2(11), 10, 446 and 454 (5A) of the Act. The said provisions have to be interpreted keeping in view the scheme of the Act and the main object for which the Act was enacted. It is no doubt true that with respect to any matter relating to a company, other than any offence against the Act, jurisdiction under the Act has been vested in this Court under Section 10 of the Act, whereas jurisdiction with respect to any offence against the Act has been vested in the Magistrate 1st Class, but the fact remains that the provision of Section 446 is a special provision, which has vested the High Court with jurisdiction to entertain or dispose of any suit or proceedings by or against the company. The prosecution sought to be launched by the Official Liquidator on behalf of the company is certainly a proceeding by the company against the acts of the office bearers. It has been vehemently contended by Mr. Bhagirath Dass, learned counsel for the respondents, that "any proceeding" would not include criminal proceedings and for this he relies on a Full Bench decision of the Lahore High Court in *Smt. Shukantla v. Peoples Bank of Northern India Ltd. in liquidation through Bhagwati Shanker, Official Liquidator and another* (1). This judgment, in our opinion, is not much help for determining the present question. In that case, the Full Bench held that the expression "legal proceeding" used in Section 171 of 19(1) Act which provision is analogous to the provisions of Section 446 of the Act, means proceeding in the Court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint. It was held that the said proceeding does not include proceedings taken in the course of the suit, nor proceedings arising from the suit and continued in a higher court, like an appeal from an interlocutory or final order

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(1) A.I.R. 1941 Lahore 392.

passed in the suit. It would thus be seen that unless the question whether 'any proceeding' would include the criminal proceedings also, was not examined at all. The Federal Court in *Governor-General in Council v. Shiromani Sugar Mills Ltd.*, (2), while disagreeing with the observations of the Full Bench of the Lahore High Court in *Smt. Shukantla's case* (supra) observed that the expression "other legal proceedings" under Section 171 of the Old Act, need not and, therefore, should not be confined to original proceedings in a Court of first instance analogous to a suit, initiated by means of a petition similar to a plaint.

5. Mr. Bhagirath Dass, learned counsel for the respondents, has relied on a decision of their Lordships of the Supreme Court in *S. V. Kondaskar, Official Liquidator and Liquidator of the Calaba Land and Mills Co. Ltd. (In Liquidation) v. V. M. Deshpande, Income-Tax Officer, Companies Circle I (B) Bombay and another* (3), to contend that the provisions of Section 446(2) would not cloth this Court with jurisdiction, if, otherwise, it had no jurisdiction. We are unable to agree with this contention. The decision in *S. V. Kondaskar's case* (supra) nowhere lays down this proposition of law. On the other hand, their Lordships of the Supreme Court in fact held that the expression "other legal proceeding" in sub-section (1) of Section 446 of the Act and the expression "legal proceeding" as provided in sub-section (2) of Section 446 of the Act have the same sense and proceedings in both sub-sections must be such as can appropriately be dealt with by the winding up Court. It was held that the Income-tax Act is a complete code and it is particularly so with respect to the assessment and re-assessment of income-tax. Merely because that after the amount of tax payable by an assessee has been determined or quantified, its realisation from a company in liquidation is governed by the Act, does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceeding as can only be started or continued with the leave of the liquidation Court under Section 446 of the Act. The ratio of the judgment is that the provisions of the Income-tax Act is a complete code itself for determining the income-tax payable by an assessee and thus the proceedings before the Income-tax Authorities under the said Act cannot be held to be proceedings as included in the "legal proceeding" as provided under sub-section (2) of Section 446 of the Act. Their Lordships observed that the said words would include all proceedings where the Court

(2) 1946 R.C. 16.

(3) A.I.R. 1972 S.C. 878.



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has jurisdiction to try the same. As already observed, the jurisdiction to try causes with respect to any matter relating to the company vests in the High Court. The scheme of the Act would suggest that the provisions of sub-section (2) of section 446 of the Act have been enacted to clothe the High Court with wide jurisdiction to entertain and dispose of any suit or proceeding by or against the company when a winding up order has been passed. It is, therefore, not correct to contend that this provision would not clothe this Court with the jurisdiction to try criminal proceedings if it so chooses. It may be observed that it is the discretion of this Court to transfer or allow institution of the said proceedings, but to say that the Court has no jurisdiction would be going against the provisions of section 446 of the Act, which is a special provision vesting jurisdiction in the High Court in connection with any suit or proceeding by or against the company. Mr. Bhagirath Dass has relied on a decision of the Delhi High Court in *Official Liquidator, R. C. Abrol & Co. (P.) Ltd. v. R. C. Absol & others* (4). This authority does not support the view as propounded by the learned counsel for the respondents, but we are respectfully not in agreement with the view taken therein. It has been observed by the learned Single Judge in *R. C. Abrol's case* (supra) that if the provisions of Section 446(2) of the Act were to be interpreted so widely so as to include criminal proceedings, in that case the provisions of section 454(5A) of the Act would become redundant. This argument, in our view, is not correct. The objects and reasons why the Legislature amended section 454 and enacted sub-section (5A) of the Act are as follows:—

“... It has been complaint of official Liquidators that the statement of affairs is not filed in spite of repeated reminders and warnings, and if filed at all, is filed only after considerable delay. The penal provision is hardly ever enforced, apparently because a complaint has to be made by the Official Liquidator to the criminal Court, and this involves delay. Much of the delay in winding up is caused by the statement of affairs of the company not being filed in time to enable the Official Liquidator to take the necessary action. It would facilitate his work and speed up the winding up of Companies, if the power to punish the officers of the company who default in filing

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(4) (1977) 47 Camp cases 537.

the statement of affairs, is vested in the winding up Court instead of in the ordinary criminal Courts. The winding up Court, which in most cases will be the High Court, will be in a better position to judge the decree and nature of the default of the officers concerned and meet out appropriate punishment where necessary. The fear that the winding up Court would take immediately cognizance of any delay and deal adequately with those in default would by itself do much to ensure prompt filing of the statement of affairs, section 454 of the Act should, therefore, be amended, vesting the power of punishment under the section in the winding up Court."

The provisions of sub-sections (1) to (4) of section 454 of the Act are procedural, non-compliance of which is an offence under sub-section (5). Sub-section (5A) of the Act was enacted by the Legislature to give special jurisdiction to the High Court for the reasons enumerated above. Provisions of section 446(2) of the Act are general in character and deal with the vesting of jurisdiction to entertain or dispose of any suit or proceeding by or against the company. The provisions of section 454(5A) of the Act are special in nature, in addition to the jurisdiction vested in the High Court under the provisions of sub-section (2) of section 446 of the Act, which are general in nature. This aspect of the case has been overlooked in *R. C. Abrol's case* (supra). It was, however, observed in that case that the High Court could take cognizance of the offence under section 194 of the Code of Criminal Procedure, 1898 only. It may be observed that the provisions of section 194 of the Old Code have been deleted in the Code of Criminal Procedure, 1973. There is no analogous provision to the provisions of section 194 of the old Code. That being the position, the inherent powers of the High Court as enshrined in section 482 of the Code of Criminal Procedure can be resorted to in proper cases with a view to secure the ends of justice. It is no doubt true that under the provisions of section 194 of the Old Code, it was provided that the High Court could take cognizance on the case having been committed to it, but the said provisions having been deleted in the new Code, the impediment of commitment proceedings, before the High Court could take cognizance of the offence, has also been removed. It, of course, goes without saying that the High Court will exercise its power of transferring the case to its original jurisdiction in appropriate cases with a view to secure the ends of justice. Therefore, it is not correct to hold that the High Court in no case can exercise original jurisdiction in criminal cases.

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6. Mr. Bhagirath Dass, has relied upon a Full Bench decision of the Allahabad High Court in *Harish Chandra v. Kavindra Narain Sinha and others* (5). This judgment is of no help to the learned counsel. *Harish Chandra's case* (supra) was not a case of the winding up of a company, wherein in the course of inquiry the Judge came to the conclusion that an offence has been committed. The matter was not pending before the High Court at any stage. The Full Bench considered the effect of section 194(1) of the Old Code and came to the conclusion that the application made for transferring the case, which was pending before the file of the Magistrate, was misconceived. The argument that the view that the High Court has no jurisdiction to try the case could not be substantiated as section 194(1) of the Old Code authorised the High Court to take cognizance of any offence upon a commitment being made, was repelled by observing that the High Court could take cognizance only when the case was committed to it and not otherwise. As already observed, the provisions of section 194 of the Old Code have been deleted in the new Code and thus in proper cases the inherent power of the High Court would be available to take cognizance of the offences by the High Court in proper cases.

7. As already observed, there are offences against the Act in which the Official Liquidator has to launch the prosecution proceedings. In appropriate cases, the High Court may exercise jurisdiction in entertaining or transferring said proceedings to do complete justice between the parties, especially when the company has been ordered to be wound up. In such cases, the winding up Court may be the only appropriate Court, who could determine the disputes more appropriately. It, of course, goes without saying that if the jurisdiction had not been vested in the High Court under sub-section (2) of section 446 of the Act, in that case, in view of the provisions of section 2(11) read with section 10 of the Act, it had to be held that all the offences under the Act had to be tried by the Magistrate and not by any other Court, but since a special provision has been enacted in the background of the scheme of the Act to clothe the High Court with jurisdiction to entertain and dispose of any suit or proceeding by or against the company.

8. Reference may also be made to the provisions of Rule 9 of the Rules, wherein it has been provided that nothing in the Rules shall

be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. This rule also serves the inherent power of the Court to pass appropriate orders which may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

9. We are, therefore, inclined to hold that the High Court can exercise jurisdiction in suits and proceedings, including criminal proceedings in appropriate cases, by or against the company. The question of law referred to this Bench is answered accordingly and the case may now be listed before a learned Single Judge for appropriate orders.

H.S.B.

Before J. V. Gupta, J.

STATE OF HARYANA—Appellant.

versus

MADHO PARSHAD,—Respondent.

Civil Misc. No. 1377/CI/1980.

November, 28, 1980.

*Court Fees Act (VII of 1870)—Section 13—Code of Civil Procedure (V of 1908)—Section 151—Appeal dismissed as incompetent—Court fee paid on cross-objections in such appeal—Whether could be refunded.*

*Held*, that the power of the Court to remit the court fee is confined only to fees which have been illegally or erroneously assessed or collected and does not extend to fees which have been paid or collected in accordance with the provisions of the Court Fees Act, 1870. Where cross-objections are filed in an appeal which itself was not competent and is dismissed as such, the court fee affixed on those cross-objections is clearly paid under a bona fide mistaken impression and the same is liable to be refunded.

*Application under Section 151 C.P.C. praying that the application be allowed and the court fee affixed on the cross objections be ordered to be refunded to the respondent-applicants.*

S. K. Goyal, Advocate, for A.G. Haryana, for the appellant.

Arun Jain, Advocate, for the Respondent.