an order for delivering the possession in the circumstances stated above, those officers have got powers to deliver possession under the said rules.

(9) In view of the above discussion, I am of the view that the orders of the Revenue Officers which have been challenged as being illegal and *ultra vires* are valid and do not suffer from any defect. Section 25 of the Security Act provides that the validity of any proceeding or order taken or made in that Act shall not be called in question in any Court or before any other authority. The orders of the revenue officers under the Security Act, have been held by me to be legal and valid. Those orders, therefore, cannot be challenged in the Civil Court and the jurisdiction of the Civil Court is barred under section 25. I, therefore, do not find any force in the appeal which is dismissed with costs.

B. S. G.

REVISIONAL CRIMINAL

Before Gopal Singh and D. S. Tewatia, JJ

REGISTRAR OF COMPANIES, PUNJAB, HIMACHAL PRADESH AND CHANDIGARH, JULLUNDUR,—*Petitioner*

versus

M/S. HIMPRASTHA FINANCERS P. LTD., SIMLA ETC.,—*Respondents.*

Criminal Revision No. 142-R of 1970

August 16, 1972.

Probation of Offenders Act (XX of 1958)—Sections 3 and 11(2)—Code of Criminal Procedure (Act V of 1898)—Section 439—Order passed under section 3 of the Act—Remedy by way of appeal under section 11(2) not availed—High Court—Whether can interfere in the order under section 439(1) of the Code.

Held, that the remedy of a revision will be barred by virtue of sub-section (5) of section 439 of the Code of Criminal Procedure, 1898, only when two conditions, as specified therein, are satisfied : (i) An appeal must lie under the Code and (ii) the revision must be filed by the party at whose instance, the appeal is competent. The scrutiny of the sub-section admits of no doubt that a party, who has no right to maintain an appeal under the Code but is entitled to prefer an

appeal apart from and outside the provisions of the Code, cannot be debarred from having his grievance redressed under sub-section (1) of section 439 of the Code. This provision does not altogether render *non est* the revisional jurisdiction of the High Court in cases in which appeal lies. Appeals which are competent outside the provisions of the Code are not at all touched by sub-section (5) of section 439 and do not fall within its clutch. If an appeal is competent under a special law, the bar created by sub-section (5) of section 439 cannot adversely affect the revisional remedy by an aggrieved party, who has not filed that appeal. The provision of sub-section (1) of section 439 of the Code dealing with the revisional power of the High Court is in no way contradictory of or inconsistent with the power of appeal conferred by virtue of sub-section (2) of section 11 of the Probation of Offenders Act. Hence even if remedy by way of appeal under sub-section (2) of section 11 of the Probation of Offenders Act against an order passed under section 3 of the Act has not been availed of, sub-section (5) of section 439 will not operate as a bar against the invoking of revisional jurisdiction of the High Court under sub-section (1) of section 439 of the Code.

Case referred to the Division Bench of this Court for decision by Hon'ble Mr. Justice C. G. Suri,—vide order dated 19th November, 1971 and the case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice Gopal Singh, and Hon'ble Mr Justice D. S. Tewatia on 16th August, 1972.

Case reported under section 438, Criminal Procedure Code, by Shri Harbans Singh, Sessions Judge, Jullundur,—vide *his order dated 5th May, 1970, for revision of the order of Shri S. N. Bhalla, Senior Sub Judge, Jullundur, dated 12th September, 1968, for enhancement of the sentenced. Charge : Under section 3 of the Probation of Offenders Act.*

D. N. Awasthy, Senior Advocate, with A .C. Jain, Advocate, *for the petitioner.*

R. N. Verma, Assistant Advocate-General (Punjab), *for the State.*

M. L. Nanda and D. R. Nanda, Advocates, *for the respondents.*

ORDER

Judgment of this court was delivered by :—

GOPAL SINGH, J.—In order to appreciate the question of law involved in the case and referred by Suri J., to the Division Bench, it is necessary to narrate the facts leading to its reference.

(2) Messrs Himprastha Financers (P) Ltd. (hereinafter called 'the company') with its head office at Simla was registered under the Indian Companies Act, 1956 (hereinafter called 'the Act') as a private

limited Company in 1965. Gurcharan Singh, Puran Chand Sud and Mrs. Kailash Devi are the three directors of the company. Under sub-section (1) of Section 220 of the Act, three copies of the balance-sheet of the company for the year ending March 31, 1967 had to be filed with the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh, Jullundur (hereinafter called 'the Registrar') within 30 days of the annual general meeting, in which the balance-sheet along with the profit and loss account had to be laid. The annual general meeting was not convened by the Company. Under sub-section (1) of Section 166 of the Act, time was twice extended at the instance of the company, by letters dated September 12, 1967 and November 24, 1967 issued by the Registrar enabling the company to hold annual general meeting on or before December 31, 1967 and to get approved the balance-sheet and the profit and loss account in that meeting. On further request on behalf of the company, time was extended to January 30, 1968 for the copies of the balance-sheet being filed by the company. In spite of extensions granted thrice to the company, the company and its directors failed to file copies of the balance-sheet. Finding that the company and its directors were knowingly and wilfully contravening the provisions of sub-section (1) of Section 220 of the Act, a notice was served upon them on February 8, 1968 to comply with the said provision. In spite of that notice, the company failed to do so. As there occurred failure on the part of the company and its directors to file the copies of the balance-sheet with the Registrar, a complaint was filed by the Registrar against the company and the above named three directors on March 30, 1968, in the Court of Shri R. L. Garg, Judicial Magistrate 1st Class, Jullundur praying that the respondents be punished for offence under sub-section (3) of section 220 read with Section 162 of the Act by imposing penalty of fine extending to rupees fifty for every day, for which the default continued. By virtue of Section 621(1-A) of the Act read with Section 247 of the Code of Criminal Procedure, the complaint is triable summarily. On September 12, 1968, the respondents pleaded guilty to the charge of offence under sub-section (3) of Section 220 of the Act. Instead of awarding sentence as provided in sub-section (3) of Section 220 read in conjunction with Section 162 of the Act and imposing the penalty of fine for default committed by the company and its directors, the trial Magistrate invoked the aid of Section 3 of the Probation of Offenders Act, 1958 and contented himself by administering admonition to the respondents.

(3) Feeling aggrieved of the above order passed under Section 3 of the Probation of Offenders Act and of not imposing on the company and its directors penalty of recurring fine for the period of default, the Registrar filed a revision petition under Section 435 of the Code of Criminal Procedure in the Court of Session at Jullundur on April 3, 1969 against the respondents. Shri Harbans Singh, Additional Sessions Judge, Jullundur, to whom the case was entrusted for disposal, by his order dated May 5, 1970 reported the case under sub-section (1) of section 438 of the Code to the High Court with the recommendation that the case was not a fit one for action taken under Section 3 of the Probation of Offenders Act and the respondents being let off with a mere admonition and that the respondents having knowingly and wilfully committed default in filing the copies of the balance-sheet, fully deserved the penalty by way of fine as provided in sub-section (3) of Section 220 read with Section 162 of the Act.

(4) A case reported to the High Court for orders under sub-section (1) of Section 438 of the Code of Criminal Procedure becomes a revision under sub-section (1) of Section 439 of the Code. When this revision petition came up for hearing before Suri J., a preliminary objection was raised on behalf of the respondents that remedy by way of appeal under Section 11 of the Probation of Offenders Act having not been availed of by the Registrar, revision petition is not competent by virtue of sub-section (5) of Section 439 of the Code. In support of that contention, the counsel for the respondents relied on a Single Bench judgment given by Sandhawalia J., in *The State* vs. *Raghbir Singh* (1), holding that if an appeal lies under Section 11 of the Probation of Offenders Act and that remedy has not been exhausted, revision petition is not competent. As against this Single Bench judgment, the counsel for the petitioner placed reliance on an unreported case entitled as *Shri B. L. Sahni* vs. *Shri Parkash Chand Jain and another* (2) decided by Dhillon J. Dhillon J., did not agree with the view taken by Sandhawalia J., but instead followed the view taken in *Maya Das and another* vs. *Municipal Committee, Chiniot* (3). In the latter case, it was held that even if remedy by way of appeal under Section 84 of the Punjab Municipal Act, 1911, against an order passed under Section 81 of that Act had not been availed of, High Court can interfere by invoking revisional jurisdiction under sub-section

(1) 1971 P.L.R. 771.
(2) Cr. Re. No 181/R of 1970 decided on 4th November, 1971.
(3) A.I.R. 1927 Lah 161.

(1) of Section 439 of the Code. It is this conflict between the judgments of the two Single Benches, which is to be resolved by this Bench. Apart from the disposal of the revision petition on merits, the following is the question, which arises on the preliminary objection raised on behalf of the respondents:—

> "Can a High Court interfere under sub-section (1) of Section 439 of the Code of Criminal Procedure when remedy by way of appeal under sub-section (2) of Section 11 of the Probation of Offenders Act against an order passed under Section 3 of that Act has not been availed of?".

(5) Reliance for the stand that exercise of revisional power under sub-section (1) of Section 439 of the Code is a bar has been placed upon sub-section (5) of Section 439 of the Code. That provision runs as follows :—

> "Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party, who could have appealed."

(6) In order that a revision may be barred by virtue of sub-section (5) of Section 439 of the Code, the following two conditions must be satisfied :—

(i) The appeal must be one which lies under the Code

(ii) The revision must be filed by the party at whose instance the appeal is competent.

(7) Undeniably, the appeal to be filed under sub-section (2) of Section 11 of the Probation of Offenders Act is an appeal under that Act and not an appeal under the Code. The remedy by way of revision petition available to an aggrieved party will, by virtue of sub-section (5) of Section 439 of the Code, not be barred, even if appeal under the Code is competent but the party, who has invoked the revisional jurisdiction of the High Court has no *locus standi* to be an appellant in such an appeal. The scrutiny of sub-section (5) of Section 439 of the Code admits of no doubt that a party, who has no right to maintain an appeal under the Code but is entitled to prefer an appeal apart from and outside the provisions of the Code, cannot be debarred from having his grievance redressed under sub-section (1) of Section 439 of the Code. *A fortiori,* where a party

invoking the revisional jurisdiction of the High Court is different from the one, who has *locus standi* as an appellant under the Code, his revision would be entertainable. In these two types of cases, sub-section (5) of Section 439 will not be a bar. In other words, that provision only restricts and curtails the power of interference by the High Court under sub-section (1) of Section 439 of the Code. The provision does not altogether render *non est* the revisional jurisdiction of the High Court in cases in which appeal lies. Appeals which are competent outside the provisions of the Code are not at all touched by sub-section (5) of Section 439 and do not fall within its clutch. If an appeal is competent under a special law, the bar created by sub-section (5) of Section 439 cannot adversely affect the revisional remedy by an aggrieved party who has not filed that appeal. The language of sub-section (5) of Section 439 of the Code only bars the entertainability of a revision petition at the instance of a party who could be an appellant. It follows as a corrollary that *suo motu* interference by the High Court is not barred as *suo motu* interference by the High Court necessarily implies that the interference is not at the instance of any particular party. Thus, revisional jurisdiction of the High Court for *suo motu* interference in spite of the provision of sub-section (5) of Section 439 of the Code has not been disturbed and has been kept intact.

(8) It is clear from the above interpretation of sub-section (5) of Section 439 of the Code that that provision is a bar against the maintainability of a revision petition only if appeal lies under the Code and revision petition has been filed by a party who is competent to maintain the appeal. Unquestionably, no appeal lies under the Code against an order passed under Section 3 of the Probation of Offenders Act under which the impugned order sought to be revised was passed in the present case. Against such an order, appeal is competent only under sub-section (2) of Section 11 of that Act. That provision runs as follows :—

> "Notwithstanding anything contained in the Code (Code of Criminal Procedure), where an order under Section 3 or Section 4 is made by any Court trying the offender (other than a High Court), an appeal shall lie to the Court, to which appeals ordinarily lie from the sentences of the former Court."

(9) It is thus obvious from the language of sub-section (2) of Section 11 of the Probation of Offenders Act that in the present case, an appeal is competent thereunder. There is no restriction

as to the party who can maintain an appeal under Section 11. Appeal under that provision will be competent by a complainant, by an accused person or by the State depending upon the nature of grievance, which springs up the cause of action for the party aggrieved. This provision does not lay down any limitation or restriction as to who has the *locus-standi* to be an appellant. Any one aggrieved of an order passed either under Section 3 or Section 4 of the Probation of Offenders Act has *locus standi* to maintain an appeal and to be an appellant.

(10) There is specific provision in sub-section (2) of Section 11 of the Probation of Offenders Act under which an appeal by the Registrar is maintainable. It is admittedly the case of the parties that no appeal has been filed under that provision by the Registrar. It will be relevant to mention here that there is no period of limitation prescribed for an appeal from the date an order is made either under Section 3 or under Section 4 of the Probation of Offenders Act. Appeal would lie without any technical restriction as to any period of limitation, apart from an inordinate delay and laches on the part of an aggrieved appellant being taken into consideration for entertainability of the appeal.

(11) The next point that arises on the above construction of the provisions of sub-section (5) of Section 439 of the Code *vis-a-vis* sub-section (2) of Section 11 of the Probation of Offenders Act is as to whether revisional power exerciseable as a remedy in general can be exercised under sub-section (1) of Section 439 of the Code, when specific provision of appeal under sub-section (2) of Section 11 of the special law of Probation of Offenders Act has not been availed of. While arguing about this point, Shri Nanda appearing on behalf of the respondents has laid stress upon the applicability of the legal maxim, *specialia exclusio generalibus* implying that the general power of revision conferred by virtue of sub-section (1) of Section 439 of the Code stands excluded by the provision of appeal in sub-section (2) of Section 11 of the special law of Probation of Offenders Act. The provision of sub-section (1) of Section 439 of the Code-dealing with the revisional power of the High Court is in no way contradictory of or inconsistent with the power of appeal conferred by virtue of sub-section (2) of Section 11 of the Probation of Offenders Act. Sub-section (1) of Section 439 of the Code is in addition to and apart from the provision of sub-section (2)

of Section 11 of the Probation of Offenders Act. Although, a party aggrieved of an order either under Section 3 or under Section 4 of the Probation of Offenders Act can file an appeal under sub-section (2) of Section 11 of the Probation of Offienders Act and has not filed it, there being in such a case no specific provision corresponding to sub-section (5) of Section 439 of the Code to debar him from invoking the revisional jurisdiction of the High Court under sub-section (1) of Section 439 of the Code, the residuary and general remedy by way of revision will be available to him. In the absence of debarring provision like that of sub-section (5) of Section 439 of the Code, there is no prohibition against the entertainability of a revision petition. The language of sub-section (1) of Section 11 of the Probation of Offenders Act reinforces the view as to revision petition being not barred although remedy by way of appeal under sub-section (2) of Section 11 of the Probation of Offenders Act has not been availed of. Sub-section (1) of Section 11 of that Act runs as follows :—

> "Notwithstanding anything contained in the Code (Code of Criminal Procedure) or any other law, an order under this Act may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court, when the case comes before it on appeal or in revision."

(12) The second part of the above provision goes a long way to suggest that apart from or in spite of the provision of sub-section (2) of Section 11 of the Probation of Offenders Act, a High Court can make an order under the provisions of that Act notwithstanding any provision either in the Code or in any other enactment and such an order may be made by the High Court when a case comes up before it either on appeal or in revision. Thus, when a case comes up in the High Court on revisional side under sub-section (1) of Section 439 of the Code, High Court will be competent to pass an order in that revision just as a trial Court will be competent to make an order either under Section 3 or under Section 4 of the Probation of Offenders Act. Even if a remedy by way of appeal has not been availed of by an aggrieved party, the High Court may in revision exercise powers conferred on a Court of appeal under section 423 of the Code either in cases, which have been reported under sub-section (1) of Section 438 of the Code or in cases, which otherwise

come to the knowledge of the High Court. When a case is reported under sub-section (1) of Section 438 of the Code to the High Court or when the High Court of its own comes to know of a case without the aggrieved party having filed any appeal, which could be maintained by it and finds that grave injustice has been done to the party, who could file a revision petition, the High Court will not connive at the illegality responsible for such an injustice. The underlying object of sub-section (1) of Section 439 of the Code will be defeated if the High Court felt hesitant to interfere with an order of illegality and avoided to render justice to the party aggrieved of it. I have thus no doubt that in spite of there being a provision of appeal in sub-section (2) of Section 11 of the Probation of Offenders Act and there being no bar against the entertainability of a revision petition, if appeal is not filed, revision will nonetheless lie. I come to the conclusion that in this case, the High Court can interfere on revisional side under sub-section (1) of Section 439 of the Code of Criminal Procedure.

(13) Instead of there being filed an appeal under sub-section (2) of Section 11 of the Probation of Offenders Act, there was filed a revision petition in the Court of Session under Section 435 of the Code and that revision petition has been forwarded for disposal to the High Court under sub-section (1) of Section 438 of the Code. Thus, the party aggrieved, namely, the Registrar has sought remedy by way of revision instead of seeking it by way of appeal. He has sought remedy all the same. The objection that appeal should have been filed and not the revision is merely one of form and a technical one too. The Court has, by virtue of the provision of Section 561-A of the Code of Criminal Procedure ample inherent power to pass an order as may be necessary to secure the ends of justice by treating a revision petition as an appeal. This well recognised practice and power of conversion of one type of remedy into that of another, which inhers in a High Court, shows that such formal and technical objections do not stand in the way of the High Court to interfere if the ends of justice call for interference.

(14) The construction of the above referred to relevant statutory provisions shows that the High Court can interfere under subsection (1) of Section 439 of the Code of Criminal Procedure notwithstanding the fact that an appeal lay under sub-section (2) of Section 11 of the Probation of Offenders Act and none was filed.

(15) Now, I refer, in chronological order, to the case law cited at the bar for the proposition as to when remedy by way of appeal competent under a special or local law has not been availed of, is revision under sub-section (1) of Section 439 of the Code entertainable? The earliest case, which has been cited is *Maya Das and another* vs. *Municipal Committee, Chiniot* (3). In that case, an order was passed under Section 81 of the Punjab Municipal Act by a Magistrate directing for issue of warrants of attachment of property of a defaulter lessee. An appeal lay from the order of the Magistrate to the Deputy Commissioner under Section 84 of the Municipal Act. No such appeal was filed. Resort was had to the provision of sub-section (1) of Section 439 of the Code of Criminal Procedure by filing a revision petition in the High Court. On objection being taken that sub-section (5) of Section 439 of the Code was a bar against the maintainability of the revision petition, it was observed as under :—

> "The learned Government pleader raised a preliminary point to the effect that no revision lay inview of the provisions of Section 439(5), Criminal Procedure Code, because under Section 84 of the Punjab Municipal Act, 3 of 1911, an appeal against the assessment or levy of any tax under the Act lay to the Deputy Commissioner or to such other officer as might be empowered by the Local Government in that behalf. This is obviously an untenable position. In the first instance, it has been only enacted in Section 439(5), Criminal Procedure Code that when under that Code an appeal lay and no appeal was brought, no proceedings by way of revision should be entertained at the instance of the party, who could have appealed. Now, in the present case no appeal lay under the provisions of the Criminal Procedure Code. Again, the farming out of the toll or the rent due to the Municipal Committee is not a tax. I overrule this contention."

(16) The next case relied on is *Mst. Bashiran* v. *State* (4). According to the facts of this case, a person visiting India on passport overstayed in the country. Rule 3 of the Passport Rules, 1950 prohibits a person proceeding from any place outside India from entering or attempting to enter India by water, land or air without a valid passport. Thus, a person entering India with a

(4) A.I.R. 1957 Raj 348.

valid passport cannot be said to have contravened the provision of rule 3 of these rules. There was no penal provision, under which a person with a valid passport overstaying in the country after the expiry of the period of visa issued on the basis of that passport would be punished. The person overstaying was, however, convicted under rule 6 of those rules. That person did not appeal against his conviction under rule 6 for overstaying after the expiry of the period of visa. A revision petition was filed with the Sessions Judge impugning the validity of the order of conviction. The Sessions Judge referred the case to the High Court. A preliminary objection was taken that no revision petition under sub-section (1) of Section 439 of the Code could lie inasmuch as remedy by way of appeal against the conviction under rule 6 of the rules had not been availed of. It was held that in spite of the fact that the petitioner had not filed any appeal, yet the High Court could, by virtue of sub-section (1) of Section 439 of the Code, interfere with the illegal order of conviction recorded against him and set aside the same.

(17) Reliance was placed on behalf of the company and the directors on the *State* vs. *K. Lachman Murty and another* (5) decided by a Single Bench. It was held in that case that wherein police cases ending in acquittal by the trying magistrate, the State omits to file a regular appeal under Section 417 of the Code of Criminal Procedure, it cannot move the High Court through the Sessions Judge to reverse the order of acquittal in exercise of its revisional jurisdiction under sub-section (1) of Section 439 of the Code as sub-section (5) of Section 439 would operate as a bar against the High Court's interference in revision. That case is obviously distinguishable and no advantage can be derived therefrom to take away the jurisdiction of the High Court in the present case when appeal to be filed in the latter is not one under the Code but under sub-section (2) of Section 11 of the Probation of Offenders Act. In that case, the appeal against the judgment of acquittal recorded by the trial Court at the instance of the State was maintainable in the High Court under Section 417 of the Code and not under any provision of appeal under a local or special law aliunde to the Code.

(18) The case of an accused person, who had been convicted under Section 506, Indian Penal Code and from whose conviction

(5) A.I.R. 1958 Orissa 204.

appeal filed in the Court of Session had been transferred by the High Court to its own file came up for consideration before the Supreme Court in *Romesh Chandra Arora* v. *The State* (6). The appeal was dismissed by the High Court but the sentence awarded by the trial Magistrate under Section 506, Indian Penal Code was enhanced. The question that arose was whether the High Court had committed any illegality in dismissing the appeal simultaneously with the enhancement of sentence. While considering that question, their Lordships, observed as follows :—

> "We have held that the High Court committed no illegality. Nothing said in this judgment should be taken as commending or encouraging a departure from the usual practice which, we understand, is that when an appeal is pending before an inferior Court, the High Court exercises, if necessary, its powers of revision after the appeal has been disposed. There may, however, be exceptional cases where the ends of justice require that the appeal itself be heard by the High Court and in such a case it is open to the High Court to exercise its powers of revision under Section 439, Criminal Procedure Code, of enhancing the sentence after having heard and dismissed the appeal. The present case was an exceptional case of that nature and we do not think that the procedure adopted by the High Court was in any way illegal or prejudicial to the appellant."

(19) The above observations of their Lordships of the Supreme Court show that the High Court has, by virtue of Section 439 of the Code, power to interfere in exceptional cases where the ends of justice require that the appeal itself be heard by the High Court and that in such cases it is open to the High Court to exercise its powers under Section 439 of the Code for enhancement of sentence after the appeal has been disposed of. In that case, the appeal transferred to the High Court had been filed by the convict while the revision petition had been filed by the State for enhancement of the sentence. The party filing the appeal was different from the party, who filed revision petition in the High Court. In such a case, sub-section (5) of Section 439 of the Code could not be a bar and, therefore, revision petition could be entertained and High Court could exercise powers for enhancement of sentence under sub-section (1) of Section 439 of the Code.

(6) A.I.R. 1960 S.C. 154

(20) A Division Bench of this Court in *Kishan Singh Munsha Singh* vs. *The State* (7) held that even if a party has not availed of remedy by way of appeal under Section 417 of the Code from a judgment of acquittal, the High Court can under sub-section (1) of Section 439 of the Code *suo motu* interfere with that judgment, if the judgment is found to be perverse or contrary to the evidence on the record and amounts to travesty of justice. This judgment shows that High Court can *suo motu* interfere, if a judgment of acquittal is perverse or results in miscarriage of justice, even if the State aggrieved of the judgment of acquittal has not moved the High Court by appeal under Section 417 of the Code.

(21) On behalf of the respondents, reliance has been placed on *Arakhita Behera and others* vs. *Bhikari Behera,* (8) In that case, an order of release with admonition was passed under Section 3 of the Probation of Offenders Act by the trial Magistrate for offences under Sections 147 and 427, Indian Penal Code. No appeal was preferred under sub-section (2) of Section 11 of that Act. Instead, the High Court was moved under Section 439 of the Code of Criminal Procedure for the order passed under Section 3 of the said Act being set aside. On a preliminary objection raised on behalf of the respondents, it was held that the petitioner having not availed himself of the remedy of appeal from the order made under Section 3 of the Probation of Offenders Act, revision petition, by virtue of sub-section (5) of Section 439 of the Code, was not maintainable. Except bare reference to sub-section (5) of Section 439 of the Code as to its being a bar for the maintainability of the revision, the language of that sub-section *vis-a-vis* sub-section (1) of Section 439 of the Code has not been considered, if I may say so with respect, by the learned Single Judge. As held above, sub-section (5) of Section 439 of the Code is only a bar against the maintainability of a revision petition when remedy by way of appeal entertainable under the Code has not been availed of. In this case, the remedy by way of appeal to be sought was one under sub-section (2) of Section 11 of the Probation of Offenders Act and not under the Code and consequently sub-section (5) of Section 439 of the Code could not be a bar. I respectfully dissent from the view taken by the learned Single Judge in holding that when remedy of appeal

(7) A.I.R. 1963 Pb. 170.
(8) I.L.R. (1968) Cuttack 223.

under sub-section (2) of Section 11 of the Probation of Offenders Act has not been availed of, revision petition under sub-section (1) of Section 439 of the Code would not be maintainable.

(22) Lastly, the respondents relied on *The State* v. *Raghbir Singh* (1). In that case, Raghbir Singh respondent was convicted by a Judicial Magistrate under Section 9 of the Opium Act. He was given benefit of Section 4 of the Probation of Offenders Act and directed to be released on furnishing a personal bond in the sum of Rs. 5,000 to keep peace and be of good behaviour for a period of one year. The State did not file any appeal under sub-section (2) of Section 11 of the Probation of Offenders Act but preferred a revision petition under Section 435 of the Code in the Court of Session. The Additional Sessions Judge, to whom the case was entrusted for disposal, made a report to the High Court under sub-section (1) of section 438 of the Code with the recommendation that the respondent be awarded sentence of rigorous imprisonent for six months. A preliminary objection was taken to the competency of the revision on the ground that remedy by way of appeal under sub-section (2) of section 11 of the Probation of Offenders Act having not been availed of, the revision petition was not competent. The provision of sub-section (5) of section 439 of the Code was relied on as a bar to the maintainability of the revision petition. The learned Single Judge while dismissing the revision petition observed as follows:—

> "The petitioner State, which had a statutory right and remedy by way of appeal had not exercised the same. On general principles and also on the specific provisions of section 439(5), a party, who has a right of appeal cannot be allowed to have resort to revision proceedings. I am hence disinclined to interfere at the instance of the State in the present case and would consequently decline the reference."

(23) Reliance for that decision, *inter-alia,* was placed on the above referred to Cuttack judgment in *Arakhita Behera and others* vs. *Bhikari Behera* (8) about the correctness of which, I am in disagreement. The scope of sub-section (5) of section 439 of the Code in relation to the right of appeal under sub-section (2) of section 11 of the Probation of Offenders Act has not been considered. Sub-section (5) of section 439 of the Code bars only those revisions of cases, in which appeals are maintainable under the Code and that too subject to the limitations prescribed therein as already indicated

by me while construing that sub-section. Sub-section (5) does not at all bar the entertainability of a revision under sub-section (1) of section 439 of the Code, when an appeal is maintainable under a special or local Act and the aggrieved party did not resort to that remedy. I respectfully differ from the view taken by the learned Single Judge and hold that even if remedy by way of appeal under sub-section (2) of section 11 of the Probation of Offenders Act has not been availed of, sub-section (5) of section 439 will not operate as a bar against the invoking of revisional jurisdiction of the High Court under sub-section (1) of section 439 of the Code.

(24) On behalf of the respondents, there has been reliance on judgment of Koshal J. in *State of Haryana* vs. *Ramji Lal Devi Sahai and another* (9). In that case, the accused committed offence under sub-section (1) of section 61 of the Punjab Excise Act, 1914. The Chief Judicial Magistrate, Narnaul, who tried the case did not impose punishment envisaged under the said provision of the Excise Act. Instead, he resorted to the provision of section 4 of the Probation of Offienders Act and released him thereunder on probation of good conduct. On behalf of the State of Haryana, there was filed a revision petition under sub-section (1) of section 435 of the Code in the Court of Session. The Additional Sessions Judge, to whom the case was transferred for disposal, reported the case to the High Court under sub-section (1) of section 438 of the Code with the recommendation that the case was not a fit one for applicability of section 4 of the Probation of Offenders Act and that the accused should have been convicted under the provision of sub-section (1) of section 61 of the Excise Act. An objection was taken before Koshal J., that there being maintainable an appeal on behalf of the State under sub-section (2) of section 11 of the Probation of Offenders Act, remedy by way of revision under sub-section (1) of section 439 of the Code was barred. While dealing with the objection, he observed as under:—

> "The petition must fail on the short ground that an appeal against the impugned order lay under section 11 of the Probation of Offenders Act, 1958 to the Sessions Judge and that not having availed of that remedy, the State cannot be allowed to ask for the discretionary relief, which this

(9) 1972 Cr. L.J. 796.

Court may be able to grant under section 439 of the Code of Criminal Procedure. It is accordingly dismissed."

(25) It is a very brief judgment. In the body of the judgment, there is no reference to the provision of sub-section (5) of section 439 of the Code as to whether a revision petition forwarded by the Additional Sessions Judge under sub-section (1) of section 438 and to be considered for disposal under sub-section (1) of section 439 of the Code was barred when an appeal lay not under the Code, but under the provision of sub-section (2) of section 11 of the Probation of Offenders Act falling outside the Code. In that brief judgment, there is neither reference to the provision of sub-section (5) of section 439 of the Code nor any discussion about the scope of that provision and the effect of the provision upon sub-section (1) of section 439, when the appeal under sub-section (2) of section 11 of the Probation of Offenders Act is not an appeal maintainable under the Code, but outside the Code. The ratio of that case is counter to the view I have taken about the scope of the provision of sub-section (5) of section 439 of the Code in relation to the remedy of revision petition under sub-section (1) of section 439 of the Code when an appeal lies under sub-section (2) of section 11 of the Probation of Offenders Act and the same has not been filed. I respectfully dissent from the *ratio decidendi* of that case as it does not lay down the law correctly.

(26) The judgment in *The State* vs. *Raghbir Singh* (1) was considered in an unreported case entitled as *Shri B. L. Sahni, Assistant Collector, Central Excise* vs. *Shri Parkash Chand Jain and another* (2) by Dhillon J. In that case, the respondents were convicted for offence under section 135(b)(ii) of the Customs Act, 1962 and Rule 126 of the Defence of India Rules. Considering that the convicts were first offenders, the recovered gold and ornaments had been confiscated and the fact that the respondents had paid penalty of Rs. 4,000 and faced protracted adjudication proceedings in the Customs Department, the trial Magistrate instead of imposing sentence of imprisonment and/or fine directed under section 4 of the Probation of Offenders Act that they should be released on probation of good conduct for a period of one year. The petitioner, the complainant before the trial Magistrate, filed revision petition under sub-section (1) of section 435 of the Code of Criminal Procedure in the Court of Session. As prayed, the case was recommended to the High Court for imposition of sentence of imprisonment instead of the order of release on probation made under section 4 of the Probation

of Offenders Act. A preliminary objection was raised before Dhillon J., before whom the case came up for final hearing, that no appeal having been filed under sub-section (2) of section 11 of the Probation of Offenders Act from the order made by the trial Magistrate under section 4 of that Act, the High Court could not interfere in exercise of revisional jurisdiction. In support of that objection, reliance was placed on the judgment given in *The State* vs. *Raghbir Singh* (1). In reply, it was urged on behalf of the petitioner that the view taken by the learned Single Judge in *The State* vs. *Raghbir Singh* (1) was not correct as sub-section (5) of section 439 of the Code operated as a bar against the invoking of revisional jurisdiction of the High Court only if appeal by an aggrieved party maintaining the revision petition was maintainable under the Code and not under a special law and had not been filed. It was observed that sub-section (5) of section 439 of the Code did not debar in that case the filing of the revison petition. Support for that view was ought from *Maya Das and another* vs. *Municipal Committee, Chiniot* (3). It is the conflict between these two judgments, one holding that the revision petition was not entertainable when remedy by way of appeal under sub-section (2) of section 11 of the Probation of Offenders Act had not been availed of while the other taking the view that such a revision petition was entertainable, which necessitated the reference.

(27) In the light of the view I have taken about the scope and effect of sub-section (5) of section 439 of the Code, a revision petition is entertainable under sub-section (1) of section 439 of the Code, even if appeal under sub-section (2) of section 11 of the Probation of Offenders Act has not been filed. The view taken by the learned Single Judge in *The State* vs. *Raghbir Singh* (1) does not appear to be correct. It is held that High Court can interfere under sub-section (1) of section 439 of the Code with the order of a trial Magistrate passed under section 3 or section 4 of the Probation of Offenders Act, even if remedy by way of appeal under sub-section (2) of section 11 of the Probation of Offenders Act has not been availed of. The preliminary objection raised on behalf of the respondents is over-ruled.

(28) Now, I come to the merits of the case. The only question, which survives for consideration is whether there is warrant for the order passed under section 3 of the Probation of Offenders Act for release of the directors after administering them admonition. The

trial of the respondents was a summary trial. At the trial, the respondents confessed their guilt for offence under section 220 of the Act for having not forwarded three copies of the balance-sheet within 30 days of the date, on which balance-sheet was to be laid before the annual general meeting of the company. They twice applied for extension of time to file the copies of the balance-sheet with the Registrar. By letters, dated September 12, 1967 and November 24, 1967 issued by the Registrar to the respondents, extensions were granted but the respondents failed to file the copies of the balance-sheet. By virtue of these extensions, they were to file the copies by December 31, 1967. Another extension was granted till January 30, 1968. Even then, they defaulted in filing the copies of the balance-sheet. On February 8, 1968, there was issued notice communicating to the respondents that if they did not file the copies of the balance-sheet within the period of notice they would be proceeded against for prosecution for offence under section 220 of the Act. Even that notice failed to persuade them to discharge their duty under sub-section (1) of section 220 of the Act to file copies of the balance-sheet with the Registrar. The complaint for their prosecution was filed by the Registrar on March 30, 1968. During the pendency of the complaint, the respondents filed three copies of the balance-sheet with the Registrar on August 19, 1968. It was thereafter that on September 12, 1968, they pleaded guilty to the charge. Thus, there is no escape from the conclusion that the respondents have knowingly and wilfully committed default in filing the copies of the balance-sheet with the Registrar from January 30, 1968 to August 19, 1968. In the written statement filed on their behalf, they have offered an explanation saying that some time in January, 1967 there was committed the murder of Shri S. L. Chaturvedi, Managing Director of the company and that the account books of the company remained in custody of the police and in Court for a pretty long time. In that explantion unsupported by affidavit as it is, there is no mention as to the particular date, on which books were taken in possession by the police and later on came to the custody of the Court. In the absence of specific relevant particulars, it is very difficult to come to the conclusion whether the respondents were not in possession of the books after the murder had been committed. In any case, they could inspect the account books while they were in possession of the police or in custody of the Court and there could be no difficulty in filing the balance-sheet, if for the purpose of filing of balance-sheet reference of those books at that time was necessary. It has been further stated in the written statement that inspection was allowed by the High Court after May, 1968 and the

books were inspected and the balance-sheet was prepared and filed. Again, it is vaguely stated that books were inspected after May, 1968. No particular dates are mentioned as to when the application was made and the books were inspected. Similarly, no date, on which the balancesheet was prepared nor the date, on which it was audited has been chosen to be mentioned.

(29) Sub-section (1) of section 220 of the Act provides that after the balance-sheet and the profit and loss account have been laid before a company at the annual general meeting, there shall be filed with the Registrar within thirty days from the date on which the balance-sheet and the profit and loss account were so laid, three copies of the balance-sheet and the profit and loss account. Filing of copies of the balance-sheet with the Registrar on the part of the company is imperative and that too has to be done within the said period of thirty days. The Registrar showed them indulgence of extension of time, but the failure to file the copies of the balance-sheet in spite of extensions given continued from December 31, 1967 to January 30, 1968 and then thereafter in spite of the notice served and the complaint filed till August 19, 1968. Thus, the company and the directors have knowingly and wilfully failed to file the copies of the balance-sheet, which they were under obligation to do as enjoined upon them by sub-section (1) of section 220 of the Act. The underlying object of section 220 of the Act is to protect the interests of the general public and particularly to safeguard those of the share-holders and creditors of the company by making it obligatory upon the company and its directors to file copies of the balance-sheet to enable the share-holders and the creditors apart from the general public to know how the affairs of the company are being carried on and what exactly the assets and liability of the company are and how the company is faring in the business, which is being carried on by it. This underlying object of public policy will be defeated, if default has been committed by the company and its directors in filing the copies of the balance-sheet in spite of repeated extensions granted to them. It is on account of that reason that deliberate and wilful default has been held to be penal under sub-section (3) of section 220 of the Act. The offence committed could not be held to be merely a technical offence. Instead of there being imposed the penalty of fine as provided in sub-section (3) of section 220 read in conjunction with section 162 of the Act, there has been administered admonition to the directors. It is not a fit case for giving the benefit

of section 3 of the Probation of Offenders Act to the directors of the company. Taking into consideration the fact that during the pendency of the complaint, the directors filed the copies of the balance-sheet with the Registrar after 6 months and 19 days after their default in filing having commenced from Janury 30, 1968, the maximum penalty of fine of Rs. 50 per day is not called for. Ends of justice would be met, if fine of Rs. 10 per day is imposed upon them for the period of default committed by them.

(30) In the result, the reference made by Additional Sessions Judge is allowed and fine of Rs. 10 per day for the period from January 31, 1968 to August 19, 1968 is imposed upon the respondents.

B. S. G.

CIVIL MISCELLANEOUS

Before Rajendra Nath Mittal, J.

JAI MAL,—*Petitioner.*

versus.

The State of Haryana etc.,—*Respondent.*

Civil Writ No. 1475 of 1972.

August 17, 1972.

Punjab Gram Panchayat Act (IV of 1953) as amended by Haryana Act (XIX of 1971)—Sections 5, 9, 10 and 11—Haryana Gram Panchayat Election Rules (1971)—Rule 12—Nomination of Panch to fill casual vacancy without holding elections first under section 10—Whether valid—Panch—Whether a member of the Gram Panchayat without being administered oath.

Held, that the nomination of a Panch under sub-rule (2) of Rule 12 of the Haryana Gram Panchayat Election Rules, 1971 read with section 11 of the Punjab Gram Panchayat Act, 1952 by the Deputy Commissioner in a vacancy caused by the death of an elected Panch is not valid where he fails to hold elections for electing a Panch under section 10 of the Act. If the election cannot be held for want of publication of election programme within time, because of any reason, the Deputy Commissioner should extend the time for holding the same under rule 42 of the Rules. It is only when the filling of the casual vacancy by the procedure under section 10 read with rule 40 has been frustrated that the appointment by the prescribed authority under section 11 is to be invoked as a last resort.

(Paras 3 and 5)