

(1952) 12 MAD CK 0014
In the Madras High Court
Case No : O.S. Appeal No. 88 of 1951

J. Loomchand Sait

APPELLANT

Vs

The Official Liquidators, Peerdan Joharmall Bank Ltd.

RESPONDENT

Date of Decision : 17-12-1952

Acts Referred:

Banking Companies Act, 1949 — Section 45A, 45C, 45G
Companies Act, 1913 — Section 177, 179, 282A
Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1898 (CrPC) — Section 403

Citation : AIR 1953 Mad 595 : (1953) 23 CompCas 142 : (1953) 1 MLJ 514

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : D. Suryaprakasa Rao and T.K. Raman Nambisan, for the Appellant;
A. Balasubramaniam, for the Respondent

Final Decision : Dismissed

Judgement

Basheer Ahmed Sayeed, J.—The appellant in this appeal is one Loomchand Salt, who was the Managing Director of the Peejdan Joharmal Bank Ltd., in liquidation. He has preferred this appeal against the order of Krishnaswami Nayudu J. who held that the appellant had acted fraudulently and had brought himself within the purview of Section 282-A of the Companies Act. The learned Judge found all the charges framed against him proved and sentenced him to pay a fine of Rs. 1000 and directed him to pay Rs. 42,527-12-9, deliver the jewels, particulars of which were given in the schedule to the charge excepting some three items referred to in the judgment and also to pay a sum of Rs. 87,000 plus Rs. 199-12-0 being the value of the securities wilfully misapplied by the said appellant on or before 12-9-1951. In default, he ordered that the appellant should undergo imprisonment for two years. The appellant was given time till 12-9-1951 to which date the matter stood adjourned. On 14-9-1951, the appellant having failed to comply with the order, dated 29-8-1951, the matter came up before the learned Judge on 14-9-1951. The respondent was ordered to undergo

imprisonment as directed in the order dated 29-8-1951 for a period of two years and that the necessary warrant should issue. This appeal is preferred against the said order.

2. The earlier history of the application taken out by the Official Liquidators of the said Peerdan Joharmal Bank Ltd., in Thiruchirapalli (in liquidation) u/s 282-A of the Companies Act, for passing appropriate orders against the respondent, has been elaborately set out in the order passed by Krishnaswami Nayudu J. under appeal, and it is therefore unnecessary to traverse the entire ground in this judgment. Suffice it to mention that the application of the liquidators in its final form was ordered by Mack J. on 11-1-1950 by which he held that the appellant was liable to bring in a sum of Rs. 2,00,000, being the value of the securities, jewels and of the unaccounted cash balance. He was directed to pay a fine of Rs. 1000 u/s 282-A and ordered to pay up within three months the sum of Rs. 2,00,000 and in default sentenced to suffer imprisonment for a period of two years. The appellant preferred O. S. A. No. 20 of 1950 against this order of Mack J. The appellate Court set aside the order of Mack J. and remanded the application to be heard and disposed of in an elaborate judgment delivered by the Honourable the Chief Justice sitting with Viswanatha Sastri J. On remand, Krishnaswami Nayudu J. after hearing the evidence on behalf of the applicants, the Official Liquidators, framed three charges against the appellant on 35-4-1951 u/s 282-A of the Companies Act. After holding an elaborate enquiry into the said three charges, which have been set out in the order of the learned Judge, and after giving every opportunity to the appellant who was represented by counsel to cross-examine the applicant's witnesses and also adduce defence evidence, the learned Judge, as already stated, came to the conclusion that the charges had been proved and imposed the sentence of fine of Rs. 1000 and imprisonment for two years.

3. When the appeal came on for hearing before us the appellant wanted legal counsel to be appointed by the Court to conduct his case, but we could not persuade ourselves to comply with his request. Thereupon, the appellant engaged the services of Mr. Rajah Aiyar assisted by three other counsel. Mr. Rajah Aiyar argued the appeal at length and placed before us every aspect of the case which was in favour of the appellant.

We are thankful to Mr. Rajah Aiyar for his able argument.

4. After having heard the arguments of Mr. Rajah Aiyar and those of the Official liquidators and having perused the entire evidence in the case, both oral and documentary, and having considered all the legal points raised by the learned counsel on both sides and having given our anxious consideration to the case, we have come to the conclusion, for the reasons set out hereinafter, that there are no merits in this appeal, that the order under appeal should be confirmed and that the appeal dismissed.

5. The first point that Mr. Rajah Aiyar has urged on behalf of the appellant is that

no leave has been obtained by the Official Liquidators for instituting proceedings against the appellant u/s 282-A of the Companies Act, as required by Section 179 of the said Act. Mr. Rajah Aiyar has invited our attention to the language of Section 179 (a) of the Companies Act which is to the following effect:

"The Official Liquidator shall have power, with the sanction of the Court, to do the following things: (a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company, etc."

and contends that the sanction of the Court for instituting criminal proceedings against the appellant was a condition precedent and that, inasmuch as no sanction was obtained by the Official Liquidators for the filing of the present application against the appellant the proceedings against him are vitiated by this serious legal defect. He also drew our attention to the fact that the order of appointment given to the Official Liquidators also did not contain any power authorising the Official Liquidators to institute proceedings u/s 179 (a) of the Companies Act. The first order passed by Mack J. on 22-11-1949, it has been pointed out, does not give authority to the Official Liquidators to institute criminal proceedings u/s 282-A, but only u/s 238-A of the Act.

The notice of motion alone mentions for the first time Section 282-A along with other sections. This section has been introduced by the Official Liquidators without sanction from the Court in the said notice of motion. Therefore, it is urged by Mr. Rajah Aiyar that the proceedings are incompetent and improper. If reliance were to be placed on the order dated 11-1-1950, Mr. Rajah Aiyar would argue, that that order having been set aside by the appellate Court which treated the application as one u/s 238-A did not hold the field any more. So, it was not of any avail, though it mentions that the advocate of two creditors made a request that the appellant might be dealt with u/s 282-A and that action was therefore taken under that section by the learned company Judge. Section 282-A says that action has to be taken "on the complaint of the company" and that it was not enough that the creditors of the company made a request to treat the application of the liquidators as one u/s 282-A; nor was it open to the learned Judge to take action "suo motu", no complaint having been made u/s 282-A of the Act.

6. It must, however, be observed that though the appellate order says that Section 238-A did not apply and directed that the application should be enquired into and disposed of u/s 282-A still the point of want of previous sanction, was not raised before the said appellate Court, nor even before the learned company Judge, who passed the order under appeal.

7. We have carefully examined the language of Section 179 (a) of the Companies Act and also the various other sub-clauses of which this section is comprised. We do not think that the language of the section warrants the interpretation put upon it by the learned counsel for the appellant that it enacts that previous sanction should be obtained by the Official Liquidators for instituting criminal

proceedings against the defaulting managing director. If it were the intention that previous sanction should be obtained for instituting criminal proceedings, the language of the section would have been in a mandatory form as contained in various enactments such as the Civil Procedure Code, and the Criminal Procedure Code and certain other Acts where it has been provided that "no suit or proceedings shall lie or be taken without the previous sanction" of the Court or the authority concerned (Vide Sections 195 and 196, Cri. P. C., Section 92 C. P. C., Section 70 of the Stamp Act, Section 223 of the Local Boards Act and Section 399 of the City Municipal Act). Far from being a prohibitory section, as is the case in other enactments, the section in the Companies Act is an enabling one which says that the liquidators shall have power, with the sanction of the Court, to institute criminal proceedings. We do not think that there is sufficient justification for us to import into the language of Section 179 the words "previous sanction".

If the words "previous sanction" were to be imported into this section, then the administration of the affairs of the company in liquidation under the various sub-clauses of this section would become well nigh impossible, for, it would then become necessary that the liquidators should run up to the Court even for ordinary acts of administering the properties and affairs of the company. At that rate, it would be inconceivable that the administration of the company in liquidation could ever be carried on. So, it is that the section has provided in general terms that the liquidators shall have power, with the sanction of the Court, to do acts which are enumerated in the various sub-clauses without laying it down that such sanction is a condition precedent to the taking of steps for the administration of the company, by the Official Liquidators. On the point that previous leave is necessary, the learned counsel has invited our attention to a decision in -- AIR 1948 82 (Privy Council) , wherein it has been observed that Section 537 Cri. P. C. does not require the lack of leave. We do not think that in the circumstances of this case that decision has any application. Reference has also been invited to the decisions in -- In Re: K.T.K. Thangamani, , -- Davood Mohideen Rowther Vs. Sahabdeen Sahib, , to support the contention that the general power to institute proceedings is not sufficient and that leave is a condition precedent for the filing of the complaint under the Companies Act. On the facts of this case, we are unable to see that these decisions have any bearing.

In the absence of specific terms that sanction should be previously obtained, it follows, as a necessary corollary, that the sanction required by the Official Liquidators could be given by the concerned authority at any time, even after the proceedings have actually been instituted or even in the course of the proceedings. On the materials placed before us by the Official Liquidators, we find that, as a matter of fact, the learned company Judge has given the sanction to institute proceedings u/s 238-A of the Companies Act even before the institution of the proceedings took place and has also given further sanction u/s 282-A of the Act, in the course of the application taken out by the liquidators for proceedings against the appellant. In the order passed by the learned company

Judge in Appln. No. 3054 of 1949 on 22-11-1949, the Official Liquidators were directed to file an application for the commitment of the appellant to prison for violation of the directions given to him on 7 and 14-10-1949. In the notice of motion in Appln. No. 4572 of 1949, the applicants prayed for appropriate orders under Sections 238-A and 282-A. This notice of motion was filed under four sections, viz., 183, 185, 238-A and 282-A of the Companies Act and under Rule 9 of the Original Side rules and under the Banking Companies Ordinance dated 23-9-1949. Paragraphs 21 and 22 of the affidavit filed in support of the notice of motion in Appln. No. 4572 of 1949 mention that the appellant had rendered himself liable to be dealt with under Sections 238-A and 282-A of the Companies Act and that it was therefore, just and necessary that the Court should be pleased to summon Loomchand Sait, the appellant, and commit him for contempt of Court and pass appropriate orders under Sections 238-A and 282-A of the Companies Act. It is, therefore, clear that the Court was approached by the Official Liquidators not merely u/s 238-A but also u/s 282-A of the Companies Act.

While the order of Mack J. proceeded at the outset to state that he had treated the application substantially as one u/s 238-A for punishing Loomchand Sait for breach of his obligations under Sub-sections 1 and 2 of Section 238-A, in the course of his order, at a later stage, the learned Judge has observed as follows:

"There is abundant material before me to commit Loomchand Sait immediately to prison to undergo the maximum sentence of two years rigorous imprisonment on these counts proved against him u/s 238-A (1)(b). I should have had no hesitation in adopting this course but for a plea made by Mr. Ganapati Aiyar on behalf of the two creditors that in their own interests and in the interests of the general body of creditors action may be taken instead u/s 332-A of the Companies Act as, if Loomchand Sait is sent to prison, the creditors may not recover a substantial dividend as they would be deprived of his assistance in recovering the bank's liabilities I have decided to give Loomchand Sait in view of his having run this bank for nearly 17 years an opportunity of implementing his assertion that he can still find 16 annas in the rupee to be paid to his creditors and to apply to this case Section 282-A under which also this application has been filed and not to send Loomchand Sait immediately to prison though he richly deserves it in view of my findings u/s 238-A."

In para. 7 of his order, the learned Judge further discusses the scope of both Sections 238-A and 282-A and the various requirements that have to be satisfied for action being taken under either of the sections and finally winds up by saying that it would be manifestly desirable in the interests of winding up administration and that he could see no legal impediment in the way of Section 282-A being applied in suitable cases in the interests of creditors, although the immediate commitment to prison of the delinquent director or managing agent u/s 238-A would be legally justified.

A reading of the relevant passages of the order of the learned company Judge

referred to and extracted above would clearly prove that even if it were contended with any force that previous sanction had not been accorded to the Official Liquidators for instituting criminal proceedings, such sanction had been actually given to the Official Liquidators in the course of the proceedings by the learned company Judge. Since we are of the opinion that Section 179 of the Companies Act does not preclude the giving of sanction by the concerned authority even in the course of the proceedings or on application, we do not think that there is anything wrong in the learned company Judge having accorded sanction in the course of the proceedings. In this view, it will be futile to contend that the Official liquidators had not obtained sanction from the Court for instituting criminal proceedings which have terminated in the conviction and sentence of the appellant. We think Section 179 has been substantially complied with, there being no statutory prohibition against proceedings being instituted without the previous sanction of the Court. Section 17 of the Presidency Towns Insolvency Act, we may state, has been interpreted to mean that sanction could be given even during the course of the proceedings.

The learned Official Liquidators have invited our attention to the decisions in -- *Mrityunjoy Chakravarti Vs. Provat Kumar Pal*, ; -- *The Official Receiver of Coimbatore District and Another Vs. D.D. Kanga*, ; -- *Emperor Vs. Bishan Sahai Vidyarthi and Others* ; -- "*Subramania Aiyar v. The Pondanur Bank Ltd. Thiruvadamarudur*", AIR 1947 Mad 343(G), and -- "*Laduram Mathmul v. Nandalal*", AIR 1920 Cal 113 (H), wherein the broad principle has been enunciated that the grant of leave is a matter between the Court and the receiver or the Official Liquidators and that the sections requiring leave of the Court in the Companies Act and in the Insolvency Acts are only administrative provisions which are the matters entirely between the Official Liquidators or the Official Receivers and the Court. It is also urged by the learned Official Liquidators that if leave is not obtained, it will be merely an error which can be rectified at a later stage. In the view we have taken, we do not think that we need go into this question any further. The learned Official Liquidators have invited our attention to a comparison of Section 171 with Section 179 of the Companies Act and they urge that the language of the two sections is different, that whereas Section 171 of the Companies Act requires that leave should be obtained as a condition precedent, the same is not the case with Section 179 of the Act. They have also relied upon the decisions in -- *Bhagirath Chandra Das and Others Vs. Emperor*, and -- "*Sunilchandra v. Krishnachandra*", AIR 1949 Cal 689 (J), where even the requirements of Section 171 have been liberally interpreted.

8. Mr. Rajah Aiyar has next urged that the complaint in this case by the Official Liquidators ought to have been filed in the name and on behalf of the company, and that, in this case, it has been filed merely by the Official Liquidators of the company. The proceedings are not, according to him, in the name and on behalf of the company as required by law. He invites our attention to Section 177 of the Companies Act, which provides for the formalities to be observed in proceedings

under the Companies Act. Section 177 is to the following effect :

"The Official Liquidator shall be described by the style of the Official Liquidator of the particular company in respect of which he is appointed, and not by his individual name."

The question is whether the requirements of this section have been substantially complied with by the form in which the proceedings have been instituted by the Official Liquidators of the company before the Court dealing with the company matters. It is true that Section 282-A says that action is to be taken on the complaint of the company and Mr. Rajah Aiyar would urge that the Judge cannot take any action "suo motu". In this case, the Official Liquidators it is that have moved the Court for the investigation into the default committed by the appellant and, as has already been pointed out, the notice of motion filed by the liquidators has been filed only u/s 282-A as well as the other sections. There is, therefore, no question of the Judge taking action "suo motu" in this case. The complaint has been by the liquidators on behalf of the company for which they have been appointed Official Liquidators. Besides, an examination of the cause-title of the application and the notice of motion", that have been taken out by the liquidators clearly set out that the applications are in the matter of the Companies Act 7 of 1913 and in the matter of the Peerdan Joharmal Bank Ltd. in liquidation and the proceedings are stated to be between N. Krishnaswami Aiyangar, the petitioner and Peerdan Joharmal Bank Ltd. the respondent and also between A. Balasubramaniam and C. S. Vidyasankaran, joint Official Liquidators, applicants and J. Loomchand Salt, respondent.

It is true that the applicants in the said application and the notice of motion have not been described as the Peerdan Juharmal Bank Ltd. (in liquidation) by the joint official liquidators, Messrs. A. Balasubramaniam and C. S. Vidyasankaran. The question is as to whether by their inscribing their name as they have actually done instead of adopting the form which they should have done, it would be so serious a defect as to vitiate the entire proceedings and whether it would go to prove that the proceedings have not been in the name and on behalf of the company. In our opinion, the non-compliance with this formal requirement in the matter of the description of the applicants in the said notice of motion and the application, cannot and will not alter the substance of the applications which, we have to state, are substantially in the name and on behalf of the company. In -- "Muhammad Yusuf v. The Himalaya Bank Ltd", 18 All 198 (K), it has been held that where the Official Liquidator described himself merely as "the Official Liquidators, the Himalaya Bank Ltd, in liquidation" and did not describe himself as "The Himalaya Bank Ltd, in liquidation, the plaintiff", there was a substantial compliance with the provisions of Act 6 of 1882 (the Indian Companies Act) and that even if it was considered that any amendment was necessary under the CPC such an amendment would not introduce a new plaintiff into the suit so as to let in the operation of Section 22 of Act 15 of 1877, Limitation Act. Even so, in -- Shiam Lal J. Dewan Vs. Official Liquidators of the U.P. Oil Mills Co., Ltd. , the

learned Judges have held that even if the proceedings are not in the name and on behalf of the company, they must be deemed to be by the company through its liquidators when the Official Liquidators have taken the proceedings in the matter of the company in liquidation. We do not think, therefore, that there is any grave defect in the omission committed in the manner and form of description of the applicants in the two applications that have been filed by the Official Liquidators in this matter.

9. A more substantial point of law that has been urged by Mr. Rajah Aiyar, the learned counsel for the appellant, is that under Article 20(2) of the Constitution of India, no person can be prosecuted and punished for the same offence more than once. He contends that Section 282-A of the Companies Act provides a double punishment in that it provides for a fine not exceeding a thousand rupees also a term of imprisonment not exceeding two years for the same offence. The terms of Section 282-A are as follows :

"Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment for a period not exceeding two years."

A reading of this section shows that what is provided for in the first instance is a fine not exceeding Rs. 1000 to be imposed upon the director or other person found guilty and an order to be passed by the Court directing the person complained of to deliver or refund the property improperly obtained or wrongfully withheld or wilfully misapplied by him; and in the second place, the section goes on to provide that, if the person against whom the fine and the order have been passed commits default, he may be ordered to suffer imprisonment for a period not exceeding two years.

This default clause imposing a term of imprisonment might come into operation either in case the person fined fails to pay the fine imposed or when he fails to comply with the order passed against him. It may also be that the said default clause might come into operation when the person against whom the fine and the order have been passed commits default in both. The intention and the language of the latter part of Section 282-A seem to be that there should be a term of imprisonment imposed upon the person, who has already been fined and ordered to do a certain thing, if he fails to comply with either or With both. If the words "of either or both" had been inserted between the words "default" and "to suffer", the language of the section would have become complete and explicit. Though these words do not actually occur in the language of the section, still we

think that what has been aimed at by the section is only that in default of either paying the fine or complying with the order for delivery etc., or both, there should be a punishment by way of imprisonment for a term not exceeding two years. We do not think that the language of the section is capable of being so interpreted as to say that it provides for a double punishment for one and the same offence.

It provides a punishment in the first instance on proof of an offence, and enables the Court to pass an order along with the punishment, and in default of the party complying with the payment of the fine or the compliance with the order, a punishment for such default has been prescribed. It is only an alternative punishment arising when default is committed. It is quite in consonance with the principles of criminal jurisprudence on which our criminal laws are based, & we do not think that this Section 282-A offends against Article 20(2) of the Constitution of India. Though the commentaries so far available on this Article 20(2) are meagre, still, the commentaries that have been placed before us, viz., that of Mr. Basu on the Indian Constitution and the Constitution of India by Mr. N. R. Raghavachariar do not enable us to say that Section 282-A of the Companies Act, could be construed as providing for a double punishment. The commentators have discussed the point of double punishment while dealing with Article 20(2) and have opined that the word "and" in the phrase "prosecuted & punished" could be taken either as a conjunctive or a disjunctive word. Whatever might be the comment on that aspect of the language contained in Article 20(2), in this case, there can be no substance in the contention that the appellant has been prosecuted and punished twice over for the same offence; much less is it a case of the appellant being simply punished twice over for the same offence. In other words, whether the word "and" occurring in the phrase "prosecution and punished" be simply taken as a conjunction or a disjunctive "word", in our opinion, it cannot be contended with any force that the appellant in this case has been either prosecuted twice or punished twice for the same offence. Therefore, we are unable to agree with the argument of the learned counsel for the appellant that the punishment imposed on the appellant in this case would amount to a double punishment for one and the same offence.

10. The third point urged by the learned counsel for the appellant is that inasmuch as the present proceedings have been also taken under the Banking Companies Act and so far no rules having been framed by the Court under the Banking Companies Act, as required by Section 45 (G) of the said Act, the proceedings out of which tin's appeal has arisen must be considered to be vitiated and void. Section 45(G) of the Banking Companies Act is in the following terms:

"The court may make rules consistent with this Act concerning the mode of proceedings to be had for the decision of all claims or questions and all other proceedings, whether civil or criminal, which are to be decided pursuant to the provisions of Part III or Part III-A and concerning all other matters for which

provision has to be made for enabling the court to effectively exercise its functions under the said provisions."

While it has not been brought to our notice that any rules have actually been framed for criminal proceedings under the said Act by the High Court, which is the Court defined u/s 45-A, no authority has been placed before us to show that simply because rules required by Section 45-G have not been framed, the proceedings taken under the Companies Act as well as the Banking Companies Act are null and void and that the High Court has no jurisdiction to inquire into the same and pass orders thereon. If the rules have not been framed as required by the said Section 45-G in our opinion, the existing rules framed under the Companies Act under which also this application has been taken out would be applicable to the proceedings in question. Even otherwise, if no rules have been framed under the Banking Companies Act under which this application is said to have been taken out since the matter is one that is dealt with on the Original Side of the High Court by the Judge dealing with company matters, we think that the procedure laid down by the Original Side rules will apply until such time as the rules required to be framed for u/s 45-G of the Banking Companies Act, have actually been framed. In any case, we do not think that it could be validly urged that the proceedings that have been instituted and have been investigated into by the learned Judge sitting on the Original Side and dealing with company matters are without jurisdiction or that they are in any way defective or vitiated by reason of the non-framing of the rules u/s 45-G of the Banking Companies Act.

11. In this connection, the learned counsel for the appellant has pointed out that u/s 45-G, the Court may, if it thinks fit, take cognisance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the formation or promotion of the banking company which is being wound up or any past or present director, manager or officer thereof.

There is also a proviso to this section which is in the following terms:

"provided that the offence is one punishable under the Indian Companies Act, 1913, 7 of 1913, with" imprisonment for a term which does not exceed two years, or with fine which does not exceed one thousand rupees."

The second clause of this section 45-C sets forth details as to what the trying Court should do if the case is tried summarily under Sub-section 1 of the said section. To this clause also there is a further clause which says that nothing contained in Sub-section (2) of Section 262 of the Cr. P. C., 1898, shall apply to any such trial. The third sub-clause of this section (Section 45-C) lays down thus:

"All offences in relation to winding up alleged to have been committed by any person specified in Sub-section (1), which are punishable under the Indian Companies Act, 1913, 7 of 1913, and which are not tried in the summary way under Sub-section (1) shall, notwithstanding anything to the contrary, contained in that Act or the Criminal Procedure Code, 1898, 5 of 1898, or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the

Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company."

The fourth sub-clause of the section says:

"Notwithstanding anything to the contrary contained in the Cr. P. C. 1893, 5 of 1898, the Court shall take cognisance of any offence under this section without the accused being committed to it for trial and all such trials shall be without the aid of a jury."

It is argued by the learned counsel for the appellant that in so far as the offence complained of against the appellant is one which is capable of being punished with imprisonment for a period which does not exceed two years or with fine which does not exceed Rs. 3000, the case should have been tried in a summary manner. In which case, his contention is, that, as per the Criminal procedure Code, such cases should be tried only by a Presidency Magistrate in the Presidency town and not by the High Court. Reliance for this position is placed on the decisions in -- In Re: K. Sundaresa Aiyar, and In Re: Veerappan, ". We do not think that these decisions apply to the facts of the present case. Even so, the learned counsel has invited our attention to the decision in -- Harish Chandra Vs. Kavindra Narain Sinha and Others, and argues that the High Court has no jurisdiction u/s 85 (sic) of the Companies Act. We are unable to agree with this contention. The Banking Companies Act has defined the Court as the High Court which has jurisdiction to try cases under the Banking Companies Act and the procedure has been prescribed by Section 45-C of the said Banking Companies Act, and we do not think that there has been any irregularity in the procedure followed by the Company Judge in the trial of this case. But the argument is that if the trial has been in a summary manner as contemplated by Section 45-C, the proper Court vested with the jurisdiction to try the offence would have been the Presidency Magistrate's Court and not the High Court. We do not think that we can agree with this contention for the reason that the Court has been defined in Section 45-A of the Banking Companies Act as the High Court exercising jurisdiction in the place where the registered office of the banking company which is being wound up is situated. Therefore, the proper and competent Court contemplated of the scheme of the Act would only be the High Court and not the Presidency Magistrate's Court, even if it is contended that the offence has been tried in a summary way.

12. In the alternative, the contention of the learned counsel for the appellant is that if the offence has not been tried in a summary way under Sub-section (1) of Section 45-C, then it should have been tried by a Judge other than the Judge for the time being dealing with the proceedings in winding" up of the banking company. His point is that in the present case, the procedure that has been followed is that of a warrant case, i.e., where witnesses have been first examined and the appellant has been called upon to enter into his defence. In such an event, according to the learned counsel, the Judge who should have tried this offence should not be the Judge dealing with the winding up proceedings of the

Banking company but some other Judge. But, actually, in the present proceedings, the same Judge dealing with company matters has also been the Judge who tried the offence and imposed the punishment against the appellant. On this ground, the learned counsel for the appellant argues that the whole proceedings have been vitiated and they should be treated as incompetent and as a nullity. The appellant ought not to have been tried by the same Judge who was dealing with the winding up of the banking company of which the appellant has been the managing director. The Official Liquidators, however, contend that the offence, in the present case, has been tried only in a summary way but the procedure followed has been that prescribed for warrant cases. They urge that it is open to the Court which tries an offence in a summary way to adopt the procedure of a warrant case, and in this case, since the offence is one-that is liable to be punished by a fine not exceeding Rs. 1000 and a term of imprisonment not exceeding two years, the Court has, in fact, tried the offence only in a summary way and not tried it as a warrant case, keeping in view the Sub-clause (1) and the proviso to Section 49-C of the Banking Companies Act.

Merely because the procedure followed has been that of a warrant case, while the case is being tried in a summary way, it cannot be said that the Judge dealing with the proceedings for the winding up of the Banking company was not competent to try the offence. Though a reading of the judgment of the learned Judge who tried the offence, "prima facie", shows that the procedure followed has been the one prescribed for a warrant case, still it is not certain and no evidence has been placed before us to show that the offence has not been tried in a summary way. It has therefore to be presumed that the offence has been tried only in accordance with Section 45-C Sub-clause (1) and not tried as contemplated in Sub-clause (3) of the said Section 45-C. That being the case, we think that the Court which has tried the offence for which the appellant has been convicted, has jurisdiction and has exercised the power vested in it to try the offence in a summary way and the proceedings cannot, therefore, be said to be vitiated. If the case has been tried in a summary way, as we think it has been, then Section 45-C Sub-clause (2) provides that Sub-clause (2) of Section 262 of the Cr. P. C., 1898 shall not apply to any such trial. We therefore cannot feel ourselves persuaded to agree with the contention of the learned counsel for the appellant that there has been any defect such as to nullify the trial of the appellant for the offence for which he has been convicted.

13. There was a further point raised by the learned counsel for the appellant that in this case no fraudulent intention has been proved on the part of the appellant as is required by Section 282-A of the Companies Act. When the case was remanded by the appellate Court it did observe that to render the appellant liable to the penalties imposed by Section 282-A of the Companies Act, there should be proof of fraudulent intention. The learned Chief Justice, who delivered the judgment of the appellate court has referred to the decisions in -- "Barrett v. Markham", 7 Common Pleas 405 (P) and also to the decision in -- "Madden v. Rodes", 190G 1 K. B. 534 (Q), wherein it has been laid down that the person

who is proceeded against for withholding or misapplying monies belonging to the company should be proved to have had a fraudulent intention in doing so. Of course, it has been observed by the learned Chief Justice in the said judgment that fraud cannot be directly proved but it could be inferred from the circumstances. In this case, the learned Judge, who has tried, this appellant, has, in the last two paragraphs of his judgment found that the Official liquidators have established that the appellant has acted fraudulently and that the appellant had brought himself to be proceeded against u/s 282-A of the Indian Companies Act.

The learned Judge has further observed that the whole conduct of the appellant in regard to the cash in the safe and the jewels would show his fraudulent intention to utilise public money for private purposes and that there was no question of his acting honestly, and dealing fairly with the properties belonging to the bank, that therefore, it was a clear case of fraud and dishonesty on the part of the appellant. The point urged by the learned counsel for the appellant in this connection is that the charges have been framed in a wrong manner and as the charges stand they only state that the appellant had wrongly withheld the properties in his possession and not that he had acted fraudulently or dishonestly in doing so. The essence of the charge, according to the counsel for the appellant, is merely misapplication of properties and not that he had any fraudulent intention in such misappropriation. As has been pointed out by the learned trial Judge, the fraudulent intention on the part of the appellant could be inferred from his conduct in regard to the funds and properties of the bank of which he was the managing director. We have been taken through the entire evidence, oral and documentary, in this case by the learned counsel on both sides and we do not think that any sufficient reason has been shown to us to dissent from the conclusions which the learned trial Judge has arrived, at in holding that the circumstances of this case prove beyond doubt that the conduct of the appellant was motivated by a fraudulent and dishonest intention to deprive the bank of its properties.

We do not also think that there is much substance in the contention of the learned counsel for the appellant that the trial Judge had prejudged the appellant's case by his order dated the 25th April 1951 in which the learned trial Judge held that there was a "prima facie" case made out to justify the court to frame charge, against the appellant.

14. The learned counsel for the appellant invites our attention to Section 281 of the Companies Act which provides that if it appears to the court hearing the case that the person proceeded against for negligence, default, breach of duty or breach, of trust, has acted honestly and reasonably he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that the court may relieve him either wholly or partly, from his liability on such terms as the court may think fit. We do not think that, on the facts of this case, the learned counsel for the appellant have succeeded in establishing to our satisfaction that there is

justification to invoke the aid of this section in favour of the appellant. The explanations given by the appellant for his conduct in respect of the properties belonging to the company do not enable us to come to the conclusion that he has acted honestly and reasonably. All the circumstances which have been placed before us go to prove only the contrary, namely, that the appellant has not acted in any "bona fide" manner, much less honestly or reasonably. Except the point that at a time when there was a run on the bank the appellant had tried to meet the situation there is nothing else which can be said to his credit. The facts reveal that in dealing with the properties of the bank, the appellant has tried not merely to help himself at the expense of the bank, but also to help all his near and dear relations with funds belonging to the bank and the amounts thus disbursed to his relations amount to several lakhs of rupees and the Official Liquidators submit that there is no possibility of the bank recovering even a small proportion of these several lakhs disbursed to these close relations of the appellant.

Such a conduct on the part of the appellant, cannot be said to be any circumstances that, should enable the court to think that the appellant could be fairly excused for his negligence, default or breach of duty, or breach of trust in order to deserve any relief either wholly or partly. In fact, notwithstanding this reprehensive conduct on the part of the appellant as has been proved by the evidence in the case, we did give him an opportunity to prove his bona fides so as to see what relief could be afforded to him. We directed him to pay a sum of Rs. 50,000 in the aggregate in instalments to the Official liquidators within a reasonable time to be fixed and to pay a sum of Rs. 10,000 by way of first instalment thereof within a week. We also gave him time to consider over the matter and make up his mind whether he would be agreeable to the suggestions made by us, but his learned counsel represented that the appellant was not in a position to agree to the proposal A sum of Rs. 50,000 bore a very infinitesimal proportion to the huge sum of about Rs. 18,00,000/- in which the Bank was indebted to its creditors and also bore a small proportion to the sum of Rs. 2,00,000 that the appellant was called upon to pay by the order which is under appeal. We therefore find it impossible to exercise any indulgence in favour of the appellant even u/s 281 of the Companies Act, which was invoked by the learned counsel on his behalf.

15. On the question of the liability of the appellant in respect of the Government securities which formed also the subject matter of the charges against him, the learned counsel for the appellant relies upon a resolution of the Board of directors condoning the disposal of the Government securities by the appellant and contends that in the face of this condonation by the Board of directors, the charge in respect of the Government securities cannot stand. We have perused the resolution said to have been passed by the Board of directors and we do not think that it is capable of being interpreted in the sense in which the learned counsel, for the appellant would like to have it. The resolution, in our opinion, is only a record by the company of what the appellant is said to have done and it

does not appear to us to contain the approval by the Board of Directors of the conduct of the appellant in respect of the Government securities. In fact, the latter part of the resolution directs the appellant to rectify the position which resulted from his conduct. This the appellant has not chosen to do.

In such circumstances, it cannot be said that the resolution of the Board, of Directors affords any protection against the charge which he has been called upon to answer. Reliance in this connection has been placed on the decisions in --"Dovey v. Cory", (1901) A. C. 477 (R), Elyth's case, 4 Ch. D. 140(S) and In re -- "Kingston Cotton Mill Co.", (1896) 1 Ch. 331 (T), and the learned counsel argues that the directors must be deemed to have acted as a man of business in having disposed of the Government securities and if his conduct has been merely imprudent, it cannot be criminally liable, and he must be deemed to have resorted to honest, reasonable and bona fide payments with a view to save the credit of the Bank. Such honest and reasonable conduct cannot be the subject of criminal charge u/s 282-A of the Companies Act, is the contention of the learned counsel for the appellant. He has Invited our attention to a decision in Natesan in re, -- AIR 1949 Mad 657 (U), in this connection. We do not think that we can accept the argument of the learned counsel for the appellant on this aspect of the case. In our view, the conduct of the appellant cannot be brought within the scope of the rule laid down in these decisions.

16. On a consideration of all the contentions and the arguments placed before us by the learned counsel for the appellant, we do not think that any sufficient ground has been shown to us to dissent from the order of the learned trial Judge. We are, therefore, of the opinion that the charges have been proved against the appellant on the evidence that has been placed before the trial court and the conviction and sentence by the learned trial Judge are correct. We, therefore, while confirming the conviction and sentence, dismiss this appeal. The Official Liquidators will have their costs of this appeal from out of the assets of the bank in their hands. The appellant will surrender before the Registrar on 19-12-1952.