

(1921) 08 CAL CK 0017
In the Calcutta High Court

Sukhlal Karnani

APPELLANT

Vs

The Official Assignee Of Calcutta

RESPONDENT

Date of Decision : 23-08-1921

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 36

Citation : 66 Ind. Cas. 890

Hon'ble Judges : Panton, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, J.—This is an appeal under Clause 15 of the Letters Patent from a judgment of Mr. Justice Greaves, directing the appellant to produce before the Registrar in Insolvency the rokurs and ledgers kept by him for the years 1974 and 1975 Sambat.

2. The facts material for the determination of the question raised before us lie in a (sic) narrow compass and may be briefly recited. One Seldana was adjudicated an insolvent on the 2nd July 1920. Seldana had carried on business in partnership with Sukhlal Karnani, the appellant before us, and the firm had transactions with the Munitions Board. On the 18th August 1920, a complaint against Seldana was filed by the Munitions Board charging him with cheating, conspiracy to cheat and forgery. On the 26th August 1920, a complaint was lodged against Karnani charging him with conspiracy to cheat. On the 29th November 1920, the Official Assignee made an application before the Registrar in Insolvency in the matter of the insolvency of Seldana. On that application, the Official Assignee alleged that Karnani could give information regarding the dealings and properties of the insolvent and prayed that Karnani should be summoned and examined by the Court and should be required to produce all books, papers, correspondence and accounts relative to transactions had between Lira and the insolvent in connection with their partnership and dealings with the Munitions Board from the 16th March 1918. This application was granted ex parte. Karnani appeared before the Registrar in Insolvency on the 15th, 17th

and 21st December 1920, and was examined by Counsel, on behalf of the Official Assignee. The object of the examination was to ascertain whether or not Karnani was indebted to Saldana in a sum of Rs. 2,64,000. A petition was then presented by Karnani to Mr. Justice Greaves on the 4th January 1921, with a view to obtain cancellation of the order for discovery made on the 29th November 1920, u/s 36 of the Presidency Towns Insolvency Act, The application was dismissed on the 7th January 1920. An appeal was preferred against this order, on the ground, amongst others, that the order for discovery had been made ex parte. This contention was overruled on the authority of the decision in *Kissory Mohan Boy, In re* 36 Ind. Cas. 990 : 20 C. W. N. 1155 : 41 C. 286., and the appeal was dismissed by Sanderson, O. J. and Richardson, J. on the 17th March 1921 [*Sukhlal Karnani (Albert Felix Seldana) v. Official Assignee of Calcutta* 66 Ind. Cas. 715 : 25 C. W. N. 750 : 43 C. 1039]. The judgment then delivered also stated that the Court was not satisfied that the examination was really intended to be used for an improper and ulterior purpose, namely, for the furtherance of the criminal prosecution. The matter was then taken up again by Mr. Justice Greaves and on the 28th June 1921, he gave directions for the purpose of a fuller enquiry. An appeal was preferred against this order, and application was made to the Court of Appeal to stay the enquiry pending the final disposal of the appeal. This application was refused on the 8th July 1921, and the appeal failed. The result was that the order of the 29th November, 1920 stood as a good and valid order. Mr. Justice Greaves then held the further enquiry, and on the 26th July 1921, made the order which is the subject matter of the present appeal. The order directs Karnani to produce the books and ledgers mentioned and it is added that the order would be served upon Karnani personally at a peremptory order with the usual warning: note.

3. In support of the appeal, it has been urged that the evidence does not conclusively show that the account books are in existence and are under the control of Karnani, That the account-books were at one time in existence is clear from the statement of Karnani himself; it is true he did not write them and there is no evidence to show that he had them in his personal custody. The hypothesis with which he started in the course of these proceedings was that during the raid of his premises by the Police on the 23rd December 1919, when numerous account-books and papers were seized by the investigating officers, the particular account-books now required might have been seized and taken away by the Police. In view of the order which we propose to make, it is not desirable that we should discuss in detail the evidence adduced in support of this allegation; it is sufficient to state that, in our opinion, the theory has not been established. An examination of the books and papers still in the custody of the Police has shown that the books required are not there and were not amongst those taken away by the Police at the time of the raid. This, however, does not by itself justify the inference that the only other possible alternative conclusion, to be deduced by an application of the principle of continuity, is that the books are still in existence and are under the control of Karnani. We cannot overlook

the fact that during the whole of the time that this matter was under investigation, a criminal charge of a grave character was pending against Karnani, and that he apprehended, rightly or wrongly, that any statement he might make in connection with these proceedings, might be utilised by the prosecution, even if not actually used against him. Indeed, Mr. Justice Greaves in the course of the judgment delivered by him on the 7th January 1921, made the following observation which is pertinent in this alleged improper purpose of the examination, it seems to me that it is for the witness to object to such questions as he considers are put for an improper purpose and if necessary, I think he would be justified on the advice of Counsel in refusing to answer such questions even if directed to do so" We need not consider how far a refusal to answer questions might involve Karnani in serious trouble, if the principle recognised in *Fernandez. Ex parte* (1861) 10 C. B. 8 : 128 R. R. 575 : 30 L. J. C. P. 321 : 4 L. T. 324 : 7 Jur. (N. S.) 571 : 9 W. R. 832 : 142 E. R. 349. should be invoked. But a perusal of his statement does leave one under the impression that this observation was not lost upon him and his Counsel. The substance of the matter is that the enquiry has been conducted under circumstances which might very well prove seriously embarrassing to Karnani. Those circumstances, we have been informed, have however, now changed as the criminal against him is no longer pending. Under altered conditions, he may thus be able to make fuller disclosures than what was considered practicable by his legal advisers during the pendency of the criminal proceeding and we are of opinion that he should be afforded an opportunity to do so. An order for discovery made u/s 36, may if disobeyed, involve the person concerned in grave consequences. Wilful disobedience of such an order may be followed by an order of such an order may be followed by an order of commitment for contempt of Court, as happened in the case of *Origanti Vankatarathnam v. Desikachari* 52 Ind Cas. 448 : 36 M.L. J. 461; (1919) M. W. N. 863, In view of such possibilities the Court should act with great caution and afford all possible facilities to the person concerned to satisfy the Court that at the time of the order the books were either not in existence or were not under his control,

4. The result is that this appeal is allowed and the order made by Mr. Justice Greaves on the 26th July 1921 set aside. The case will be remitted, so that there may be a fresh investigation of the question, whether the appellant is in a position to carry out the order made on the 29th November 1920, for the production of rokur and corresponding ledger of 1974 and 1975 Sambat, The costs of this appeal will be in the discretion of the learned Judge who may rehear the matter.