
(1976) 01 CAL CK 0007
In the Calcutta High Court

The Asiatic Oxygen and Acetylene Company and Others	APPELLANT
Vs	
The State and Others	RESPONDENT

Date of Decision : 27-01-1976

Acts Referred:

COMPANIES ACT, 1956 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 192, 200, 202
Income Tax Act, 1961 — Section 2, 275A, 276, 276A, 276B
Penal Code, 1860 (IPC) — Section 276D, 395

Citation : (1976) CriLJ 1596 : 80 CWN 378

Hon'ble Judges : Sudhamay Basu, J;P.K. Chanda, J

Bench : Division Bench

Judgement

Sudhamay Basu, J.—These are six Rules arising out of applications made under Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973 for quashing complaints under Sections 276(b), 276(B), 276(d) and 276(D) of the Income Tax Act, 1961 and same orders passed by the learned Chief Presidency Magistrate, Calcutta,

2. It appears that complaints were filed against the Directors of the Asiatic Oxygen and Acetylene Company Limited and Asiatic Oxygen Company Limited and one Mr. K. C. Gangwal, designated as the Principal Officer of the said companies, for failure to deduct Income Tax from the salary of the employees, or failure to submit returns in time, for failure to deduct Income Tax and super tax on dividends for certain period under various sections of the Income Tax Act. To be precise the Revision Case No, 271 of 1975 relates to a complaint for delay in submitting returns u/s 276(b) of the Income Tax Act. The returns were due on 30-4-1971 but the same were filed on 12-12-1972 and the complaint was filed on the 19th of September, 1973. The complaints were made against Shyam Sundar Jalan, H L. De (Since deceased) and Bal Krishna Jalan described as Directors and one Mr. K. C. Gangwal, Principal Officer. In Revision Case No. 272 of 1975 complaint is made against Shyam Sundar Jalan, H. L. De and Durga Narayan Kapur as Directors and one Mr. Kapur Chandra Gangwal as Principal

Officer. The same is for failure to submit return in time u/s 276(b). The return was to be filed on 13-4-1966 but it was actually filed on 2-11-1972 and the complaint was lodged on 19-9-1973. Revision Case No. 273 of 1975 arises out of a complaint against the Asiatic Oxygen and Acetylene Company Limited. Shyam Sundar Jalan, H. L. De and Bala Krishna Jalan as Directors and K. C. Gangwal as Principal Officer. It is for failure to deduct Income Tax out of salaries for the month of March, 1967 and is u/s 276(B). Similarly revision Case No. 275 of 1975 also involves Section 276(B) for failure to deduct out of salaries for the month of December, 1967 which was actually paid on 18-11-1972. The persons complained against were M/s. Asiatic Oxygen Limited, Shyam Sundar Jalan, H. L. De, Durga Narain Kapoor as Directors and K. C. Gangwal as Principal Officer. Civil Revision No. 276 of 1975 involves a complaint u/s 276(d) for failure to deduct Income Tax out of salaries for the month of June, 1967. The same was paid on 8-11-1972 and the complaint was made on 25-9-1973. The persons complained against are the same as in Civil Revision Case No. 275 of 1975. Civil Revision No. 274 of 1975 involves complaint for failure to deduct dividend for the year ending on the 31st of March, 1967 u/s 276(d). The amount was due on 8-4-1967 but was paid on 18-10-1973. The complaint was filed on 21st of May, 1974. More details need not be given so far as this case is concerned as Mr. Banerjee argued that u/s 468 of the Code of Criminal Procedure the case was time barred. There was no satisfactory explanation or reply given on behalf of the Income Tax authorities or the State with regard to the delay.

It was represented before the Court that six petitions for quashing the proceedings are by way of test cases. Hundreds of similar cases are pending before the Magistrates.

3. The principal point urged by Mr. Nalin Chandra Banerjee, learned advocate, appearing in support of the rules is that cognisance having been taken in all these cases by the learned Chief Presidency Magistrate who transferred them the transferee Magistrates were not competent to issue process. Mr. Banerjee referred to Sections 190, 200, 202, 203 and 204 of the Old Code of Criminal Procedure and by examining those provisions in detail contended that issue of process by a Magistrate other than one who took cognisance was impermissible. Section 190 lays down when a Magistrate takes cognisance. Clauses (a), (b) and (c) of Sub-clause (1) of the said section specify when cognisance of an offence can be taken by a Magistrate. Section 200 provides that a Magistrate taking cognisance of an offence shall at once examine complainant and the witnesses present. But the proviso makes it clear that the Magistrate may not examine the complainant when the complaint is made in writing before transferring the case u/s 192. Further, when a complaint is made in writing by & Court or by a public servant examination of complainant is not necessary. u/s 202 the Magistrate may postpone issue of process and may either enquire into the case himself or direct an enquiry or investigation by a Magistrate subordinate to him or by a Police Officer for the purpose of ascertaining the truth or falsehood of the complaint. u/s 203 the Magistrate before whom a complaint is made or to whom it has been

transferred, may dismiss the complaint if after considering the statement of the complainant and the witnesses and the result of investigation or enquiry, there is in his judgment, no sufficient ground for proceeding. u/s 204 which comes within Chapter XVII relating to commencement of the proceeding, a Magistrate may issue summons for the attendance of the accused. The sentence begins with "if in the opinion of a Magistrate taking cognisance of an offence there is sufficient ground for proceeding". Mr. Banerjee laid considerable emphasis upon the said expressions and submitted that it is not open to a Magistrate who has not taken cognisance of an offence to issue process. He argued that the scope and purpose of Section 202 was to ascertain the truth or falsehood of the charge. Section 202 had nothing to do with the issue of process. It only stated that the issue of process could be postponed, if the Magistrate had any doubt of the truth or falsity of the case. It could not be construed to provide a Magistrate with power to issue process. The issue of process was dealt with by Section 204. In this connection he cited three unreported decisions of this Court; namely (i) Criminal Appeal No. 3 of 1950 disposed of on 4-4-1950 by K. C. Dasgupta and Lahiri, JJ.; (ii) Criminal Revision No. 709-14 of 1971 disposed of on 2-6-1972 by A. K. De and Ajay Kumar Basu, JJ.; (iii) Criminal Revision No. 604 of 1972 disposed of on 7-5-1972 by a Bench consisting of the Chief Justice and A. K. De, J. Mr. Banerjee also cited the case of Sudhindra Nath Vs. The State, ,

(i) In Criminal Appeal No. 3 of 1950 which was disposed of on the 4th of April, 1950, the Additional Chief Presidency Magistrate took cognisance and examined the complainant u/s 200 of the Code of Criminal Procedure. Later on he sent it for enquiry and cognisance u/s 156, Cr. P.C. by the D.C.D.D. but he neither accepted nor rejected the report submitted by the Police. He transferred the case to another Presidency Magistrate who convicted the accused. The High Court held that the Magistrate had no jurisdiction to direct investigation u/s 156. Having acted u/s 200 of the Code of Criminal Procedure he could merely treat the report of the Police as one u/s 202 and either dismiss the case u/s 203 or issue process u/s 204, Cr. P.C. The High Court sent back the case to the learned Magistrate to be heard and disposed of according to law. Later on the learned Magistrate, however, failed to carry out the order of the High Court and neither acted u/s 203 nor u/s 204. He transferred the case and the transferee Magistrate, Mr. T. P. Mukherjee issued process. In a fresh appeal the Division Bench consisting of Dasgupta and S. C. Lahiri, JJ. held, on a preliminary point raised, that the issue of process by the transferee Magistrate in this case was without jurisdiction. It was for the Additional Chief Presidency Magistrate who had taken cognisance of the case to issue process. The order of the transferee Magistrate in convicting and sentencing the accused was set aside and the case was sent back for retrial. The order issuing process which was passed by the transferee Magistrate, Mr. T. P. Mukherjee was set aside. The charge sheet from the police was to be considered as a report received on enquiry u/s 202, Cr. P.C. The Additional Chief Presidency Magistrate was to apply his mind to the report and decide whether to act u/s 203 or u/s 204. In this case clearly the Additional

Chief Presidency Magistrate was in the wrong as he failed to carry out the first orders of the High Court. Moreover, he could only treat the police report as one made u/s 202. Having directed enquiry it was for him to take decision as to whether he was to issue process or not.

(ii) In the next case cited by Mr. Banerjee which is Criminal Revision No. 604 of 1972 the Sub-divisional Magistrate Basirhat, took cognisance of an offence on a complaint and examined the complainant on oath but postponed issue of process and directed enquiry u/s 202 to be made by another Magistrate, Sri. N. K. Saha. Mr. Saha held the enquiry and submitted his report to the Subdivisional Magistrate recommending issue of process. A few days later, during the absence of the Sub-divisional Magistrate, Mr. Saha took the file of the Sub-divisional Officer and issued process on considering his own report. Thereafter, on a petition filed by one of the accused the Sub-divisional Magistrate stayed the operation of the order of Sri N. K. Saha dated the 8th of March, 1972. Later on another Magistrate, Mr. N. G. Chakraborty vacated the order of the Sub-divisional Magistrate staying the operation of the order dated the 8th of March, 1972 and directed issue of warrant. The said order was challenged in this High Court. The Division Bench consisting of the Chief Justice and A. K. De, J. heard the application for revision. Mr. A. K. De, J. delivering the judgment held that the Magistrate who took cognisance can alone issue process u/s 204. As Sri N. K. Saha was not the Magistrate who took cognisance of the offence his order in issuing process was bad. The said order and all subsequent orders were thereafter set aside. In this case also, as in the previous case, after an enquiry was directed u/s 202 a Magistrate who directed enquiry did not issue process. That seems to be the main point involved in both the cases. But Mr. Banerjee laid emphasis on the expression used by A. K. De, J. that the Magistrate who takes cognisance of an offence can alone issue process u/s 204.

(iii) In the Criminal Revision Cases Nos. 709-14 of 1971 decided on the 2nd of June, 1972 (Cal), by a Division Bench consisting of A. K. De and A. K. Basu, JJ., one Sri K. P. Das took cognisance of certain complaints filed before him, examined the complainant in each case postponed the issue of process and directed enquiry by another Magistrate, Sri Banerjee who held enquiry and submitted report. The Sub-divisional Officer, Barrack-pore, received the records and on a subsequent date, after hearing parties perused the records and disagreeing with the report of the Enquiry Officer directed issue of summons. The said order was challenged. The Court held that in those cases one Magistrate took cognisance of the offence and ordered enquiry by another Magistrate. The report was not submitted to him. Another Magistrate to whom the report was sent considered the same and ordered issue of process. Thus he adopted a procedure not sanctioned by Law. This case also is similar in nature to the other two cases referred to above. On facts these cases are distinguishable from the cases which are before this Court. In the cases before us there was no enquiry directed by the Chief Metropolitan Magistrate nor is there any question of issue of process by a Magistrate other than a Magistrate who directed the enquiry. If,

however, the law is that only the Magistrate who takes cognisance can issue process. Mr, Banerjee would succeed but the facts, of the three cases he relied on as already noted above, are clearly distinguishable.

(iv) The next case cited by Mr. Banerjee was *Sudhindra Nath Vs. The State*, . In that case the Additional Chief Presidency Magistrate took cognisance, examined complainant and directed enquiry u/s 202. Thereafter, he transferred the case to the another Presidency Magistrate. The latter issued process on the accused and after trial convicted him. On appeal the High Court set aside the conviction and ordered retrial on the ground that the Additional Chief Presidency Magistrate having taken cognisance of the case and having directed an enquiry u/s 202 of the Code it was for him, to decide whether process should be issued or not and he could not transfer that task to anybody else. Under the circumstances the issue of process by the learned Magistrate was without jurisdiction and the subsequent trial was also bad. In that case the question of admissibility of evidence of the complainant who died was also discussed at length. So far as facts are concerned the same are also similar to the other three cases cited by Mr. Banerjee. The facts of the present cases, as noted above are distinguishable. In the present cases the Chief Metropolitan Magistrate did not direct any enquiry u/s 202.

4. Mr. J. N. Ghose, learned Advocate appearing on behalf of the Income Tax Department, emphasised that Section 192 of the Code of Criminal Procedure puts no bar as to the time of transfer. Sub-section (1) simply states that any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case of which he has taken cognisance or enquiry or trial to any Magistrate subordinate to him. There is nothing to indicate when this power of transfer may be exercised. Again u/s 202, a Magistrate to whom a case has been transferred u/s 192 may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against. The other part of the section to which Mr. Banerjee drew our pointed attention is that he may either enquire into the case himself or direct an enquiry or investigation for the purpose of ascertaining the truth or falsehood of the complaint. Mr. Banerjee took pains to explain that the scope of Section 202 was the ascertainment of truth or falsity of the complaint. But the same section points out that to postpone issue of process a transferee Magistrate has to record reasons. Why has he to record reasons for postponement? That requirement clearly implies and indicates that the transferee Magistrate himself can issue process. The transferee Magistrate is put on the same footing as the transferor Magistrate. In the case of *Rajindra Nath Mahato Vs. T. Ganguly, Dy. Superintendent and Another*, . A complaint was filed against the B.D.O., Officer-in-Charge of a local police and Deputy Superintendent of Police, Purulia u/s 395, I.P.C. on the allegation that during search these officers committed dacoity in the house of the complainant. The Magistrate dismissed the complaint u/s 203, Cr. P.C. on the ground that the complaint was incompetent without sanction. On a reference to the High Court the order of the Magistrate was set aside. On

27-3-1967 the Magistrate Mr. S. K. Ganguly took cognisance of the case and fixed a date for holding judicial enquiry. He came to a conclusion that prima facie, a case u/s 395, I.P.C. had been made out against the accused. He submitted his report to the Sub-divisional Magistrate who on the basis of the report directed issue of process. The High Court at Calcutta was moved for quashing the process. The High Court held that cognisance was taken by Sri Ganguly but process was issued by one Sri Sarkar. The latter not having taken cognisance had no right to issue process u/s 204. It, therefore, quashed the process. The Supreme Court upheld the order of the Calcutta High Court. It observed that the language of Section 202 of the Code of Criminal Procedure is that the Magistrate may, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, Therefore, "the power of the Magistrate to issue process u/s 202 of the Code of Criminal Procedure is not limited by the terms of Section 204 of the Code of Criminal Procedure to issue process". According to the Supreme Court the two courses are: first u/s 204 of the Code of Criminal Procedure for the Magistrate taking cognisance to issue process or secondly u/s 202 of the Code of Criminal Procedure for a Magistrate to whom the case has been transferred to issue process. It observed that in that case there was no order of transfer of the case by Sri Ganguly to Sri Sarkar. The issue of process was a matter for judicial determination. Before issuing process a Magistrate has to examine the complainant. That is why the issue of process is by the Magistrate who has taken cognisance or the Magistrate to whom the case was transferred.

5. The Supreme Court clearly stated that power of Magistrate to issue process u/s 202 was there and it was not limited by Section 204. Mr, Banerjee wanted us to read the Supreme Court decision as holding that only a Magistrate who took cognisance or a Magistrate to whom the case was transferred u/s 202 can issue process. But that seems to be impermissible. There is no provision u/s 202 for the transfer of a case. Moreover, various High Courts including ours have uniformly held that a person who directs an enquiry has to himself determine whether process should be issued or not. The way Mr. Banerjee would like to interpret the Supreme Court decision would run counter to these decisions. Again, we have already noted that Section 202 clearly implies that a Magistrate to whom a case has been transferred has the power to issue process. Decisions of this Court going back to very early days support such a construction. Reference may be made to the case of Hafizar Rahman Vs. Aminal Hoque, . It clearly decided that when a case is transferred to Subordinate Magistrate u/s 192, Sub-section (1) of the Code of Criminal Procedure the latter has the same authority to deal with the case, as regards issue of processes and other matters connected with the enquiry or trial, as is vested in the superior Magistrate from whom he receives the case on transfer. In that case two references were made before the High Court. In those two cases the Sub-divisional Officer on receiving complaint made enquiry and summoned two accused persons and thereafter transferred the cases to the Honorary Magistrates. The latter Magistrate also

issued processes against other accused persons. The ground upon which the two cases were referred to the High Court was that the Honorary Magistrates had no jurisdiction to summon persons against whom processes had not been issued by the Sub-divisional Magistrate before the case was transferred to him. In course of discussion Edgley, J. observed : It is however clear from the provisions of Section 202 of the Code that the Magistrate who takes cognisance of an offence is not vested with exclusive jurisdiction as regards the issue of process, as Section 202 provides that a Magistrate to whom a case has been transferred u/s 192 may, if he thinks fit for reasons to be recorded in writing, postpone the issue of process..... It follows, therefore, by implication that if such a Magistrate has power to postpone the issue of process against the accused persons he has also power to issue process and this power is not limited by the terms of Section 204. The language used by Edgley, J. is strikingly similar to the language used by A. N. Kay, C. J. in the Supreme Court case. Reference may also be made next to Hemendra Nath Sen Vs. Emperor, to which Mr. Ghose drew our attention. It decided that a Magistrate to whom a case is transferred by the District Magistrate u/s 192 stands in the shoes of the original Magistrate and he has full authority to deal with the case as if he himself had taken cognisance of it. In that case one Mr. Bhowmick took cognisance of a case on a complaint. The case was subsequently transferred under orders of the High Court by the District Magistrate from the file of Mr. Bhowmick to Mr. S. N. Dutt, another Deputy Magistrate for trial. The latter Magistrate after recording evidence directed summons to issue. An objection was taken that Mr. Dutt had no authority to issue process as Mr. Bhowmick was the Magistrate before whom a complaint was filed and he had taken cognisance. A Division Bench of the High Court, however, discharged the rule. It was of the view "If Mr. Bhowmick who took cognisance of the offence as he did u/s 190(a), Cr. P.C. had chosen to issue process against the petitioner no possible objection could have been taken. Mr. Dutta to whom the case was transferred by the District Magistrate u/s 192 stands in the shoes of Mr. Bhowmick and he had full authority to deal with it as if he himself had taken cognisance of it". This clearly lays down that a Magistrate to whom a case is transferred after the transferor Magistrate takes cognisance of the offence has full authority to deal with the case and issue processes, Das, J. in the case of Dalu Gour and Others Vs. Moheswar Mahato, also holds that it is well settled that when a case is transferred to a Subordinate Magistrate u/s 192, Sub-section (1) the latter has the same authority to deal with the case as regards issuing of process and other matters connected with the enquiry or trial as is vested in the superior Magistrate from whom he receives the case on transfer. The transfer again may be made as soon as the transferring Magistrate has taken cognisance of the case. He need not wait for the stage when the accused person appears as a result of the issue of process.

In an earlier Full Bench decision, Emperor Vs. Colin Mackenzie Mackay, the Chief Presidency Magistrate took proceeding u/s 476, Cr. P.C. against the witness, drew up a complaint and then transferred it to a Presidency Magistrate for disposal.

The latter issued process held an enquiry and committed the petitioner for trial. While the Full Bench considered the question of propriety of drawing up a complaint and taking cognisance himself, the issue of process by the transferee Magistrate was not found fault with,

6. In the circumstances and for the reasons stated above we are unable to accept the validity of Mr. Banerjee's submission. We have gone into the question at some length as Mr. Banerjee contended that the uniform decision of this Court was that issue of process by any one else than the Magistrate who took cognisance was bad. The cases cited by Mr. Banerjee are distinguishable. As already explained they relate to instances where after an enquiry was directed u/s 202 the Magistrate, who directed enquiry did not issue process but some other Magistrates did. The same was found fault with. In our view, the transferee Magistrate cannot be said to be incompetent to issue process only because the learned Chief Presidency Magistrate who transferred them had earlier taken cognisance in these cases. We have given our reasons. The observations made in the Supreme Court decision of Rajindra Nath Mahato Vs. T. Ganguly, Dy. Superintendent and Another, and some other decisions of this Court noted above also support the view we take.

7. The next point urged by Mr. Banerjee was that a company can have only one principal officer. According to him, more than one principal officer is not contemplated under existing laws. Directors are not principal officers but under the Income Tax Act any Director may be designated as a principal officer. In these cases sanctioning authority accorded sanction against Mr. K. C. Gangwal as principal officer and against others as Directors. He referred in this connection to Section 2, Sub-section (35) of the Income Tax Act which defines a principal officer. In this connection he also referred to Section 282, Sub-section (2) (b) of Income Tax Act according to which a notice or requisition under the Act may be addressed in the case of a local authority or company to the principal officer thereof. Section 2(35) which states what a principal officer means runs as follows:

"Principal Officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means-

(a) the secretary, treasurer, Manager, Agent of the authority, company, association or body or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income Tax Officer has served a notice of his intention of treating him as the principal officer thereof;

The said definition does not mention a Director but any person connected with management or administration upon whom the Income Tax Officer has served a notice of his intention of treating him as the principal officer can be a principal officer. No such notice was given by the Income Tax Officer to any of the Directors. Moreover, Mr. Banerjee contended that a Director cannot act as an

agent of the company. It is only the Board of Directors who collectively constitute agency. In this connection he referred to Pennigton's Company Law, 3rd Edition where it has been stated that the Directors have no-power to act individually as agents for the company. According to Mr. Banerjee, the Directors mean Board of Directors. In any event, since the proceedings were initiated on the basis of sanction but the sanction describes all the persons as Directors except one. It is clear that the case cannot proceed against them.

8. Mr. Ghose, on the other hand, contended with some force that as regards principal officer the definition u/s 2(35), Sub-clause (a) only was involved. Clause (b) was not attracted. Directors should be treated as agents of the company. There is no reason why the company may not have plurality of offices. Citing Palmer's Company Laws, 17th Edition, page 167 he stated that Directors are in the eye of law agents of the company. What special assignment each Director had in making payments of Income Tax will be a matter of evidence. We find substance in Mr. Ghose's submission. Without evidence the question cannot be decided here and now. It is noted that paragraph one of the petition of complaints itself makes a distinction between Directors and the Principal Officers. In the case of R.K. Dalmia Vs. Delhi Administration, it was held (para 98) that Dalmia as a Director and Chairman of the company was an agent of the company. It was, inter alia, found that Dalmia got control and dominion over the funds under the powers conferred on him by the Board of Directors by its resolution authorising him and another person to operate on the accounts of the insurance company with the bank. It was a matter of evidence whether the Directors named in this case could be treated as agents of the company. The petition before us itself shows how finance was arranged for, how the I.F.C. was approached, how amounts were deducted from the employees' salary but the same was kept in the general fund. The petition shows that it was under the direction of the Directors that the amounts were deducted. Therefore it is not a case where the petition does not disclose a prime facie case. Whether Directors would be treated as principal officers in the circumstances of the case is a matter of evidence and at this stage it would be premature to quash the proceedings on that ground alone. Again Section 2(20) of the Income Tax Act states that the expression "Director has the same meaning as is ascribed to it in the Companies Act". Now, in the Companies Act, according to Section 2, Sub-section (13) a Director would include any person occupying the position of Director by whatever name called and u/s 2, Sub-section (24) an individual, the principal officer also includes a Manager or an Agent. Whether the Directors in these cases were in charge of the management is a matter of evidence. The complaint, as is well known, does not usually and need not contain all material pleadings. Facts and circumstances may be proved by evidence to show that Directors acted as Managers. Their own appeal before this Court, as Mr. Ghose pointed, fills up some of the gaps in the petition of complaint and inter alia, shows prima facie, deduction of Income Tax was utilised for some ulterior purposes.

9. What is after all a sanction? u/s 279, Sub-section (1) of the Income Tax Act a

person shall not be proceeded against for an offence u/s 275(A) or 276 or 276(A) or 276(B) Or (B), (C) or (D) or 277 or 278 except at the instance of the Commissioner. It merely requires that the complaint should be at the instance of the Commissioner. There is no doubt that in the instant cases the de facto complainant is the Commissioner, Dealing with the argument of Mr. Banerjee that there was no application of mind of Mr. Ghose submitted that there was initially a presumption that the official acts were done properly. Moreover, the expression "Director" is only a designation or prescription to identify the particular persons. Other particulars may come in due course. The complaint, as has already been noted is not required to disclose all of them. Moreover even if the Board of Directors collectively would act on behalf of the company circumstances may make the Directors as agents. Reference may be made to Halsbury, 4th Edition, Volume 7 for treating the position of Directors. In paragraph 496 the Directors are regarded as Agents of the Company. It is observed that the true position of Directors is that of agents for the company. As such, they are endowed with powers and duties of carrying on the whole of its business subject, however, to restrictions imposed by the articles and statutory provisions. Definition of Manager in the Companies Act in Sec 2(24) would include a Director. Therefore, it is a question of evidence. The complaint makes out an offence. Evidence would only disclose who are the offenders. The word "Directors" may be looked upon as designations to identify particular persons. The role they played will only appear in course of evidence. Board of Directors, as such, cannot be prosecuted. Whether one or two Directors or the entire Board of Directors acted as agents in the Company would appear only through evidence. On a careful consideration of the facts and circumstances of the case we are unable to hold that the learned Magistrate had no jurisdiction or competence to issue process. We also hold that it will be premature at this stage to quash the proceedings. The point as to whether the accused persons who are designated as Directors or Principal Officers or Agents could only be determined after the witnesses were examined.

10. The result is that five of the petitions fail. The rules except in C. R. 274 of 1975 are discharged. The rule in C. R. 274 of 1975 is made absolute as the same is barred by limitation. Let the records go back at an early date so that the hearing may be expedited. It may be noted that the rules have abated with regard to H. L. Dey who has since died.

P.K. Chanda, J.

11. I agree.