

(1937) 09 BOM CK 0013

In the Bombay High Court

Case No : Criminal Application for Revision No. 223 of 1937

The Central Bank of India Limited

APPELLANT

Vs

P.D. Shamdasani

RESPONDENT

Date of Decision : 10-09-1937

Acts Referred:

Bankers Books Evidence Act, 1891 — Section 6
Criminal Procedure Code, 1898 (CrPC) — Section 94

Citation : AIR 1938 Bom 33 : (1937) 39 BOMLR 1187

Hon'ble Judges : Rangnekar, J;Norman, J;John Beaumont, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Broomfield, J.—This is an application for revision of an order of the Presidency Magistrate, Sixth Court, rejecting an application made by the petitioner on October 2, 1936, for permission to inspect certain documents which have been produced in Court. The petitioner is prosecuting the auditors of the Central Bank of India for offences under Sections 191, 193, 197 and 199 of the Indian Penal Code in respect of alleged false statements contained in the balance-sheet of the Bank for the year 1925 certified by them as being correct.

2. By an application of December 5, 1935, the complainant asked for a witness summons to be issued against the Managing Director of the Bank for the production of various documents and books specified in a list attached to the application. The application purported to be made u/s 94 of the Criminal Procedure Code. The Magistrate made an ex parte order for compliance, and he explains in the order under revision that he did this because he thought it would save public time and avoid repetition of arguments as he expected that the question of relevancy would be raised, discussed and decided in the presence of both parties when the witness from the Bank appeared to produce the books and documents.

3. On February 7, 1936, a second application was made for the production of

further books. The Court did not issue formal summonses but letters of request were written and the Secretary of the Bank appeared with a van-load of books which were apparently produced and reproduced in Court at a large number of hearings. On various dates between February 1, and September 1, 1936, the complainant called on the secretary to produce specified documents and books out of the collection which had been brought to Court, and three of them, viz., X/21, X/21-A, and X/21-B were produced by a clerk of Messrs. Fergusson & Co., one of the firms of auditors. As the documents were already in Court, these specific requests for "production" were obviously made with the object of using the documents as evidence in the case, subject of course to proof if necessary. The Bank did not, at this stage at any rate, take exception to the original order to produce, though objection might have been) taken u/s 162 of the Indian Evidence Act. But there were protracted arguments as to the relevancy of the documents. The Magistrate held some to be relevant, others irrelevant. Those held relevant were marked X to X/23. In a few cases the note made is "marked for identification," but in most cases the documents were simply ordered to be marked X number so arid so. There is no doubt that the Magistrate considered and decided the question of admissibility. That is sufficiently clear from the proceedings themselves and the Magistrate says in his order under revision that the books so marked were produced "after determining objections as to admissibility, relevancy and production." During the examination of the complainant some of the documents were formally admitted in evidence and marked as exhibits, i.e. Ex. A is part of X/19, A-I also part of X/19, B, B-I and B-2 are all parts of X/2, C and; C/I are parts of X, D, D/I and D/2 are parts of X/6.

4. On September 2, 1936, the complainant made an application u/s 6 of the Bankers' Books Evidence Act, XVIII of 1891, for inspection of X/16. That application came to be rejected after hearing the Bank's objection to it, and on October 2, 1936, the complainant applied u/s 94 of the Criminal Procedure Code for inspection of all the books and documents X to X/23. That section provides that whenever any Court considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding, such Court may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it.

5. The complainant relied in support of his application mainly on two cases, *In re Lakhmidas* (1903) 5 Bom. L.R. 980 and *Makomed Jackariah & Co. v. Ahmed Mahomed* ILR (1887) Cal. 109 It will be convenient to refer to those cases at once and I will take the earlier one, *Mahomed Jackariah & Co. v. Ahmed Mahomed*. That was a case in which two persons were charged with an offence of cheating which was alleged to have been committed by dishonestly inducing the complainant to deliver to one of the accused certain sums of money between the years 1882 and 1887. The khata books of this accused for the years 1882 to 1887 were produced in Court under a search warrant and the question arose whether the prosecution was entitled to inspect the books so produced. It was

held that when once an accused person's documents are in the possession of the Court by virtue of the due execution of a search warrant issued under the provisions of Section 96 of the Criminal Procedure Code, there is no distinction between such documents and those found upon his person at the time of his arrest. They can be used in evidence against him and there is a right to inspect documents so seized and the proper persons to inspect are those conducting the prosecution. Mr. Justice Ghose said : The Magistrate has to determine, at the time when he makes an order u/s 94 of the Criminal Procedure Code, or issues a search warrant u/s 96, whether the documents are necessary for the inquiry; but when they are brought into Court the inspection should not rest with the Magistrate who does not prosecute and has no interest one way or the other in the result of the prosecution. It is reasonable that those who conduct the prosecution should have such inspection, for the production of such documents is for the purpose of using them in evidence, and this could not be done unless the prosecution had an opportunity of inspecting them, Further on he says: Bearing in mind the purpose for which any document or thing is seized and brought before the Court, it seems that the legislature, while providing for the seizure and production in Court of documents, etc., intended by implication that the prosecution should, Central Bank of India under the orders of the Court, have the power to inspect them, and determine whether they should go in as evidence.

6. In *re Lakhmidas* was a case of a prosecution under Sections 406 and 403 of the Indian Penal Code and here also the books of the accused were seized under a search warrant. It was held that the prosecution had the right to inspect the books- The Court said (P- 982):-

The question whether the production of a particular document or book is necessary or desirable for that purposes of any trial is one which must be decided by the Magistrate before he orders the production and in determining that question he has to exercise his discretion judicially in the sense that he must satisfy himself that the document or book has a bearing upon and is relevant to the case. When he has so satisfied himself, his jurisdiction to order its production comes into play and that carries with it the jurisdiction to allow the prosecution the right of inspection.

This is the concluding passage in the judgment, but from earlier observations in it it is clear that the Court took the view that generally the right to inspection should follow as a necessary consequence of the production ordered u/s 94. *Mahomed Jackariah & Co. v. Ahmed Mahomed* was cited with approval and it was pointed out that as the Criminal Procedure Code had been re-enacted without change after the date of that decision, the legislature must have intended to accept that view of the law.

7. The application for inspection was hotly opposed by the Bank and the Magistrate in a learned and elaborate order held that the complainant has no right of inspection of any of the documents. The gist of his reasoning may be said to be that there is a conflict between Section 94 of the Criminal Procedure

Code and the Bankers' Books Evidence Act, that the provisions of the special Act must be taken to override the general provisions of Section 94, that the authorities cited which deal with Section 94 and Section 96 of the Code and not with the Bankers' Books Evidence Act have therefore no application, that the books must be deemed to have been produced u/s 5 of the Bankers' Books Evidence Act, that the complainant has no right of inspection except u/s 6 of that Act and that he has no right of, inspection under that section because in the Magistrate's view he only desires to make a roving and fishing inquiry and because to allow inspection would involve a breach of contract and confidence between the Bank and its customers.

8. Now it is perfectly true that the cases relied on by the petitioner were not concerned with bankers' books and *Mahomed Jackariah & Co. v. Ahmed Mahomed* was prior to the enactment of the Bankers' Books Evidence Act. It also appears to be true that by reason of Section 1, Sub-section (2), of the Criminal Procedure Code, nothing in the Code will affect any special or local law now in force or any special form of procedure prescribed by any other law. The Bankers' Books Evidence Act is a special law which in my opinion comes within that description. But after careful comparison of the provisions of that Act with the provisions of Section 94 of the Criminal Procedure Code, I do not find that there is really any conflict between them. Section 5 of the Bankers' Books Evidence Act is the only section which is or can be relied upon as containing anything inconsistent with Section 94. But all that that section enacts is that no officer of a Bank shall in any legal proceeding to which the Bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause. Under the definition in Section 2 of the Limited Act "the Court" means the person or persons before whom a legal proceeding is held or taken. That is to say, it includes the Magistrate trying this case. The Bank then cannot be compelled to produce its books without an order of the Court "for special cause." But I can see no reason at all why an order made u/s 94 of the Criminal Procedure Code should not be regarded as a sufficient order for the purpose of Section 5 of the Bankers' Books Evidence Act. I can find nothing in that Act which prevents an order being made u/s 94 in a proper case. Moreover in a case of this kind, the case of a prosecution! in respect of a balance-sheet, it is difficult to see how the provisions of the Bankers' Books Evidence Act only would suffice to make the prosecution effective. How can the prosecutor be expected to state that he relies only on specified entries which could be proved by certified copies? Obviously it would be absurd to suggest that the whole of the books with reference to which the balance-sheet was prepared should be proved in this way.

9. The letters written to the Bank did not mention Section 94, but the applications to the Court did, and the order to comply passed on those applications may be said to show, I think, that the Magistrate was satisfied that the necessary condition existed. The orders passed in the first instance may have

been interim orders subject to modification after hearing the other side. But when the documents were held after argument to be relevant, the only reasonable conclusion seems to be that the Magistrate held that the requirements of Section 94 are satisfied in respect of the documents which have been marked.

10. In my opinion the order to produce was lawfully made u/s 94, and that being so, it cannot be held that the authorities as to the prosecutor's right of inspection of documents produced under that section have no application in the case of bankers' books. No doubt bankers' books stand on a different footing from other books and some of the observations in these cases may require qualification where such books are concerned, for instance, I may suggest, the observations of Mr. Justice Ghose about the Magistrate having no interest in the matter one way or the other. The Court of course has no interest in the result of the prosecution, but it is interested in seeing and is bound to see that as far as possible any thing in the nature of a roving or fishing inspection of the books of a Bank is prevented. Where such books are concerned the interests of third parties who have no connection whatever with the particular litigation may be affected. In the case of bankers' books an order u/s 94 should be very cautiously made and carefully drafted, A routine order to comply ex parte is, I think, generally undesirable, and in any case the prosecutor should be required to state before the issue of the order not only what books he requires to be produced but. why their production is necessary with specific reference to the allegations in the complaint. No doubt in a case of this kind, where a balance-sheet is the foundation of the charge, all the books which have been used for the purpose of preparing the balance-sheet may- in a sense be relevant but it can seldom be necessary to have all of them produced. The charge will usually relate, as it does relate in this case not to the whole balance-sheet but to a comparatively India, small number of specific items in it, and the books which it is necessary to have produced, in the first instance at any rate, will only be those containing entries bearing on those specific items. The complainant in this case by making his application much too comprehensive has caused, and the Court by not scrutinizing the application more carefully in the first instance has permitted him to cause, much waste of time and expense and inconvenience to everybody concerned, especially the Bank, and this probably accounts for the somewhat intransigent attitude which appears to have been adopted by the Bank in some respects. If the fact were not apparent from the record it would have been difficult to believe that it was only after long drawn-out argument extending over many hearings that the very balance-sheet which is the subject of the prosecution was allowed to go upon the record.

11. But, subject to what I have said, the principles laid down in *Mahomed fackariah & Co. v. Ahmed Mahomed* and *In re Lakhmidas must*, I think, apply and the prosecution cannot be denied the right of inspection of documents the production of which has been held to be necessary or desirable for the purpose of the trial and which have been held to be relevant after considering the objections

of the party producing. Generally speaking, when the Court has satisfied itself on this point it is too late to object that the prosecutor only wants a roving inspection or that to allow inspection may possibly affect the interests of third parties. Anyhow I am by no means seriously impressed by the arguments which have been addressed to us on these points. The documents in question are twelve years old or more and the suggestion that the complainant merely desires to make a fishing inspection of them seems to me to be rather far-fetched. The allegations in the complaint are perfectly specific and the grounds on which inspection is sought have been made sufficiently clear. I am not satisfied in fact that the complainant's case could be properly presented to the Court if he is denied the right of inspection.

12. As regards breach of contract and confidence practically all that there is to be said on that point is contained in Halsbury's Laws of England, Vol. 1, para. 1409, 2nd Edn., p. 869 :?

It is an implied term of the contract between a banker and his customer that the banker will not divulge to third persons, without the consent of the customer, express or implied, either the state of the customer's account, or any of his transactions with the bank or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a Court, or the circumstances give rise to a public duty of disclosure or the protection of the banker's own interests requires it.

The authority for these propositions is *Tournier v. National Provincial and Union Bank of England* [1924] 1 K.B. 461. Obviously there is nothing to prevent the Court ordering the production of a Bank's books in a proper case.

13. In my opinion the only real difficulty in this case has arisen owing to the somewhat irregular procedure followed in the matter of production of the documents, which perhaps left some loophole for the argument that the Magistrate had not applied his mind fully to the question of the necessity for the production of the books and documents as a whole as distinct from certain entries in them. I think the only reasonable inference from the record of proceedings is that the Magistrate did in fact so apply his mind. But as regards all the documents as to which there appears to be any serious dispute we have ourselves re-examined the matter. In the detailed application put in on behalf of the Bank in reply to the notice to show cause it was stated that there was no objection! to the inspection of the documents marked X to X/4, X/8 to X/14 and X/19. Objection was taken to the inspection of the others and we have considered these in detail. Some of the documents relate to the years 1923 and 1924 and it was stated that the auditors might not have examined these for the purpose of examining the balance-sheet and that therefore they were not necessary for the purpose of this trial. But one of the specific allegations in the complaint and one of the more serious ones is that certain figures were deliberately inflated for the purpose of showing a profit where there was in fact no profit. In order to establish and to test such an allegation books of the

previous years would presumably be necessary. Moreover, most of these documents are included among those the inspection of which was not objected to in the Bank's application. As regards the remainder it is not disputed that they must have been used by the auditors. Some of them in fact are clearly the foundation of the audit. These books must contain many entries which are relevant and necessary to be proved for the purpose of the case and those which are necessary cannot be ascertained without inspection.

14. The result of our examination is that we hold that the complainant is entitled to inspection of these documents marked X to X/23. We think that the Magistrate's order refusing him inspection was wrong and must be set aside.

15. After the above decision was certified to the Magistrate u/s 442 of the Criminal Procedure Code, the Bank filed an application on April 27, 1937, praying that notice should be given to the Bank of any application for inspection of its books, and at the hearing of the case on May 8, 1937, the Bank filed another application praying that inspection be not given of the documents marked X to X/23 produced by the Bank in Court.

16. On May 15, 1937, the Magistrate rejected both the applications of the Bank and directed that inspection of the books and documents marked X to X/23 be allowed to the complainant and ordered the Bank to give inspection of those documents from June 7, 1937.

17. On July 14, 1937, the Bank applied to the High Court in revision against the order passed by the Magistrate on May 15, 1937.

18. The application was heard on August 31, 1937, by a bench consisting of Beaumont C.J. and Norman J., when their Lordships directed the application to be heard by a bench of three Judges.

19. Accordingly on September 9, 1937, the application was heard by Beaumont C.J., and Rangnekar and Norman JJ.

20. Sir Jamshed Kongo, instructed by Ardeshir, Hormusji, Dinshaw & Co., for the applicant. The Bank here received no summons from the Court, but only a letter of request by the Court to produce their account-books in Court. The letter made no mention of Section 94 of the Criminal Procedure Code. The Bank had no idea when Produced books that they were producing the same u/s 94 of the Criminal Procedure Code. They produced the books to make them available in the Court for facility of reference. When the complainant made an application to the Magistrate for inspection of the books u/s 94 and the Magistrate gave notice of the application to the Bank, it became aware of the nature of inspection sought. The Bank thereupon made a substantive application to the Magistrate on October 6, 1936, objecting to the inspection. The Magistrate decided in favour of the Bank. The complainant applied to the High Court in revision without making the Bank a party. The judgment given on the application is, therefore, not binding on the Bank.

Rangnekar, J.

21. The High Court has ample powers u/s 561A of the Criminal Procedure Code.]

22. Yes. See also *The Government of Bengal v. Meer Surwar Jan* (1872) 18 W.R. Cr. 33.

23. The complainant cannot, under the guise of an order issued u/s 94, have a roving inspection of the account-books of the Bank. Those books contain much confidential information about the customers of the Bank, which the Bank is not at liberty to disclose without the permission of those customers. When, however, an entry has been selected by the complainant, the Bank is bound to produce its books with reference to that entry.

24. Section 94 appears in the Criminal Procedure Code, Section 1 of which provides : "nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred," which, in the present case, would obviously refer to the Bankers' Books Evidence Act, 1891. Sections 5 and 6 of the latter Act set out the conditions under which production and inspection of bankers' books can be had.

25. Section 94 of the Code gives no right of inspection as regards the documents produced under it. There is no chapter for discovery or inspection in the Criminal Procedure Code like that in the Civil, Procedure Code. If a document is found on the person or in the house of the accused, then the production of the document may carry with it the right of inspection u/s 94. But it is too much to say that the books of a Bank, which is not a party to the proceeding, can, when produced u/s 94, be made the subject of a roving inspection.

26. The case of *In re Lakkmidas* (1903) 5 Bom. L.R. 980 does not help the complainant. All that is decided there is that the Court has jurisdiction to order inspection; but Broom-field J. goes further and says that the production carries with it the right of inspection.

27. In *South Staffordshire Tramways Co. v. Ebbsmith* [1895] 2 Q.B. 6669 it was held that the jurisdiction to order inspection of entries in bankers' books u/s 7 of the Bankers' Books Evidence Act, 1879 (42 & 43 Vic. c. 11), ought to be exercised in conformity with the general law as to discovery, by which a party to an action is entitled to refuse discovery of entries which he swears to be irrelevant. It also appears from the case that inspection of entries in a banker's books relating to an account kept in the name of a person not a party to the action can be ordered under the Act where the Court is satisfied that those entries will be admissible in evidence against a party to the action at the trial; but such an order ought not to be made without notice to such person, nor unless very strong grounds are shown for thinking that there are entries in the account which are material to the case¹ of the party asking Limited for inspection. In *Arnott v. Hayes*) 36 Ch. D 7311887 Cotton L.J. said 737 : "The examination of the books is to be only for the purposes of the action, and the

Judge ought to be careful not to make his order wider than necessary." And Bowen L.J. added (p. 738) : "I also think that great caution should be exercised in acting under this power, and I have no reason to doubt that the Judges do exercise such caution." In the first case, Kay J. said (p. 678) : "...before we grant inspection of the account of the company, the plaintiffs ought to be able to show, not only that the company can be identified with the defendant, but also that there are entries which will probably be in the account on which a finger can almost be laid material to the question at issue in the action, and which will be evidence against the defendant at the trial." Nothing of that sort has been done here. Only an application for production of books was made. When books are produced the complainant claims inspection of the books item by item. It is perfectly open to the complainant to call for specified entries; but in no case can he have a roving inspection. The order passed here is one of the most oppressive orders. The auditors have nothing to do with the books produced. The books are the books of the Bank. They contain several confidential matters which the Bank cannot allow to be exposed.

28. Broomfield J. says that the Magistrate is to consider the relevancy of books; but it is not possible for any one to consider the relevancy of the large number of entries. The books are not exhibits in the case. They are so far only marked for identification.

29. There is a well-marked distinction between public prosecution and private prosecution. In the case of public prosecution, the police have to investigate and may have wider powers to ascertain the case of the prosecution. Where, however, a private prosecutor comes to the Court, he must be thoroughly prepared to make out his case from the materials available to him. He cannot hope to substantiate his case by inspection of other person's books. In any event he cannot have the right of inspection beyond that permitted by the Civil Procedure Code.

30. P.D. Shamdasani (complainant) in person!. The purpose of the present application is two-fold. Firstly, to set aside the order passed u/s 442 of the Criminal Procedure Code by the trying Magistrate on May 15, 1937, conformably to the High Court decision given on April 14, 1937, and certified to him u/s 442. Secondly, to restore the order passed by the trying Magistrate on December 22, 1936, rejecting the complainant's application made on October 2, 1936, u/s 94 of the Criminal Procedure Code for inspection of the documents marked X to X/23 which order was set aside by the High Court on April 14, 1937. The substantial questions of law which arise for determination are : (1) whether the application is competent? (2) whether the High Court has power to review its own judgment? I submit that both these questions should be answered in the negative. It is true that the Bank was not made a party to the application for revision before the High Court. was not and it could not be so made because it was not a party to the case nor was it even a witness in the case. It was merely summoned to produce certain documents in its possession. A person

summoned to produce a document does not become a witness by the mere fact that he produces it. See Section 139 of the Indian Evidence Act, 1872. Objections were raised by the accused and the Bank u/s 162 of the Act. The validity of these objections was decided on by the trying Magistrate at about twenty hearings. He held some documents to be relevant and others irrelevant. Those held relevant were marked X to X/23. This is sufficiently clear from the proceedings themselves and the Magistrate says in his order of December 22, 1936, that the documents so marked were produced " after determining objections as to admissibility, relevancy and production." In the result the documents marked X to X/23 were produced to the Court and not to the parties, and it is for the Court to decide whether they are to be used or not. The Court has decided that the documents marked X to X/23 are to be used in evidence. After this was done, the Bank has no locus standi. That being the correct position of the Bank in law, it could not have appealed to the Privy Council against the order passed by the High Court on April 14, 1937. It has applied to the High Court in order to do indirectly what it cannot do directly. It has to be shown u/s 442 of the Criminal Procedure Code that the order passed by the trying Magistrate on May 15, 1937, is not conformable to the High Court decision given on April 14, 1937, and certified to him u/s 442, and, therefore, illegal. The present application is not founded upon such valid ground and is therefore incompetent.

John Beaumont, Kt., C.J.

31. The order passed by the High Court is as between you and the accused- The Bank was not a party to it and is not bound by it]

32. The position taken up by the Bank in the lower Court was that it was not a " party to the above proceedings." See its application made on September 3, 1936, showing cause against the order passed by the trying Magistrate on September 2, 1936, on the complainant's application made on September 2, 1936, u/s 6 of the Bankers' Books Evidence Act, 1891. The observations of the Magistrate, namely, "the Bank is not a party to these proceedings, and, therefore, u/s 5 of the Bankers' Books Evidence Act, it could have claimed the benefit of the provision under that section" in his order passed on October 27, 1936, are most significant. I could not, therefore, make the Bank a party to the application for revision before the High Court. Even if I had done so, it is optional with the Court to hear parties. No party has any right to be heard before any Court when exercising its powers of revision. See Section 440 of the Criminal Procedure Code. The High Court when exercising such powers did not think fit to hear the Bank evidently because the High Court had before it the case on behalf of the Bank as presented (a) by the Bank in their three applications dated September 3, 1936, October 6, 1936, and October 29, 1936 (&) by the counsel for the Bank in his arguments recorded in the trying Magistrate's notes as also orders passed on October 27, 1936, and December 22, 1936 (c) by the counsel for the accused in his arguments recorded in the said notes and orders, and (d)

by the counsel for the accused in his arguments at the hearing of the application for revision before the High Court in support of the said orders. The same attorneys and the same counsel, who appeared in the lower Court for the accused as well as the Bank, appeared before the High Court for the accused. The secretary of the Bank and not the accused attended the Court and produced the documents marked X to X/23. The case presented to the Court apparently on behalf of the accused was really on behalf of the Bank. The secretary of the Bank instructed counsel for the accused and the Government Pleader. The Bank obtained from me a copy of the revisional application on payment of the usual charges which amounted to Rs. 14-4-0. The Bank knew full well that I had filed the revisional application and had not made it a party thereto. The Bank did not intervene to assert its rights, if any. The Bank is guilty of laches. The present objection could and should have been raised at the hearing of the revisional application. The Court is bound to have regard to this fact. See Section 537 of the Criminal Procedure Code. It is now too late to raise the present objection. The present application has no foundation in law and must be dismissed on the ground of incompetency.

33. The jurisdiction conferred on the High Court by Section 15 of the Charter Act (24 & 25 Vic. c. 104) is controlled by the Criminal Procedure Code, 1898. See Clauses 28 and 38 of the Amended Letters Patent. See also *Empress v. Burah* ILR (1878) Cal. 172 : L.R. 5 IndAp 178. Sections 435 and 439 of the Code control the jurisdiction conferred on the High Court u/s 15 of the Charter Act. Section 369 of the Code as amended makes it clear that even the High Court has no power of altering or reviewing their judgment save as provided by their Letters Patent. Any alteration of a judgment not sanctioned by this section is a nullity. Judgment of a single Judge or division bench of the High Court cannot be interfered with by himself or by division or full bench. As soon as the judgment is signed and sealed, it becomes final and the Court is *jttnetus officio*. See *Queen-Empress v. C.P. Fox* ILR (1885) 10 Bom. 176 *Queen-Empress v. Durga Charn* ILR (1885) All. 672 and *In the Matter of Gibbons* ILR (1886) Cal. 42. When once a Bench has been dissolved, it cannot ever be reconstituted. It is not and cannot be called the same Bench because it happens to be composed of the same Judges. A judgment of two Judges of the High Court sitting as a Criminal Bench is a judgment of the High Court, and no other Judge or Bench of Judges of the High Court has power to override such judgment. See *Dahu Raut v. Emperor* ILR (1933) Cal. 155.

34. Section 561(A) of the Criminal Procedure Code deals with the inherent powers of the High Court. It can be invoked only in three cases : (1) to give effect to any order passed under the Code (2) to prevent abuse of the process of any Court, and (3) to secure the ends of justice. Clause (3) should be read in the light of Clauses (1) and (2). This section does not confer upon the High Court any new powers because the Court cannot, by invoking its inherent powers, extend the powers given to it by the statute, but merely declares that such inherent powers as the High Court may possess have not been taken away or

abridged by any provisions of the Code : *Raju v. The Crown* ILR (1928) Lah. 1. The inherent powers of the Court do not include the power to revise an order which has been made in the criminal appellate jurisdiction : *Dahu Rout v. Emperor* ILR (1933) Cal. 155. The section does not enable a High Court to pass orders which conflict with the provisions of the Code. See *In Re: Gurunath Narayan Betgeri*, Nor can it alter or review its own judgment in a criminal case, "once it has been pronounced, signed and sealed even if made without jurisdiction except in cases where it was passed in default of appearance without any adjudication on the merits, or to correct a clerical error. See *Dahu Raut v. Emperor* ILR (1933) Cal. 155 and *Raju v. The Crown*. ILR (1933) Cal. 155.

35. The facts in *The Government of Bengal v. Meer Surwar Jan* (1872) 18 W.R. 33 are somewhat peculiar. The accused in that case was convicted on a charge of riot with murder. Previous to his apprehension and commitment he had evaded process, viz., a warrant issued against him, and certain moveable property belonging to him, which had been attached, was declared to be at the disposal of the Government u/s 184 of the Criminal Procedure Code. He was acquitted on appeal. Subsequently he petitioned the Court praying that as he had been "released by this Court from the unjust sentence passed by the Magistrate," the Court would be pleased to direct the confiscated moveable property to be restored to him. No mention was made in his petition that his moveable property had been declared to be at the disposal of the Government. The statement that he had been "released by this Court from the unjust sentence passed by the Magistrate" was false. He thereby practised a gross fraud upon the Court and obtained an order in his favour which the High Court had no jurisdiction to make. The order having been without jurisdiction, was a nullity. It was competent to the High Court to revise such an order. This case has no bearing on the question before this Court.

John Beaumont, Kt., C.J.

36. We have no intention of reviewing the order of the High Court passed on April 14, 1937. The order stands as between the complainant and the accused.]

37. This Court cannot, therefore, do indirectly what it cannot do directly. It is an established rule to abide by former precedents *stare decisis*, where the same points come again in litigation, as well to keep the scale of justice steady and not liable to waver with every new Judge's opinion, as also because the law in that case being solemnly declared, what before was uncertain and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter according to his private sentiments; he being sworn to determine, not according to his own private judgment, but according to the known laws of the land?not delegated to pronounce a new law but to maintain the old. *Jus dicere et non jus dare*. See also *Miller V, Salomons* (1853) 7 Wxch. 475.

38. The High Court judgment in my revisional application is founded mainly on

two cases, *In re Lakhmidas* (1903) 5 Bom. L.R. 980 and *Mahomed Jackanak & Co. v. Ahmed Mahomed* ILR (1887) Cal. 109. The decision in the former case follows the decision in the latter case. It is laid down in the latter case that the Magistrate has to determine at the time when he makes an order u/s 94 of the Criminal Procedure Code whether the documents are necessary for the inquiry; but when they are brought into Court, the inspection should not rest with the Magistrate who does not prosecute. It is reasonable that those who conduct the prosecution should have such inspection, for the production of such documents is for the purpose of using them in evidence and this cannot be done unless the prosecution had an opportunity of inspecting them. It is laid down in the former case that when the Magistrate has satisfied himself that a particular document or book has a bearing upon and is relevant to the case, his jurisdiction to order its production comes into play and that carries with it the jurisdiction to allow the prosecution the right of inspection. This is the concluding passage in the judgment, but from earlier observations in it, it is clear that the Court took the view that generally the right to inspection should follow as a necessary consequence of the production order made u/s 94 of the Criminal Procedure Code.

39. In the old Acts of 1861 and 1869 there was no section dealing with the production of documents. The omission caused much hardship. Section 365 was enacted by Act X of 1872 to facilitate due administration of criminal justice. The law remained the same in Act X of 1882, whereby the previous laws in the mofussil and in the Presidency towns were consolidated and amended. Section 94 of the present Criminal Procedure Code of 1898 corresponds to Section 365 of Act "X of 1872.

40. The applications made by me on December 5, 1935, and February 7, 1936, were made under the provisions of Section 94 of the Criminal Procedure Code. It then follows that the trying Magistrate's orders passed on these applications for the production of the documents mentioned in the lists thereto attached were lawfully made u/s 94, and that being so, it cannot be held that the authorities as to the prosecutor's right of inspection of documents produced under that section have no application in the case of bankers' books. The cases of *South Staffordshire Tramways Co. v. Ebbsmith* [1895] 2 Q.B. 669 and *Arnott v. Hayes* (1887) 36 Ch. D. 731 have no application to a case like the present in which the documents have already been held to be relevant.

41. The material document marked X/2, namely, "Original balance-sheet as at 31-12-1925 with profit and loss account and the Auditors' Report at foot thereof " has been admitted by the trying Magistrate and allowed to be put in as exhibit B, B/1 and B/2. The case for the prosecution is that the statement, namely "that such balance-sheet exhibits a true and correct view of the state of the Company's affairs according to their information and the explanations given to them and as shown by the books of the company " in the Auditors' Report (exhibit B/2) made or caused to be made by the accused at the foot of the

balance-sheet as required by Section 145 of the Indian Companies Act, 1913, is false.

42. The rule is clearly established that a balance-sheet is worthless without the books from which it has been made up. When once a balance-sheet is admitted to be relevant, so much of the books as is the foundation of such balance-sheet is also admitted to be relevant. See *Kent Coal Concessions Limited v. Dueuid* [1910] 1 K.B. 904]. See also *British Association of Glass Bottle Manufac-Central Bank of turers Limited v. Nettlefold* [1912] 1 K.B. 369, on appeal [1912] A.C. 709. The observations of Farwell L.J. in this case in the words, namely, " Here is a balance-sheet; a balance-sheet necessarily implies the existence of books of account from which that balance-sheet was made up, those books, so far as they were used to make up that balance sheet, are relevant because the balance-sheet is admitted to be relevant and therefore they must be produced " are most significant.

43. In the detailed application put in on behalf of the Bank on October 29, 1936, in reply to the notice to show cause, it was stated that there was no objection to the inspection of the documents marked X to X/4, X/8 to X/14 and X/19. Objection was taken to the inspection of others. As regards these, it is not disputed that they must have been used by the auditors. Some of them are clearly the foundation of the audit. The suggestion that the complainant merely desires to make a fishing inspection of them has been rightly discountenanced by the High Court. The allegations in the complaint to which the evidence so far recorded bears ample testimony are perfectly specific and the grounds on which inspection is sought are sufficiently clear. The law governing public prosecution and private prosecution is the same, in any case as regards the right of inspection. The findings of the High Court to the effect that the complainant's case could not be properly presented to the Court if he were denied the right of inspection and that these books must contain many entries which are relevant and necessary to be proved for the purpose of the case and those which are necessary cannot be ascertained without inspection, are correct. The reasoning of the High Court to the effect that there is nothing in the Bankers' Books Evidence Act which prevents an order being made u/s 94 of the Criminal - Procedure Code in a proper case and that the prosecutor cannot be expected to specify entries unless he has ascertained by inspection the particulars of those entries, is also" correct. The final order holding that the complainant is entitled to inspection of documents marked X to X/23 and that the Magistrate's order refusing him inspection was wrong and must be set aside is well-founded in law.

44. Sir Jamshed Kmgga was not heard in reply.

45. B.G. Rao, Assistant Government Pleader, for the Crown,
John Beaumont, Kt., C.J.

46. The facts giving rise to this revision application are as follows. The complaint was filed on February 14, 1929, and it charges the auditors of the Central Bank

with having certified a false balance-sheet of the Bank for the year ending December 31, 1925. The hearing commenced on December 3, 1935, and on December 5 an application was made by the complainant, purporting to be u/s 94 of the Criminal Procedure Code, asking for production of a large number of books of the Central Bank. The learned Magistrate endorsed on that application the word "Comply," and on December 9 a letter of request was sent to the Bank containing a list of the documents which the Bank was asked to produce. That list includes books of account for the four years 1923 to 1926 inclusive kept by the Bank at its Head Office in Bombay, including general ledgers for the years 1923 to 1926 inclusive, and profit and loss analysis ledgers for the same years, title-deeds and other documents evidencing the cost price of the properties of the Bank, minute books of directors' meetings including committee meetings for the four years 1923 to 1926 inclusive, and other documents. The Bank, pursuant to that letter of request, produced the books which they were asked to produce, and which, we are told, filled a lorry. On January 23, 1936, the complainant made an application for the appointment of an independent auditor to inspect the books which had been produced, but that application was rejected. On February 8 there was a further letter of request addressed to the Bank, asking them to produce certain other books, and these also were produced. Between April and July, 1936, the books which had been produced were marked for identification X to X/23, and some of them were actually put in evidence after the complainant commenced his evidence, which was in July, 1936. On September 2, 1936, the complainant made an application for inspection of the books marked X/16 and X/16A, that application being made under the Bankers' Books Evidence Act. On September 3 the Bank applied that the application should not be complied with, and on October 27 the Magistrate made an order acceding to the Bank's application and dismissing the application of the complainant. In the meantime, however, on October 2 the complainant had made another application, purporting to be under s. 94 of the Criminal Procedure Code, for an order for inspection of all the documents which had been produced, namely, those marked for identification, X to X/23. Notice of that application was given to the Bank, and they opposed it, and on December 22, the learned Magistrate made an order refusing to grant inspection. Both the learned Magistrate's orders of October 27 and December 22, 1936, were based on elaborate reasons. On February 20, 1937, the complainant filed a revision application in this Court against the order of the learned Magistrate of December 22, 1936, that is the order purporting to have been made u/s 94 of the Criminal Procedure Code. A rule was issued to two of the accused, but no rule was issued to the Bank, and they were not heard on the application. On April 14, the application of the complainant was allowed by a Bench of this Court consisting of Mr. Justice Broomfield and Mr. Justice N.J. Wadia, and they directed that the complainant be entitled to inspection of all the documents marked X to X/23. On April 22 the Bank applied to the Magistrate asking that they should not be required to give inspection, and maintaining that as they had not been parties to the revision application in this Court, the Magistrate's order of December 22, 1936, remained valid so far as the Bank was

concerned. On May 15 the learned Magistrate rejected that application, and in deference to the views expressed by this Court, though against his own opinion as to the obligations of the law, directed the complainant to take inspection of the documents X to X/2S. Against that order the Bank have filed the present revision application. Both Mr. Justice Broomfield and Mr. Justice N.J. Wadia being on leave, the application came in the ordinary course before the Bench dealing with criminal appeals and revision applications. After the case had been partly opened, it appeared to me that it involved questions of considerable importance to the commercial community, and I, therefore, directed that Bank of India should be heard by a bench of three Judges.

47. Mr. Sliamdasani, the complainant, contends, in the first instance, that the Court has no jurisdiction to interfere with the order made by a Bench of this Court on April 14, and it is, of course, clear that this Court has no jurisdiction in appeal or revision in respect of an order made by an appellate bench of this Court. The order stands as between the complainant and the accused, but the contention of the Bank is that the order does not bind them, and that we must determine what their rights in the matter are, irrespective of the order which was made in their absence.

48. The judgment of this Court was given by Mr. Justice Broomfield, and he seems to me to lay down the following propositions. First, that the order for production of documents was made u/s 94 of the Criminal Procedure Code; secondly, that such an order confers by implication a right on the part of the complainant to inspect the documents produced under the order; thirdly, that there is nothing in the Bankers' Books Evidence Act inconsistent with such a right; and, fourthly, that even if the Magistrate's order did not involve the granting of a right to inspect the documents, nevertheless on the merits such right should be given since inspection is necessary to enable the complainant to present his case properly. With all deference to the learned Judges who were parties to that decision, it seems to me that none of those propositions can be supported. For reasons which I will give in a moment, I am of opinion that the case does not really turn on Section 94 of the Criminal Procedure Code. But, as the matter was dealt with in some detail by Mr. Justice Broomfield, I would say that, in my view, there is no justification whatever for the suggestion that when a Magistrate makes an order for production u/s 94 of the Criminal Procedure Code, which he can do whenever he thinks such an order necessary or desirable for the purposes of the proceedings before him, he thereby commits himself to the proposition that inspection of all the documents production of which is ordered must necessarily follow. The cases on which Mr. Justice Broomfield relied for that proposition, viz., *Mahomed Fackariah & Co. v. Ahmed Mahomed* ILR (1887) Cal. 109 and *In re Lakhmidas* (1903) 5 Bom. L.R. 980 do not, in my opinion, go nearly as far as that. Certainly the Bombay case does not. I think all that those cases decide is that the power to order production u/s 94 involves a power in the Court to grant inspection of the books after the order to produce has been complied with. But it would be very inconvenient if the Magistrate could

not order production of books until he had arrived at a point in the case at which he was in a position to consider whether a right of inspection should be granted or not. Usually inspection should only be given of particular documents shown to be relevant, and not of documents in bulk. In point of fact, in this case I do not think that any order for production was ever made against the Bank. When the Magistrate wrote the word "Comply" on the application for an order for production, that seems to have been a direction to the office which was followed by mere letter of request to the Bank, and the suggestion that the Magistrate in writing the word "Comply" on the application intended to commit himself to the view that the whole of this lorry load of books production of which he was requesting could properly be inspected by the applicant, and the further suggestion that the Bank, in complying with the letter of request without raising any question as to their obligation to do so, thereby precluded themselves from subsequently objecting to inspection, seem to me wholly untenable.

49. As I have said, however, I think that really the case does not arise u/s 94 of the Criminal Procedure Code. It seems to me to arise under the Bankers' Books Evidence Act. That is a special Act dealing with the subject-matter of bankers' books, and being a special Act, the provisions of the Criminal Procedure Code do not in any way conflict : see Section 1(2). Section 4 of the Bankers' Books Evidence Act deals with the mode of proof of entries in bankers' books, and Section 5 deals with the obligation of the Bank to produce their books, and directs that in any legal proceedings to which a Bank is not a party no officer of a Bank shall be compelled to produce any banker's book the contents of which can be proved under this Act, that is, by certified copies, unless by order of the Court or a Judge made for a special cause. It is apparent that in this case no order was ever made by the Magistrate for a special cause under that section. But we are not really concerned with orders for production, but with an order for inspection, and that matter is dealt with in Section 6 of the Act. That section provides : "On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in banker's book for any of the purposes of such proceeding" and Sub-section (3) directs that "The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order." So that the Bank have a statutory right to object to any order directing inspection to be given of their books. The Bank, as I have pointed out, did successfully oppose the applications of the complainant both of September 2 and of October 2, 1936, asking that they should be required to give inspection, and, in my opinion, this Court in setting aside the order of December 22 made on the application of October 2, without hearing the Bank, in effect disregarded the Bank's statutory right. No doubt that order purported to be made u/s 94 of the Criminal Procedure Code, but, for the reasons I have given, I think that in law it must be taken to have been made u/s 6 of the Bankers' Books Evidence Act, since, in my opinion, that is the only Act

under which the Court can deal with the right to inspect a banker's book. Even had the order been made u/s 94 of the Criminal Procedure Code, I think that it would have been contrary to the ordinary practice of this Court, and indeed to principles of natural justice, to have set aside an order which had been made at the instance of the Bank without giving the Bank an opportunity of being heard. However, if the order was made under the Bankers' Books Evidence Act, the Bank had a statutory right to be heard. In my opinion, therefore, the order of this Court must be held not to be binding upon the Bank, and it follows, therefore, that the order of the learned Magistrate made on May 15 must be set aside, unless we come to the conclusion, after hearing the Bank, that on the merits inspection of these documents ought to be given to the complainant.

50. On that question Mr. Justice Broomfield took the view that the complainant alleges that specific items in the balance-sheet of the Bank for the year 1925 were false and fraudulent, that many of the books of the Bank, though, I imagine, certainly not all those included in the list X to X/23, must have been before the auditors when they certified the balance-sheet as correct, and that the complainant cannot properly present his complaint without inspecting the books of the Bank. The proposition really comes to this, that if a complainant makes a charge sufficiently specific against his opponent, then he is entitled to inspect all his opponent's books and the books of a third party, which would be relevant, assuming the charge to be well-founded. " Clearly if the charge is not well-founded, no books can be relevant to support it. It is contended by the complainant that that proposition of Mr. Justice Broomfield is correct, that he has made a complaint on oath, and that the Court must assume in the first instance that the complaint is well-founded, and that unless he is allowed to inspect the books of the Bank his prosecution will be stifled. In my opinion, however, the proposition laid down by Mr. Justice Broomfield is much too wide. There is no doubt truth in the contention that it may be difficult, or even impossible, for the complainant to prove his case without inspection of the Bank's books, but the Court has to have regard to other aspects of the matter. The legislature has endowed the Courts with wide powers of ordering production of documents necessary for the determination of matters before the Courts, and for directing inspection of those documents; but it must always be borne in mind that an order directing a person to produce or give inspection of his books in a dispute to which he is not a party involves a serious inroad upon his normal rights as a citizen, and the Courts have always set their faces against giving anything in the nature of a roving or fishing commission to inspect documents. The Court does not allow a man to say, " I make such and such a charge against my opponent, and now if you will let me look into his books I will see whether I can find some evidence to support it." If the Courts were to make orders for inspection of books merely on an allegation that certain facts are true, the practice would be open to very serious abuse, and the Court might easily become something of a menace to a mercantile community. It would be open to an unscrupulous person to make a false charge, possibly against a business rival, and then get inspection of that

business rival's books. In saying that I am not suggesting that the complainant in this case is making a false charge. I am not at present in a position to express any opinion upon that, but in framing rules for its own guidance the Court cannot ignore the fact that a good many unscrupulous people exist, and that false complaints are not uncommon, notwithstanding the penalty which may be invoked against a man, who presents a false complaint, u/s 211 of the Indian Penal Code. In my opinion it is not the practice of the Court to allow inspection of bankers' books under the Bankers' Books Evidence Act unless a prima facie case is made out for thinking that there is some matter on which the books of the Bank are bound to be relevant. The complainant here has given evidence. He has not yet been cross-examined, and as far as I can see, he has produced no evidence beyond his own assertion that these items in the balance-sheet which he challenges are false. He gives in the on case of bad debts specific figures. He says that bad debts which have been included at a sum of rupees five lakhs, ought to have been included at a figure of Rs. 28 lakhs odd. He gives the actual amount in rupees, annas and pies, but he gives no evidence whatever to show how he arrives at that figure, and why he suggests that the figure in the balance-sheet is wrong. That being so, in my opinion, he has not at the present moment made out any case for inspecting the books of the Bank.

51. In my opinion we must set aside the order of the learned Magistrate made on May 15, 1937, and direct that, notwithstanding the order of this Court dated April 14, 1937, which was made in the absence of the Central Bank, the Bank is not bound to give inspection of all the documents X to X/23, but if the complainant makes out a prima facie case for supposing that any particular item in the balance-sheet which is challenged is false, and that any particular document or documents will be relevant to support that charge, then the Magistrate can give inspection of any such document after hearing what the Bank may have to say u/s 6 of the Bankers' Books Evidence Act, and if necessary, after allowing cross-examination of the complainant by the accused.

Rangnekae, J.

52. I agree and have nothing to add.

Norman, J.

53. I agree and have nothing to add.