

owner of the vehicle, and, in a case like the present, where the vehicle has not been insured, they would have no compensation whatsoever. This argument is obviously without substance. In *Shri Ram Partap v. General Manager, Punjab Roadways, Ambala* (7), Dua J. repelled the argument on behalf of the General Manager of the Punjab Roadways that because of the negligence of the driver, the owner, the Punjab Roadways, was not liable, and in *Nand Singh Virdi v. Punjab Roadways and others* (8) P. C. Pandit J. held that the insurer only incurs the liability of the assured and that also to the extent to which the vehicle is insured. Therefore, the third party has first of all to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, then he cannot get any compensation from the insurer. The provisions of the Motor Vehicles Act, 1939, have not, in any way, changed the general law under which compensation is claimed by one person from another. These two cases lend support to the conclusion that in an application under section 110-A, the applicant can claim compensation for death of, or bodily injury to, persons arising out of an accident because of the use of a motor vehicle from the negligent driver and owner of the vehicle. So this argument that Atma Singh respondent cannot claim compensation against the applicants before the Claims Tribunal is not tenable.

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and another

Mehar Singh, J.

There is no other argument that has been urged. So these revision applications fail and are dismissed with costs, counsel fee being Rs. 32 in each application.

B.R.T.

CIVIL ORIGINAL

Before A. N. Grover, J.

IN re MUKTSAR ELECTRIC SUPPLY CO. LIMITED (IN LIQUIDATION) AND PETITION OF S. P. CHOPRA & CO. AND ANOTHER.

Civil Original No. 32 of 1964.

Companies Act (VII of 1913)—S. 281(2)—Companies Act (I of 1956)—S. 633(2)—Relief against a possible Criminal prosecution—Whether can be granted by High Court—Relief to the liquidator—Whether can be granted after the company has been dissolved.

1965
November, 5th

(7) A.I.R. 1962 Punj. 540.

(8) I.L.R. (1962) 2 Punj. 887=A.I.R. 1963 Punj. 214.

Held, that relief can be granted against a possible criminal prosecution for offences under Companies Act under sub-section (2) of section 633 of the Companies Act, 1956 or section 281(2) of the Indian Companies Act, 1913, by the High Court. Such a relief can be granted to a liquidator even after the Company has been dissolved. It would lead to a lot of abuse and anomalies if, after the Company has been dissolved, the liquidator can escape his responsibilities or liabilities under the Act, if the alleged negligence, misfeasance, default or breach of duty, etc., is discovered to have been committed after the Company's dissolution unless in the Act itself some limitation is provided for initiating action or instituting proceedings. If proceedings against a liquidator can be started after the dissolution of the company, he is entitled to ask for relief under sub-section (2) of section 633 of the Companies Act, 1956 or section 281(2) of the Indian Companies Act, 1913.

Petition under sections 281/216 of the Indian Companies Act, 1913/Sections 633 and 518 of the Companies Act, 1956, praying that the following reliefs to the petitioners:—

- (a) granting relief to the petitioners in respect of the payment to the Custodian described above and the statements filed with the Registrar for the year ending 30th September, 1949 and any matter or claim arising therefrom;
- (b) give directions confirming or approving the action of the Petitioners in having incurred expenses of Rs. 11,282 on account of the claim of Messrs Siemens Limited and payment of Rs. 18,718.00 made to Custodian Enemy Property as set out above; and
- (c) such other orders as may be just and proper in the circumstances of the case.

VED VYAS, B. R. TULI, S. K. TULI AND D. R. NANDA, ADVOCATES,
for the Petitioners.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Registrar of
Companies.

J. N. KAUSHAL, ADVOCATE-GENERAL, WITH M. R. SHARMA,
ADVOCATE, for Delhi Administration.

JUDGMENT

Grover, J .

GROVER, J.—This is a petition filed by S. P. Chopra and Company, Chartered Accountants, New Delhi Petitioner No. (1) and S. P. Chopra a partner of that Company Petitioner No. 2 under section 281 read with section 216 of the Indian Companies Act, 1913 (hereinafter called the Act) which admittedly would govern the present case.

The allegations in the petition are that the Muktsar Electric Supply Company, Limited (in liqn.) (to be called the Company) was incorporated under the Act with its registered office at Lahore. On 30th September, 1942 it went into voluntary liquidation and petitioner No. 1 were appointed its voluntary liquidators. Petitioner No. 2 was the sole proprietor of petitioner No. 1 till 1949 and since then he has been the senior partner of petitioner No. 1 and in that capacity he was generally looking after the conduct of the liquidation of the Company. The High Court of Lahore passed a supervision order under section 221 of the Act but petitioner No. 1 continued to function as liquidators of the Company. Before the partition of the country in August, 1947 the registered office of the company was shifted to East Punjab. The records of the company, however, could not be brought from Lahore initially but later on some of them were retrieved and brought to Delhi between 1948 and 1949. On account of the transfer of the registered office to East Punjab the various returns under the Act were filed from time to time with the Registrar of Companies, East Punjab. The returns which were filed with the Registrar have been set out in paragraph 6 of the petition. They were filed from 8th July, 1950 to 5th July, 1961 on which date the final statement of account up to 30th January, 1961 was submitted. The assets of the Company were sold to Okara Electric Supply Company Limited through its Managing Director, Shri R. L. Oberoi (since deceased) for a sum of Rs. 1,00,000 and the balance of the banking account of the Company in 1947 with the Punjab National Bank Ltd., Lahore, was got transferred to the same Bank in New Delhi. The final meetings of creditors and members for the dissolution of the Company were held originally in February, 1960 and again on 30th January, 1961. One of the creditors of the Company was Siemens Limited, Lahore, which had its residence and principal office in Germany (hereinafter referred to as the Foreign Company). It is stated that the total claim of the Foreign Company was between Rs. 35,000 to Rs. 40,000. It appears that owing to the II World War the assets of the Foreign Company had vested in and were controlled by the Custodian of Enemy Property of undivided India till August, 1947. According to the petitioners, it was decided to declare cent per cent dividend but before doing so, they wanted to ensure that the Foreign Company's claim was suitably settled. For that purpose in 1948 the petitioners approached the Custodian of Enemy Property,

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In re. Muktsar Bombay and made an offer to him of a sum of Rs. 30,000 Electric Supply in full and final settlement of the Foreign Company's entire Co. Limited claim. This offer was further pursued on behalf of the petitioners by Shri Duschek and Shri K. N. Taneja, Chartered (In Liquidation). and petition of S. P. Chopra & Accountant. The Custodian, Bombay, however, informed Co. and another

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the petitioners that they should disburse the amount in Pakistan since the Foreign Company was in Lahore and get clearance from the appropriate Pakistan authorities to the effect that the amount of the claim could be received by the Custodian in India. In paragraph 12 of the petition, it was stated that in August, 1949 in view of the fact that the Custodian was willing to accept the said amount only after clearance from the Pakistan authorities, the petitioners opened a separate account with the Grindlays Bank Ltd., Simla, specifically for the purpose of payment of the said claim and deposited the sum of Rs. 30,000 in that account. This amount was earmarked by the petitioners for payment to the Custodian, Bombay. According to paragraph 13, the petitioners utilised the services of Kh. Nazir Ahmad, Advocate, Lahore, for getting clearance from Pakistan authorities. He arranged to get the clearance. Besides Kh. Nazir Ahmad and a junior colleague of his, Mr. Duschek was also engaged for the purpose of work between Bombay and Lahore for getting the necessary clearance. Some travelling expenses were paid to the members of the staff. For professional services rendered and other expenses, the petitioners incurred a total expenditure of Rs. 11,282 in this connection. It has further been stated in the petition that after deducting the sum of Rs. 11,282 the balance of Rs. 18,718 was paid to the Custodian at Bombay by cheque in full and final settlement. The negotiations in this connection lasted for about a year and certain letters were exchanged between the parties. In the return filed by the petitioners with the Registrar of Companies, Punjab, under section 244 of the Act for the year ending 30th September, 1949 in Form No. 58 it was stated—

“Custodian Enemy Property Bombay 30,000.” In other words, Rs. 30,000 were shown to have been paid to the Custodian, Bombay, as against Rs. 18,718 paid to him by cheque and Rs. 11,282 spent on his account on the expenses. The petitioners maintained that that statement was correct and that the opinion of leading firms of Chartered Accountants also supported the position taken by them. It was further alleged that one Ram Saran Khanna, who was an

employee of petitioner No. 1 and was its Liquidation Assistant looking after various liquidations entrusted to petitioner No. 1, had the custody of all the relevant records. He removed with ulterior motives certain records including the record of the Company sometimes before September, 1963. The petitioners tried to recover these records but without success. Ram Saran died in April, 1964. The petitioners had in their possession only some correspondence with the Registrar. In paragraph 18 it was stated that petitioner No. 2 was appointed Inspector in April, 1963 to investigate into the affairs of Bennett, Coleman and Co. Ltd., Sahu Jain Ltd., Ashoka Marketing Ltd., New Central Jute Mills Co. Ltd and Rohtas Industries Limited which were under the management and control of Shri Shanti Prasad Jain. Petitioner No. 2 had been carrying on investigation and it is alleged that with a view to intimidate him and obstruct him to carry on as Inspector, Shri Shanti Prasad Jain managed to contact Ram Saran and through him obtained access to the documents of petitioner No. 1 including certain documents and information relating to the Company. After doing that and after distorting facts, it is alleged in paragraph 19, Shri Shanti Prasad Jain got lodged a complaint with the Police at Delhi against petitioner No. 2 in which a false suggestion was made that the aforesaid petitioner had filed a wrong statement with the Registrar inasmuch as he had shown Rs. 30,000 as paid to the Custodian when in fact Rs. 18,718 were paid. This complaint was filed by one Dayavrat who had no connection whatsoever with the Company. In paragraph 21 petitioner No. 2 claimed that he had been entrusted with a large number of important assignments and that he holds a high status in his profession. He was a member of the Council of the Institute of Chartered Accountants of India and also its Vice-President and President during the years 1955-1956 and 1956-57, respectively. The petitioners maintained that they had all along acted honestly and reasonably and since they apprehended that proceedings might be brought against them in respect of negligence, default, breach of duty, misfeasance or breach of trust in respect of the aforesaid payment to the Custodian and the statement filed with the Registrar for the year ending 30th September, 1949 and any matter or claim arising therefrom, the present petition was filed in August, 1964 praying that they be relieved from any liability under the aforesaid provisions. Certain other directions were sought in the petition but they are no longer pressed and need not be

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In *re. Muktsar Electric Supply Co. Limited (In Liquidation)* petitioner No. 2 affirming the correctness of the contents of the various paragraphs of the petition. On 18th August, 1964 this Court directed a notice to be issued to the Registrar of Companies and to Dayavrat for 18th September, 1964. Dayavrat filed a reply dated 17th September, 1964 through Shri T. R. Bhasin, Advocate. In this reply it was pointed out, *inter alia*, that no petition was competent under section 518 of the Companies Act, 1964 (sections 633 and 518 of the new Act were also mentioned in the petition) since the Company had been wound up and dissolved in 1961. The other objection raised was that a liquidator could not be called an officer of the Company and could not claim the benefit of the provisions under which relief had been claimed. It was asserted that the information which had been lodged by the answering respondent was motivated by public spirit in the interest of weeding out corruption since an offence of criminal breach of trust had been committed in respect of public funds. It was stated that as the answering respondent did not know what the police was doing in the matter of investigation, it would be proper to issue notice to the investigating officer, Police Station Parliament Street, New Delhi. Apart from denying the allegations relating to Shri Shanti Prasad Jain being responsible for the complaint which had been filed against petitioner No. 2, this respondent stated that he was not in a position to deny or affirm the averments made in paragraphs 1 to 18 of the petition or in paragraphs 20 to 23. The Registrar of Companies, Shri H. S. Kamlani, also filed an affidavit in reply dated 5th November, 1964 admitting the correctness of most of the statements contained in the petition which could be ascertained from the records, but he expressed inability to state anything about those facts regarding which records were not available in his office. In paragraph 8 of his affidavit it is said that the statement which had been filed by the petitioners under section 244 of the Act for the period from 1st October, 1948 to 30th September, 1949, had been seized on 29th July, 1964 by Shri Tara Chand, Deputy Superintendent of Police, Parliament Street, New Delhi, in connection with the investigation of F.I.R. No. 69, dated 28th January, 1964, alleging an offence under section 409 of the Indian Penal Code. He admitted the correctness of the statements made in paragraphs 17, 18 and 19 of the petition and that petitioner No. 2 was

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appointed Inspector by the Central Government to investigate into the affairs of the companies under the management of Shanti Prasad Jain. In paragraph 9 it was stated—

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—————
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“I say that on the 10th of October, 1963 the Central Government received from the Manager of Delhi Office of M/s Bennett Coleman & Co. Ltd., a complaint alleging *inter alia* that Shri S. P. Chopra has committed misconduct in his capacity as the Liquidator of M/s Muktsar Electric Supply Co. Ltd. I am informed that on the 22nd October, 1963, one Shri Ram Saran Khanna of whom mention is made in the petition voluntarily met Shri D. L. Mazumdar who was at the relevant time Secretary to the Government of India, Department of Company Law Administration, Ministry of Commerce & Industry and stated that he had been working with Shri S. P. Chopra, for a period of about twenty-five years and therefore he was conversant with the aforesaid allegations. The said Shri Ram Saran Khanna further volunteered to give fuller details in respect of the said allegations contained in the aforesaid complaint received from M/s Bennett Coleman & Co. Ltd. by the Central Government.”

In paragraph 10 he proceeded to say—

“ * * * * *, I am informed that Shri S. D. Aggarwal, a Senior Accounts Officer of the Department of Revenue and Company Law (Company Law Division) who is also an Inspector appointed by the Central Government to investigate into the affairs of Sahu-Jain Companies, had in the course of the search under section 240-A of the Companies Act, 1956 seized from the residence of Shri S. P. Jain at Calcutta some papers containing information concerning Shri S. P. Jain's connection with the complaints against Shri S. P. Chopra.”

It may be added, however, that Shri Kamrani filed another affidavit dated 4th January, 1965 saying that the Government of India had since obtained the opinion of the

In re. Muktsar Attorney General in the matter and according to that opinion he was admitting that a liquidator was an officer of the Electric Supply Co. Limited (In Liquidation) Company and was entitled to seek relief under the relevant provisions and further that relief could be granted and petition of S. P. Chopra & even after the dissolution of the Company. It was also Co. and another submitted that the provisions under which relief had been sought were applicable "in respect of original proceedings of any kind seeking to hold a liquidator liable to any penalty in respect of winding up proceedings."

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On 27th November, 1964 a challan was presented in the Court of a Magistrate 1st Class, Parliament Street, New Delhi, alleging an offence against petitioner No. 2 under section 409, Indian Penal Code. It appears that in Liquidation Misc. 112 of 1964, the Superintendent of Police (South New Delhi) incharge of Parliament Street Police Station was directed to be impleaded as a respondent. On 25th February, 1965 the learned Advocate-General stated that the Superintendent of Police was interested only till the investigation of the case was completed and he had put in a challan in a Court of Law and he was, therefore, no longer interested. On that date, according to the order recorded by this Court, a notice was directed to be sent to the Delhi Administration because it was felt that Dayavrat had no longer any *locus standi* in the matter. On 25th May, 1965 the challan which had been filed was sought to be withdrawn and its withdrawal was allowed by the Magistrate. On 3rd September, 1965 the Advocate-General stated that there had been some change of circumstances and owing to the directions of the Central Government to the Delhi Administration the proceedings had been withdrawn but that another investigation was being carried out through a senior police officer. An adjournment was, therefore, sought for filing a written statement on behalf of the Delhi Administration which was granted.

On behalf of the Delhi Administration an affidavit was filed, dated 2nd October, 1965 of Shri L. S. Titus, Secretary (Co-ordination), Delhi Administration. It was stated therein that the criminal information which had been laid against petitioner No. 2 had been duly investigated by the police who had filed a challan against him under section 409 but before the charges could be framed, it was withdrawn and fresh investigation was ordered. It was admitted that petitioner No. 2 had opened a separate account with the Grindlays Bank Ltd., Simla and transferred

Rs. 30,000 to that account out of the funds of the Company but the other allegations contained in paragraph 12 of the petition were denied. Paragraph 13 was denied and it was said that the police investigation showed that the petitioner had misappropriated Rs. 11,282 and that he was prohibited from paying any amount to Kh. Nazir Ahmad or his junior by section 5 of the Foreign Exchange Regulation Act, 1947. Paragraph 7 of this affidavit deserves to be reproduced: —

“Para No. 14 as stated is not admitted. The petitioner by his letter dated 1st March, 1950 sent to the Custodian of Enemy Property, Bombay a cheque for Rs. 18,718 being 55 per cent of his claim. The Custodian accepted this amount in full and final settlement as the petitioner had according to his said letter declared a dividend of 55 per cent and the Custodian had no reason to doubt the honesty of the petitioner-liquidator. It was never brought to the notice of the Custodian that the petitioner had spent any money out of the moneys purported to be paid to him and thus question of Custodian raising any objection to the expenses did not arise.”

In paragraph 9 it was stated that the petitioner had acted *mala fide* in showing payment of Rs. 30,000 to the Custodian, Bombay, but in fact Rs. 18,718 had been paid. The allegation that Shanti Prasad Jain got information with ulterior motives from the petitioners' office was not admitted for want of knowledge. In the verification it was stated that the contents of the paragraphs of the affidavit were based on information received from the police records relating to the investigation conducted in the first instance. A rejoinder affidavit was filed by petitioner No. 2 dated 11th October, 1965. It was stated therein that the Special Police Establishment was asked to make an enquiry into the conduct of the investigating officer, Shri T. C. Malik, the then D.S.P. of the Parliament Street Police Station, who had carried on the investigation of the case registered against petitioner No. 2. It was stated in paragraph 3 that the authorities had obtained reliable information that Shri T. C. Malik, while on official tour in connection with the investigation, was working in close association with Shri Shanti Prasad Jain and his organisation and was availing of of certain benefits from them, obviously with a view to giving a benefit to them. Accordingly first information report was registered against him

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in March, 1965. It was further stated that thereafter the whole matter had been referred to the learned Attorney General who had considered the entire material and had given his advice against taking any proceedings against petitioner No. 2. It was for that reason that the case had been withdrawn unconditionally on 25th

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May, 1965. It was pointed out that more than four months had expired since the withdrawal of the case and no further enquiry had been made from petitioner No. 2. It was asserted that the restrictions under the Foreign Exchange Regulations Act, 1947 came into force on 27th February, 1951 and were not operative at the time the amount in question was spent on expenses of counsel at Lahore. In paragraph 13 of this affidavit it was stated that the relevant records of the Company having been destroyed long ago it was not possible to find out the correspondence that passed between petitioner No. 2 and the office of the Custodian of Enemy Property. Petitioner No. 2 had distinct recollection and maintained that he had discussed the nature and quantum of expenses incurred with Shri Krishnaswamy, the then Assistant Custodian at Bombay and details of expenses had also been discussed with him by other persons connected with the negotiations and it was only after he was fully satisfied about the matter that the Custodian confirmed the composition which was agreed to in July/August, 1949 at Rs. 18,718. Accordingly a draft was prepared by Shri Krishnaswamy and Shri K. N. Taneja and that letter was formally addressed by the liquidators' office to the Custodian on 1st March, 1950. In paragraph 16 it was stated:—

“In view of the attitude taken up by the Custodian authorities at Bombay, it was possible that the Pakistan authorities would claim, as was done in numerous other cases of joint stock companies, that this company was still a Pakistani Company and that the transfer of funds from Lahore to Delhi was unauthorised and should be reversed. Such action would have greatly damaged the interests of the general body of the creditors of the Company which S. P. Chopra & Co. as liquidators were in duty bound to safeguard. In view of these facts it became necessary to handle this delicate matter with utmost care and a leading Advocate at Lahore was engaged for the purpose. It is also a well known

fact that Pakistani Advocates working for In re. Muktsar Indian clients at that time were charging very high remuneration and Indian clients had no other alternative but to accept such demands." *Electric Supply Co. Limited (In Liquidation) and petition of S. P. Chopra & Co. and another*

In paragraph 17, it was stated that the allegations related to a period more than 15 years ago. Relevant records of the Company were destroyed after its dissolution in accordance with law. The relevant records of the Grindlays Bank had also been destroyed with the result that full details of the facts were obviously not available. Many of the material witnesses had died and that is why petitioner No. 2 had sought protection of this Court. On 15th October, 1965, I made an order, the material part of which may be reproduced:—

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“After hearing the counsel for the parties and examining the affidavits which have been filed in this case, I am of the view that proper orders cannot be made until the learned Advocate-General makes available the following records and documents:—

- (1) The file of the Custodian of Enemy Property, Bombay containing the letter mentioned in paragraph 7 of the affidavit filed by Mr. L. S. Titus, dated 2nd October, 1965.
- (2) The first information report registered against Shri T. C. Malik, Deputy Superintendent of Police, in March, 1965, mentioned in paragraph 3 of the rejoinder affidavit of Mr. S. P. Chopra, dated 11th October, 1965.
- (3) Any other records in the possession of the police or the Delhi Administration which may support the statements contained in the affidavit of Mr. Titus, dated 2nd October, 1965.

The learned Advocate-General is also directed to ascertain whether any investigation has been made so far and if so, the stage to which it has proceeded after the 25th of May, 1965, in the case registered against Mr. Chopra in January, 1964 at the instance of Mr. Dayavrat. It will be open to the Advocate-General to file a proper affidavit

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The learned Advocate-General has produced the records containing the letter, dated 1st March, 1950, copy of which is marked C/1, which had been written by the petitioners on behalf of the Company to the Custodian of Enemy Property, Bombay, as also copy of the first information report, which had been lodged against T. C. Malik, (marked C/2). The only other document on which he has relied is the return made in Form No. 58 on 8th July, 1950, by the petitioners with regard to lists of dividends and composition, copy marked C/3. It has further been stated by him that after I had recorded the last order on 15th October, 1965, the police has started investigation and statements of two persons have been recorded. The statement of the informant was recorded on 21st October, 1965 and of the Manager, Grindlays Bank Ltd., Simla, on 26th October, 1965. It is, however, admitted that between the period 25th May, 1965 and 21st October, 1965 the police made no investigation whatsoever.

The reason why it became essential to peruse the letter mentioned in paragraph 7 of the affidavit filed by Mr. Titus was that if in that letter what had been stated in the affidavit had been written the whole explanation of the petitioners furnished in the affidavits of petitioner No. 2 would have been found to be wrong and incorrect and that factor would have been of decisive importance in this case. The material part of that letter, which was addressed to the Custodian of Enemy Property, Bombay, may be reproduced—

** * * * *

Your claim with the company has been compromised for a sum of Rs. 18,718 being 55 per cent of Rs. 32,332-11-0 plus Rs. 1,700 and odd to cover interest, costs, etc. The cheque for the same is enclosed herewith, on receipt of which please give us your full and final settlement receipt against all claims from the Muktsar Electric Supply Co., Ltd., now in liquidation."

Paragraph 7 of the affidavit of Mr. Titus was based on an alleged statement in the letter that a dividend of 55 per cent had been declared by the liquidators and, therefore, a cheque for Rs. 18,718 was being sent as 55 per cent of the

entire claim of the Foreign Company. It is not possible to see how Mr. Titus could with any justification suggest that the petitioners had made a deliberate misrepresentation that a dividend of 55 per cent had been declared with regard to all the creditors and, therefore, the amount which was being sent was 55 per cent of the claim. It is true that in the letter 55 per cent is mentioned, but it is nowhere stated in the letter that dividend had been declared at that figure. I regret to say that either by an oversight or by misreading the letter Mr. Titus has attempted to create an impression that such a statement was contained in the letter which would have completely knocked the bottom out of the case of the petitioners. Apart from this letter and the other statement contained in Exhibit C/3, in which payment was shown to the Custodian, Enemy Property, Bombay at a figure of Rs. 30,000, the learned Advocate-General has not been able to place any material before me either from the police records or any other records in the possession of the Delhi Administration which could satisfactorily rebut the statement on oath of petitioner No. 2 that the amount of Rs. 30,000 was shown in Form No. 58, because Rs. 18,718 had been paid by cheque to the Custodian at Bombay and the balance of Rs. 11,282 had been incurred as expenditure for professional services and other expenses to which reference has been made for complying with all the formalities that were required to be satisfied before any amount could be paid to or accepted by the Custodian of Enemy Property, Bombay. There is no doubt that the letter, Exhibit C/1, does not contain any mention of the amount of Rs. 11,282 being the expenditure incurred in the matter of getting the requisite clearance, etc., from the Pakistan authorities, but the explanation has been furnished in the affidavits of petitioner No. 2. He has also given the reasons why in Form No. 58, the total amount of Rs. 30,000 was shown. In these circumstances it has been urged on behalf of the petitioners that the statements on oath in the affidavits of the petitioner No. 2 ought to be accepted and that even if there was some technical mistake in not mentioning the details of the amounts paid and expended on account of getting the clearance for payment to the Custodian, Enemy Property, Bombay, the petitioners should be absolved from liability in exercise of the powers conferred by the relevant provisions of the Act to save them from further unnecessary harassment.

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In *re. Muktsar Electric Supply Co. Limited (In Liquidation)*, I have given anxious consideration to the matters which call for determination in this case and it appears to me that while deciding whether the explanation of the petitioners and the statement of facts relevant to the petition of S. P. Chopra & Co. and another of amount of Rs. 11,282 which is alleged to have been secreted away or misappropriated the following facts must be prominently kept in view:—

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- (a) The Registrar of Companies, who was the proper person for taking action against the petitioners in respect of any alleged false or wrong statements in Form No. 58 (Exhibit C/3), has completely supported the case of the petitioners through his counsel, Dewan Chetan Das, Deputy Advocate-General.
- (b) No complaint whatsoever was filed for a number of years until Dayavrat lodged the information with the police. The affidavit of the Registrar, read with the affidavit of the petitioner No. 2, seems to indicate that there were extraneous reasons which prompted the filing of the report and that it had not been made *bona fide*.
- (c) All the relevant records including the Company records relating to the account opened in the Grindlays Bank Ltd. had either been destroyed or were not available to the petitioners from which they could support the statements contained in the affidavits filed on their behalf.
- (d) It could hardly be disputed that in obtaining the clearance from the appropriate Pakistan "authorities a fair amount of expenses would have been incurred. When the Custodian of Enemy Property, Bombay accepted the amount of Rs. 18,718 in full and final settlement, he could not have done so unless he was satisfied that the amount of expenses had been incurred. Unfortunately Shri Krishnaswamy, the then Assistant Custodian at Bombay, is no longer alive otherwise it could have been ascertained from him what the true state of affairs was, but on

the whole the explanation of the petitioners carries conviction that apart from Rs. 18,718, substantial expenses were incurred which must have been deducted from the total claim for which the composition was made because it was the Custodian of Enemy Property, Bombay who was insisting that the clearance be obtained from the Pakistan authorities first.

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- (e) No material worth the name has been produced before this Court by the respondents which would throw a reasonable doubt on the correctness of the material facts affirmed in the affidavits of petitioner No. 2.
- (f) Although the police had sufficient time for investigation, the challan filed on 27th November, 1964 was withdrawn on 25th May, 1965 unconditionally and since then no further investigation whatsoever was made until after the order of this Court dated 15th October, 1965.
- (g) Most of the material witnesses are not alive.

In view of the entire discussion, I am satisfied that the explanation which has been furnished by the petitioners in the matter of showing an amount of Rs. 30,000 as having been paid to the Custodian, Enemy Property, Bombay in Form No. 58 (Exhibit C/3) must be accepted and even if there has been some negligence or default in the matter of not showing the two items separately of which Rs. 30,000 were the total, the petitioners deserve to get such relief as may be open to them under the relevant provisions of the Act because the default or negligence was only of a technical nature.

The scope and ambit of section 281 of the Act has next to be decided. That section stood as follows:

"281. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of

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trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

“(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the following :—

- (a) directors of a company;
- (b) managers and managing agents of a company;
- (c) officers of a company;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.”

Sub-sections (1) and (2) of section 372 of the English Companies Act, 1929 were identically worded and section 281 of the Act appears to have adopted, virtually the same language as was employed in the English section. *In re Barry and Staines Linoleum, Limited* (1), a director, who had failed to obtain his qualification shares within the time fixed but who continued to act and receive remuneration as a director, thus incurring penalties under sub-section (5) of section 141 of the English Act, applied to the

(1) (1934) 1 Ch. 227.

Court under sub-section (2) of section 372 for relief against any liability which he had incurred by acting and receiving remuneration as a director after he had ceased to be a director. It was held by Maugham J. (as he then was) that the Court had jurisdiction under sub-section (1) of section 372 to grant relief from the penalties imposed by section 141. After considering the facts, Maugham J. observed—

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“I have no hesitation in coming to the conclusion that I ought to relieve him wholly from his liability to that fine, a liability of a penal character which I think that he ought not, in the circumstances, to be made to undergo.”

In *In re Gilt Edge Safety Glass Limited* (2), petitions were presented under section 372 by two directors of a company, who had inadvertently continued to act as directors after they had, owing to a reduction of capital, ceased to hold qualifying shares of the minimum value required by the articles of association of the company. Actually, summary proceedings before the Magistrates had been commenced against them under section 141(1) of the English Companies Act, 1929. It was held that section 372(1) made the Court which heard the case the only Court which had jurisdiction to give relief in respect of the proceedings which had already been commenced and that with regard to the claim under section 372(2) the Court would make an order granting the petitioners relief from future or apprehended claims in respect of a technical defect; the summary proceedings already commenced being expressly excepted from that order. The scope of section 281 (2) came up for consideration before the Orissa Court in *In the matter of Orissa Jute and Cotton Mills, Ltd.* (3). After discussing the English cases, it was laid down that with regard to any criminal proceedings which were already pending, relief could be granted only by the Court where they were pending under sub-section (1) and under sub-section (2) the Court could relieve the petitioners from any apprehended liability for which proceedings could be taken in the future. In *In re Tolaram Jalan and others* (4), it was held that the word “claim” occurring in

(2) (1940) 1 Ch. 495.

(3) A.I.R. 1956 Orissa 205.

(4) A.I.R. 1959 Bom. 245.

In re. Muktsar Electric Supply Co. Limited (In Liquidation), sub-section (2) of section 633 of the Companies Act, 1956 (equivalent to section 281 of the Act) would also include proceedings such as penal proceedings under section 162, read with section 220 of the Act of 1956. Section 633 of S. P. Chopra & the Companies Act of 1956 was considered by the Kerala Co. and another Court in *In re. Bank of Deccan Ltd.* (5). Following the

Grover, J. English cases as well as the Orissa decision, it has been held that under sub-section (1) it is for the Court before which the proceedings are pending to grant relief but the High Court can grant relief under sub-section (2) and that the scope of that sub-section is wide enough to cover criminal prosecution. The word "claim" in sub-section (2) must be construed as having been used in a special sense so as to include also criminal prosecution. The High Court has, therefore, power under section 633(2) to relieve against an apprehended prosecution.

The learned Advocate-General has relied on *Thakur Dan Singh Bist v. Registrar of Companies* (6), in which a contrary opinion has been expressed with regard to the scope of section 633(2) of the Act of 1956. According to A.P. Srivastava J., sub-section (1) is wide enough to cover all kinds of liabilities, both penal and civil, but sub-section (2) applies only to apprehended claims, i.e., claims for civil liability, and does not cover penal liabilities or prosecution. I have carefully perused this judgment but, with great respect, I am unable to agree with the view of the learned Allahabad Judge in preference to the consistent view of the English Courts as also the Orissa, Bombay and Kerala Courts that relief can be granted against a possible criminal prosecution under sub-section (2) of section 633 of the Act of 1956 or section 281 (2) of the Act, as under section 372(2) of the English Act.

A faint attempt was made on behalf of the respondents to argue that no relief could be granted under section 281(2) after a Company had been wound up. No authority has been cited in support of this submission. The decision in *Pulsford v. Devenish* (7) proceeded on the basis that the dissolution of a company does not relieve the liquidator of responsibilities for non-performance of his duties. It would lead to lot of abuse and anomalies if after

(5) A.I.R. 1960 Kerala 15.

(6) A.I.R. 1960 All, 160.

(7) (1903) 42 Ch. 625.

the Company has been dissolved the liquidator can escape his responsibilities or liabilities under the Act if the alleged negligence, misfeasance, default or breach of duty, etc. is discovered to have been committed after the Company's dissolution unless in the Act itself some limitation is provided for initiating action or instituting proceedings.

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On behalf of the petitioners it has been pointed out that criminal proceedings are apprehended under sections 282 and 282-A of the Act. Sections 282 and 282-A provide penalties for making a false return etc., and for wrongful withholding of property of a Company by its officers. As I am satisfied with the explanation given by the petitioners in respect of the amount expended on obtaining clearance from the Pakistan authorities and the other expenses incurred in connection with the satisfaction of the claim of the Foreign Company, hereby relieve them from any apprehended liability for which proceedings can be instituted against them in the future under sections 282 and 282-A of the Act.

No other point has been urged before me by the counsel for the parties. The petition is consequently allowed in the manner and to the extent indicated above. In the circumstances, the parties are left to bear their own costs.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, C.J.

STATE,—Petitioner.

versus

PARKASH CHAND,—Respondent.

Criminal Revision No. 674 of 1965.

1965

Defence of India Act (LI of 1962)—S. 14—Notification dated 7th January, 1963, issued by the Punjab Government under Defence of India Rules (1962)—Rule 125(2)—Whether to be tried by the Special Tribunal. November, 12th

Held, that a notification was issued by the Punjab Government in a Gazette Extraordinary dated the 7th of January, 1963, by which Special Tribunals were created in 16 Districts in this State. Column 5 thereof specifies the offences which shall be tried by the Special Tribunal and these are exactly on the lines set out in section 14 of the Defence of India Act, 1962. The Defence of India Rules of 1962, including rule 125 sub-rule (2) of which is alleged to have been contravened in the present case, are specifically framed in exercise of the powers conferred by section 3 of the Act. It is, therefore, clear that any of the offences specified in section 14 and in the notification must be