

REVISIONAL CRIMINAL

Before Khosla and Kapur, JJ.

THE ALL INDIA ANGLO-INDIAN ASSOCIATION, etc.—
Petitioners.

versus

MR. R. A. MASSEY,—Respondent.

Criminal Revision No. 496 of 1952.

1954

April, 2nd

*Indian Companies Act (VII of 1913)—Section 248—
Regulation 14 framed under, by appropriate Government
for Delhi—Whether empowers Registrar alone to initiate
Criminal proceedings under the Act.*

Held, that in view of Regulation 14 framed under section 248(2) of the Indian Companies Act by the appropriate Government for Delhi the Registrar or a person duly authorised by him is alone competent to initiate proceedings in respect of offences under the Indian Companies Act, 1913, and a member of the general public cannot (as he can under the Criminal Procedure Code in respect of offences punishable under the Indian Penal Code) initiate proceedings against the offender without the authority of the Registrar.

Held, that when a statute creates new offences and makes provisions for punishment of the offenders in respect of those offences the method prescribed in the statute is the only method by which the offenders can be punished.

Ganpat Rai v. Emperor (1), *Emperor v. Shib Das* (2), *The Queen v. Cubitt and others* (3), *Anderson v. Hamlin* (4), *Ashutosh Ganguli v. Watson* (5), *P. Lakshmi Narasayya v. S. P. Narasimhachari* (6), and *Emperor v. Motilal Amratlal Shah* (7) relied on; *Ma Si Muthuveeran Chettiar and others v. Mottayan Chettiar* (8), and *Public Prosecutor*

(1) A.I.R. 1948 Lah. 30

(2) 8 I.C. 190

(3) 22 Q.B.D. 628

(4) 25 Q.B.D. 221

(5) I.L.R. 53 Cal. 629

(6) 21 I.C. 685

(7) I.L.R. 55 Bom. 89

(8) A.I.R. 1942 Mad. 283

v. *Swami Chetty* (1) dissented from; *Surendra Nath Sarkar v. Kali Pada Das* (2) and *Emperor v. Vishwanath B. Patel and others* (3) distinguished.

Case reported by S. S. Dulat, Esq., I.C.S., Sessions Judge, Delhi, with his No. 2048-RK of 27th May, 1952.

The order passed by Shri M. L. Batra exercising the powers of a Magistrate of the 1st Class in the Delhi District, dated 1st April 52.

The facts of this case are as follows:—

A complaint under Sections 31, 31-A, and 36 of the Indian Companies Act has been filed by Mr. R. A. Massey against the All India Anglo-Indian Association and its Presidents, Mr. Frank Anthony and its Secretary, Mr. G. W. Russel and this complaint is pending in the Court of Mr. M. L. Batra, Magistrate, 1st Class, Delhi. A preliminary objection was raised on behalf of the accused, and it was that under the Companies Act a complaint of this type by a private individual was not competent, as under the regulations made by the appropriate Government under Section 248, subsection (2) of the Indian Companies Act the Registrar of Joint Stock Companies, or a person duly authorised by him, were the only persons competent to lay a complaint. Reliance was placed on a decision of the Lahore High Court, *Ganpat Rai v. Emperor*, (4). The learned Magistrate did feel that the decision in question covered the case, but, finding that it was a decision of a foreign Court, the learned Magistrate held that he was not bound to follow it, and as on other grounds the learned Magistrate thought that a private complaint was not barred, he over-ruled the objection.

(1) A.I.R. 1953 Mad. 196

(2) I.L.R. (1940) 1 Cal 575

(3) A.I.R. 1942 Sind 9

(4) A.I.R. 1948 Lah. 30

Against this order the present petition for revision has been filed on behalf of the accused.

Learned counsel urges that under Section 5, Subsection (2), Criminal Procedure Code, all offences under any law other than the Indian Penal Code are to be investigated, enquired into, and tried, according to the manner provided in that special law, and since a regulation has been made under Section 248 of the Indian Companies Act authorizing the Registrar of Joint Stock Companies, or a person authorized by that officer, to file complaints and launch prosecutions under the Indian Companies Act, no other person can initiate such proceedings and no Court is competent to take cognizance of such offences, except on the complaint of the Registrar or his nominee

Section 5, Criminal Procedure Code, says this —

“All offences under the Indian Penal Code shall be investigated, enquired into, tried, and otherwise dealt with, according to the provisions hereinafter contained.”

Subsection (2) —

“All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with, according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying, or otherwise dealing with such offences.”

It is clear, and this is more or less conceded, that if the Indian Companies Act provides a special

manner for enquiry into, or trial of, offences under the Indian Companies Act, then those provisions would override the general provisions of the Criminal Procedure Code. The Indian Companies Act does not itself contain any such special procedure. Section 248, subsection (2), however, says this:—

“The Central Government may appoint such Registrars and Assistant Registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.”

It is admitted that as far as Delhi is concerned, regulations have been made. The relevant portion of the regulation governing this particular matter is in these words:—

“The Registrar shall take notice of omission to file or register documents on the due dates and he or any person duly authorized by him may institute or conduct any prosecution under the Act.”

The question in the present case is, whether this language should be taken to mean that the Registrar alone can institute and conduct any prosecution under the Indian Companies Act, or whether it merely means that he may also do so without debarring any other person from doing so. To put it in another way, the question is, whether the words of the regulation are merely meant to enable the Registrar to institute prosecutions under the Indian Companies Act, or whether the power to institute such proceedings is given to the Registrar alone and, therefore, taken away from every other person. This matter was for consideration before the Lahore High Court in

Ganpat Rai v. Emperor (1), already referred to, and the language of the regulation in force in the Punjab at that time was identical to the regulation in force in Delhi. Marten, J., who decided the case, held that the meaning of the regulation was that the power of instituting prosecutions under the Indian Companies Act, was confined to the Registrar, and he held that a private complaint was not competent. It is, in my opinion, of no consequence that the Lahore High Court happens to be a foreign Court at the moment. The question really is not, whether the decision in question is binding on the Courts in India, but whether the view adopted by a learned Judge of a High Court, even if it be foreign High Court, should or should not be followed.

It is contended on behalf of the complainant that the view adopted in *Ganpat Rai v. Emperor* (1), is not sound, and that the meaning of the regulation relied upon in this connection merely is that the Registrar can also file a complaint if he so chooses but that it is not intended to take away the right of an ordinary complainant to go to Court and file a complaint. To me, however, it appears that if a special Act or a regulation made under that Act sets up a special machinery for the institution of proceedings under the Indian Companies Act then that must be deemed to be the only machinery to institute such proceedings, unless, of course, it is otherwise clear that such is not the intention. A very similar matter came up for consideration before the Calcutta High Court in *Srish Chandra Ray and others v. Gaharali Talukdar and others* (2), in connection with Section 72, Provincial Insolvency Act. Subsection (2) of Section 72 of the Act provides that, "where a Court has reason to believe that

(1) A.I.R. 1948 Lah. 30

(2) A.I.R. 1927 Cal. 148

an undischarged insolvent has committed an offence mentioned in sub-section (1), the Court after making any preliminary enquiry that may be necessary may send the case for trial to a Magistrate of the First Class." The question raised in the Calcutta High Court was, whether a person could be prosecuted, except in accordance with the mode mentioned in Section 72, Subsection (2), and B. B. Ghose, J., who decided the case, expressed his opinion thus:—

"I am of opinion that where a special offence is created by a statute, and the mode how the penalty should be imposed is provided in that statute, it can only be imposed in the mode provided therein and in no other mode."

Reference was made to Section 195, Criminal Procedure Code, and it was sought to be argued that the Provincial Insolvency Act did not in any manner take away the power of a Criminal Court from taking cognizance of an offence under the Provincial Insolvency Act, except in the manner provided in Subsection (2) of Section 72, but this argument did not find favour with the High Court. It would appear that the view adopted by Marten, J. in *Ganpat Rai v. Emperor* (1), finds support from the Calcutta Case.

On behalf of the complainant reliance is placed largely on *Ma Si Muthuveeran Chettiar and others v. Mottayan Chettiar* (2). That was also a case under the Companies Act and proceedings had been initiated at the instance of a private person. It was urged in the High Court that the proceedings were bad as the Registrar, Joint Stock Companies, has not filed any complaint. Horwill, J., did not accept this contention. It

(1) A.I.R. 1948 Lahore 30

(2) A.I.R. 1942 Madras 283

appears that in Madras also certain regulations had been framed under Section 248, Indian Companies Act. What precisely the language of the relevant regulation was in that case is not very clear from the report, but I take it, that the words enabled the Registrar to file a complaint. Horwill, J., found that this was merely permissible, and he said:—

“These notifications merely permit the Registrar to do what before was not a part of his duty, viz., to lay complaints. They do not purport to restrict a Magistrate in the exercise of his powers under Section 190, Criminal Procedure Code.

This case was actually referred to before Marten, J., in *Ganpat Rai v. Emperor* (1), but he distinguished it on the ground that the language of the regulations in force in Madras was different. Apart from that matter, however, the view adopted in the Lahore case appears to me sounder on principle than the view taken in the Madras case. I say this because if in spite of a special machinery being set up for initiating prosecutions under the Indian Companies Act, it is still open to private complainants to start similar proceedings in criminal Courts, the object of setting up a special machinery would be largely frustrated.

There is no other authority directly bearing upon this matter. The Madras case *Ma Si Muthu veeran Chettiar and others v. Mottayan Chettiar* (2), does refer to Calcutta decision *Surendra Nath Sarkar v. Kali Pada Dass* (3) and learned counsel

(1) A.I.R. 1948 Lahore 30

(2) A.I.R. 1942 Madras 283

(3) I.L.R. (1940) 1 Calcutta 575

for the complainant has also referred to another Calcutta decision reported as *Bhagirath Chanāra Das and others v. Emperor* (1). Neither decision is, however, of any assistance, because it appears that in Bengal no regulation under Section 248, Indian Companies Act, has been framed in connection with such a matter. In *Surendra Nath Sarkar v. Kali Pada Dass* (2), the argument rested on the language of Sections 137 and 141, Indian Companies Act, which sections, however, deal with an entirely different matter. In *Bhagirath Chandra Das and others v. Emperor* (1), it was made quite clear that there was no regulation made in Bengal entrusting the institution of such complaints to the Registrar, and on that ground largely Lodge, J., refused to follow *Ganpat Rai v. Emperor* (3).

On a consideration of the authorities and the language of the relevant regulation made under Section 248, Indian Companies Act, it appears to me that the correct view to be adopted in this case is that a complaint by a private person like the present complaint is not competent under the Indian Companies Act.

RECOMMENDATION.

I direct, therefore, that the record of this case be forwarded to the High Court with the recommendation that the proceedings pending in the Court of the learned Magistrate be quashed.

HIGH COURT ORDER.

Petitioner by:—Shri BHAGWAT DAYAL, Advocate.

Respondent by:—Shri K. L. GOSAIN, Advocate
KHOSLA, J. I have heard counsel for both parties in this case and a number of rulings on each side have been cited before me. In support

Khosla, J.

(1) A.I.R. 1948 Cal. 42
(2) I.L.R. 1940 (1) Cal. 575
(3) A.I.R. 1948 Lah. 30

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey
—
Khosla, J.

of the view taken by the learned Sessions Judge in his reference order Mr. Bhagwat Dyal has cited *Emperor v. Shib Das* (1), *Ganpat Rai v. Emperor* (2), *Srish Chandra Ray and others v. Gaharali Talukadar* (3), *Anderson v. Hamlin* (4), *P. Lakshmi Narasayya v. S. P. Narasimhachari* (5), *Public Prosecutor v. Swami Chetty* (6), *Surindra Nath Sarkar and others v. Kali Pada Dass* (7), *Ma Si Muthuveeran Chettiar and others v. Mottayan Chettiar* (8), *Emperor v. Vishwanath B. Patel and others* (9). It seems to me that the matter is of sufficient importance to be considered by a Bench of two Judges as cases of a similar type may well arise, and although upon the arguments heard and upon a first consideration of the matter I am inclined to agree with the view expressed by the learned Sessions Judge. I think it is better that a matter of this complexity should be considered by two Judges. I therefore direct that these papers be placed before Hon'ble Chief Justice for being referred to a Division Bench of this Court.

There is no particular urgency about the decision of this matter as the proceedings in the Court of the trial Magistrate have been stayed and the nature of these proceedings does not demand immediate disposal.

Petitioner by:—M/s. BHAGWAT DYAL and RAM BEHARI LAL, Advocates.

Respondent:—Nemo.

JUDGMENT.

Khosla; J.

KHOSLA, J. A criminal complaint by the respondent Massey was filed under sections 31, 31-A,

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- (1) 8 I.C. 190
 - (2) A.I.R. 1948 Lah. 30
 - (3) A.I.R. 1927 Cal. 148
 - (4) 25 Q.B.D. 221.
 - (5) 21 I.C. 685
 - (6) A.I.R. 1953 Mad 196
 - (7) A.I.R. 1940 Cal. 232
 - (8) A.I.R. 1942 Mad 283
 - (9) A.I.R. 1942 Sind 9

and 36 of the Indian Companies Act against The All-India Anglo-Indian Association, its President Frank Anthony and its Secretary G. W. Russel. A preliminary objection to this complaint was raised on behalf of the accused persons that the complaint was not competent because it had not been filed by the Registrar or by a person duly authorised by him as required by Regulation 14 framed for the State of Delhi under section 248 (2) of the Indian Companies Act. The question, therefore, arose whether a complaint by a private individual in respect of an offence punishable under the Indian Companies Act was competent. The case was reported to this Court by the learned Sessions Judge of Delhi who discussed the point at some length and after referring to a number of cases recommended that the proceedings pending in the Court of the Magistrate be quashed on the ground that private complaint of this type was not competent. The matter came up before me sitting singly in the first instance and I took the view that it should be considered by a larger Bench. My brother Kapur, J., and I have now heard it and although there has been no appearance on behalf of Massey, the complainant in this case, we have had the advantage of hearing Mr. Bhagwat Dayal on behalf of the Association at considerable length. He has taken us through the entire case law bearing on the subject and his arguments have been of great assistance to us in coming to a conclusion on this point.

Regulation 14 framed under section 248(2) of the Indian Companies Act authorises the Registrar of Companies to keep certain returns. It also empowers him to initiate proceedings in respect of an offence punishable under the Act. The question for our decision is whether this Regulation bars every other person from initiating criminal proceedings under the Act. The decision of

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey
—
Khosla, J.

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey
—
Khosla, J.

this point in my view rests on the well-recognised principle *generalia specialibus non derogant*, that is to say, the general law does not override the special law in respect of any particular matter. The offences which have been created by the Indian Companies Act are not punishable under the Indian Penal Code. They have been specially created by the Companies Act and the Registrar has been given the authority to initiate criminal proceedings in respect of them. In my view this can only mean that the Registrar or a person duly authorised by him is alone competent to initiate proceedings and a member of the general public cannot (as he can under the Criminal Procedure Code in respect of offences punishable under the Indian Penal Code) initiate proceedings against the offender.

Of the cases cited before us *Ganpat Rai v. Emperor* (1), is a case on all fours with the present one. Marten, J., heard and decided this case on the 3rd of March 1947, i.e., before partition and held that a prosecution under section 282, Indian Companies Act, against an officer of a company by a private complainant who had no status in the company was invalid. He relied upon the *ratio decidendi* of an older decision of the Punjab Chief Court in *Emperor v. Shib Das* (2). In that case the provisions of the old Regulation 5 framed under Act VI of 1882 were considered. The wording of that Regulation was somewhat different but in substance it authorised the Registrar to see that all returns were duly and punctually furnished and also provided that "the Registrar shall be" deemed the proper officer for instituting and conducting "all prosecutions under the Act." It may be said that the wording of that

(1) A.I.R. 1948 Lah. 30

(2) 3 I.C. 190

Regulation was more definite and it restricted the power of initiating proceedings to the Registrar because he was to be deemed the proper officer for this purpose. Regulation 14 is not quite so definite, but in my view it is intended to place a limit upon the rights of members of the public to launch proceedings in respect of offences punishable under the Companies Act.

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey
—
Khosla, J

In *The Queen v. Cubitt and others* (1), Charles, J., was considering an offence punishable under the law relating to fisheries. The sea-fishery officer was given the right to enforce the provisions of that Act and Charles, J., observed—

“The statute has created a number of new offences by sections 4, 5, 7 and 9. The next question is, how are these offences to be punished. That is pointed out by section 11. I agree with the Lord Chief Justice that that section means that the Act is to be enforced by sea-fishery officers exclusively.”

Anderson v. Hamlin (2), was a similar case. In that case section 11 of the Fisheries Act was again being considered and Mathew, J., pointed out that if any stranger were allowed to prosecute for an offence against the Act, the result would be that a prosecution might be undertaken by a person who could not pay costs if they were awarded against him. This argument would perhaps not apply with equal validity to this country where costs in criminal cases are not ordinarily awarded, but it is clear that the sea-fishery officer was held to be the only person who could start prosecution under that Act.

(1) 22 Q.B.D. 628

(2) 25 Q.B.D. 221

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey

In *Ashutosh Ganguli v. Watson* (1), the provisions of section 72 of the Provincial Insolvency Act were considered. This section laid down the procedure by which a person accused of an offence under subsection (1) of section 72 could be proceeded against, and it was held—

Khosla, J.

“If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy in case of neglect to perform the duty or discharge the liability, the general rule is ‘that no remedy can be taken but the particular remedy prescribed by the statute.’ ”

This argument applies with equal force to the case of the Registrar under Regulation 14.

In *P. Lakshmi Narasayya v. S. P. Narasimhachari* (2), the provisions of the Presidency Towns Insolvency Act were considered and a similar decision was given.

The last case cited in support of this plea was *Emperor v. Motilal Amratlal Shah* (3). In that case the provisions of the Bombay District Municipal Act and the City of Bombay Municipal Act were considered. Section 517 of the Act provided—

“The Commissioner may (a) take, or withdraw from, proceedings against any person who is charged with (i) any offence against this Act, etc.”

A Division Bench of the Bombay High Court took the view that although there was no express provision in the section barring any other

(1) I.L.R. 53 Cal. 629

(2) 21 I.C. 685

(3) I.L.R. 55 Bom. 89

person from instituting proceedings the Commissioner alone was competent to initiate proceedings in respect of offences arising under that Act.

There is, therefore, substantial authority for the view that when a statute creates new offences and makes provisions for punishment of the offenders in respect of those offences the method prescribed in the statute is the only method by which the offenders can be punished, and therefore in the present case the Registrar or a person duly authorised by him can only initiate proceedings.

Mr. Bhagwat Dayal drew our attention to a few cases in which the contrary view was, or appears to have been, taken. In *Ma Si. Muthuveeran Chettiar and others v. Mottayan Chettiar* (1), Horwill, J., took the view that a Magistrate could take cognizance of an offence punishable under the Companies Act on a private complaint. There was a notification containing provisions similar to the provisions of Regulation 14 of the Delhi State and that notification permitted the Registrar or the Assistant Registrar to institute proceedings under the Act. I find myself unable to accept the view of Horwill, J., that a private individual can also institute such criminal proceedings. A similar view was expressed by Somasundaram, J., in *Public Prosecutor v. Swami Chetty* (2). In a case of the Calcutta High Court *Surendra Nath Sarkar v. Kali Pada Das* (3), it was observed that a private individual was not barred from initiating proceedings in respect of offences under the Companies Act, but there is nothing to show in this judgment that there

The All-India
Anglo-Indian
Association,
etc.

v.
Mr. R. A.
Massey

Khosla, J.

(1) A.I.R. 1942 Mad, 196

(2) A.I.R. 1942 Mad 283

(3) I.L.R. (1940) 1 Cal. 575

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey
—
Khosla, J.

was any regulation or provision similar to Regulation 14, and it may be that in Bengal the Registrar was not given authority to initiate proceedings. Finally, there is the decision of Davis, C. J., in *Emperor v. Vishwanath B. Patel and others* (1), to the same effect. In this case too there is no reference to any notification or regulation similar to the one obtaining in the State of Delhi.

The weight of authority therefore appears to me to be in support of the view that where a person is specially empowered to initiate proceedings in respect of offences newly created by a statute, that person alone is entitled to initiate proceedings and a member of the public cannot start a prosecution without the authority of the person so appointed. I would accordingly accept the recommendation made by the learned Sessions Judge and quash the proceedings pending in the Court of the Magistrate below.

Kapur, J.

KAPUR, J. I agree and because of the importance of the matter I would like to give my reasons. The regulation made under section 248(2) of the Indian Companies Act provides for the receipt by the Registrar of certain returns and it also gives him power to initiate criminal proceedings for any offence under the Act. The question that arises for decision in view of the language of this regulation is whether it excludes the power of any other person to initiate proceedings. In an American book—Crawford on Statutory Construction (Interpretation of Laws) in paragraph 195 it is stated on the authority of several American cases—

“As a general rule, in the interpretation of statutes, the mention of one thing implies the exclusion of another thing.

(1) A.I.R. 1942 Sind 9

It, therefore, logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect.”

The All-India
Anglo-Indian
Association,
etc.
v.
Mr. R. A.
Massey

and in Note 110 it is said—

“This may also include the maxim *‘expressum facit cessare tacitum’* (when a law designates the actors, none others can come upon the stage). *Taylor v. Taylor*, 66 W. Va. 238, 66 S. E. 690.”

Unfortunately this case is not available in this library.

The Calcutta High Court in *Ashutosh Ganguli v. Watson* (1), had an occasion to examine the effect of the provisions of section 72 of the Provincial Insolvency Act which gives the power for initiation of proceedings for infringement of that Act, and B. B. Ghose, J., before whom it was contended that the ordinary procedure under the Code of Criminal Procedure was not excluded because of this section was of the opinion that where a special offence is created by a statute and the mode how the penalty should be imposed is provided in that statute, it can only be imposed in the mode provided therein and in no other mode. The learned Judge relied on the observations of Coleridge, L. C. J., in the *Queen v. Cubitt and others* (2). The Lord Chief Justice said in that case—

“For instance, if any Act provided that the Attorney-General was to sue for a penalty, no one else could sue for it; it is obvious that if everyone could sue

(1) I.L.R. 53 Cal. 629

(2) 22 Q.D.B. 622

The All-India
Anglo-Indian
Association,
etc.

v.

Mr. R. A.
Massey

Kapur, J.

for the penalty the Attorney-General could sue for it, so that on that view of the statute the clause enabling him to sue would be unnecessary and useless."

Reference was also made by the learned Judge to another English case *Anderson v. Hamlin* (1). There the Salmon Fishery Act, 1865, in section 27 provided—

"A board of conservators shall have power within their district to do the following things, or such of them as they may in their discretion think expedient; that is to say,

(2) To issue such licences for fishing as are provided by this Act.....

(4) To take legal proceedings against persons violating the provisions of the Salmon Fishery Acts, 1861, 1865, or either of them."

Dealing with this Statute the Lord Chief Justice referred to two cases *Reg. v. Hicks* (2) and *Rex v. Corden* (3), where there were no negative and exclusive words, but the penalty was to go to a particular person. Referring to this his Lordship said—

".....that this was a strong indication that the person to whom the penalty was to go was the only person to sue for it. These are two strong authorities for the contention that in such a

(1) 25 Q.B.D. 221

(2) 24 L.J.M. (M.C.) 94

(3) 4 Burr. 2279

case as the present the person who is The All-India
to receive the penalty is the only per-Anglo-Indian
son entitled to sue for it." Association.

v.

Mr. R. A.
Massey

and my learned brother has already referred to
the judgment of Mathew, J.

Kapur, J.

The Bombay High Court in *Emperor v. Moti-
lal Amritlal Shah* (1), where the statute in dispute
was the Bombay District Municipal Act which
provided—

“The Municipality and the Chief
Officer may direct any prosecution for
any public nuisance.....”

it was held that the legislature contemplated by
the use of these words that the prosecution, if
any, should be instituted by the Municipality
alone and not by a private individual; so long as
the acts complained of were offences only under
the Act and not under any other Act. Madgav-
kar, J., referred to two other cases under the old
Bombay District Municipal Act and to the City
of Bombay Municipal Act, where there was no
express provision in the section that no other
person could institute such proceedings, to sup-
port his argument. These cases lead one to the
conclusion that the Law of Interpretation in
India is the same as in America, i.e., when a law
designates the actors, none others can come upon
the stage.”

It is not necessary for me to deal with all the
cases which have taken a contrary view, but in
some of them no reference is made to a regula-
tion similar to the one which exists in the State of
Delhi, and in the case decided by Horwill, J., in

(1) I.L.R. Bom 89

The All-India
Anglo-Indian
Association,
v.
Mr. R. A.
Massey
—
Kapur, J.

Ma. Si. Muthuveeran Chettiar and others v. Mottayan Chettiar (1), reference was made to a notification but the question does not seem to have been raised that as a result of that notification the statute contemplated the right of initiating proceedings to be vested in the Registrar alone, and in the Calcutta case *Surendra Nath Sarkar v. Kali Pada Das*, (2), no reference was made to a previous judgment of that very High Court which I have quoted above. No doubt, the two English cases that we have mentioned were referred to but they were not followed on the ground that in the absence of any specific provision in the Act itself, it could not be inferred that the intention of the legislature was to bar private prosecutions. I am, therefore, of the opinion that as far as this State is concerned the prosecutions by private individuals in regard to offences which are a creation of the Indian Companies Act alone are not permissible because of the existence of the regulation made under section 248(2) of the Indian Companies Act.

I would, therefore, accept the reference and order that the proceedings be quashed.

APPELLATE CRIMINAL

Before Harnam Singh, Falshaw, and Dulat, JJ.

KRISHAN KUMAR,—Convict-Appellant.

versus

THE STATE,—Respondent.

Criminal Appeal No. 25-D of 1953.

1954

November, 3rd

Prevention of Corruption Act (II of 1947)—Section 5-A—Provisions of—Failure to comply with, in respect of investigation—Whether illegality which vitiates the whole proceedings in the trial or bars a trial, or whether merely an irregularity curable under the provisions of the Code of

(1) A.I.R. 1942 Mad. 283
(2) I.L.R. (1940) 1 Cal 575