

[O. E. 131]

In the High Court of Orissa

CRIMINAL JURISDICTION

District

1947.

PART I



FR000162

(THIS FILE MUST BE PRESERVED FOR EVER.)

Revision under section 435, Code of Criminal Procedure

No. 335

Motion made on behalf of

Gandhi Nilakantha Das

PETITIONERS

Through Mr.

M. S. Rao.

versus

Sri N. S. Mukherji & 4 ors.

OPPOSITE-PARTY

SUBJECT

Praying that the order of the *Sab. Divl* Magistrate of *Cuttack* dated the *27th* day of *June* 1947. *& also the order d/26.9.47 of the Sessions Judge, Cuttack be set aside.*

To Magistrate—No.	Cr.	Intimates that the <i>15th</i> of <i>March</i> 1948, has been fixed
Dated	194	the hearing, when the Court will consider any cause which may be
To Sessions Judge—No.	Do. Cr. A.,	shown by why the conviction and sentence
dated	Do. 194	should not be and requests him to forward the record
To Advocate-General—No.	Do. Cr. B.,	on or before the 194 .
dated	Do. 194	COPY for information, with the request that he will forward the
From Sessions Judge—No.	194	record on or before the 194 .
dated		COPY for information
From Magistrate—No.		
dated	194	Lay before <u>the Criminal Bench</u>
Date of decision of High Court		<u>the Hon'ble Mr. Justice</u>

8.2.1949

Deputy Registrar

In the High Court of Orissa.

Criminal Jurisdiction.

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Pandit Nilakantha Das

*Appellant -
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VERSUS

Shri N. S. Mukherji & Co.

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Compared and found correct

Signature of Officer of Court.

Date 194 .

Das
14/5/48
Record-keeper

Limitation

Mr M.S. Rao

H. C. SCH. III-4

Mrs D. Sahu vs B. K. Pal

In the High Court of Judicature at Patna.

Cuttack Circuit

ORDER-SHEET.

C_o Rev ~~Appel~~ No. 335 1947

Pandit Nilakantha Das

VERSUS

Sri N.S. Mukherjee & Co

Appellant

Respondent

Serial No. of Order.	Date of Order.	ORDER WITH SIGNATURE.	Office note as to action (if any) taken on Order.
1	5.11.47	Presented. Put up for orders.	<p>Recd called for</p> <p>Registrar</p> <p>7/11 Sec Cont recd</p> <p>15/11</p> <p>This petition is beyond the reasonable period of sixty days. 20/11/47.</p>
2	6.11.47	Place before the Bench.	For Admission with Limitation
3	9.12.47.	<p>This application will be heard. Issue notice.</p> <p>Let further proceedings in the enquiry as ordered by the Sub-divisional Magistrate be kept under suspension till the hearing of this application.</p> <p>I should invite the attention of the Dist. Magistrate about the unusual delay in disposal of this complaint. Had it been proceeded with due diligence the entire prosecution case would have been disposed of long ago. This no doubt discloses very regrettable state of things in the magistracy of the District of Cuttack. Let a copy of this order be sent to the District Magistrate.</p>	<p>18/11</p> <p>P. B. G.</p>

Serial No. of Order.	Date of Order.	ORDER WITH SIGNATURE	Office note as to action (if any) taken on Order.
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4. 22.12.47 15 days time is allowed to file 6 copies of Newn. petition

D. Wilson
Asst Registrar

5. 8.1.48 ...5... days further time is allowed to comply with order No. 4... failing which the case will be laid before the Bench for orders.

D. Wilson
Asst Registrar

or 5
6 copies of Ravnfeh

not filed
by
21/1

notice issued

✓

4.02.48

✓

16/3

6. 3.8.48. Let notice on C.P. no. 3 be reissued in the same address.

by

Algo

S. 12 received.
notice on o.p 3.
Can not be served
as there is no such
Willage. Petition to take
steps for service by
competent authority if
necessary.

Mr. D. Sahu appears for C.P 2.

by
21/4.

notice on opp. 3 received
for 21/8.

D. Wilson
21/8.

Serial No. of Order.	Date of Order.	ORDER WITH SIGNATURE.	Office note as to action (if any) taken on Order.
7.	8.9.48.	<p>Three days time is allowed to supply the correct address of O.P. nos for issue of notice, see place before the Bench for orders.</p> <p><u>Wm Rego</u></p>	<p>The S.R. is not sufficient on op. party no 5 as he is now remaining at the Cutback firm.</p> <p>The Petitioner's advocate may be asked to supply the Cutback address of the op. party so that notice will be reissued on him.</p> <p>lin 9.9.48</p> <p>The S.R. on op. party 3 is received after proper service.</p> <p>lin 11/9</p> <p>on 17</p> <p>not complied with.</p> <p>Wm Rego 22/9</p>
8	23.9.48	<p>It is reported that the address of op party no.5 has been filed. If so, accept.</p> <p><u>J. G. ...</u></p>	<p>N. to present address of O. party no.5 19/10</p>
9.	3.11.48.	<p>The address of the O. Party no. 5 is stated to have been filed today in C.O. Court. If so accept.</p> <p><u>Wm Rego</u></p>	<p>S.R. Reminded on 22/9</p> <p>Notice to the present address of the O.P. 5 has been issued as he is not there. Petitioner's advocate may be asked to supply the correct address of the said O.P. for proper service of notice on him.</p>

Ce. Rev. 335-47

Serial No. of Order.

Date of Order.

ORDER WITH SIGNATURE.

Office note as to action (if any) taken on Order.

Notice to o.p. 5- received for 15.11.48

See 3/11

Service return received.

See 18/11

Notice to o.p. no. 5 was returned by the said o. party with an endorsement on it, to the effect that he being an asst. in the office of the Director of Agric. & Food Production, Quetta, the notice should come through proper channel in order to enable him to get leave.

For consideration if any further notice will be issued to him in the manner he wants it. This may be noted here that this is a Compl. Case between private parties.

See 19/11

Service on o.p. no. 5 should be taken as sufficient but he should be informed by letter that the case will now be taken as ready for hearing in the court and if he wants to attend the court on the date of hearing personally then the letter may be shown to the authority concerned to grant such leave as he may require.

See 19/11

Letter issued on 19/11

See

10 23.11.48. Adjourned to day after to-morrow as requested.

PAID

to power filed by Mr B.K. Pal for the Respondt

24.11.48

11 25.11.48 Post on 1.12.48 as requested by the Counsel for Appellant along with a.R. 167/48, a.R. 276/48 and a.R. 297/48.

Power filed by Mr D. Sahni 26.11.48

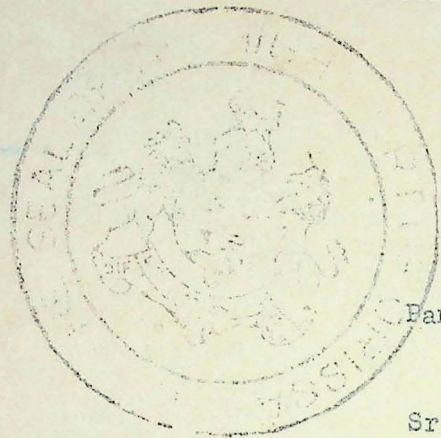
PAID

Serial No. of Order.	Date of Order.	ORDER WITH SIGNATURE	Office note as to action (if any) taken on Order.
12	24.1.49	Let this be put up for hearing tomorrow first after part heard case if any	memo no 1263 27/1/49
		<i>P.P.D.</i>	Records of Judgments forwarded to the Sen. Judge, Calcutta
13	25.1.49	part-heard	memo no 1263 27/1/49
		<i>P.P.D.</i>	Records in Cr Rev 50 e/47 returned to the Sen. Judge, Calcutta.
14	26.1.49	part-heard -	memo no 1264 27/1/49
		<i>P.P.D.</i>	Records in G. Case No 28/48 & Case No 120 e-1/48 returned to the D.H. Calcutta
15	27.1.49	Hearing concluded and judgment reserved To be mentioned tomorrow at 1.30 P.M. in the chambers	Returned to the D.H. Calcutta
		<i>P.P.D.</i>	
19	28-1-49	Judgment reserved	
		<i>P.P.D.</i>	
20	8.2.49	judgment delivered - Cr Rev. 297-48 & Cr Rev. 296/48 are allowed & Cr Rev. 335/47 & Cr Rev 167/48 are rejected -	
		<i>P.P.D.</i>	

14/49

4

Cr. Revisions Nos. 335/47, 167/48, 276 of 1948 and 297 of 1948.



From the orders dated 27th June, 1947, and 26.9.47 passed by the Sub-Divisional Magistrate, Cuttack, and the Sessions Judge, Cuttack, in (Cr. Revn. 335/1947); Order passed by the Sub-Divnl. Magistrate, Cuttack, dated 26th April, 1948 (Cr. Revn. 276 of 1948); Orders passed by the Addl. Dist. Magistrate, Cuttack, dated 19th June, 1948, and order passed by the 1st. class Magistrate, Cuttack, dated 10.5.48 (Cr. Revn. No. 167 of 1948).

Pandit Nilakantha Das Petitioner
Vrs.

Sri N. S. Mukherji & 4 Ors Opp. Party.

For the petitioner Mr. M.S. Rao

For the Opp. Party Mr. D. Sahu.

Before:- THE HON'BLE MR. JUSTICE B. JAGANNADHAS.

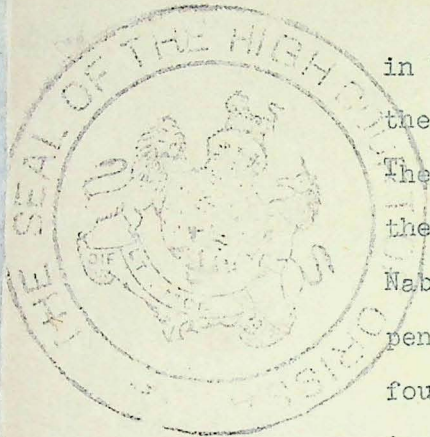
DAS, J.

These four criminal revisions arise out of a connected dispute and have therefore been heard together. Cr. Rev. 335/47 and 297/48 arise out of case No. 121-C-1 of 1946 in the Court of the Sub-Divisional Magistrate, Cuttack, Sadr, and are based on a complaint by one Pandit Nilakanth Das filed on 26.1.46. Cr. Revisions 167/48 and 276/48 arise out of case No. 507-C-1 of 1948 on the file of the Sub-Divisional Magistrate, Sadr Cuttack, which arose out of a complaint dated 26.4.48 filed by one Banamali Misra ^{presumably} on behalf of the said Pandit Nilakantha Das. Out of these four applications Cr. Revn. 297/48 is an application by an accused therein, one Asok Das, to quash the criminal proceedings which arose on the complaint dated 26.1.46 and the Cr. Revn. 276 of 1948 is an application by the said Asok Das to quash the criminal case which arose out of the complaint dated 26.4.48. The complaint dated 26.1.46 is against five accused of whom the above mentioned Asok Das ~~is~~ is the second. Before the issue of

of summons and after examining the complainant on oath, an inquiry was ordered by the Magistrate under Sec.202 of the Cr. Procedure Code. On receipt of the report, summonses were ordered to issue against the accused, but on the application of the accused, the summonses were recalled and a fresh inquiry ordered. Against this order the complainant went up in revision to the Sessions Judge who declined to interfere. Accordingly the complainant has come up to this Court with an application to set aside the order of the Magistrate recalling the order for issue of summons and directing a second inquiry and that application of the complainant to this court is Cr. Revn.335/47. Complaint dated 26th April, 1948, is against the sole accused Asok Das, and the learned Magistrate after examining on oath the person who presented the plaint straightway directed issue of summons. But before the summonses ^{was} were actually taken out of the Magistrate's office for service, the accused came up and applied to the Magistrate and on that application, the Magistrate recalled the order issuing the summons and dismissed the complaint under Sec.203, Cr. P.C. Against that dismissal the complainant went up in revision to the ^{Addl} Dist. Magistrate who set aside the order of dismissal and directed further inquiry. Cr. Revn.167/48 is by the accused against this order of the Addl. Dist. Magistrate directing further inquiry. Thus Cr. Revns. 335/47 and 167/48 raise the question of validity and propriety of the action of the respective Magistrates in recalling their previous orders issuing summonses against the accused on the respective complaints. Cr. Revision 276/48 and 297/48 raise the question of liability of the two complaints dated 26th January, 1946, and 26th April,

1948, to be quashed. It will be seen that neither of these criminal cases have so far gone beyond the stage contemplated under Sec.202 and 203 of the Cr. Pr. Code. It will also be seen that Asok Das is the common accused in both the complaints.

It is now necessary to state that the complainant in both the cases, namely, Pandit Nilakantha Das, is the father of the accused Asok Das in both the cases. These two criminal cases arise out of disputes between the father and the son relating to a press called the Naba Bharat Press situated in Cuttack. There are now pending between the parties to these criminal litigations four suits relating virtually to the same dispute as is involved in the criminal complaints. Those are suit Nos.323/47, 324/47, 6/48, 7/48, all on the file of the second Munsif, Cuttack. Accused Asok Das is admittedly the declared keeper of the Naba Bharat Press at the material period of time. The press had an account in the Darjeeling Bank, Cuttack. The first accused in the 1946 complaint was the Manager of the Darjeeling Bank at the time; the second accused therein is the son of the complainant and the keeper of the press; the fourth accused was the cashier and the Manager of the press for some time. The third accused was also the Manager and the cashier of the press for sometime after the fourth accused ceased to be such. The fifth accused was an accountant of the press for sometime and alleged to have been also the manager for sometime. There is also a paper by name "Naba Bharat" which is printed and published by the Naba Bharat Press. But whether it is an independent business concern or is merely part of the Naba Bharat Press business ^{appears to be} is a matter in dispute. The case for



for the complainant, in substance, is that the press is his sole property and that he opened with his moneys a bank account in the name of the press in the Darjeeling Bank, authorising the cashier A-4 to operate on the said account; that A-1, A-2 and A-4 unauthorisedly dealt with the bank account and transferred the moneys to the account of A-2 and that this was done as the result of a criminal conspiracy between all the five accused to defraud the complainant.

The position taken up by the accused-applicant in the applications for quashing is that the complaints do not disclose any offence, that the dispute between the parties is entirely one of civil nature and that the complaints have been filed malafide, with a view to coerce the accused, Asok Das, into submission in the civil dispute and that the criminal prosecutions are an abuse of the process of Court and that the prosecutions are not in the public interests and have therefore to be quashed.

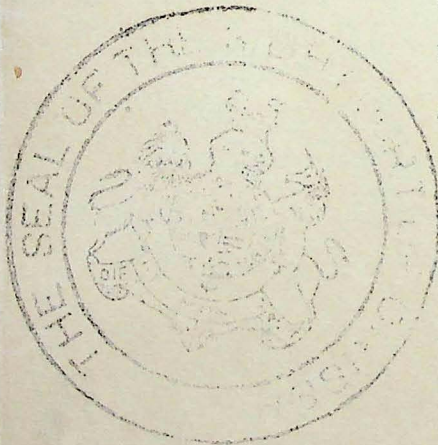
This argument requires closer examination, and for that purpose, I propose to review in some detail the history of the dispute, the pleadings in the civil suits, and the allegations in the complaints. I may state at this stage that in view of the allegations made in the applications for quashing as to the interconnection between the criminal proceedings and the civil suits, I have called for the records in four civil suits above-mentioned and also the records in Cr. Rev. No.290 of 1946 on the file of the High Court and have made use of them for the purpose of a clearer appreciation of the dispute between the parties. In the subsequent narration, I shall refer to the accused with reference to their ranks in the complaint of Jany., 1946.

The Naba Bharat Press appears to have been started in 1934. At some subsequent time the second accused Asok Das was declared as the keeper of the press. In or about 1942, a press account was opened in the Darjeeling Bank. It would appear that the complainant was a member of the Central Legislative Assembly at Delhi between 1941 to 1945 and his case is that he was absent from Cuttack for considerable periods during those years and that it was in 1945, after he returned to Cuttack from the Assembly session that he inquired into the press account in the Darjeeling Bank and that he demanded the accounts from A-4 by a letter dated 14.8.45 and it was thereafter that he came to know about the various irregularities, misappropriation, and conspiracy which he complains of in his complaint dated 26th January, 1946. It would appear to be the case of the accused as appears from their pleadings in the civil suits that the complainant was at Cuttack for considerable periods during these years and that he was actually putting up in the premises of the press and that the affairs of the press were fully within his knowledge at the time. However that may be, sometime in the latter half of 1945, it would appear that the complainant applied to the Collector to get the declaration in favour of his son as the keeper of the press cancelled and to get his name substituted as the keeper of the press, but the Collector on the ground that the dispute between the parties relating to the keepership of the press was one of civil nature, declined to accede to the request of the complainant. Thereafter on 8.10.45 the complainant appears to have started criminal proceedings. First he filed a complaint on that date against the present fifth accused under Sec.408 of the Indian Penal Code on the ground that the fifth accused was the Manager of the press and in that capacity misappropriated cash and other articles of the value of about Rs.3000/-. On that



that complaint a preliminary judicial inquiry was ordered by the Magistrate under Sec. 202 of the Cr. Pr. Code and the case of the then accused, as appears from those proceedings, seems to have been that the person in charge of the press was the present second accused Asok Das and that he delivered all accounts to him and had obtained discharge from him. The complaint was dismissed under Sec. 203 Cr. Procedure Code. Against the dismissal of the complainant filed an application in revision to the Sessions Judge who in an elaborate order, dated 13.11.46, declined to interfere on the ground that the background of the complaint was a family quarrel between the ~~part~~ complainant and his son, on account of which differences between them had arisen recently. He dismissed the revision with the remark that "Neither Pandit Nilakantha Das nor Sri Asok Das can be permitted to use the criminal Court as a handle for the trial of their strength." Against this dismissal by the Sessions Judge, a further revision was taken to the High Court and the High Court in Cr. Revn. No. 290 of 1946 summarily rejected the application sometime early in 1947. While these proceedings relating to the complaint of 8.10.45 were still pending the complainant filed the present complaint on 26.1.46. On this complaint, a preliminary judicial inquiry was ordered. The first report which was submitted on 29.1.46 was not accepted on the ground that the Magistrate who made the report was a class-mate of the complainant and another inquiry and report ^{by another magistrate} was ordered on 29.1.46. That Magistrate appears to have avoided the inquiry on the ground that he was a relation of the complainant and a third Magistrate was directed to make the inquiry and report. He also appears to have avoided the responsibility on the same "flimsy" ground as characterised in the Order Sheet. A fourth Magistrate was thereupon directed to make the inquiry on 7.2.46

and the matter was with him until 15.4.47 for which period he kept it pending for one reason or another. As appears from his report, there was an attempt at compromise of the dispute between the father and the son and the pendency of the inquiry with him was largely due to this attempt at compromise. No compromise having been achieved, the Magistrate appears to have submitted his report on 15.4.47 which was accepted by the Sub-Divisional Magistrate on 21.4.47, when summons were ordered to be issued to the accused. Later however, on 27.6.47, the Sub-Divisional Magistrate recalled the order issuing summons and ordered a further inquiry on the ground that the report which he had accepted on 27.5.45 was one made without giving an opportunity to the accused to represent their points of view. Against that order there has been a revision to the Sessions Judge which has been dismissed. As already stated, one of the revisions, Viz. Cr. Rev. No.335/47 now under consideration ^{relates to} ~~is against~~ this order of dismissal. On 22.6.47 the complainant filed the two suits O.S.323/47 and O.S.324/47 as against A-3 and the Darjeeling Bank in the first suit and against A-4 and A-2 in the second suit. It may be noticed from the plaint in O.S.323/47 that the cause of action is stated to have arisen on 22.6.44 and from the ~~plaint~~ ^{complaint} in O.S.324/47 that the cause of action though stated to have arisen in August, 1945, really ~~is~~ arose on or about 22.6.44. It would therefore appear that both the suits were filed when the claims, if any, were about to be time-barred. On 3.1.48, the complainant filed the two other suits No.6/48 and 7/48, the first against A-5 and A-2 and the second against A-2 and the Darjeeling Bank. In the first the cause of action is stated to have arisen on 6.10.45 and in the ~~second~~ second on 21.8.45.



Subsequently on 26.4.48, the second complaint has been filed against A-2 alone with reference to an alleged transaction of 1945, on the allegation that the complainant came to know about it only shortly prior to the date of the filing of that complaint. The four suits above mentioned were originally ordered to be tried together, but it transpired later that the Darjeeling Bank had gone into liquidation and accordingly the two suits in which the Bank was a party, namely, O.S.323/47 and O.S.7/48, have been stayed under Sec.171 of the Indian Companies Act and the other two suits, namely, 324/47 and 6/48 have been directed to be proceeded with. It would also appear that in O.S.324/47, applications were filed under O.23, Rule (3) of the C. Pr. Code by the two defendants therein, namely, the present A-2 and A-4 alleging that the whole claim in that suit was compromised and that as a result thereof, the second accused Asok Das (first defendant therein) gave a letter to the Dist. Magistrate, Cuttack, agreeing to the transfer of the press in the name of the plaintiff-complainant and that on the basis of that letter, the complainant has got himself registered as the keeper of the press, but was avoiding to file the petition for compromise as agreed upon. These petitions were under O.23 Rule 3 and appear to have been dismissed for default of appearance and petitions for restoration of the same are now pending. It has been admitted before me by counsel for complainant that as a fact the complainant has now got himself registered as the keeper of the press in substitution of A-2.

It will now be convenient to get a correct idea of the civil dispute between the parties as appears from the pleadings in the four suits. In the plaint in O.S.323/47, the plaintiff-complainant alleges that he is the owner of the Naba Bharat Press and the

the editor and the proprietor of the Naba Bharat paper and that he opened a current account in the Darjeeling Bank with instructions that it is to be operated upon by Bhubaneswar Misra (fourth accused) the then cashier and that the first defendant therein (3rd accused) was the works manager under the plaintiff; that on 22.6.44, the said first defendant wrote to the Bank that he took charge of the managership of the Naba Bharat Press and requested the Bank to allow him to deal with it and that the Bank, without obtaining the consent of the plaintiff, unauthorisedly allowed withdrawals by the ~~xx~~ first defendant and that he accordingly withdrew various amounts from 22.6.44 to 10.10.44; that he had received also various sums for job works done by the press, which he has not credited to the press or accounted for. The suit is accordingly for accounts against him with the allegation that the second defendant is also liable for having allowed unauthorised withdrawals. The defence of the first defendant is that the Naba Bharat Press belongs to Asok Das; that he was employed by the said Asoka Das; that when the defendant left the service of the press, he made over charge of his responsibility, monetary and otherwise, to the said Asok Das who gave him a full discharge; that, as a matter of fact, the plaintiff was residing in the press premises at all material times, that he was on good terms with Asok Das at the time and that the plaintiff had full knowledge at the time of all the acts and dealings of himself with the press and with Asok Das; that family quarrels arose between the plaintiff and Asok Das in the middle of 1945; that the plaintiff has been harrasing him, because he was not prepared to accede to the request of the plaintiff to support him in the dispute.



In O.S.324/47, the plaintiff alleges as in the previous suit his ownership of the press and the paper. He further alleges that he appointed the first defendant therein (fourth accused) as the manager and the cashier of the press in 1942 and that he opened a current account in the Darjeeling Bank in the said year and directed that defendant-1 should operate on the ~~xxx~~ bank account; that the defendant left his job without the plaintiff's knowledge in 1944 or '45; that defendant-1 without any authority to do so and without the knowledge or consent of the plaintiff paid moneys of the plaintiff, or of the press or of the paper to the second defendant; that defendant-1 when called upon to render accounts, delivered some statements and stated also that defendant-2 had taken away the books; that on a search made in the premises of the press some books and accounts were found and that the defendant had not rendered any accounts. He ~~further~~ therefore brings the suit for rendition of the accounts against defendant-1 and for a decree against defendant-1 as also for a decree against defendant-2 for such sum as may be found to have been wrongly paid to defendant-2. The defendant-1 in his written statement alleges that Asok Das was the proprietor and that he had rendered all accounts to Asok Das; that the suit has been filed because he was not prepared to assist the plaintiff in the dispute between him and his son. The second defendant in the suit, namely, Asok Das alleges in his written statement in the suit that the press was a joint family concern of which he was the keeper and had the sole charge with the right to employ and discharge persons in the management of the press and that the first defendant had rendered accounts to him and was given discharge by him. It may be noticed that the first defendant in O.S.323 and the first defendant in O.S.324

are close and common relations of the complainant and his son.

In O.S.6/48, the complainant alleges that he appointed the first defendant therein as an accountant in the press and later as the provisional manager; that he gave to defendant 2, Asok Das ~~un~~authorisedly paper and other materials that he deposited in the bank in the name of defendant 2, several amounts belonging to the Naba Bharat Press accounts and that he gave moneys and cheques to defendant 2; that he accordingly files the suit against defendant-1 for rendition of accounts and for the decree against defendant 1 and 2 for such sums and value of articles that defendat-1 made over unauthorisedly to defendant 2. Defendant 1's plea is that the second defendant Asok Das is the owner of the press and that he was appointed by Asok Das and that he had rendered all the accounts to ^{the} said Asok Das and obtained discharge from him and that he was not liable for the accounts and the suit was filed because he was unwilling to help the complainant in his dispute with his son. It may be noticed that this defendant was the person against whom a complaint on similar allegations was filed in October 1945, and dismissed as already mentioned. The second defendant in the suit Asok Das sets out his plea in the following terms. -

"The Naba Bharat Press was started as a joint family property of the plaintiff and defendat-2 of which the plaintiff was the Karta; that ^{it} subsequently proved to be a losing concern and was left solely to him. He put in his own finances and that he registered himself as the owner of the press since 1941; that the press became the sole property of the defendant; that the Naba Bharat paper also had to stop publication on account of straitened circumstances in 1940 and that this paper subsequently

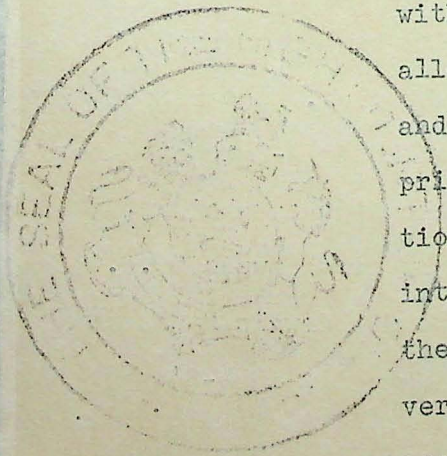


revived due to the efforts of the defendant and that the defendant was the proprietor of the paper while the plaintiff was only the editor thereof; that owing to the efforts of the defendant the press became solvent and a good deal of profit accrued and that the plaintiff thereafter became greedy and tried to oust the defendant from the press." He alleges that on account of this greed and subsequent ill-will, the plaintiff was harassing him by starting criminal and civil litigations against him and against the other persons connected with the business who were not prepared to side him. He states that the first defendant had rendered all the accounts to him. In suit No.7/48, the plaintiff alleges that defendants 1 and 2 therein, that is , Asok Das and the Darjeeling Bank respectively colluded with each other; that defendant 2 , the Bank allowed defendant 1 to withdraw from the current account of the Naba Bharat Press various amounts without the consent or knowledge of the plaintiff and that defendant 1 and 2 have not rendered proper accounts inspite of repeated demands and therefore the plaintiff brought the suit for rendition of accounts against both of them. The written statement of the first defendant Asok Das therein raises the same pleas as those in the other suits. Defendant 2 does not appear to have filed any statement as the Bank had gone into liquidation ~~meanwhile~~ meanwhile and proceedings have been stayed, but it may be noticed that in the earlier suit O.S.323 of 1947, wherein the bank is also a party-defendant, a written statement was filed on behalf of the Bank which takes up the same position as that taken by Asok Das and the other defendats in the various suits.

It is thus obvious that all the four suits

suits raise the question of the ownership of the press and the question whether Asok Das was de jure or de facto incharge of the press and the question of validity of his dealings with the press and press accounts, on that footing, ^{as} also about the validity of the acts of the other defendants in the various suits in so far as they have ~~been~~ dealt with Asok Das on that footing and obtained discharges from him. It has been brought to my notice that in O.S.257/43 on the file of 2nd Munsif, ^{cutback} the 2nd accused Asok Das had filed a written statement and also deposed disclaiming all connections with the press. How far that binds the second accused or the other accused ~~which~~ would be a matter for consideration in the civil and criminal proceedings.

The allegations in the two pending complaints may now be considered. As regards the 1946 complaint, the complainant alleges that he started the press with his own money; that the bank account was opened by him and that A-4 was authorised ~~him~~ by him to operate the account; that he had sent from time to time large sums of money by cheques drawn in favour of the accused 2 and 4 and other ^{employees} amounts of the press with the direction to deposit the same in the bank account of the press; that the accused No.1 without the petitioner's knowledge and authority had allowed the press account to be operated by the accused No.3 and that he also transferred the press account to the private account of accused No.2; that on inquiry the petitioner came to know that all the accused persons entered into ^a criminal conspiracy between 1942 and 1945 to defraud the petitioner. The complainant also alleges that he had verbally and by a letter dated 15.9.45 warned the accused No.1 and that even subsequent to that warning accused No.1 had transferred Rs.332-10-0 from the Naba Bharat Press account to the private account of accused No.2



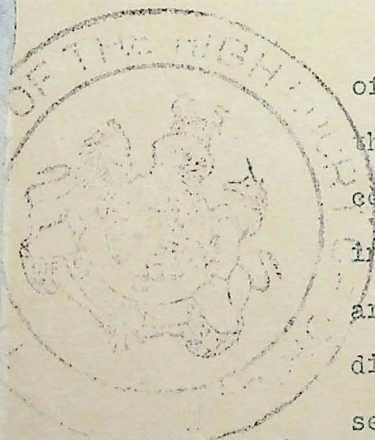
that there are several instances when the complainant had sent the cheques to the Manager, Darjeeling Bank, giving him instructions to deposit ^{the proceeds} thereof in his personal account, but that the cheques have been criminally diverted by the 1st. accused to the account of the second accused. The complainant therefore alleges that the accused persons are guilty under Sec. 120(B), 403, and 409 of the I.P.C. In his sworn statement taken on this complaint, he, more or less, reiterates to what all he stated in his complaint. In the report submitted by the Magistrate ^{Mr Ahmed} on inquiry into this complaint, dated 12.4.47, the only further facts that are stated therein are that a copy of the application for opening the current account in the Darjeeling Bank in 1942 was shown by the complainant purporting to contain the signatures of A-4 under the complainant's signature; that on various dates A-4 withdrew certain sums of money from the account and deposited them in the name of the second accused; that the account books of the press in the handwriting of the A-4 do not show these transactions; that the account books ~~show~~ ^{shows} some amounts, collected by A-4 as press dues for job works, to have been deposited according to pay-in-slips into the account of A-2 and also the amount, collected by a number of receipts ^{as having} have not been shown in the account book. The report also ~~purports to state~~ that the bank allowed A-3 to operate on the account without reference to the complainant and that there were withdrawals by him between 22.6.44 and 10.10.45 and that none of the withdrawals had been shown in the press account book which is in A-3's

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handwriting. The report further states that accused-2 wrote to the bank on 3.1.45 that he would operate on the press account and that he was allowed to do so and that A-2 transferred the balance at the credit of the press account to his own account and that the bank allowed the same without reference to the complainant. It may be noticed that the accused impugned the correctness of this report and had obtained an order for fresh inquiry and report and at best the statements in the report can be taken for the present purposes as only an amplification of the complainant's case.

As regards the second complaint of April, 1948, the allegations in the complaint are that the Press Syndicate Ltd., Calcutta, owed some money to Naba Bharat (paper) for certain advertisements; that the Press Syndicate sent on 18.8.45 a cheque by ordinary post to the Manager, Naba Bharat Press and that it was intercepted by the accused therein (Asok Das) who ~~encashed~~ encashed it through Hazradi Bank, Cuttack Branch, on the false representation that he was an officer of the Naba Bharat P and that he misappropriated proceeds of the cheque to the tune of Rs.572-4-3.

It is clear from the above detailed narration of the averments in the civil suits and the allegations in the criminal complaints, that, at least so far as the complaint of 1946 is concerned, the questions at issue in both the criminal proceedings and the civil litigations are substantially the same and arise out of the same dispute between the father and the son. As regards the second complaint of April, 1948, though there appears to be no civil suit directly relating to the same matter, it is fairly obvious that it is impliedly covered by the subject



matter of the civil suits. This complaint no doubt purports to relate to the Naba Bharat paper, but the case of the accused Asok Das as appears from his written statements in the civil suits is that the press and the paper both belong to him and if that is made out, it would obviously be a substantial defence to the complaint of April, 1948. Therefore the subject-matter of this complaint must also be taken to be involved in the civil litigation between the parties.

The question therefore for consideration is whether in view of this complete inter-connection between the criminal and civil proceedings and the history of the dispute, the criminal proceedings are liable to be quashed as an abuse of process and as vexatious harassment of the accused.

In order to determine this, it is now desirable to examine the power of the High Court to quash criminal proceedings, while they are pending in the subordinate courts and the limits of that power. It may be taken as settled that the power exists, but that it is not to be used except under very exceptional circumstances. When a complaint is made reasonably disclosing that an offence may have been committed, it is necessary in the public interests that it should be fully investigated by the courts having the responsibility for the same and the High Court cannot normally be called upon to examine and correct those proceedings at every stage. It is the duty of the High Court to allow proceedings in the subordinate courts to go on and to take their normal course and not to encourage applications for interference with them, which would impede speedy administration of justice. It is also desirable in the interests of the administration of justice that private parties are given unhampered opportunity of bringing offences to the notice of public authorities by

by means of complaints and for having them fully investigated. While these principles are clear and undoubted, it is equally undoubted that it is the duty of the High Court to prevent harassment of the citizen by illegal and untenable prosecutions which are started by private complainants for their personal ends and thereby convert^{ing} the criminal court into a forum for the investigation and settlement of the elaborate and complicated civil disputes or as a lever for the settlement of such civil disputes under coercion of criminal proceedings.

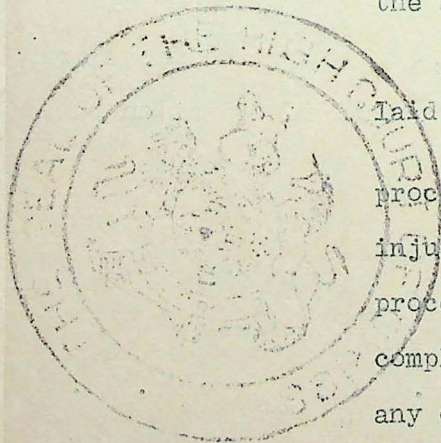
In I.L.R. 22, Calcutta 123, P.138, the learned Judges laid down as follows:-

"There can be no doubt that we have the power to interfere at any stage of the case. When it is brought to our notice that a person has been subjected for over two months to the harassment of illegal prosecution we think it is our bounden duty to interfere." Their Lordships held in that case that on the facts alleged, the charge made in the case was unsustainable and quashed the same.

In I.L.R. 26, Cal. P.786, their Lordships laid down:-

"It is inadvisable to interfere in a pending proceeding unless there is some manifest and patent injustice and unless they are apparent on the face of proceedings calling for prompt redress. If neither the complaint nor the evidence for the prosecution makes out any case whatsoever against the petitioner, it is manifest that he should not be left in the position of a person accused in the offence for a moment longer than is necessary" Their Lordships considered the complaint in the case and the evidence so far adduced and quashed the proceedings.

In I.L.R. 38 Cal. P.68 the real question in dispute between parties was whether the share of a particular



person in a partnership had devolved on his son or was transferred to his daughter or daughter's son. The criminal proceedings arose out of this dispute. On a preliminary inquiry on the complaint the report was that the complaint was "not utterly devoid of foundation". The Judges were ^{not} prepared to find that no offence of any kind could be made out on the complaint. Yet on a consideration of the allegations in the complaint and the material available by them (the case had not gone beyond the stage of issue of process to the accused) their Lordships quashed the proceedings.

In A.I.R. 1925, Alld., P.311, the learned Judge held on the facts that to allow the case to proceed is to allow a mock-trial to proceed with no purpose and quashed the proceedings.

In A.I.R. 1947, ^{Alld.,} P. 348, His Lordship stated as follows:-

"This court is reluctant to interfere with the ordinary course of law and substitute its own judgment for the judgment of the Magistrate who is trying the case before the completion of the trial, but where the facts are so preposterous that the court feels satisfied that on the face of the facts there is no case against the accused and where the court is clearly of opinion that a further prolongation of the prosecution would amount to harassment and abuse of the process of the court, it is the duty of the court to interfere under Sec.561(A) of the Cr. Pr. Code and to put an end to the accused." His Lordship on the facts of that case held that the prosecution amounted to an abuse of the process of court and quashed the proceedings.

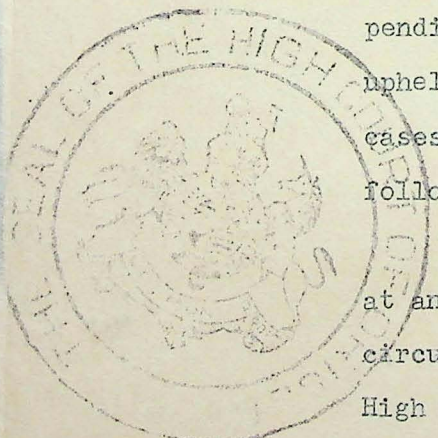
In A.I.R. 1928, Bombay, P.184, it was observed as follows:-

"The High Court has power to interfere at an

interlocutory stage to quash the proceedings, if a clear case is made out. Ordinarily the High Court would not interfere at an interlocutory stage with the proceedings pending before the Magistrate, but when it appears that the accused is not guilty on the face of the proceedings, the High Court will interfere even at an interlocutory stage, in order to prevent further harassment of the accused." On the facts of that case, their Lordships held that no offence appeared to have been committed and accordingly quashed the proceedings.

In I.L.R. 39, Madras P.561, His Lordship held that the ingredients necessary to constitute the offence had not been made out, that the case presented evidence of fabrication and development, and that the case showed that it was not a bonafide prosecution and on these grounds quashed the proceedings.

In A.I.R. 1925, Madras P.39 the learned Judge discussed the power of the High Court to quash proceedings pending in a subordinate court in an appropriate case and upheld the same after discussing all the reported decided cases and the relevant sections of the Cr. Pr. Code in the following terms. -



"I am of opinion that the High Court has power at any stage to quash or set aside the proceedings. The circumstances which will justify the interference of the High Court have not been and cannot be laid down with precision. While Judges repeatedly held that it is only when exceptional grounds exist, that the High Court ought to interfere, the decided cases show that no hard and fast rule can be laid down but that when ~~the~~ in the interests of justice, the High Court's intervention became necessary, it was not refused. In some of the cases, the proceedings were set aside on the ground that

that the facts alleged did not in law constitute the offence with which the accused have been charged. In other cases evidence was examined and probabilities were discussed and the High Court set aside the proceedings on the ground that it was not in the interests of justice that the proceedings should be allowed to continue." On the facts of that case, the learned Judge thought the proper course in that case was to stay the criminal proceedings until the disposal of the civil litigation rather than to quash the proceedings themselves.

In A.I.R. 1938, Madras P.129., the Court laid down as follows:-

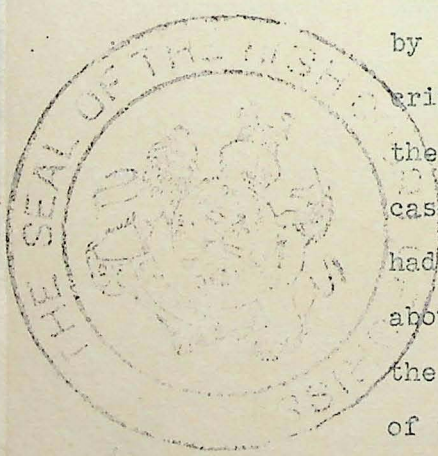
"The inherent jurisdiction of this court to pass any orders necessary to prevent abuse of process of this court is not in question and indeed has been clearly expressed in Sec.561-A., Cr. Pr. Code. Since prevention is always better than cure, the obligation to prevent specious and spiteful criminal prosecution for actions which though strictly dishonourable, yet do not amount to crimes is one that must never be shirked." The court held on the facts of the case that the complaint did not on its face show that any criminal offence had been committed and accordingly dismissed the complaint under Sec. 203 of the Cr. Pr. Code.

In 12 Cr. Law Journal P.50, Their Lordships stated as follows :-

"We accept unhesitatingly the principle that the High Court should be reluctant to interfere in cases such as the one before us. We are by no means satisfied that the action of the present accused was entirely beyond suspicion and we are not prepared to say that the

complainant had no ground for alleging sharp practices on his part. We give no opinion on this point. We merely state that there are elements of suspicion in this case. But we have no hesitation whatsoever in asserting that in all such cases the appropriate tribunal to decide questions of this kind is the Civil Court and save for very exceptional reasons the decision of the Civil Court should be accepted as conclusive between the parties.....It is a very sound general principle that parties should not be encouraged to resort to criminal courts in cases in which the point of dispute between them is one which can be more appropriately decided by the Civil Court. There is unfortunately a tendency on the part of persons who consider themselves aggrieved to rush to criminal courts either for the purpose of obtaining at small cost to themselves, decisions on matters which ought in the ordinary course of things to be adjudicated upon by the Civil Court or of prejudicing the course of proceedings already instituted or about to be instituted in the Civil Court by the other side. This tendency should be checked and criminal courts should be on their guard not to lend their aid in cases of this kind." On the facts of the case their Lordships held that if the criminal trial had proceeded the court would at least have felt doubt about the guilt of the accused and also held that the civil Court had already given a decision in favour of the accused. On those grounds and in the circumstances of the case, they quashed the criminal proceedings.

In 14 Cr. Law Journal, P.128, His Lordship dismissed the criminal complaint on the ground that there was no good reason for allowing the criminal prosecution to go on pending the decision of a Civil Court and that every discouragement should be given to



to the habit of rushing into criminal courts when a civil dispute arises.

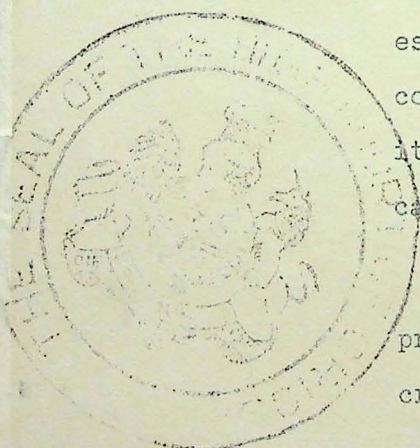
In 26 Cr. L.J. P.287, the High Court quashed the proceedings on the ground that the contents of the complaint and the initial deposition of the complainant make it perfectly clear that the question between the parties was whether a decree against the complainant was satisfied or not by the transfer to the decree-holder of certain land and that the civil court was the proper place for the matter to be decided and that a criminal prosecution for decision, of what in essence is a civil dispute between the parties is not to be encouraged.

In 34 Cr. L. Journal P.377, His Lordship quashed the criminal proceedings on the ground that on the facts of that case, the complaint appeared to be purely vexatious and that the dispute involved was in any case prima facie one, for disposal by the Civil Court.

In 35 Cr. L. Journal P. 449, the Patna High Court quashed the criminal proceedings on the ground that there was prior criminal proceedings ending in discharge substantially on the same facts though for an alleged different offence, and that fresh proceedings would amount to abuse of the process of court.

It will thus be seen on a review of the various cases that though the ~~own~~ power to quash criminal proceedings is ~~not~~ not to be readily used by the High Court the power itself is undoubted. In some of the cases, the power has been exercised after the charge has been framed and there was enough material in the shape of prosecution evidence to enable the court to get a fair idea of the whole case. In some other cases, the power was exercised at a much earlier stage when the court felt that there was enough material before it to enable it to

to come to a satisfactory conclusion about the nature of the prosecution and the case of the accused. In some of the cases, the court interfered on the ground that no offence was in fact made out, but it is clear that it is ^{not} the only ground for quashing. In many cases the power was exercised on the ground that the prosecution amounted to an abuse of the process of the court though it was not quite clear that an offence could not ultimately be made out vide I.L.R.38 Cal. P.68; 12 Cr. L. J. P.50; 14 Cr. L. J. P.128; 26 Cr. L. J. P.287 and 34 Cr. L. J. P.377. It has been clearly recognised in all these cases that the foundation of jurisdiction is the imperative duty of the High Court to prevent the abuse of process and the improper harassment of the accused by the criminal proceedings. Courts have also stressed upon the desirability of not encouraging a dispute which in essence is of civil nature being dragged into a criminal forum, especially in a case where the dispute requires complicated investigation of civil rights and where it appears that the continuance of the prosecution is not called for in any public interest.

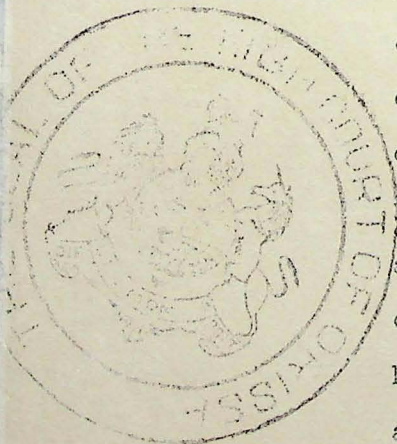


In the light of these well-established principles the course to be now adopted in respect of ^{the} two criminal prosecutions has to be determined.

One outstanding fact that clearly emerges from the above elaborate consideration of the allegations in the complaints and the averments ~~of~~ the pleadings ~~of~~ the civil suits is that the matter in dispute in the complaints is substantially the same as the one in the civil ^{suits} disputes. Both the criminal and the civil litigations involve the same elaborate inquiry into

into complicated questions of title to the press and its appurtenances or questions as to the right of A-2 to deal with the press, the paper and its moneys either on the footing of ^{his} its being the declared keeper of the press or on the footing of his being in de facto charge of the same or in someother capacity and also the question of genuineness and validity of the alleged discharges given by A-2 to the other accused. This investigation relates to transactions covering over a period of 3 to 4 years from 1942 to 1945. The inadvisability of permitting the criminal court as the forum for investigation in 1949 of issues of this complicated nature for the alleged transactions of 1942 to 1945 ^{is obvious and} cannot obviously be overlooked. Such investigation is wholly undesirable unless considerations of outstanding public interest demand it and unless there is a reasonable chance of conviction on the basis of the present complaints. In a normal case where the dispute was not preceded by the history such as the one which has been set out above and where the civil dispute has a reasonable chance of early termination, I should have thought that the stay of criminal proceedings would have been the more appropriate course. I was indeed inclined at one stage to think that it might have been the proper course to adopt in this case. But in this case both the civil and criminal litigations are pending in their very early stages. The complaint of January, 1946, is now pending for over three years though it may be for no fault of the complainant. There is also no reasonable likelihood of the civil litigation terminating at an early date in view of the stay in two of the cases and in view of the point about the alleged compromise in one of the other cases.

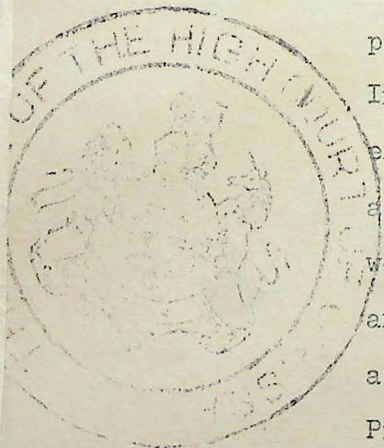
The dispute between the parties started as early as in the second half of 1945. According to the various ~~al~~ accused the troubles arose out of family dispute between the father and the son in which the father has been trying to reopen the old transactions which were perfectly within ~~his~~ his knowledge and with his implied approval. This may or may not be so. But it is clear that the earliest outcome of the dispute is the attempt by the father to obtain a declaration of the Naba Bharat Press in his own name in substitution for that of his son. It is not without significance that it is only after he failed in that attempt, that the criminal proceedings appear to have been started. His first complaint was in October, 1945, against A-5. That had its chequered career and was ultimately dismissed with an admonition by the then Sessions Judge that neither Pandit Nilakantha Das nor Sri Asok Das can be permitted to use the criminal courts as ^{the} forum for the ventilation of their civil disputes. While this criminal proceeding was still pending, the present criminal complaint of 1946 was filed on 26.1.46. It would appear from the report of Mr. Ahmed on that complaint that the matter was pending with him for over an year on account of attempts at compromise. It is obvious and it is only natural that the complainant (as much as the accused) would have been anxious for a compromise rather than for the continuance of the criminal prosecution. If the complainant had been keen on the criminal prosecution in public interests and for the vindication of public justice, he at least should not have been a party to this undue prolongation of the inquiry. It is a fair inference to draw that the pendency of the criminal prosecution was sought to be utilised for securing the settlement of a civil dispute.



This is further confirmed by the fact that the civil litigation does not start immediately after the cause of action came to be known to the complainant according to him, but it starts only when the claims were about to be time-barred and when the settlement of the dispute through the medium of the criminal court was still not in sight. As has been shown, the two suits O.S. 323 and 324 of 1947 were filed just about the time when the limitation was about to expire. There can therefore be no reasonable doubt that the criminal prosecutions have been launched or at least continued to secure a speedy settlement of the civil dispute. I am not concerned with the morality or legitimacy of that course. It sometimes does happen that a criminal prosecution arises out of a civil dispute and that such prosecution gives a handle for the settlement of a civil dispute. That without more may not ordinarily be enough to justify interference with pending criminal proceedings. I have therefore to consider whether the public interests demand the continuance of this prosecution and whether the continuance of this prosecution is reasonably likely to end in a conviction or whether it is more likely to amount to serious vexation and harassment to the accused. In a case like this, where the complainant and most of the accused are very closely related, where the main accused is the son of the complainant, where the alleged misappropriation is not in respect of any public funds or the alleged acts of misappropriation have no repercussion outside the family circle, it appears to me that no serious question of public interest is really involved. On the other hand it is of much greater public importance that the time of the criminal courts is not unnecessarily

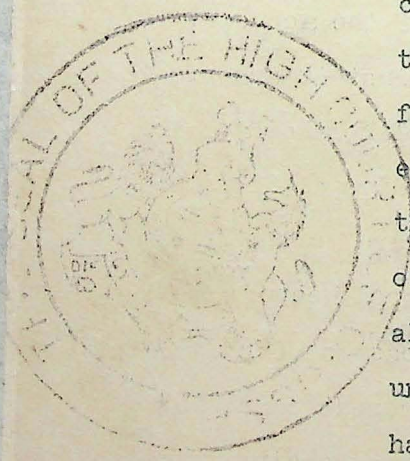
unnecessarily taken up with an elaborate inquiry about a complicated civil dispute of this nature and it is also a matter of public interest that criminal proceedings started so late after the alleged misappropriation should not be kept hanging over the heads of the accused for such inordinately long time to their serious harassment.

The chances of the result of the two criminal prosecutions, if proceeded with, may now be considered. Taking up the criminal complaint of January, 1946, the remarkable feature about it is that the joint indictment against all the five accused in respect of alleged misappropriations covering over ~~up~~ a period of four years from 1942 to 1945 can only be justified on the allegation of conspiracy which does not appear to have ~~been~~ any substantial foundation. It is no doubt true that the legality of joinder depends on the averments and not on the proof of averments. But if it appears that there is no foundation at all for the averments of alleged conspiracy and that the allegations are not bonafide but only a pretence to rope in all the accused together into a criminal trial otherwise ^{Illegal} legal, then such a prosecution ought not to be allowed to be proceeded with. In this case if the allegation of conspiracy was non-existent, each one of the accused or such out of the accused as may be directly connected with any particular transaction would in the normal course have to be separately tried and such trial would have to be confined either to an aggregate sum covering one year's period under Sec.232,Cr. Pr. Code or to three items within one year under Sec.234 of the said Code. In the complaint of January, 1946, except the bare allegation of conspiracy there is absolutely no averment of any fact which may afford reasonable justification for such allegation. Even the report of Mr. Ahmed discloses no justifiable indication of



of the conspiracy. If the allegation of conspiracy is a fact, it is rather remarkable that the complainant when he filed the civil suits chose to file four independent suits at two stages rather than a single comprehensive suit against all of them ^{through} ~~he~~ would thereby have obtained the additional advantage of a joint decree against all. In these circumstances, permitting the continuance of these prosecutions would therefore prima facie be permitting an illegal prosecution to be continued. Turning to the merits of the complaint, it is to be noticed that the complaint of January, 1946, discloses only a bare allegation that the first accused unauthorisedly allowed the press account in the bank to be operated by the third accused and that he also unauthorisedly allowed the press account to be transferred to the private account of accused-2. There is no allegation that as a result of these unauthorised dealings the amounts covered thereby have not been utilised for the press, there is no allegation that there was any dishonesty accompanying ^{these} ~~this~~ unauthorised acts ^{that} or any of the accused committed these unauthorised acts with the intention of causing wrongful loss to the press or to the complainant or of securing wrongful gain to anybody. If any suggestion of dishonesty is to be found in the complaint, it is only in the allegation that the accused persons entered into a criminal conspiracy for defrauding the complainant between 1942 to 1945. There is no hint of what that conspiracy and fraud consisted of. It is remarkable that a complaint so serious as this and involving a sum of at least Rs.14,132, 132/- as the complaint alleges, is devoid of any reasonable indication of diversion of funds from ^{their} ~~this~~ legitimate purpose with a dishonest intention. The mere allegation of unauthorised dealings and transference of funds into

into A-2's account cannot be taken in the circumstances of this case as sufficient allegation of dishonest and criminal misappropriation. Even if we look at the report of Mr. Ahmed, nothing more is found than a reiteration of these unauthorised dealings plus the additional suggestions that in the accounts, which presumably the complainant had produced before him, some of the receipts or withdrawals were not noted. It would appear from the allegations in the complaint itself and from the pleadings in the civil suits that for one reason or another the complainant had no access to all the relevant accounts. It is therefore not possible to treat this suggestion ~~as~~ in Mr. Ahmed's report about absence of some entries in the accounts as a fair indication of dishonest misappropriation. It is no doubt true that at the outset of the complaint, the complainant is not to be expected to furnish details of the evidence that he may be able to put forth before the court. But in a case of this nature where the complaint is mainly against the complainant's own son and his close relations, and where to the knowledge of the complainant the complaint arises out of a dispute, between the parties, of a civil nature, the complaint in order to form the foundation of a serious prosecution may be expected to disclose some more substantial materials than the bare allegation of mere irregularities and transference of funds into A-2's account. I have closely scrutinised all the allegations in the complaint and I have been unable to find any such allegation therein and my attention has also not been drawn to any such in the course of the arguments on behalf of the complainant. The absence of any such substantial allegations indicating dishonesty, may therefore be fairly taken to be due to the paucity of such material. As against the paucity of such material, there is the outstanding fact that the second



second accused, admittedly is the declared keeper of the press. That may or may ^{not} in law help him in his contention that he is the owner of the press. But having regard to the provisions and also of the purpose of the Press Act under which the declaration is made, it would be reasonable to start with a presumption in favour of the accused that he was the person in charge of the press and its transactions. It would therefore require very strong evidence to make out that his dealings with the press and the press account and the dealings of persons purporting to derive authority from him, are to be treated as criminal. The complainant in the whole of his complaint has not alleged that the second accused apart from being barely the declared

keeper of the press, had at no time anything to do with the press. ^{on the other hand he states in his complaint that he was sending cheques to the press} ~~the press.~~ ^{for the press} ~~x~~ It appears to me therefore reasonably clear that the complainant has at present no substantial and tangible material on which a conviction of all or any of the accused may reasonably be expected. While I am not prepared to say that after a harassing inquiry some material may not be forthcoming which may criminally implicate one or more of the accused, it appears to me that the chances against it are greater and that there is also a greater likelihood of the accused being able to avail themselves at least of the benefit of doubt having regard to the admitted fact that the ^{2nd} accused is the declared keeper of the press.

I may also add that at least so far as the fifth accused is concerned, the present complaint which appears practically to cover, as against him, the same subject-matter which was under inquiry in the complaint of October, 1945, and was dismissed would clearly amount to unnecessary harassment against him.

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Having regard to all the considerations above set forth, I am clearly of opinion that the prosecution based on the complaint of January, 1946, would amount in law to an abuse of process and illegal harassment of the accused and that its continuance is not only not required in public interests, but that its discontinuance is clearly called for. I may also notice at this stage that the complainant is a prominent public citizen and the accused is a respectable advocate. I may also note the fact that even in the stage of preliminary inquiry under Sec.202, two successive Magistrates surprisingly and rather improperly shirked the inquiry and a third Magistrate kept it pending with him for an unduly long period. This is also a circumstance which cannot be ignored in this context. I have therefore after deep and careful consideration come to the conclusion that the proceedings based on the complaint dated 26.1.46 filed by Pandit Nilakantha Das against the five accused should be quashed. Cr. Revision No.297 of 1948 is accordingly accepted.



As regards the proceedings based on the complaint dated 26.4.48, no doubt some of the above considerations mentioned in respect of the other complaint do not apply. But this complaint arises also against the same background of civil dispute and is intimately connected with it as already shown. Having come to the conclusion that the proceedings based on that complaint are to be quashed, it would not be right to adopt a different course in respect of this complaint. It must be noticed that this complaint has not been filed by Pandit

Nilakantha Das himself, but by an alleged Manager of his, and there is nothing on the record to show why this is so. The complaint has not even been backed up by the sworn statement of Pandit Nilakantha Das, but only by that of his Manager. One Magistrate has thought fit to dismiss the complaint under Sec.203. I am therefore of the view that the proceedings based on the complaint dated 26.4.48 filed by Banamali Misra against Asok Das should also be quashed. Cr. Rev. 276/48 is accordingly accepted.

Criminal Revisions 335 of 1947 and 167 of 1948 -

As I have stated at the outset, these revisions raise the question whether the Magistrates had power to reconsider the orders once passed by them under Sec.202 or 203 of the Cr. Procedure Code. The cases in 48, Cr. Law Journal, P.626; 49 Cr. L. J. P.599, A.I.R.1948, Cal. P. 342, are against the existence of any such power. The cases in 25 Cr. L. J., P. 464; A.I.R. 1931 Patna, P.81 and A.I.R. 1948, Patna, P.31, appear to recognise the existence of the power. A distinction has been made in some of the cases on the ground that though summonses may have been ordered to be issued, they have not actually been sent out and served. The cases which appear to recognise the existence of the power seem to proceed on the ground that Sec.369 of the Cr. Pr. Code negating the power of review of a criminal court in terms relates to judgments. It is therefore sought to be implied that the criminal court has got the power to review interlocutory orders. It appears to me that these decisions recognising the power of the criminal court to recall previous orders ignore the well-established principle that no court has the power ^{to} review an order ~~of the court~~ which is in the nature of ^a judicial determination of the matter dealt with by that order. It

It appears to me to be very doubtful whether such orders can be recalled or reviewed merely because ~~ix~~ they are interlocutory orders and not the final judgments in the case. The absence of any inherent power of review in courts has been recognised and laid down in several cases. Some of the cases in which the orders were recalled and reconsidered may be explained on the basis of ~~the~~ distinction pointed out in 53, Indian Cases P.56, where it has been shown that the absence of the power of review does not preclude a court from correcting its previous orders based on want of jurisdiction, fraud, mistake of the court, or the like.

It appears to me therefore that the existence of the power of reconsidering and recalling orders once passed under Sec.202 and 203 is very doubtful and if I have to decide this case with reference to the point, I should have felt it desirable to refer the matter to a Bench. In view however of the fact that the two criminal proceedings out of which these revisions arise, have been quashed, it is unnecessary to pass any orders on these applications. They are accordingly rejected.



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B. Jagannadha

 8-2-49

Orissa High Court,
 Cuttack.

The 8th Feby., 1949.

Pradhan.