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In Re: Regent Park Syndicate Ltd.

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Court : Kolkata

Decided On : Apr-23-1929

Reported in : AIR1930Cal521

Appellant : In Re: Regent Park Syndicate Ltd.

Judgement :

Buckland, J.

1. This is an application by Mr. L.N. Bird, Deputy Commissioner of Police, Calcutta, for an order giving him liberty to inspect, through one of his subordinate officers or any other person, the records of an examination under Section 195, Companies Act, of Ray Bahadur Dwarkanath Chakravarti and of Gopalchandra Chakravarti, also for certified copies of their depositions.

2. In his petition, Mr. Bird says that on an application by one Khirodemohan Goswami, the manager of the estate of the minor sons of the widow of the late Kadhikamohan Ray of No. 45, Lansdowne Road, against certain persons to the effect that they entered into a criminal conspiracy to commit a criminal breach of trust in respect of the sum of a lakh of rupees belonging to the estate, he ordered an investigation into the matter to be conducted by Inspector Pulinkumar Chatterji of the Detective Department. He states that the investigation so far has disclosed a prima facie case of an offence of conspiracy to commit criminal breach of trust as an agent punishable under Sections 120(b) and 409, I.P.C., against

Sureshchandra Sanyal, two other subordinate officers of the minors estate, and also against Ray Bahadur Dwarkanath Chakravarti and his son Gopalchandra Chakravarti. Mr. Bird then states the result of his investigations in greater detail, which it is not necessary to repeat.

3. Mr. Bird then continues that he is informed that, on the application of the Imperial Bank of India, Ray Bahadur Dwarkanath Chakravarti and his son Gopalchandra Chakravarti have been examined by the Registrar in Insolvency of this Court under the provisions of Section 195, Companies Act, as to their dealings in respect of property involved in the criminal charge, and that they made statements in their examination with reference to certain matters. He then says that such statements are material evidence in reference to the conspiracy, and finally concludes that, for the purpose of completing the investigation of the case, it is necessary to have inspection of the depositions of the said two persons so examined under the Companies Act. This application has been strenuously opposed on behalf of the deponents, they being persons, among others, who are being prosecuted upon the charge of conspiracy. The point is not covered by authority. I shall have to refer to some English cases which have been cited in the course of argument, but there is none directly bearing upon the point. On behalf of the deponents the first point taken is that the application is based upon contempt of Court, in that it was a contempt of Court on the part of some person, whose name is not disclosed, to have informed the applicant as to what was said upon the examination, and that the applicant has declined to state the name of his informant, and that, in the circumstances, the application should be summarily rejected.

4. As to such information I may refer to what preceded the examination. An application was made to this Court in the matter of the Regent Park Syndicate Limited (in liquidation), and an order was made, among other things, for the examination under Section 195 of Ray Bahadur Dwarkanath Chakravarti and his son Gopalchandra Chakravarti. An appeal was preferred against that order and the order was vacated, except as regards the injunction which had been granted, and so much of it as was directed to the examination of these persons. The learned Chief Justice, in ordering the examination to be held, Said:

When the notes of the examination are transcribed they will be filed on the file of the company in the winding up proceedings. They will be part of the record of the company's winding up. There can be no doubt that Mr. T.N. Chakravarti and the other witness, Gopal will be entitled for the purpose of any further application that may be made against them to take copies of the notes at their own expense, but it does not follow that any other person will be allowed to take copies without permission of the Court.

5. The examination has since been held by the Registrar in Insolvency.

6. Strictly, the materials before the appeal Court, when that judgment was delivered, are not before me on this application, but they have been referred to, and it is difficult to suppose that anybody who has perused the proceedings in that case and the judgment delivered by the appeal Court would not realize that the statements of the deponents might assist in investigating the criminal charge preferred. This makes it difficult to treat the suggestion that there has been a contempt of Court on the part of some one in making the very limited statement which is referred to in para 4 of the petition very seriously. But apart from that, the contempt, if contempt there be, is not a contempt by the applicant. It is the contempt of the person who made the statement to the applicant. Who that person is I have not enquired. I am told that the deponents have enquired and that they have not been informed, but that has nothing to do with the Court so long as no application is made to the Court in respect of the alleged contempt. The contempt, therefore, is not contempt by Mr. Bird, but by some person or persons unknown, to ascertain whose name no serious effort has been made through the medium of the Court and against whom no application in contempt is pending. In my opinion, there is no substance in the suggestion that the application is based upon a contempt of Court.

7. A further objection is based upon paras. 5 and 6 of the petition, which, it is contended, are inconsistent. I may say, with reference to para. 5, that I should not contemplate allowing the applicant to take copies of the depositions of the deponents. The rules of the Court applicable to pending proceedings allow inspection only. Further, even if copies of the depositions were to be allowed to be

taken by the applicant it is not and it could not be a matter for this Court to decide whether such depositions would be admissible in evidence in different proceedings before some other Court. For these reasons, I disregard entirely para. 5 of the petition.

8. Then I come to para. 6. Llearned Counsel has submitted that even to allow inspection would be to allow the depositions to be used in evidence against the deponents in the criminal proceedings. That is not what I understand the applicant to mean by this paragraph. What I understand him to mean is that after inspecting the depositions and making notes Mr. Bird, with such information as he may have thus acquired, proposes independently to investigate the facts disclosed, for the purpose, if possible, of producing independent proofs of any such matters which may be relevant to the criminal proceedings. That is not using the deposition itself in evidence against the deponents, and it is far from my intention, by any order that I may make, now to say that that may be done. On the other hand I must at the same time make it clear that I do, not exclude the possibility of that, if it may otherwise be accomplished and is permissible, in which connexion I may draw attention to a passage in Palmer's Company Precedents, Edn. 13, Part 2, p. 669, where the learned author in a note says that if the depositions are required to be used at a criminal trial, the proper course is to subpoena the Registrar to produce them and no order under Rule 73 of 1909 seems necessary, that being the rule under which an order for inspection, such as is now sought, would be made in England. That this is the correct course to follow for such purpose also appears from the form of the order quoted on p. 723 of the same volume. Whether or not that course should be followed as regards these depositions, and whether or not the depositions would be admissible in evidence, are not matters as to which I am called upon to adjudicate.

9. On the same point, viz., the use of depositions against the deponents in the criminal proceedings, I have been referred to Section 196(7), Companies Act. For reasons which I do not wish to elaborate, but of which one is that Section 195 and 196 apply to totally different circumstances, I do not think that any argument by analogy can be based upon Section 196. It has been submitted that Section 196(7) does not allow notes of the examination held under that section to be used

in criminal proceedings. This is based upon the words in the subsection which say that notes of the examination may be used in evidence in civil proceedings against the person examined. Criminal proceedings, it is true, are not mentioned, but the fact that they are not mentioned does not, in my opinion, necessarily exclude the possibility of the notes being used in such proceedings. It may be that the point was left open to be dealt with under the general law. I will leave the matter there, because it is not a point upon which I have now to adjudicate, but I wish to guard myself against expressing any opinion as to the precise effect of the subsection, which, in that it contains a special reference to civil proceedings, differs from the corresponding section of the English Companies Act.

10. The point to be decided has also been discussed by learned Counsel on either side from a wider point of view. Mr. Panckridge, on behalf of the Crown, has argued, and in my opinion rightly, that-where, for the purpose of the administration of criminal justice, it is necessary that an order such as that which is asked for should be made, the Court will make it. As against that, it has strongly been pressed upon me that the rights of the individual must be protected. Certainly they must be considered, but the circumstances of this case are peculiar in the sense that the witness and the person charged in the criminal prosecution are the same. In such circumstances, an application such as this might be expected to be resisted. I can but consider whether, so far as any assistance is to be derived from the authorities, the rights of the individual should be allowed to outweigh the importance of the investigation and detection of crime and the interests of public justice.

11. Section 195 is a section providing for the examination of any person or officer of the company known or suspected of having property of the company in his possession or of any person who is capable of giving information concerning the trade dealings or affairs or property of the company. The object of this section has been considered in cases in which the question has arisen as to whether or not inspection should be given of the depositions recorded under Section 174, the corresponding section of the English statute. The strictly private character of the examination has frequently been referred to. But it is important to bear in mind that those have all been cases in which the question had to be considered in relation to

claims either by or against the company. In none of them was the question of a criminal prosecution involved. In Haddock's case [1902] 2 Ch. 73, the Master of the Rolls said:

This proceeding is a private examination which the Court sanctions in order that the liquidator may obtain the necessary information to enable him to proceed in the winding-up, and for many reasons it is most undesirable that the opposing party in the litigation contemplated by the liquidator should be allowed to be present at a proceeding which is a proceeding for the purpose of informing the officer of the Court and the Court what course ought to be pursued.

12. In In re, Grey's Brewery Co. [1884] 25 Ch. D. 400 Chitty, J., made similar observations, and continued:

The result of the examination, that which is written down, is not evidence against anybody else. It is the statement on oath of the person under examination, but the examination is not a proceeding in the nature of a litigious proceeding between parties, the object of the examination being, as I have already stated, to get information in order to see what course ought to be followed with reference to some matter or some claim which the official liquidator, when he applies to the Court is allowed to state privately.

13. The learned Judge's observations were with reference to what may be called the winding-up aspect of the matter. But if the object o the examination is to get information to see what course should be followed by the official liquidator, if it may be that information has been derived in the course of such examination which will be of service to the State in adminstering criminal justice, is it not right to say that that is also a matter which the Court should consider? From the standpoint of the interests of the State, it seems to me that the Court would only be doing what is right in holding that a public servant 'who is charged with the investigation of criminal offences should be allowed to inform himself as to anything that may have come to light on such examination. I do not say that I should take the same view where the applicant is a private prosecutor. His motives would require scrutiny and it might not be possible to ensure that the information would be rightly used. In In re, Imperial Continental Water Corporation [1886] 33 Ch. D. 314 a private

individual brought an action against the company and its directors, and, independently of that action, obtained an order under Section 115, Companies Act, for the examination of the directors. The Court postponed the examination until after the trial, the principle being that the plaintiff was not entitled to have an additional advantage in his action by reason of the provisions of the Act. That case is illustrative of the principle that, as regards civil proceedings, the deponent is entitled to protection, but it is a very different matter to apply such a principle to the investigation of criminal proceedings at the instance of the Government. In my opinion an order should be made in favour of the applicant, but the form of the order must be considered with reference to the rules of this Court.

14. Chapter 4, Rules 10 and 11, are those which apply to search, inspection and taking copies of documents forming part of the records in suits and proceedings in this Court by a person who is not a party. When the proceedings have terminated there is no difficulty. But during the pendency of the proceedings the order is within the discretion of the Registrar subject to the order of the Judge. It follows, therefore, that there is no right by a person who is not a party to the proceedings to search, inspect or take copies of any records in a pending proceeding, and even when inspection is allowed it may only be taken in the presence or with the consent of the parties appearing or after 24 hours' notice to them. On search or inspection a party is not allowed to take copies, but only notes of such search or inspection.

15. The order, therefore, that I make is that the applicant, Leslie Newman Bird, is at liberty to inspect the depositions of Ray Bahadur Dwarkanath Chakravarti and Gopalchandra Chakravarti, recorded upon their examination under Section 195, Companies Act, by the Registrar in Insolvency. The order is personal to the Deputy Commissioner of Polioe making the application. He may not take copies, but he may make notes of his inspection, and in so doing he may not reproduce verbatim any portion of the deposition however brief. For the purposes of obtaining inspection Mr. Bird may be attended by his solicitor, but the actual inspection must be by Mr. Bird alone, and neither the solicitor nor any other person will be entitled to inspect under this order. The Registrar will make the necessary arrangements. Before inspection there must be 24 hours' notice to all the parties to the summons.

No order as to costs.

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