

CIVIL MISCELLANEOUS SIDE

Before Bhandari, C. J. and Bishan Narain, J.
 M|s DALMIA JAIN AIRWAYS, LTD. (IN VOLUNTARY
 LIQUIDATION), DELHI, AND OTHERS,—Petitioners.

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Miscellaneous No. 309-D of 1955, in C.W. 3-D/54

Constitution of India, Articles 132, 133, 134—Discrimination in procedure offending Article 14 alleged—High Court holding otherwise—Substantial question of law as to the interpretation of the Constitution—Whether involved—Judgment under appeal—Whether in a Criminal matter—Test of—Phrase “the case is a fit one for appeal under Article 134(1)(c)”—Import and meaning of.

1955
 May, 18th

Held, that (1) where the point raised is that an investigation by police under the Criminal Procedure Code is excluded when an investigation has been made or is to be made under the provisions of the Indian Companies Act and otherwise a discrimination in procedure will be

introduced offending Article 14 of the Constitution is not accepted by the High Court, it cannot be said that the case involves a substantial question of law as to the interpretation of the Constitution.

(2) the test to be applied in deciding whether the judgment under appeal was a criminal cause or matter is that if the cause or matter is one which, if carried to its logical conclusion, may result in the conviction of the person and in a sentence of some punishment, such as imprisonment or fine, is a criminal cause or matter.

(3) the phrase "the case is a fit one for appeal" gives wide discretion to the High Court to grant or refuse to grant the certificate even if on the merits a substantial question of law is involved and that the Court when granting the certificate should exercise its discretion so as to advance justice and prevent injustice. It means something more than a question of law or a substantial question of law and that the point involved must be of general importance at least. Merely because a novel or new point is raised, it does not become a substantial question of law or of general importance and therefore fit one for appeal to the Supreme Court.

M. P. Sharma v. Satish Chandra (1), *Amand v. Secretary of State for Home Affairs* (2), and *Dhakeswari Cotton Mills, Ltd. v. Commissioner of Income-tax, West Bengal* (3), referred to.

Application under Articles 123, 133 and 134 of the Constitution of India praying that leave to appeal to the Supreme Court may be granted and the case certified as fit one for appeal to the Supreme Court.

VED VYAS and S. K. KAPUR, for Petitioners.

C. K. DAPHTRY, Solicitor-General, K. S. CHAWLA and

D. K. KAPUR, for Respondents.

(1) A.I.R. 1954 S.C. 300

(2) (1943) A.C. 147

(3) A.I.R. 1955 S.C. 65

JUDGMENT

BISHAN NARAIN, J. This is an application under Articles 132, 133 and 134 of the Constitution of India for leave to appeal to the Supreme Court.

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The circumstances in which this petition has been made may be stated briefly. The Registrar, Joint Stock Companies, on receipt of a complaint in November, 1951, relating to affairs of Dalmia Jain Airways Ltd. started proceedings under section 137 (6) of the Indian Companies Act, and as he was dissatisfied with the explanation given by the Company, he reported the matter to the State Government under section 137 (5). The Government appointed Messrs. S. P. Chopra and Company to investigate into the affairs of the Company under section 138 (4) in June, 1952. In the meeting held on the 13th of June, 1952, the Company resolved by a special resolution that it be wound up voluntarily and appointed Shri C. P. Lal Advocate, to act as a voluntary Liquidator, who immediately wrote to the Registrar requiring him to drop the proceedings started by him under section 137 on the ground that proceedings after voluntary liquidation could be taken only under section 237 of the Act and section 137 becomes wholly inapplicable to such a Company, but this request of the voluntary Liquidator was rejected by the Registrar. Thereupon an application was made to this Court under Article 226 of the Constitution for an order quashing the appointment of Messrs S. P. Chopra and Company as investigators on the ground that after the Company had gone into voluntary liquidation section 137 and the following sections were not applicable to it. This petition, however, was dismissed *in limine* by a Division Bench of this Court in September, 1952. Soon after the

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voluntary liquidator made an application under sections 153 and 153-A of the Companies Act for sanction of a scheme and when it had been sanctioned, the Liquidator transferred all the assets and liabilities of the Company as well as its books to a new concern. Asia Udyog Limited, which in the course of arguments was described as one of the Dalmia concerns. The investigators made their report on the 27th of November, 1952, according to which certain officers of the Company were found to be guilty of criminal offences in relation to the Company. The Central Government thereupon referred the matter to Shri Pettigore Advocate (Public Prosecutor), who caused the Registrar to lodge a first information report and that was done on the 18th of November, 1953. In pursuance of this report the police authorities made an application to the District Magistrate, Delhi, under section 96 of the Criminal Procedure Code for search of documents and this application was duly granted, whereupon the police searched various places and seized a considerable number of documents. The Company and its officers then made an application to the Supreme Court under Article 32 of the Constitution which was, however, dismissed by their Lordships,—*vide M. P. Sharma v. Satish Chandra* (1). It was after dismissal of their petition by their Lordships of the Supreme Court that they applied to this Court under Article 226 of the Constitution mainly for writ of *mandamus* with a view to stop investigation into the affairs of the Company by the police in pursuance of the first information report filed by the Registrar. The petition is a lengthy one but the substance of the petition is that the police should not be allowed to carry on the investigation by seizure and

inspection of documents relating to the company. In support of the petition under Article 226 the petitioners' counsel had argued (1) that provisions relating to the investigation under the Criminal Procedure Code are not applicable to offences relating to companies and (2) that the Indian Penal Code does not relate to offences relating to companies and that all the offences under the Companies Act are non-cognizable and therefore the first information report could not be lodged with the police. It was also argued that investigation under the Companies Act can be made while the company is a going concern under section 137 of the Companies Act but once the company goes into liquidation then section 137 automatically ceases to be applicable and proceedings can be taken only under section 237 of the Indian Companies Act. It was then argued that in any case the Registrar and other authorities concerned had not taken proper proceedings under sections 137 to 141-A of the Indian Companies Act and the proceedings taken were irregular in law. This Court, however, dismissed the petition and rejected all the contentions of the petitioners. This Court also held that in any case as far as the irregularities under section 137 of the Indian Companies Act are concerned, even if they are proved, this Court would not in the exercise of its discretion interfere under Article 226 of the Constitution of India. The petitioners have now applied under Articles 132, 133 and 134 of the Constitution of India with a view to appeal to the Supreme Court.

It appears to me that Article 132 of the Constitution of India has no application to these proceedings. In the course of arguments a reference was made to Article 14 of the Constitution and it was pressed into service with a view to persuade this Court to hold that an investigation by

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the police under the Criminal Procedure Code is excluded when an investigation has been made or is to be made under the provisions of the Indian Companies Act and it was argued that otherwise a discrimination in the procedure will be introduced which will be in conflict with Article 14 of the Constitution. This argument was not accepted by this Court. In such circumstances it cannot be said that the case involves a substantial question of law as to the interpretation of the Constitution. I, therefore, hold that Article 132 is not applicable to this case and therefore the petitioners cannot appeal to the Supreme Court as a matter of right.

I am also of the opinion that Article 133 has likewise no application to this case. Article 133 relates to civil matters. In this case it is true that the proceedings were initiated by the Registrar under the Companies Act but, in substance, the purpose of the application under Article 226 was to quash the investigation that the police is making in pursuance of the first information report lodged by the Registrar. It is, therefore, a criminal matter. The test which should be applied in deciding whether the judgment under appeal was a criminal cause or matter was laid down by Lord Wright in *Amand v. Secretary of State for Home affairs* (1), in the following words—

“The principle * * * *
is that, if the cause or matter is one which, if carried to its conclusion, may result in the conviction of the person charged and in a sentence of some punishment, such as imprisonment or fine, it is a criminal cause or matter.”

There is no doubt that in the present case if the writ petition filed by the petitioners remains dismissed, then the police will continue its investigation which may result in a trial and there is a possibility of a conviction for an offence which may involve punishment of imprisonment or fine. I, therefore, hold that Article 133 has no application.

Therefore, the petitioners can ask for a certificate from this Court only under Article 134 of the Constitution. Admittedly the only provision applicable to this case is Article 134 (1) (c) under which this Court must certify that the case is a fit one for appeal to the Supreme Court and the question to be determined is whether the petitioners have succeeded in showing that they should be granted the required certificate. Shri Ved Vyas, the learned counsel for the petitioners, argued that in such cases where construction of certain sections is involved, generally the Supreme Court grants leave under Article 136 of the Constitution of India and contended that therefore this Court also should grant the required certificate under Article 134 and he referred us to a certain case in which their Lordships of the Supreme Court had granted special leave from a judgment of the Calcutta High Court in which the construction of section 137 or section 237 of the Companies Act was involved. I see no force in this contention. As far as I can see Article 136 is not in terms identical with the provisions laid down in Article 134 (1) (c). Under Article 136 an absolute discretion has been given to the Supreme Court to grant special leave in any case, but under Article 134 (1) (c) the High Court has no jurisdiction to grant any certificate unless it is of the opinion that it is a fit case for appeal. Therefore, the discretion given to the High

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Court is circumscribed by the provisions of Article 134 (1) (c). Regarding the powers under Article 136 their Lordships of the Supreme Court have defined them in the case *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* (1), in these terms—

“It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by the constitutional provision made in Article 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule. All that can be said is that the Constitution having trusted the wisdom and good sense of the Judges of this Court in this matter, that itself is a sufficient safeguard and guarantee that the power will only be used to advance the cause of justice, and that its exercise will be governed by well-established principles which govern the exercise of overriding constitutional powers. * * * * *

The whole intent and purpose of this Article is that it is the duty of this Court to see that injustice is not perpetuated or perpetrated by decisions of Courts or Tribunals because certain laws have made the decisions of these

(1) A.I.R. 1955 S.C. 65

Courts or Tribunals final and conclusive.”

Therefore it is clear that the powers of the High Court and of the Supreme Court under Article 136 and under Article 134(1)(c) are not identical. Moreover, it appears to me that it is not possible for this Court to say that the Hon'ble Judges of the Supreme Court will grant special leave under Article 136 and then prejudging the decision of their Lordships of the Supreme Court mould its own decision accordingly while dealing with a petition under Article 134(1) (c). I am, therefore, of the opinion that this contention of the learned counsel has no force.

It must be remembered that these proceedings have not arisen out of a criminal trial but out of a petition under Article 226 of the Constitution and relate to matters anterior to a criminal trial and that those matters may or may not result in such a trial. The powers conferred on this High Court under Article 226 of the Constitution are discretionary and of an equitable nature. Even where a petitioner succeeds in a petition under this Article in showing that his legal right has been infringed, this Court is not bound to grant the petition and may reject it in the exercise of its discretion on various grounds which have nothing to do with the merits of the case. Now in the present case this Court came to the conclusion that this Court would not interfere with the proceedings taken by the Registrar, etc., under sections 137 to 141-A of the Indian Companies Act simply because some irregularities have been committed in the process. It is difficult for me to see how such an exercise of the discretion by this Court can be considered to be not judicial. There is no suggestion that the

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Registrar, the Public Prosecutor and the police are proceeding in this matter *mala fide*. They are only doing their duty in accordance with law with a view to investigate into offences that may have been committed by certain persons in relation to the Dalmia Jain Airways Ltd., and, if so, to bring the case before the criminal Courts. I am, therefore, of the opinion that if any irregularities have been committed by these officers while performing their duties, then those matters could not be considered to be fit matters for appeal to the Supreme Court. After all these proceedings are being taken to advance the cause of justice. It is possible that after investigation it may be found that no offence has been committed in relation to this Company by the petitioners or other persons connected with the Company, and it is also possible that if the investigation shows that the petitioners and other officers of the Company are innocent, then they would have been unnecessarily harassed, but such a possibility should not lead this Court to prevent the police from making the necessary investigation, particularly if the investigators appointed under section 138, Indian Companies Act, have already reported against the petitioners and others.

The question that now remains to be considered is whether the questions of law raised in this case would justify this Court in certifying the case to be a fit one for appeal. Now the phrase "the case is a fit one for appeal" is not defined in the Constitution nor in the Civil Procedure Code although that phrase has been long in use in connection with civil matters in section 109(c), Civil Procedure Code. The decisions under that section have been numerous, but no effort has been made in those decisions to define

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this phrase. In my opinion this phrase gives wide discretion to this Court to grant or refuse to grant the certificate even if on the merits a substantial question of law is involved and that the Court when granting the certificate should exercise its discretion so as to advance justice and prevent injustice. In any case it is well settled that the phrase means something more than a question of law or a substantial question of law and that the point involved must be of general importance at least and in fact, and in my opinion correctly, Shri Ved Vyas conceded that under this phrase something more than a substantial question of law is to be shown. He, however, argued and strenuously urged that the decision of the questions of law in this case is of public importance as the questions involved affect all persons who are connected with the administration of companies in this country. I see no force in this argument. If this argument be sound, then every case in which the construction of a section of the Indian Companies Act is involved must be held to be of public importance and a certificate must be granted under Article 134 (1) (c). If this had been the intention of the Constitution, then it would have been expressed in very different language in this Article. Moreover, if this argument is taken to its logical conclusion, then to every case in which a question of law is involved Article 134 (1) (c) must be attracted because a decision on every question of law affects a good number of citizens of India and can therefore be considered to be of public importance making Article 134 (1) (c) applicable to the decision of every such question of law. This is obviously incorrect. The substance of one point involved in the present case is this whether investigation into the affairs of a defunct company is limited to section 237 of the Indian Companies

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Act and whether the conduct of the alleged delinquent officers of such a company can be investigated by the police or the investigation is limited to section 237 of the Indian Companies Act only. It cannot be said that such officers are so numerous in this country that the matter should be considered of public importance.

Another point argued in the writ petition was that the Registrar was not competent to lodge the first information report and the police could not take any action on that information. If all the offences under the Companies Act are non-cognizable, as argued by the petitioners, then the police cannot initiate prosecution proceedings, and if and when that is done, it is open to the petitioners to raise this point and also to raise the point regarding the legality of the investigation before the trial Magistrate. Shri Ved Vyas then argued that in this case number of questions have been raised which have not yet been decided by any Court. That may be so, but merely because a novel or a new point is raised, it does not become a substantial question of law or of general importance and therefore fit one for appeal. It is true that number of questions of law have been argued in this case involving construction of various sections of the Indian Companies Act, Criminal Procedure Code and the Indian Penal Code but by itself this is not sufficient, as concerned by the learned counsel for the petitioners, to warrant grant of a certificate under Article 134 (1) (c).

As far as I can see the real purpose of the petitioners in this case is to prevent investigation into their conduct. The Dalmia Jain Airways

Ltd. have gone into voluntary liquidation. The shareholders suspect that the officers of the Company have been guilty of having committed offences by which they have been deprived of the amounts they had invested in the Company. The investigators appointed under section 138 (4) have reported that serious offences under various sections of the Indian Companies Act have been committed by certain officers of the Company. In such circumstances it appears to me that this Court should not, in the exercise of its discretion, certify the case to be a fit one for appeal from a judgment which was delivered on a petition under Article 226 of the Constitution of India.

For all these reasons I am of the opinion that this petition should be dismissed and I order accordingly.

BHANDARI, C. J. I agree.

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