CIVIL WRIT

Before Bhandari, C.J. and Bishan Narain, J.

MESSRS DALMIA JAIN AIRWAYS LIMITED AND OTHERS,—*Petitioners*

v.

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 3-D of 1954.

1955

Feb. 23rd

Indian Companies Act (VII of 1913)—Whether deals with all the offences in relation to companies and repeals the Indian Penal Code to that extent—Sections 137 to 141A—Investigation under—Whether excludes investigation by Police under Chapter XIV of the Code of Criminal Procedure—Right of police to investigate—Extent of—Section 237—Scope of—Whether excludes the application of sections 137 to 141A to companies in liquidation—Proceedings started under section 137 when the company was a going concern—Whether cease to be applicable on the company going into voluntary liquidation—Relative scope of sections 137 to 141A and section 237—Section 141A(2)—Proceedings under—Extent and nature of—Whether exclude operation of section 190(b) and (c) of the Code of Criminal Procedure—Successive investigations—Whether permissible—Regulations framed under section 248 of the Companies Act, 1913—Regulations 4 and 12—Whether bar investigation by the police—Interpretation of Statutes—Rules as to implied repeal stated.

Held, that the Companies Act does not deal with all the offences in relation to the companies and an accused person can be tried for offences described in the Indian Penal Code even when they relate to the companies and the Indian Penal Code has not been impliedly repealed to that extent. The argument that the Companies Act deals with offences similar to the offences dealt within the Indian Penal Code and therefore the provisions of the Indian Penal Code stand by necessary implication repealed is unsound as the Code has been made expressly applicable to acts which fall within the Code even though these acts may be offences under the Companies Act as well.

Held, that investigation under section 137 of the Indian Companies Act, 1913, is very different in scope from the investigation under the Code of Criminal Procedure and it is difficult to hold that by enactment of sections 137 to 141-A the legislature intended to abrogate the provisions contained in Chapter XIV of the Criminal Procedure Code when offences have been committed in relation to the companies. It is also not possible to say that the provisions of the Criminal Procedure Code cannot stand together with the provisions relating to investigation in the Companies Act and the proceedings under the Companies Act do not necessarily conflict with those under the Criminal Procedure Code. The proceedings started under sections 137 onwards are not exclusively or primarily criminal. The investigation under these provisions is only into the affairs of the company which may disclose several liabilities of the officers of the company or may disclose commission of criminal offences.

Held, that the police has statutory right to investigate into all cognizable offences without any judicial authority and into non-cognizable offences after obtaining judicial sanction and every citizen has a constitutional right to approach the police or Court for investigation, if his rights have been infringed by the commission of an offence.

Held, that proceedings under section 237 of the Indian Companies Act relate to offences in relation to the companies and these offences cover all kinds of offences for which accused persons may be criminally liable. It does not, however, exclude the operation of sections 137 to 141-A of the said Act and there is no reason for holding that proceedings under section 137 started when the company was a going concern, should be considered to have ceased to be applicable as soon as the resolution for the voluntary winding up of the company is passed and cannot be continued till criminal proceedings are started under section 141-A of the Act if necessary. Reading the two sections together and reading section 237 as proviso to section 137, it is clear that sections 137 to 141-A become inapplicable only when the offence appears to the liquidator or the Court during the administration of winding up proceedings and section 237 does not become applicable if the proceedings have already been started under section 137 onwards and voluntary liquidation supervenes. When proceedings have

already been started under section 137 then any discovery of an offence by the Inspectors cannot be said to be an offence which has come to light when the liquidator or the Court were dealing with the matter and were administering its affairs to wind it up, i.e., in the course of winding up.

Held further, that section 141-A (2) contemplates that after the officer concerned has come to the conclusion that certain persons ought to be prosecuted, he shall cause "proceedings" to be commenced. Clearly the proceedings contemplated are proceedings to be taken to further the officer's decision that certain persons should be prosecuted. The subsection further makes it obligatory on the part of certain persons other than the accused in the proceedings to render all assistance in connection with the prosecution. It is noticeable that the subsection makes a distinction between "prosecution" and "proceedings", and the assistance is to be rendered after section 141-A (2) has come into operation "in connection with prosecution and not in the course of prosecution" or "in prosecution proceedings". The words of this subsection do not exclude the possibility of the officer taking any proceedings which may be a stage earlier than the institution of a prosecution. The word "proceedings" is a word of very wide connotation and in any case it is much wider than "criminal prosecution" and there is no reason why its meaning should be restricted only to proceedings in prosecution. The legislature when using these wide words intended to lay down that it was open to the Registrar to start proceedings by laying information before the police or by filing a complaint in Court according to the circumstances of each particular case. Moreover the words used in sections 137, 141-A (2) and 237 are directory and not mandatory and the whole scheme of all these sections appears to be enabling rather than mandatory or exclusive and they do not take away the statutory right of the police to investigate into offences. Consequently under section 141-A (2) it is open to the officer to cause a report to be made to the police with the object that prosecution should be instituted. The operation of section 190 (b) or (c) of the Code of Criminal Procedure is also not excluded expressly or by necessary implication by section 141-A (2) of the Indian Companies Act, 1913, as there is no irreconcilable conflict between these two provisions of law.

Held, that there is no bar to police or any investigating authority to investigate matters successively. The purpose of investigation is to collect evidence and there is no reason why an investigating authority should be debarred from making successive investigations if the circumstances so require.

Held, that Regulations 4 and 12 made under section 248(2) of the Indian Companies Act, 1913, regulate the duties of the Registrar and relate to investigations and inquiries into all infractions of law made by a company in complying with any of the provisions of the Act and institution and conduct of prosecution is also to be done by him or by his nominee. These duties do not include investigation and prosecution under the ordinary criminal law. These Regulations, however, do not and cannot impliedly take away the powers of the police to investigate at the instance of the Registrar into any offence in relation to the companies whether described in the Act or in the Indian Penal Code. As the scope of investigation under the Companies Act is limited in its very nature to offences under that Act, it is only after the investigation under the Companies Act has been completed that the question arises under section 141-A(2) whether the officer should order further investigation or not.

Held, that the following rules of interpretation of statutes as to implied repeal are well-settled:—

(i) That the enactment should not generally be so construed as to lead to the conclusion that the legislature intended to repeal an important enactment without expressing an intention to do so unless the court is compelled to do so. Undoubtedly when by a special or local Act a new offence is created, then the accused must be dealt with in accordance with the provisions of the special or local laws.

(ii) That when a new statute makes an act already punishable under some former law and there is nothing in the later enactment expressly or by necessary implication to exclude the operation of the former one then the accused person can be proceeded against under either of the two enactments.

(iii) That it cannot be readily presumed that the Legislature intended to keep really contradictory enactments on the statute book.

Petition under Articles 226 and 227 of the Constitution of India and under sections 439 and 561-A of the Criminal Procedure Code, praying that appropriate Writs in the nature of Certiorari and Mandamus be issued cancelling the appointments of M/s. S. P. Chopra as an Inspector and Shri Pettigora, Advocate, as Public Prosecutor, under sections 138 and 141-A of Indian Companies Act and also praying that their reports together with the order, dated the 19th November, 1953, be quashed and also further praying that respondents be directed not to proceed with the investigations on the basis of F.I.R. No. 15/C.I.A., or to take any action on the reports or advice of M/s. S. P. Chopra or Shri Pettigora.

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

C. K. DAPHTRY, PORUS A. MEHTA, A. M. CHATTERJEE, D. S. CHAWLA, DALIP KAPOOR and H. R. KHANNA, for Respondents.

ORDER

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Bishan Narain, J.—This is a petition under Articles 226 and 227 of the Constitution of India and under sections 439 and 561-A of the Criminal Procedure Code by Dalmia Jain Airways Limited (hereinafter called the company) and its Directors and Secretary and Asia Udyog Limited.

The facts and circumstances leading to the present petition briefly stated are these. The Dalmia Jain Airways Limited was incorporated as a public limited company with an authorised capital of Rs. 10 crores and with a subscribed capital of Rs. 3½ crores sometime in July, 1946. The Registrar, Joint Stock Companies, received a letter dated the 20th of November, 1951, from one of the contributories complaining of the way the affairs of the company were being conducted. The

Registrar took action under section 137(6) of the Indian Companies Act and called upon the Managing Agents of the company to reply to the allegations made by the contributory by letter dated the 2nd of February, 1952. The Secretary of the company sent his explanation by letter dated the 25th of February, 1952, but the Registrar found the same to be unsatisfactory and by order dated the 1st of April, 1952 called upon the company to furnish further information on the matters specified in the said letter within ten days from the receipt of the order. In response to his order the Secretary by a letter dated the 28th of April, 1952, i.e., after expiry of 10 days asked for further time which request was rejected by the Registrar on the 7th of May, 1952. The Registrar thereafter acting under section 137(5) of the Companies Act reported to the State Government and informed the company to that effect by a letter dated the 10th May, 1952. The authorities then acting under section 138(4) appointed Messrs S. P. Chopra and Co., by an order dated the 7th of June, 1952 to investigate into the affairs of the company and report thereon, and this information was conveyed to the company in due course. In the meanwhile the company did not remain idle and after receiving the letter of the Registrar dated the 2nd of February, 1952, mentioned above, started another kind of proceedings.The company applied to the Registrar under section 131 of the Indian Companies Act for extension of three months' time for laying the accounts before the general meeting which in ordinary course was due to be done by the 31st of March, 1952, and in this application it was stated incidently that the management was planning to send the company into voluntary liquidation. A notice of an extraordinary general meeting to be held on the 13th June was published in the Times of India of

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18th May wherein a special resolution was proposed to be passed for voluntary liquidation, but it is significant that no reason was given in the notice to be published in the newspaper for taking this step. By that time the Registrar had reported the matter to the State Government. In the meeting held on the 13th June, 1952 the company resolved by a special resolution that it be wound up voluntarily and appointed Shri C. P. Lal Advocate as voluntary liquidator and this resolution was advertised in the Official Gazette of India, dated the 21st of June, 1952. It appears that one of the first acts of the voluntary liquidator was to write to the Registrar, Joint Stock Companies, to cancel the order of investigation passed in this case on the ground that the said order had become infructuous in view of the changed circumstances and therefore proceedings started under section 137 were no longer applicable to the company as it is now in the course of winding up. Next day the Registrar, however, informed the company that he did not agree with the representation of the voluntary liquidator in this matter. I may state here that the legal position taken up by the voluntary liquidator in this letter is the main and principal contention argued before us in this petition. The company thereupon filed a petition under Article 226 of the Constitution in this Court, on the 10th of September, 1952 for an order quashing the appointment of Messrs. S. P. Chopra and Company, *inter alia* on the grounds that after the company had gone into voluntary liquidation, sections 137 and 138 to 141-A were not applicable and therefore the proceedings taken under these sections were illegal and invalid. This petition was, however, dismissed *in limine* by a Division Bench of this Court. While the investigators were investigating the affairs of the company, it appears that two

applications by certain creditors for compulsory winding up of the company were filed in April and May, 1952, before the Company Judge, but these applications were dismissed, on the 3rd of December, 1952, and the order of dismissal passed by the Company Judge was maintained by the High Court. The day after the creditors' applications had been dismissed the voluntary liquidator made an application under sections 153 and 153-A of the Companies Act for sanction of a scheme under which broadly speaking the assets and liabilities of the company were transferred to the Asia Udyog Limited (another Dalmia concern) which firm undertook to pay certain amounts to the shareholders. The scheme was amended during the hearing of the petition and was ultimately sanctioned by the Company Judge as amended. As soon as the scheme was sanctioned, all the assets and liabilities of the company with the exception of a small sum of money are stated to have been transferred to the Asia Udyog Limited. Against the order of the Company Judge, however, four appeals were filed in this Court which are still pending.

Now to revert to the proceedings under section 137 of the Companies Act the investigators made their report, on the 27th of November, 1952, and sent it to the Central Government under section 141 of the Companies Act. According to this report certain persons were guilty of criminal offences in relation to the company and the Central Government referred the matter to Shri Pettigora Advocate (Public Prosecutor) and he caused the Registrar to file a first information report on the 18th of November, 1953 and it was stated in that report that *inter alia* offences under sections 406, 408, 418, 420, 465, 467, 469, 471 and 477-A of the Indian Penal Code were disclosed.

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Next day on the basis of this report the Assistant Inspector--General of Police applied under section 96 of the Criminal Procedure Code for issue of a warrant for search of documents in the places as per schedules filed with the application and also sought permission of the Court to investigate non-cognizable offences which were mentioned in the first information report. The petition was granted by the District Magistrate who issued warrants for searches simultaneously at 34 places. The searches were made on the 25th of November, 1953, and the police seized documents from various places. Thereupon the company, Asia Udyog Limited, amongst others filed a petition under Article 32 of the Constitution of India in the Supreme Court and this petition was directed against the order of searches made by the District Magistrate. This application, however, was dismissed by their Lordships of the Supreme Court and their decision is reported in *M. P. Sharma* v. *Satish Chandra* (1). While the petition under Article 32 of the Constitution of India was pending in the Supreme Court the present petition was filed in this Court for issue of writs of *certiorari* quashing the proceedings taken under sections 138 to 141-A and the order dated the 19th of November, 1953 and for writs of *manda mus* to stop the investigation on the basis of the first information report and for a writ of *manda mus* against Mr. Pettigora and the State Government not to act on the reports of Messrs. S. P. Chopra and Company under the Indian Companies Act or under the Criminal Procedure Code.

The learned Solicitor-General appearing for the respondents raised preliminary objections to the hearing of the petition on various grounds.

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

He urged that the petition really and in substance is directed against the issue of search warrants and as the Directors of the company have not been allowed to function under section 208-A (2), they have no grievance and, therefore, this petition, should not be entertained by this Court. It was also *inter alia* argued that the petition was premature as the investigation by the police may not result in the prosecution of the petitioners and that in any case the order of this Court dismissing the previous application, dated the 10th of September, 1952, must be deemed to have decided all the points raised in the present petition and, therefore, the various questions raised in this petition should not be entertained. It is, however, not necessary to discuss these various preliminary objections at length as we had heard the counsel for the parties on the merits and we have come to the conclusion that on merits this petition must be dismissed.

Shri G. S. Pathak, learned counsel for the petitioners has argued that the first information report filed by the Registrar and the application made by the police under section 96 Criminal Procedure Code in pursuance of this first information report are illegal and invalid. His arguments are that the Companies Act is a consolidating Act and all offences against property mentioned in the Indian Penal Code relating to companies have been impliedly repealed by the Companies Act as these offences have been specifically mentioned in the Companies Act, that all provisions relating to the investigation laid down in the Criminal Procedure Code are not applicable to offences relating to companies in as much as the Companies Act makes specific provisions for investigation into those offences, that even if the Indian Penal Code is not impliedly repealed, all offences

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relating to the companies can be investigated only in accordance with the provisions of the Companies Act, that the Companies Act makes all offences relating to companies as non-cognizable and, therefore, criminal proceedings can be started only by a complaint to Court with the result that the first information report filed in the present case as well as all the proceedings taken by the police in pursuance of that first information report are invalid in law, and that the investigation under the Companies Act can be made while the company is a going concern under section 137 of the Companies Act, on its winding up under section 237 of the Companies Act and as soon as a company, as in the present case, went into voluntary liquidation, section 137 automatically ceased to be applicable to the company and the proceeidngs taken thereafter under sections 138(4) and 141-A are invalid.

I proceed to deal with the first point raised by the learned counsel. His argument is that all matters relating to substantive or adjective laws have been laid down in the Companies Act and, therefore, for offences relating to companies, one must look only at the Companies Act and cannot refer to the Indian Penal Code which must be held to have been repealed to that extent. There is no force in this argument. Section 2 of the Indian Penal Code prescribes that all acts or omissions, contrary to the provisions of the Code or special and local laws, enumerated in this section and none others, are punishable as offences and section 5, which is a saving clause to section 2, lays down that offences mentioned in the local or special laws shall be punishable according to those Acts. Therefore, the Penal Code is general criminal law of this country. The Companies Act creates a number of offences some of which are peculiar to

the Act itself and some of which are also offences similar to the ones described in the Indian Penal Code and there are certain offences which are not mentioned in the Companies Act at all. Now the Companies Act, as rightly pointed out by Mr. Pathak, is an Act which purports to consolidate the statutes relating to companies. There is, however, no indication in this Act that the Legislature intended to amend and alter substantially the Indian Penal Code as applicable to the companies so as to abolish certain offences described in the Indian Penal Code and to change the elements of some of the offences mentioned in that Code. It is well-settled that it cannot be readily presumed that the Legislature intended to keep really contradictory enactments on the statute book, and there is no indication that it was the intention of the legislature to effect important changes in the criminal law in relation to companies without expressing any intention to do so. It would be observed that section 290 of the Companies Act repeals certain previous Acts and a part of the Arbitration Act, but there is no mention in the schedule of repealed Acts of the Indian Penal Code. Further there is nothing in the Companies Act to exclude the operation of the usual criminal law as mentioned in the Penal Code expressly or by necessary implication. In the present case an information has been made to the police by the Registrar for the prosecution of the petitioners under various sections of the Indian Penal Code. Some of those offences are cognizable and some non-cognizable. The learned counsel has argued that all these offences described in the Indian Penal Code are really covered by sections 236, 238, 238-A, 282, 282-A and 282-B of the Companies Act, but from a bare reading of these provisions of the Code and the Companies Act it is clear that the elements and

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ingredients of the offences defined and stated in these two Acts are different although some of them may be to a certain extent considered similar. Moreover it cannot be said that the offences mentioned and stated in the Companies Act cover all the possible offences for which a person may be held to be criminally liable in relation to companies under the Indian Penal Code. After all it is well-settled that the enactment should not generally be so construed as to lead to the conclusion that the legislature intended to repeal an important enactment without expressing an intention to do so unless the Court is compelled to do so. Undoubtedly when by a special or local Act a new offence is created and the Companies Act does create new offences, then the accused must be dealt with in accordance with the provisions of the special or local laws. It is, however, equally well-settled that when a new statute makes an act already punishable under some former law and there is nothing in the later enactment expressly or by necessary implication to exclude the operation of former one then the accused person can be proceeded against under either of the two enactments and this conclusion is supported by the provisions of section 26, General Clauses Act. Mr. Pathak has strongly relied on a decision of a Division Bench of this Court reported as *The State* v. *Gurcharan Singh* (1), in which the learned Judges after analysing the Prevention of Corruption Act, 1947, came to the conclusion that section 409 described in the Indian Penal Code was impliedly repealed by the Corruption Act so far as it was applicable to public servants. The learned Judges in the course of their judgment accepted the correctness of the position that an accused person could be tried either under section 409, Indian Penal Code, or

(1) A.I.R. 1952 Punjab 89

under section 5(1)(c) of the Prevention of Corruption Act, but they came to the conclusion that nevertheless section 409 must be considered to be impliedly repealed on account of three important changes that the Corruption Act introduced regarding sanction, the right of the accused to give evidence on oath in the course of the trial and the change in the nature and quantum of the sentence. The learned Judges relied on a passage from Maxwell reading—

> "Indeed, it has been laid down generally, that if a later statute again describes an offence created by a former one and affixes a different punishment to it, varying the procedure—giving, for instance, an appeal where there was no appeal before,—the earlier statute is impliedly repealed by it."

When an enactment creates new offences and provides a special procedure for prosecution of those offences then the prosecution, without complying with the procedure laid down under the enactment, may be barred, as was held in the cases reported in *In re. Kuppasami and others,* (1), and *The Queen* v. *Cubitt and others* (2). In the present case, however, it cannot be said that the Companies Act again describes the offences mentioned in the Indian Penal Code and therefore it is impossible to say that a different punishment has been affixed by the Companies Act to the offences mentioned in the Indian Penal Code. Further it is conceded before me that the Companies Act makes no change whatsoever in the procedure to be followed during the trial of the

(1) A.I.R. 1923 Mad. 339
(2) (1889) 22 Q.B.D. 622.

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case. I may state here that under section 278(3) of the Indian Companies Act all offences under the Act had been made non-cognizable but it expressly amends the Code of Criminal Procedure in this matter. I am therefore of the opinion that the decision reported in *The State* v. *Gurcharan Singh* (1), is clearly distinguishable and is of no assistance in the present case. I, therefore, hold that the Companies Act does not deal with all the offences in relation to the companies and an accused person can be tried for offences described in the Indian Penal Code even when they relate to the Companies and the Indian Penal Code has not been impliedly repealed to that extent. In any case it appears to me that the argument that the Companies Act deals with offences similar to the offences dealt with in the Indian Penal Code and therefore the provisions of the Indian Penal Code stand by necessary implication repealed is unsound as the Code has been made expressly applicable to acts which fall within the Code even though these acts may be offences under the Companies Act as well.

Mr. Patnak then contended that in any case Chapter XIV of the Criminal Procedure Code was not applicable to offences relating to companies, whether these offences are described in the Indian Penal Code or in the Companies Act, in view of the provisions of sections 137 and 237 of the Companies Act. There is no provision in the Companies Act expressly excluding the application of this Chapter of the Criminal Procedure Code to offences under the Companies Act. Now Chapter XIV deals with "Information to the police and their powers to investigate" while section 137 deals with investigations by the Registrar and

(1) A.I.R. 1952 Punjab 89

sections 237 lays down the procedure for prosecuting officers of the company in the course of winding up. The argument of the learned counsel is that proceedings prior to instituting or commencing criminal proceedings are laid down with minute particularity in the Companies Act and therefore the general powers of the police under Chapter XIV of the Criminal Procedure Code are by necessary implication excluded in accordance with the recognised rule that when a person is given authority to do a certain thing in a certain way, the thing must be done in that way or not at all and for this purpose the learned counsel has strongly relied on the decision of their Lordships of the Privy Council in *Nazir Ahmad* v. *King-Emperor* (1). Now reading section 1(2) and section 5, Criminal Procedure Code it is clear that subject to any special enactment in force all offences must be investigated, enquired into and tried in accordance with the provisions of the Criminal Procedure Code. It is conceded before us that the Companies Act does not lay down any provisions regarding trial of offences and therefore the Criminal Procedure Code governs the trial of offences whether they relate to companies or are created by the Indian Companies Act. It is, however, argued that the Companies Act lays down exclusive procedure for investigation of offences relating to companies under sections 137 and 237 and any other mode of investigation is excluded.

Now the police has statutory right to investigate into all cognizable offences without any judicial authority and into non-cognizable offences after obtaining judicial sanction, and every citizen, to my mind, has a constitutional right to approach the police or Court for investigation if

(1) A.I.R. 1936 P.C. 253

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his rights have been infringed by the commission of an offence. Section 5, Criminal Procedure Code, lays down specifically that all offences under the Code or under any other law shall be investigated, enquired into or tried in accordance with the provisions of the Criminal Procedure Code, unless it is regulated by any other enactment. The Companies Act prescribes a mode of investigation into the affairs of a company which may disclose criminal liability of certain persons connected with the company. The object and scope of investigation under the Companies Act is to enable the Registrar to bring to light offences which the aggrieved persons may not be able to do on account of their apathy or inability. Under section 137 of the Act, the Registrar is authorised to investigate into the affairs of a company on receipt of documents received by him or on receipt of a complaint by calling for the explanation from the company and when he finds that a company has failed to explain the position or the explanation offered is unsatisfactory, he may report the circumstances of the case to the Central Government [Section 137 (5)]. The Central Government may then appoint Inspectors to investigate into the affairs of the company under section 138 and if it appears to the Central Government that offences have been committed in relation to the company after receiving the report from the investigators then it shall refer the matter to the Advocate-General or Public Prosecutor, and if that officer considers that prosecution ought to be instituted he may cause proceedings to be instituted (Section 141-A). Under section 140 copy of the report of the Inspectors must be sent to the company, to the Registrar and to the complainant on request. The investigation under section 137 appears to me

to be very different in scope from the investigation under the Criminal Procedure Code and it is difficult to hold that by enactment of sections 137 to 141-A the legislature intended to abrogate the provisions contained in Chapter XIV of the Criminal Procedure Code when offences have been committed in relation to the companies. If the legislature intended to exclude investigation under Chapter XIV then it could have easily enacted that Chapter XIV shall not be applicable to investigations of offences in relation to companies. It is well-settled that Courts are not in favour of holding that a statute or section has been repealed by implication unless very strong reasons are forthcoming for that finding. Mr. Pathak has relied on the observations of Griffith, C.J., reported in 7 Commonwealth Reports 1, 7. The observations relied upon are—

> "So far as possible the Acts are to be read together and as forming one document and so far as there is anything in a later Act inconsistent with the provisions of the earlier Acts the later Act must be read as a proviso or exception to the former if possible. But if the provisions are not inconsistent the later must necessarily operate as a repeal of the former..... Where the provisions of a particular Act of Parliament dealing with a particular subject-matter are wholly inconsistent with the provisions of an earlier Act dealing with the same subject-matter then the earlier Act is repealed by implication. Another branch of the same proposition is this that if the provisions are not wholly inconsistent but may become inconsistent in their

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application to particular cases then to that extent the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act."

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The principles on which the Courts hold a section or an Act to be impliedly repealed are well-known and have been summarised by Maxwell (*vide* pages 163 onwards), and it is not necessary to repeat them here. Applying these tests to the present case it is not possible to say that the provisions of the Criminal Procedure Code cannot stand together with the provisions relating to investigation in the Companies Act and proceedings under the Companies Act do not necessarily conflict with those of the Criminal Procedure Code. The proceedings started under section 137 onwards are not exclusively or primarily criminal. The investigation under these provisions is only into the affairs of the company which may disclose several liabilities of the officers of the company or may disclose commission of criminal offences. It is, therefore, difficult to see how these proceedings can be said to be conflicting with the mandatory provisions of the Criminal Procedure Code, particularly when it is remembered that the object of proceedings under the Companies Act is absolutely different from the object of the investigation under the Criminal Procedure Code. It is, however, not necessary to deal with this aspect of the case in further detail as it was conceded before us that initially the proceedings were started under section 137 of the Companies Act which were legal and valid (subject to certain objections by the petitioners) and that the information lodged with the police in the

present case purported to have been done by the Registrar under section 141-A of the Companies Act.

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Now as regards section 237, it is no doubt true that proceedings under that section relate to offences in relation to the companies and these offences cover all kinds of offences for which accused persons may be criminally liable. In *re. London and Globe Finance Corporation, Limited,* (1), Buckley, J. while dealing with section 167 of the English Companies Act, 1862, which is similar in terms with section 237 of the Indian Companies Act, laid down the scope and object of the section in these terms—

> "But at the same time in this branch of the law the apathy of the public in setting the law in motion has, I will not say encouraged, but has at least failed to repress grievous frauds which have been committed and too often have gone unpunished."

He further observed while laying down the principles on which the power to institute prosecutions should be granted under section 167 of the Act—

> "It is obvious that no one legitimately can or ought to institute a criminal prosecution with a view to his personal profit. Neither should a prosecution be instituted from motives of vengeance against the offender. The motive of every prosecution ought to be to inflict punishment upon the criminal for the proper enforcement of the law and for

(1) (1903) 1 Ch. 728

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the advantage of the State, and with a view to deter others from doing the like. From the prosecution no doubt there may arise benefit to the prosecutor in the sense that, if he be a person interested in commerce, it may be to his advantage to enforce commercial morality."

This shows that the scope and object of investigation and prosecution under the Criminal Procedure Code are different from the ones under the Companies Act. It is, however, not necessary to decide in this case whether section 237 excludes investigation under Chapter XIV of the Criminal Procedure Code as admittedly in this case investigation has not taken place either under section 237, Indian Companies Act or under Chapter XIV of the Criminal Procedure Code. In fact the Registrar refused to take proceedings under section 237 even when the voluntary liquidator requested him to do so.

This brings me to the most important point argued before us at great length. The petitioners' case is that after the company went into liquidation, investigation for any offence relating to the company could be made only under section 237 and investigation carried out under section 137(6) of the Companies Act was incompetent even if investigation had been started under this section before the company went into liquidation.

The petitioner company went into liquidation by passing a resolution on the 13th June, 1952, after it had been informed of the appointment of Messrs. S. P. Chopra and Company, as inspectors under section 138 by the Central Government by the letter dated the 7th June, 1952. The petitioners' case, therefore, is that after the 13th June,

1952, proceedings under sections 137 to 141-A should have been dropped as suggested by the liquidator to the Registrar and proceedings under section 237 should have been initiated if the liquidator or the Court considered it necessary. Now admittedly the scope and object of section 237 is to lay down the procedure for investigating into offences in relation to companies. Under this section if it appears that a person has been guilty of any offence then the liquidator may report to the Registrar and if the liquidator fails to do so then the Court may on the application of any interested person or *suo motu* direct the liquidator to make the required report; the Registrar thereupon may inform the liquidator that no proceeding ought to be taken and in that case the liquidator may himself take proceedings subject to previous sanction of the Court. The Registrar may on the other hand place his papers before the Advocate-General or the Public Prosecutor and if so advised institute proceedings, or the Registrar may refer the matter to the Central Government for further enquiries into the affairs of the company and in that case the Central Government must investigate the matter. Proviso to section 237(6) lays down that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing and of being heard thereon by the Registrar. Mr. Pathak's case is that this section lays down in detail the procedure for investigating offences after the company has gone into liquidation and therefore it is not open to the Registrar to investigate the matter or to continue to investigate the matter under sections 137 to 141-A as these sections relate to investigations into the affairs of a going concern. The argument is that sections 137 to 141-A are in a way general provisions for investigation and section 237 is a special

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provision for investigation into offences in the course of liquidation and in case of inconsistency and conflict the provisions should be so construed as to preserve the safeguards granted to delinquent directors under section 237 even if it be necessary for the purpose of achieving it to hold that certain provisions of sections 137 to 141-A are impliedly repealed by section 237.

Now sections 137(6) and (7), section 141-A and part of section 141 were inserted in the Act by the Companies (Amendment) Act of 1936 and section 237 was substantially altered by this very amending Act and was further amended by Act II of 1938. Therefore sections 141-A and 237 were inserted in the Act at the same time. In the circumstances it is not easy to accept the suggestion that the legislature intended to repeal impliedly the provisions of section 141-A. Section 237 does not lay down a complete procedure for investigation and for initiating criminal proceedings so as to exclude the consideration of any other provision in the Act. This section 237 consisting of as many as 8 subsections does not lay down the procedure to be adopted after the Central Government has completed the enquiry under section 237 (3). The Central Government after receiving the report can only act under section 141 and under section 141-A. If the report is sent to the Registrar under section 141 then the Registrar may take action under section 237 (6). But there is no provision of law which debars the Central Government from taking action under section 141-A. There is no other provision in the Companies Act which can make the enquiry made by the Central Government under section 237 (3) effective unless the Central Government can invoke the provisions of the Criminal Procedure Code which I am assuming are not applicable in

the present case. It can, therefore, be not said that section 141-A is inapplicable to the proceedings taken under section 237. Mr. Pathak endeavoured to show that sections 137 to 141-A can have no application to companies after liquidation by arguing that the phrase 'in the course of winding up' in section 237 denotes point of time and is equivalent to 'after commencement of the winding up'. This latter term is used by the legislature in various sections, for example, sections 216, 227, 230(5) and 230-A, out of which sections 216 and 230-A(3) were inserted in the Amendment Act of 1936. There is no reason why this term should not have been used by the legislature in section 237 to bring out its intention clearly. According to Oxford Dictionary, the phrase 'in the course of' means 'in the process of' and that means that when, while the liquidator or the Court is dealing with the matter relating to conduct of the winding up proceedings, it appears to either of them that the affairs of the company should be investigated then action is to be taken under section 237. If investigation has already started under section 138 before liquidation then it cannot be said that it appears to the liquidator in the course of winding up that an offence has been committed. There is no doubt that section 237 has no application to a company which is a going concern but it neither expressly nor by necessary implication excludes the provisions of sections 137 to 141-A to the affairs of a company. There is no substance in Mr. Pathak's argument that by this construction of the two sections the accused person or delinquent directors will be deprived of the safeguards granted to them by the legislature. No reason has been suggested why a delinquent director of a defunct company which is in the process of winding up should be treated with greater consideration and leniency than a

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delinquent director of a going concern. In any case there is no special safeguard that is granted to the officers of a company under section 237 which is not available to them under section 137. Under section 137 the Registrar has the same powers as under section 237 with the only difference that he must hear the company before reporting the matter to the Central Government, but under section 237 he must hear the officers of the company after the matter has been reported or referred to him. This difference is due to different circumstances. Before a company goes into liquidation it is in possession of all the facts and documents relating to its affairs and it would be unjust to enter into investigation of the affairs of a going concern without first getting an explanation from its officers because such an ivestigation may jeoperdise its existence. After the company, however, has gone into liquidation such considerations do not arise. The liquidator is in possession of the books and not the officers of the company. After all the data has been collected it is only then that it is fair to call upon the accused persons to offer any explanation that they may care to offer to the Registrar. The intervention of Court which Mr. Pathak emphasised and considered as a very important safeguard under section 237 does not in fact exist. In certain cases the Court dealing with the winding up proceedings may get the matter referred to the Registrar, but it is not in every case that Courts come into the picture. Moreover, when the Court gets the matter referred to the Registrar 'if it appears to the Court' that some specified persons have been guilty of an offence it does not deal with the matter judicially and there is no provision that the Court must hear the accused before ordering the reference under section 237 (5). If at that stage the Court can hear the accused then it may result into a judicial enquiry or

rather a trial by the Company Judge. The proceedings before the Company Judge are not and cannot be in the nature of commitment proceedings at that stage. If at that stage the Court can hold a judicial enquiry then instead of being safeguard to the delinquent directors it may be most embarrassing and prejudicial to them. Moreover the power is given to the Court to act *suo motu* in this matter and such a power is not pertinent to the adoption of a judicial procedure. It is, therefore, clear that both under section 137 and under section 237 it is the Registrar who takes the explanation of the company or the suspects and it cannot be said that the accused persons have special safeguards under section 237 which are not available to them under section 137. Moreover the Company Judge has not been given any power under section 237 to order that no prosecution should take place. A Company Judge cannot prevent a prosecution of delinquent directors and others under section 237 of the Indian Companies Act. It follows from all this discussion that it cannot be said that section 237 is in conflict with section 137 and as a provision applicable to a company in liquidation must exclude the application of section 137.

It was then urged that there is a danger of conflict of authorities if the Registrar continues to proceed under section 137 even when winding up proceedings have supervened during the enquiry. I, however, see no such possibility. Under section 237 (4) if the Registrar does not wish to prosecute then the liquidator may with the sanction of the Company Judge do so. This only enables a liquidator in certain circumstances to launch a prosecution in spite of the Registrar's unwillingness. Section 237 does not authorise the liquidator or the Court to prevent the Registrar from taking criminal proceedings against an alleged offender.

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Let us look at this matter from another angle. Now it is urged that section 137 does not and cannot apply to investigations after winding up of the company but that appears to be incorrect. Section 137 (7) which was inserted in the Companies Act in 1937 lays down that section 137 (1) applies to liquidators. If that be so then section 137 is applicable to companies after liquidation. There appears to be no reason for holding that under section 137 (7) the Registrar cannot call upon the liquidator to produce documents under section 137(1). Moreover under section 137 (6) a contributory can make a representation to the Registrar. The word 'contributory' is a word which is applicable to members of a company only after it has gone into liquidation and is not a very suitable term for describing a past or present shareholder. Taking into consideration that the Central Government can take advantage of sections 141 and 141-A in an inquiry held under section 237 (5) and under the provisions of section 237(6) and (7) and the provisions of section 137, it appears to be clear that the legislature did not intend to exclude the applicability of the provisions of sections 137 to 141-A to a company which has gone into liquidation. In the present case we are concerned with section 237 so far as it relates to voluntary liquidation. There is no provision in the Act which automatically stays proceedings under section 137 or any other section when the company goes into voluntary liquidation although the legislature has provided for such a stage in the case of compulsory winding up (section 171 of the Companies Act). That being so, there is no reason for holding that the proceedings initiated under section 137 should not continue after the company has gone into voluntary liquidation. It was urged by Mr. Pathak that under section 216 it is open to the Court to stay

proceedings pending under section 137 after the commencement of voluntary liquidation. This section, however, only gives discretionary power to a Company Judge to stay proceedings if in his opinion it is necessary to do so in the interests of justice. He may or may not have jurisdiction to exercise this power to stay proceedings taken under section 137 but admittedly no such order has been passed in the present case. If it is open to a Company Judge to stay proceedings under section 137 after the commencement of voluntary liquidation then it follows that he has also the power to allow proceedings to continue under that section and if that be so, the contention of the learned counsel that proceedings under sections 137 to 141-A cannot be taken after the commencement of voluntary liquidation falls to the ground.

The provisions relating to investigation of an offence are matters of procedure and they should be so construed as to carry out effectively the legislative intention to promote speedy and effective investigation. If it be held that the company could delay investigation into its affairs and into the conduct of its officers by merely going into voluntary liquidation then it would hamper investigation. By construing the section in such a way as to nullify proceedings taken under sections 137 to 141-A on voluntary liquidation of the company and to compel institution of fresh proceedings under section 237 will merely facilitate evasion of speedy investigation by the company and will enable delinquents to profit by their own wrongs, and it is not open, as stated by Maxwell, to a party to plead in his own interest a self-created necessity and thereby take advantage of his wrong. In the present case it is fairly clear from the conduct of the company's officers that one of the main purposes of sending the company

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into voluntary liquidation was to avoid investigation under section 137, and as stated above one of the first acts of the liquidator was to call upon the Registrar to withdraw proceedings under this section.

Therefore, there is no reason for holding that proceedings under section 137 started when the company was a going concern should be considered to have ceased to be applicable as soon as the resolution for the winding up of the company voluntarily is passed and cannot be continued till criminal proceedings are started under section 141-A of the Act if necessary. Reading the two sections together and reading section 237 as a proviso to 137 it is clear that sections 137 to 141-A become inapplicable only when the offence appears to the liquidator or the Court during the administration of winding up proceedings and section 237 does not become applicable if the proceedings have already been started under sections 137 onwards and voluntary liquidation supervenes. When proceedings have already been started under section 137 then any discovery of an offence by the Inspectors cannot be said to be an offence which has come to light when the liquidator or the Court were dealing with the matter and were administering its affairs to wind it up, i.e., in the course of winding up. I am, therefore, of the opinion that the proceedings taken after the 13th of June in the present case in accordance with sections 138 to 141-A were legal.

Finally, it was urged that the powers exercised under sections 137, etc., were not exercised in accordance with law and the procedure adopted was defective. The objections raised were—

(a) that there was no representation made to the Registrar as contemplated in

section 137 (6) that the business of the company was carried on for a fraudulent purpose;

(b) that Messrs, S. P. Chopra and Co., being a firm could not have been validly appointed Inspectors under section 138;

(c) that the report of the Inspector was made after they had ceased to be Inspectors and therefore no action could be taken thereon;

(d) that the report on which the action has been taken is only an interim report which is not permissible in law; and

(e) that the Registrar could not lodge a report to the police but could only file a complaint in a Court and therefore any proceedings taken in pursuance of that information are illegal.

The representation under section 137 (6) was made to the Registrar by a contributory by letter dated the 20th of November, 1951, in para 2 of that letter reads—

"2. Investment in fully paid shares of joint stock companies. On receipt of the Balance Sheet under reference I enquired from the Dalmia Jain Airways Ltd., to clarify the name of Joint Stock Companies, whose shares they hold for such a huge figure and also to quote the current market value of the shares held. But no satisfactory reply is available. It is certainly not satisfying merely to state in the Balance

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Sheet that 'INVESTMENT HAS BEEN MADE IN FULLY PAID UP SHARES OF JOINT STOCK COMPANIES' for the simple reason that the bought shares might be selling in the market at a huge discount. For instance I bought Dalmia Jain Airways shares at Rs. 10-4-0 each and now they are selling in the vicinity of Rs. 3 each. Consequently, it will be wrong on my part to show in my Balance Sheet that I hold Joint Stock Companies shares (paid up) to the value of Rs. 1,025 even if I do so, I must put a note saying that the present value of the shares is in the vicinity of Rs. 300.

It will be observed from the above that the total of both the above mentioned items comes to Rs. 3,07,72,470 against the paid up capital of Rs. 3½ crores which means that almost the whole of the capital money has been blocked whereas expenses continue. On the face of all this the Managing Agents continue to receive Rs. 90,000 every year as their office allowance.

It is hoped that you will kindly do something for the safeguard of the interest of the shareholders concerned."

This letter in the opinion of the Registrar contained a sufficient material to make him take action under section 137(6) and it cannot be said that he was wrong in this opinion. The letter gives details which suggested to the Registrar that allegations of fraud had been made in that representation and it is neither necesssary nor open to us

to sit on judgment on the opinion of the Registrar. Mr. Pathak then contended that a firm as such could not be appointed as Inspectors under section 138 although he conceded that more than one Inspector could be appointed to investigate into the affairs of the same company and his argument was that a firm could not be appointed in asmuch as it is necessary for the Inspectors to have personal qualifications to carry out the inspection. He also argued that the legislature would have used the word 'firm' in this connection as it did in section 144 if it was intended to allow a firm to be appointed. But, there is, however, no evidence nor any suggestion that any member of the S. P. Chopra and Co., is not qualified to act as Inspector under section 138. I have, therefore, no hesitation in repelling this contention. The next objection was that the report was made after the Inspectors' appointment had been cancelled. The Inspectors were appointed on the 7th of June, 1952. It appears that by letter dated the 26th November, 1952 Government wrote to the Registrar that the appointment of S. P. Chopra and Co., is cancelled, and a copy was sent to the firm which was received by the firm on the 27th November, 1952. On the 27th November, 1952 the firm sent the report to the Central Government. On the 29th December, 1952 the Government cancelled the orders dated the 26th November 1952, on the ground that Messrs. S. P. Chopra and Co., have submitted their report. In such circumstances it cannot be held that the Government could not take any action under section 140 or 141-A on the report dated the 27th November, 1952. There is no force in the suggestion that the report being an interim report could not be considered to be a valid report. There is no reason why the Inspectors cannot make an interim report on which the Government may act, and in

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any case the report dated the 27th of November, 1952 is a final report as its perusal clearly shows.

The main argument of Mr. Pathak in connection with the validity of the proceedings taken under section 141-A was that under that section the Registrar could not lodge a report with the police but should have filed a complaint in Court, and I proceed to examine this aspect of the matter. Mr. Pathak argued that under section 141-A the proceedings are to be instituted in a case where in the opinion of the officer prosecution should be instituted and the argument is that the intention was that proceedings are to be instituted in Court which necessarily is after investigation has been completed and under section 137 only a complaint could be filed in Court by the Registrar. It was further argued that under section 190, Criminal Procedure Code, it is not open to the police to submit a charge-sheet and therefore investigation by the police and information lodged with it are futile and incompetent. It is further urged that the Criminal Procedure Code, Part V, Chapter XIV, relates to investigations while Part VI, Chapter XV relates to proceedings and the words 'institute proceedings' in the Companies Act must be held to have been used in the same sense as are used in the Criminal Procedure Code so far as these words relate to criminal matters. Section 141-A (2), however, contemplates that after the officer concerned has come to the conclusion that certain persons ought to be prosecuted he shall cause 'proceedings' to be commenced. Now this subsection does not state the kind of proceedings that are to be commenced, but it is clear that they must be taken to further the officer's decision that certain persons should be prosecuted. Further the subsection makes it obligatory on the part of

certain persons other than the accused in the proceedings to render all assistance in connection with the prosecution. It is noticeable that the subsection makes a distinction between 'prosecution' and proceedings, and the assistance is to be rendered after section 141-A (2) has come into operation 'in connection with prosecution' and not in the course of prosecution or 'in prosecution proceedings'. The words of this subsection do not exclude the possibility of the officer from taking any proceedings which may be a stage earlier than the institution of a prosecution. The word 'proceedings' is a word of very wide connotation and in any case it is much wider than 'criminal prosecution' and there is no reason why its meaning should be restricted only to proceedings in prosecution. It appears to me that the legislature when using these wide words intended to lay down that it was open to the Registrar to start proceedings by laying information before the police or by filing a complaint in Court according to the circumstances of each particular case. Moreover it will be noticed that the words used in sections 137, 141-A (2) and 237 are directory and not mandatory and the whole scheme of all these sections appears to be enabling rather than mandatory or exclusive (vide *Emperor* v. *Vishwanath B. Patel and others* (1), and in my opinion they do not take away statutory right of the police to investigate into offences. It is true that the Criminal Procedure Code, Chapter XIV deals with the powers of the police to investigate cognizable cases without the intervention of Court and to investigate non-cognizable cases with the order of a Magistrate, while Chapter XV deals with a subsequent stage, i.e., proceedings in Court. This

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Chapter, however, is headed "Proceedings in prosecution" which means that the Chapter deals with proceedings which are limited to prosecution proceedings and therefore the heading in B to Chapter XVI "Conditions requisite for initiation of proceedings" is necessarily limited to proceedings in prosecution in this context and proceedings taken to investigate an offence therefore are not covered by the use of the word 'proceedings' in that context. Section 4(1), Criminal Procedure Code, defines investigation as 'proceedings for collection of evidence. In this view of the matter it is clear that under section 141-A (2) it is open to the officer to take proceedings for collection of evidence with the object of instituting prosecution and it is for him to decide whether he should institute prosecution proceedings or lay information before the police for starting investigation proceedings. Obviously the decision will be based on the nature of the offence alleged in a particular case and in some cases he may consider it advisable on the basis of an enquiry by the Central Government to file a complaint in Court and in other cases he may consider it advisable to get the matter further investigated by the police. If the intention of the legislature was that the proceedings under section 141-A (2) must be taken by a complaint to Court and by no other proceedings then the words used by it in the subsection are peculiarly unhappy. The legislature would have in that case used the word 'complaint' which is a well-known term and has in fact been defined in the Criminal Procedure Code,—*vide* section 4(h). Consequently it is impossible to accept the argument that the operation of section 190 (b) or (c) of the Criminal Procedure Code is excluded expressly or by necessary implication by section 141-A (2), and I am unable to see any irreconcilable conflict between these two provi-

sions of law. It was then argued that if the police can still investigate after a report has been made to it under section 141-A (2) then the result will be that there will be successive investigations resulting in undue hardship to suspects and it will be open to prosecuting agencies to get investigation made under section 137 or under the Criminal Procedure Code at their sweet will and that such a construction of these sections will introduce discrimination in the procedure which must be avoided. There is, however, no force in these arguments. There is no bar to police or any investigating authority to investigate matters successively. After all the purpose of investigation is to collect evidence and there is no reason why an investigating authority should be debarred from making successive investigations if the circumstances so require. Moreover the nature of the enquiry under the Companies Act is different in its scope from the investigation under the Criminal Procedure Code, and in a particular case inquiry under the Companies Act may be considered to be not as effective as an investigation under the Criminal Procedure Code. In the circumstances, if the police is allowed to investigate into the matter then I am unable to see how intervention of the police introduces discrimination in procedure. Mr. Pathak has invited our attention to the case reported in *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri and another* (1), in which their Lordships of the Supreme Court had laid down the law thus—

> "It is well settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure: in other words,

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the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position."

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Their Lordship of the Supreme Court in another case reported in *Shree Meenakshi Mills Limited* v. *Sri A.V. Visvanatha Sastri and another* (1), have observed—

> "The implication of the Article (14) is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination."

Applying these tests I have no doubt in my mind that the construction placed by me on these provisions of law does not introduce discrimination in procedure.

After a complaint is filed in Court the Magistrate under section 202, Criminal Procedure Code, may direct investigation by a police officer and it was not argued by Mr. Pathak that after a criminal Court is seized of the matter by a complaint under section 141-A (2) then it cannot order the police to investigate the case any further. In fact it was conceded before us that after proceedings have started in a criminal Court the procedure laid down in the Criminal Procedure Code is applicable. Therefore, even if section 141-A (2) is construed as suggested by Mr. Pathak, investigation by the police is not entirely excluded.

(1) 26 I.T.R. 713

Mr. Pathak then approached the matter from another angle. He argued that under section 278, sub-clause (3) of the Companies Act all offences against the Companies Act are deemed to be non-cognizable and under Regulations 4 and 12 made under section 248(2) of the Act the Registrar or a person authorised by him are the only persons who can initiate and conduct criminal investigation and prosecution and if under section 141-A (2) proceedings by a report to the police can be started then section 278 (3) and Regulations 4 and 12 will become redundant and futile. I regret I am unable to see any force in this argument. Offences described in the Act have been made non-cognizable by section 278 (3) of the Act, but this does not mean that offences in relation to companies not described in the Act must also be deemed to be non-cognizable. Section 141-A (1) uses the words 'criminal liability', and Mr. Pathak in another connection had urged that these words include all offences whether described in the Companies Act or in the Indian Penal Code. It is also significant that in this particular subsection the words 'criminal liability' are used and not the word 'offences against this Act'. It appears to me that these words of a wider import were deliberately used by the Legislature to include offences described in the Indian Penal Code. If that be so then offences under the Indian Penal Code cannot be deemed to be non-cognizable under section 278 (3) of the Companies Act. Regulations 4 and 12 made under section 248 (2) read—

> "4. The Registrar shall take notice of omissions to file or register documents on the due date. He or any person duly authorised by him may institute and conduct any prosecution under the Act.

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12. The Registrar or his nominee shall institute such inquiries and investigations at the offices of registered companies or otherwise as shall be necessary to obtain information or evidence respecting defaults or respecting any infractions of the law made by such companies in complying with any of the provisions of the Act."

These Regulations regulate the duties of the Registrar and relate to investigations and inquiries into all infractions of law made by a company in complying with any of the provisions of the Act and institution and conduct of prosecutions is also to be done by him or by his nominee. These duties do not include investigation and prosecution under the ordinary criminal law. In the present case investigation was to be made under section 137 (6) of the Act as laid down in Regulation 12 and then under section 137 (5) the Registrar had to, if he considered it necessary, report to the Central Government. This has been done in the present case in accordance with law. These Regulations, however, do not and cannot impliedly take away the powers of the police to investigate at the instance of the Registrar into any offence in relation to the companies whether described in the Act or in the Indian Penal Code. The nature of investigation under section 137 of the Act, as I have already stated, which is held by the Registrar is of a very different nature from the one which is held under the Criminal Procedure Code. As the scope of investigation under the Companies Act is limited in its very nature to offences under that Act it is only after the investigation under the Companies Act has been completed that the question arises under section 141-A (2) whether the officer should order further investigation or not.

For these reasons I am of the opinion that under section 141-A (2) it is open to the officer to cause a report to be made to the police with the object that prosecution should be instituted. It may be noted that in the present case the Registrar at the instance of the officer has reported to the police and the police has taken the permission of the Magistrate to investigate into non-cognizable offences as laid down in section 155 (2) Criminal Procedure Code. Therefore the proceedings that have been taken are in accordance with law.

Finally I may state that whether preliminary inquiry should be held under section 137 or under section 237 of the Companies Act it cannot be said that the petitioners have any substantial grievance in the present case. In this case the machinery under section 137 has been employed, a detailed inquiry has been held by the Inspectors and according to their report serious offences appear to have been committed by the officers of the company. The first information report lodged with the police therefore cannot be considered to be a frivolous one and it appears to me that it would not be proper for this Court to interefere at this stage as such an interference is bound to hamper and obstruct investigation. The remarks of their Lordships of the Privy Council made in *Emperor* v. *Khawaja Nazir Ahmad* (1), fully apply to this case. These remarks are—

> "In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their

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Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491, Criminal Procedure Code, to give directions in the nature of *habeas corpus*".

Moreover the petitioning company has already gone into liquidation and therefore the investigation cannot affect the finances of the company. The officer under section 141-A (2) has already decided that in the circumstances of the company and considering the facts of the case prosecution should be instituted. The investigation may ultimately not result in the prosecution of the suspects. The jurisdiction vested in this Court under Article 226 of the Constitution or section 439 or section 561-A of the Criminal Procedure Code is discretionary and even if I had found that some irregularities had been committed in all these proceedings I would not, in the exercise of my discretion, have interfered with the investigation at this stage.

For these reasons I see no force in this petition and dismiss it.

Bhandari, C. J. BHANDARI, C.J.—I agree.