

In the matter of the Indian Companies Act VII of 1913 and of the Kaithal Grain and Bul-lion Exchange, Limited, Kai-thal. *In re Calvert ex-parte Calvert* (1), in which it was held by Wright, J., that the rule that on a proof for a judgment debt the Court will go behind the judgment and ascertain whether there is a prov-able debt, does not apply to a proof for assessed taxes. This being a bankruptcy case, and I find that this decision was followed by a Division Bench of the Lucknow Court—Bennett and Ghulam Hassan. JJ., in *Messrs Dinshaw, and Co. v. The Income-tax Officer, Lucknow* (2), in which it was held that where no statement of account is filed, and the notice for production of accounts is not complied with and consequently a company is assessed on an estimated income under section 23(4) against which there is no appeal and it becomes final, it cannot be challenged or reopened subsequently by the liquidator of the company in liquidation proceedings unless there is reason to think that the assessment is vitiated by fraud. This was a case in which although all the dates are not given in the judgment it is clear that the winding-up order of the company followed fairly soon after the assessment in question which was for the year 1934-35 and the company was wound-up on the 15th of October 1935. The present case for not re-opening the assessments is even stronger.

Falshaw, J.

In the circumstances I consider that the claim of the Income-tax Officer was wrongly rejected by the Liquidator and I accordingly order him to recognize the claim of the Income-tax Officer for Rs. 16,574-1-6 shown in the 3rd part of the List A. As I understand that the assets of the company are at present negligible I make no order as to costs.

REVISIONAL CRIMINAL

Before Harnam Singh, J.

SHRI BALWANT RAI,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 121-D of 1953

Code of Criminal Procedure (Act V of 1898)—Section 514—Proceedings under—Nature of—Questions for decision stated—Person proceeded against—Whether an accused person—Provisions of Section 342—Whether applicable.

1953

August 17th.

(1) (1899) 2 Q.B. 145

(2) I.L.R. 16 Luck. 599

Held, that in proceedings under section 514 of the Code there is no inquiry into or trial for an offence and the penalty paid by the person bound by the bond is not fine. The questions that arise for decision in such proceedings are:—

- (1) Whether the surety bond has been forfeited; and
- (2) whether the person bound by such bond should be ordered to pay the penalty mentioned in the bond or any portion of that penalty.

Held, that the person to whom notice is given to show cause why the penalty mentioned in the bond should not be exacted is not an 'accused' person within section 342 (4) of the Code of Criminal Procedure and the provisions of that section have no application to proceedings under section 514 of the Code.

Petition under section 439 of Criminal Procedure Code for revision of the order of Shri H. S. Dhillon, Additional District Magistrate, Delhi, dated the 20th July 1953, modifying that of Shri G. L. Mittal, Magistrate, 1st Class, Delhi, dated the 10th June 1953, imposing penalty of Rs 2,000.

FAQIR SINGH, for Petitioner.
KANWAL KISHORE, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Criminal Case No. 84/3 Harnam Singh, of 1953, Balwant Rai stood surety for Shrimati J. Bimla Wati on the 30th of October 1952.

By the surety bond Balwant Rai agreed to pay Rs. 2,000 to the Government of India by way of penalty in case Shrimati Bimla Wati failed to appear on any date fixed in the case.

Shrimati Bimla Wati failed to appear in Court on the 20th of February 1953.

On the 20th day of February 1953, the Magistrate recorded a formal order that the bond was forfeited and gave notice to the surety to show cause why the penalty mentioned in the bond should not be exacted.

On the 10th of June 1953, the statement of Balwant Rai was recorded without oath on the footing that he was an accused person. No other evidence was examined in the case.

Shri Balwant Rai v. The State
 ———
 Harnam Singh, J.

From the provisions of section 514 of the Code it is plain that a person proceeded against under that section is a person bound by the surety bond to pay the penalty when the conditions of the bond have not been observed. Proceedings are taken under section 514 of the Code for the recovery of the penalty. In my opinion, penalty paid by the person bound by the bond is not fine.

By the Code of Criminal Procedure (Amendment) Act, XVIII of 1923, section 340 of the Code of Criminal Procedure, 1898, hereinafter referred to as the Code, was amended. The old section which enacted "every person accused before any Criminal Court may of right be defended by a Pleader" was substituted by the amended section 340 of the Code. The amended section reads:—

"340. (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under section 107, or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings."

From the provisions of section 340(2) of the Code it is plain that a person against whom proceedings are instituted under the Code is not necessarily an accused person. In cases falling under section 514 of the Code the questions that arise for decision are:—

(1) whether the surety bond has been forfeited; and

(2) whether the person bound by such bond should be ordered to pay the penalty mentioned in the bond or any portion of that penalty.

That being the position of matters, it cannot be sustained that the person to whom notice is given to show cause why the penalty mentioned in the bond should not be exacted is an 'accused' person within section 342(4) of the Code of Criminal Procedure which provides that no oath shall be administered to the accused.

Shri Balwant
Rai
v.
The State
—
Harnam Singh,
J.

Section 342(1) of the Code provides, *inter alia*, that an accused person may be questioned under that section "for the purpose of enabling him to explain any circumstances appearing in the evidence against him and the answers given by the accused may be taken into consideration in the inquiry or trial, and put in evidence for or against him in any other inquiry into or trial for, *any other offence* which such answers may tend to show he has committed." Clearly, section 342 of the Code has no application to proceedings under section 514 of the Code. In proceedings under section 514 of the Code there is no inquiry into or trial for an offence.

For the foregoing reasons, I find that illegality occurred in proceedings under section 514 of the Code on the 10th of June 1953, when the Court examined Balwant Rai on the footing that he was an accused person. That being so, I quash the proceedings that have been taken in the Court of first instance from the stage the illegality occurred and remand the case for a fresh enquiry.

Balwant Rai, surety, will be given opportunity to examine such evidence as he may be advised to establish any plea that he may take to show that the penalty should not be exacted.

In the result, I allow Criminal Revision No. 121-D of 1953, set aside the order passed by the Magistrate on the 10th of June 1953, and order a fresh enquiry under section 514 of the Code in accordance with the observations made above.