

# THE INDIAN LAW REPORTS

## PUNJAB SERIES

### CRIMINAL MISCELLANEOUS

Before R. P. Khosla, J.

SHAUKAT ALI KHAN.—*Petitioner.*

*versus*

THE STATE OF PUNJAB,—*Respondent.*

**Criminal Miscellaneous No. 594 of 1958.**

1959

Nov. 19th

*Constitution of India (1950)—Articles 362 and 363—Covenant of merger between the Rulers of erstwhile States and the Union of India—Article 30—White paper on Indian States—para 240—Ruler of a former covenanting State—Whether entitled to immunity from appearance in courts—Code of Criminal Procedure (Act V of 1898)—S. 503—Scope of—Whether covers the case of a ruler of a former State.*

*Held*, that the signatory Rulers to the covenant of merger of their States in the Indian Union enjoyed sovereign powers in their own territories before integration and could not, in view of the provisions of Article 13 of the covenant, para 240 of the White Paper on Indian States and Clause 21 of the Memorandum of personal privileges of the Rulers, be subjected to the ordinary process of the Municipal Courts. Article 362 of the Constitution of India clearly furthered the protection guaranteed under the covenant or agreement as respects the personal rights and privileges of the Rulers of the integrated States. Article 363 of the Constitution was still a step one further in the scheme envisaging protection of all those rights and privileges, for nothing arising from

or relating to the covenants or agreements was made justiciable. It is thus plain that the sovereign power at the time of integration extended solemn assurance which later received constitutional recognition guaranteeing the personal privileges and rights including protection from ordinary process of Courts to the Rulers of the integrating States. Such a Ruler is entitled to be examined on commission.

*Held*, that section 503 of the Code of Criminal Procedure, circumscribes the powers of a Court to issue commission to examine a witness and there is no discretion exercisable outside the said provisions. This provision does not cover the case of a Ruler of a former State as it does not answer to the requirements of the term "inconvenience" used therein.

*Application under Section 369 read with Section 561-A of the Criminal Procedure Code on behalf of H. H. Nawabi Iftikhar Ali Khan praying that order passed in Cr. R. No. 835 of 57 be recalled and the case be redecided after hearing the applicant.*

M/S NURUDDIN, M. SULTAN YAR (K) KHAN and H. L. SIBAL,  
Advocates for the Petitioner.

M/s S .M. SIKRI, Advocate-General, and KARTAR SINGH KAWATRA, Advocate, for the Respondent.

#### ORDER.

R. P. Khosla, J. · R. P. KHOSLA, J.—This petition has arisen from my order, dated the 1st May, 1958, in Criminal Revision No. 835 of 1957.

To appreciate the points agitated, it is necessary to set out the relevant facts. A first information report under section 408, Indian Penal Code, was lodged at the instance of Fida Ahmed, Private Secretary to the Nawab Iftikhar Ali Khan of Malerkotla, alleging commission of criminal breach of trust by the accused (Shaukat Ali Khan), who was at one time in the service of the Nawab. During the proceedings in the trial Court (Magistrate 1st Class, Malerkotla) the prosecution

wanted to examine Nawab Iftikhar Ali Khan as a witness and, it appears, at the instance of the counsel for the State a letter of request was issued to the Nawab for appearing in Court on or about 3rd October, 1956. An application was moved on behalf of the Nawab representing that he was immune from the ordinary process of the Court, exemption from appearance in Court accordingly was sought and it was prayed that he should be examined on commission. The prayer was allowed and the Nawab was on 8th October, 1956, ordered to be examined on commission. The said order directing examination on commission was attacked by the accused in revision before Sessions Judge, Barnala. The learned Sessions Judge, while affirming the order of the trial Magistrate, dismissed the revision. From the order of the learned Sessions Judge, the accused came up to the High Court in Criminal Revision No. 835 of 1957. Nawab Iftikhar Ali Khan was not impleaded as a party either before the learned Sessions Judge or in the High Court. On the grounds that no immunity attached to the Nawab, which was conceded by the counsel for the State and that provisions of section 503 of the Code of Criminal Procedure did not protect him, the revision was allowed and the order of the learned Magistrate was set aside. In the result, the Nawab was directed to appear in Court for giving evidence as a prosecution witness.

The learned counsel appearing for the applicant Nawab Iftikhar Ali Khan in the present proceedings raised two-fold contentions, namely, that the order of this Court, dated the 1st May, 1958, in Criminal Revision No. 835 of 1957, was an *ex parte* order as respects the Nawab, for he was never before this Court, nor had he been made a party to the proceedings; and since the order affected

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his privileges vitally and was prejudicial to his rights and interests, the order be recalled, reopened and the applicant be heard on merits. It was otherwise urged that complete immunity attached to the Nawab, in view of the covenant executed at the time Malerkotla integrated into Patiala and East Punjab States Union, and the learned counsel for the State appearing in Criminal Revision No. 835 of 1957 had not properly defended the interests of the Nawab for erroneously having conceded the point. Apart from the question of immunity, it was contended that provisions of section 503 of the Code of Criminal Procedure also afforded protection.

At some earlier stages of the hearing, the learned counsel appearing for the State suggested that the order, dated the 1st May, 1958, being a judgment in a criminal matter could not be reviewed, but the Advocate-General, who on the directions of the Court in view of the importance of the matter had appeared, conceded that the questioned order is not a judgment and the same could be recalled without involving any considerations relating to review of a judgment in criminal cases.

The question that remains to be determined thus is whether any immunity attached to the Nawab as respects the matter in question, and that apart, whether provisions of section 503 of the Code of Criminal Procedure independently extended protection necessitating issuance of a commission.

The learned counsel for the applicant urged that the immunity had been guaranteed by the Constitution of India. Submission was that at the time of the integration of the Patiala and East Punjab States Union, the Rulers of the integrating

States, the Nawab of Malerkotla being one of them, had entered into a covenant with the Union of India by which their integrity and privileges since enjoyed including immunity from the ordinary process of Courts of law had been safeguarded. Reference was invited to the contents of Article 13 of the Covenant and para 240 of the White Paper and para 21 of memorandum of personal privileges of the Rulers of the integrated States. Article 13 of the covenant reads:—

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“13. The Ruler of each covenanting State, as also members of his family, shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before the 15th day of August, 1947.”

Para 240 referred to above was worded:

“240. *Guarantees regarding rights and privileges.*—Guarantees have been given to the Rulers under the various Agreements and Covenants for the continuance of their rights, dignities and privileges. The rights enjoyed by the Rulers vary from State to State and are exercisable both within and without the States. They cover a variety of matters ranging from the use of red plates on cars to immunity from Civil and Criminal Jurisdiction and exemption from customs duties etc. even in the past it was neither considered desirable nor practicable to draw up an exhaustive list of all these rights. During the negotiations following the introduction of the scheme embodied in the Government of India Act, 1935, the Crown

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Department had taken the position that no more could be done in respect of the rights and privileges enjoyed by the Rulers than a general assurance of the intention of the Government of India to continue them. Obviously it would have been a source of perpetual regret if all these matters had been treated as justiciable. Article 363 has, therefore, been embodied in the Constitution which excludes specifically the Agreements of Merger and the Covenants from the jurisdiction of Courts except in cases which may be referred to the Supreme Court by the President. At the same time, the Government of India considered it necessary that *constitutional recognition* should be given to the guarantees and assurances which the Government of India have given in respect of the rights and privileges of Rulers. This is contained in Article 362, which provides that in the exercise of their legislative and executive authority, the legislative and executive organs of the Union and States will have due regard to the guarantees given to the Rulers with respect to their personal rights, privileges and dignities".

Clause 21 of the memorandum of personal privileges of the aforesaid Rulers is in the following terms:—

"21. *Immunity from the process of courts of law.*—It would be for the courts to decide whether a Ruler is immune from Civil and Criminal Process and if so to what extent and under what circumstances. The Government of

India have no doubt that such immunity as the Rulers enjoyed before the 15th of August, 1947, in British Indian Courts would be regarded as a personal privilege of the Rulers and in view of the express provision in the merger Agreements and Covenants, it will continue to be granted to them by all courts in India. The Government of India do not consider that any statutory provision is necessary”.

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Attention was also called to the provisions of Article 362 of the Constitution, which says:

[His Lordship read Article 362 and continued:]

These provisions unmistakably show that the signatory Rulers to the covenant in their own territories enjoyed sovereign power before integration and could not, in view of the provisions set out, be subjected to the ordinary process of the Municipal Courts. Article 362 of the Constitution of India clearly furthered the protection guaranteed under covenant or agreement as respects the personal rights, and privileges of the Rulers of the integrated States.

Article 363 of the Constitution was still a step one further in the scheme envisaging protection of all those rights and privileges, for nothing arising from or relating to the covenants or agreements was made justiciable.

Article 363(1) of the Constitution provides:

[His Lordship read Article 363(1) and continued:]

It is indeed plain, and I have little doubt, that the sovereign power at the time of integration extended solemn assurances, which later received

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constitutional recognition guaranteeing the personal privileges and rights including protection from ordinary process of Courts to the Rulers of the integrating States.

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For the opposite side the learned Advocate General, while seeking support from decision in *Parshotam Vijaya and others v. Dalip Singhji and another* (1), contended that the covenant was a mere agreement and not a statute and could not, therefore, be given effect to. For the view I have taken, and if I am right, the covenant does not stand alone, it has the backing of constitutional provisions as above observed.

As regards the second alternative ground raised on behalf of the applicant, namely, that section 503 of the Code of Criminal Procedure also afforded protection, I am still of the opinion that the matter did not strictly fall within the purview of the provisions of the said section, the learned Magistrate's powers to issue commission to examine a witness are circumscribed and there is no discretion exercisable outside the said provisions. The instant matter did not answer to the requirements of the term "inconvenience" either as already observed.

For the conclusion that there was constitutional immunity as respects the applicant, I have no hesitation in recalling my order, dated the 1st May, 1958, in Criminal Revision No. 835 of 1957. I would order accordingly.

Criminal Miscellaneous No. 594 of 1958, must succeed. While allowing the same, I would hold that the applicant Nawab Malerkotla was entitled to immunity from appearance in Court and that

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(1) A.I.R. 1953 M.B. 254



the trial Magistrate was right in directing commission to record his statement.

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In the result, order dated the 1st May, 1958, in Criminal Revision No. 835 of 1957 is set aside and the order of the trial Court, dated the 8th October, 1956, is restored and affirmed.

B. R. T.

LETTERS PATENT APPEAL.

Before G. D. Khosla, C J., and G. L. Chopra, J.

LAL CHAND,—Appellant.

*versus*

PARMA NAND AND OTHERS,—Respondents.

L:A:P: No: 107-D of 1954.

*Displaced Persons (Debts Adjustment) Act (LXX) of 1951—S. 2 (6) (C)—Pecuniary liability—Whether should exist at the time of coming into force of the Act—Provisions of the Act—Whether applicable to debts incurred after the commencement of the Act.*

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Jan. 22nd

*Held*, that the pecuniary liability mentioned in clause (C) of Section 2(6) of the Displaced Persons (Debts Adjustment) Act, 1951, whether it be by way of a fresh advance or only a renewal of an old debt must be shown to be due to the displaced creditor at the time of the Act came into force so as to make it fall within the definition of a "debt". It is only then that he can be deemed to be entitled to the benefit of the provisions of Section 10 or Section 13 of the Act. It does not include a pecuniary liability that becomes due to a displaced person after the Act has come into force and there is no scope for invoking the provisions of the Act to a debt incurred after its commencement.

*Letter Patent appeal under clause 10 of the Letters Patent from the judgment of Hon'ble Mr. Justice Falshaw dated 17th January, 1956, in F. A. O. No. 60-D/54.*

A. R. WHIG, for the Appellant.

D. K. KAPUR, for the Respondents.