**(1994) 11 CAL CK 0012**

**Calcutta High Court**

**Case No:** Appeal from Original Order No. 414 of 1993

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| Regional, Provident Fund Commissioner | | APPELLANT |
| | Vs | |
| Raj Kumar Nemani | | RESPONDENT |

**Date of Decision:** Nov. 29, 1994

**Acts Referred:**

- Companies (Court) Rules, 1959 - Rule 232, 233
- Companies Act, 1956 - Section 391, 446, 446(2)
- Constitution of India, 1950 - Article 21, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 197, 197A, 482
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 17
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141
- Penal Code, 1860 (IPC) - Section 406, 409

**Citation:** 99 CWN 141 : (1994) 2 ILR (Cal) 512

**Hon'ble Judges:** Ruma Pal, J; Mukul Gopal Mukherji, J

**Bench:** Division Bench

**Advocate:** Arun Prakash Chatterjee and Jayanta Biswas, for the Appellant;S.C. Ukil and Prasanta Banerjee for State, Aninda Mitter, Bimal Kumar Chatterjee, Ashim Kumar Banerjee and Mukti Chandra Ghose, for the Respondent

**Judgement**

Mukul Gopal Mukherji, J.

The present appeal is directed against an order dated May 14, 1993, passed by a learned Single Judge of this Court directing the release of the writ Petitioner, Raj Kumar Nemani, the Chairman/Member of the Committee of Management of Baranagore Jute Factory on bail subject to the condition that he would report to the Officer-in-Charge, Alipore P.S., over telephone twice a week, but he would not leave Calcutta without the express permission of the Court except for the purpose of going to Baranagore Jute Factory to perform his duties. By the same order the

learned single Judge directed the superintendent of Dum Dum Central Jail to release the said Petitioner forthwith. It was further directed by the self-same order that the writ Petitioner, who was in a nursing home for treatment, would be released and would be set free as and when he would be certified by the doctor.

2. On an appeal being moved against the self-same order by the present Appellant, the Regional Provident Fund Commissioner, West Bengal, a Division Bench of this Court stayed the operation of the order dated May 14, 1993, except that the Respondent writ Petitioner, Raj Kumar Nemani, would not be arrested on the same charges by the Police till the disposal of the appeal. The Division Bench recorded an order itself that the writ Petitioner/Respondent was released from the jail custody on May 15, 1993, pursuant to the order dated May 14, 1993, passed by the trial Court. The appeal Court made it clear that this order would not prevent the trial Court to hear out and dispose of the main writ application. By a subsequent order dated June 22, 1993, the Division Bench further expressed its desire that the main writ petition should be heard out by the trial Court. We are, however, given to understand that the trial Court has since not heard out the matter and the present appeal is placed for hearing mainly on the question of the propriety of the order passed by the trial Court.

3. It has been contended before us by the Appellant that the Baranagore Jute Factory having its registered office at 284, Maharaja Nanda Kumar Road, is an establishment governed by the Employees Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to for the sake of brevity as the Act. It was granted exemption in terms of Section 17 of the Act. The establishment was required to deposit the Provident Fund and other allied dues strictly, within 15 days from the close of every month. The dues for the month of January 1993 were required to be paid by the establishment to the Board of Trustees of its Provident Fund by February 15, 1993. The employees'' share of Provident Fund contributions amounting to Rs. 5,59,387 for the said month of January 1993 had been duly deducted by the employer from the wages of the employees of the establishment. Despite such deduction the said employees'' share of Provident Fund contribution was not paid into the Company''s Provident Fund Account. The employer''s share of Provident Fund contributions for the said month was also not paid. Till about the month of April 1993 the establishment has defaulted in the payment of Provident Fund dues to the tune of Rs. 558.33 lakhs and out of the said outstanding dues, the sum of Rs. 144.44 lakhs fell into arrears during the period of the writ Petitioner''s tenure as Chairman of the establishment. In the circumstances, for non-payment of the employees'' share of Provident Fund contributions for the month of January 1993 the Regional Provident Fund Commissioner, West Bengal, lodged a F.I.R. dated April 13, 1993, with the Inspector-General of Police, Enforcement Branch, West Bengal, 11 was given out in the said F.I.R. that by not paying the employees'' share of Provident Fund dues for the, said month of January 1993 even after deducting the same from the wages of the employees, the employer of the establishment had

committed an offence punishable u/s 406/409 of the Indian Penal Code and as such, necessary action might be taken to prosecute the writ Petitioner as employer. The said F.I.R. was forwarded by the office of the Inspector-General of Police to the Officer-in-Charge, Baranagore P.S. who received the same on May 9, 1993. On receipt of the F.I.R. the Police started Baranagore P.S. Case No. 145 of May 9, 1993, under Sections 406/409 of the Indian Penal Code. The writ Petitioner was accordingly arrested by the Police on May 10, 1993, on which date he was produced before the learned Sub-divisional Judicial Magistrate, Barrackpore. The bail application moved by the writ Petitioner was rejected by the learned Sub-Divisional Judicial Magistrate Barrack-pore, by order dated May 10, 1993. Thereupon on May 11, 1993, the writ Petitioner moved the writ application under Article 226 of the Constitution of India. On May 11, 1993, the learned Single Judge passed an order directing the writ Petitioner to be produced by the Police authorities before the Court on day following, that is, on May 12, 1993 at 2 p.m. On receipt of the notice of the writ petition, the Appellant, the Regional Provident Fund Commissioner, West Bengal, entered appearance and contested the question of issuance of an interim order by raising the question of maintainability of the writ petition itself. The learned Single Judge directed the writ Petitioner to serve a notice on the workers. Accordingly, on May 14, 1993, when the matter was heard, the workers purportedly constituting 90% of the total work force of the establishment were represented through Counsel. The learned Judge after hearing the parties was pleased to pass the order impugned dated May 14, 1993.

4. The basic grievances of the writ Petitioner as pleaded in the writ petition are that when the Police came to arrest him on May 10, 1993 he told the Police authorities that the monies in question had already been paid, but without taking steps for verifying such statements, the Police unreasonably and unjustly took him into custody. It was further contended that he was appointed Chairman of the Committee of Management of the establishment by orders passed by the Company Court, i.e. the learned Judge of this Hon''ble Court taking company matters. As such, he was an officer of the Court and he could not be prosecuted by the Regional Provident Fund Commissioner, West Bengal, as also the Police authorities without obtaining prior leave from this Court. It was further averred that the Regional Provident Fund Commissioner, West Bengal and the Police authorities acted mala fide so as to interfere with the fundamental rights of the writ Petitioner as guaranteed under Article 21 of the Constitution of India. By making such grievances the writ Petitioner prayed for a writ in the nature of mandamus for his release and also a writ in the nature of prohibition restraining the Regional Provident Fund Commissioner, West Bengal and the Police authorities from proceeding with the Baranagore P.S. case No. 145 dated May 9, 1993, under Sections 406/409, Indian Penal Code.

5. As regards the maintainability of the writ petition, we have heard the submissions of the learned Advocate for the Respondent writ Petitioner that the entire arrears of

Provident Fund which are the subject-matter of the complaint made by the Regional Provident Fund Commissioner, West Bengal, having been deposited prior to the lodging of the complaint the prosecution could not be proceeded with. Reference was made to the observations of the Supreme Court in Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, wherein the Supreme Court expressed the view that the prosecution should not be proceeded with if the accused deposited the arrears of Provident Fund in respect of which the prosecution had been instituted by the date fixed by Court.

6. It was further contended that no leave of the Court was obtained prior to the starting of the criminal proceeding against the writ Petitioner who is the Chairman of the Committee of Management pf Baranagore Jute Factory constituted by an order of Court. According to the writ Petitioner, leave of the Court was a condition precedent for initiating criminal proceedings against an appointee of the Court and that since such leave of Court had not been obtained, the complaint was not maintainable and was liable to be quashed. Hence, it is argued that no arrest in furtherance of such a complaint could at all be made.

7. Reference was made to a judgment of a learned Single Judge this Court in the Company of Management for Baranagar Jute Factory and Others Vs. Atis Dipankar Chowdhuri, (being Criminal Revision No. 1550 of 1991) wherein a criminal proceeding was initiated against the Committee of Management of which the writ Petitioner was a member without taking leave of the Court. By a judgment dated February 15, 1993, it was held that the prosecution without prior leave of the Court was bad. Reliance was also placed on another judgment of this Court in Corporation of Calcutta Vs. Sudhamoy Bose, for the proposition that any criminal complaint against a person appointed by the Court as Receiver without taking prior leave from the Court was per se bad in law.

8. It was further averred on behalf of the writ Petitioner that the learned Single Judge who passed the impugned order dated May 14, 1993, did so because he was convinced that the writ petition disclosed and prima facie case for quashing of the criminal complaint.

9. A reference was made also by the writ Petitioner Respondent to the judgment in the cases State of U.P. Vs. R.K. Srivastava and Another, and State of Haryana and others Vs. Ch. Bhajan Lal and others, that a writ application was maintainable for quashing bf a F.I.R. or of a criminal complaint when the same does not disclose any criminal offence or is ex facie not maintainable. It was averred that in the facts of the present case no recital about any prior leave of the Court having been mentioned in the F.I.R. which is the basis of the criminal complaint, the prosecution is ex facie bad and is liable to be quashed.

10. It was further submitted that in State of Haryana v. Chowdhury Bhajan Lal it was held that there was no legal bar if the High Court exercise its power under Article

226 of the Constitution or Section 482, Code of Criminal Procedure, in interfering with any proceeding relating to a cognizable offence. It was further averred that the distinction between the writ petition under Article 226 of the Constitution and a Revision petition u/s 482, Code of Criminal Procedure, in Criminal Revision jurisdiction for quashing of the proceeding is practically obliterated and a reference was made to in Bhajan Lal''s case (Supra) (para. 108).

11. It was contended on behalf of the writ Petitioner Respondent that if the Police authorities have been given the power to arrest in a case of cognizable offence, that power of arrest should be exercised reasonably and only when the arrest is absolutely necessary for investigation into an offence alleged in the F.I.R. or in the petition of complaint. Arrest is not a must in every case and the power of arrest is not a mechanical one. Reference was made to the decision in Joginder Kumar Vs. State of U.P. and others, It was held in this case that no arrest could be made because it was lawful for the Police Officer to do so. The existence of the power to arrest is one thing and the justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in Police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interests that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person''s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commissioner merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom and except in heinous offences, an arrest must be avoided if a Police Officer issues notice to the person to attend the Station House and not to leave the Police Station without permission to do so. The other observations, however, are not relevant in the present context. In paras. 7 to 28 of the said judgment it was observed that one of the sources of corruption in Police is about the exercise of power of arrest and the absolute test is that whether there is any need to detain the accused at all.

12. It was submitted by the Respondent writ Petitioner that the exercise of power of arrest in the instant case was absolutely unwarranted and arbitrary and showed a mala fide exercise of powers for the following reasons:

(i) The charge was of non-payment of arrears of Provident Fund contribution for the month of January 1993. Only an investigation was necessary to find out whether Provident Fund dues for the aforesaid period had been paid or not. For finding out this fact, all that Police authorities were required to do was to seize the Provident Fund records of the Mill and of the Trustees of Provident Fund, if necessary, so that

there cannot be any subsequent tampering of records.

(ii) Instead of scrutiny of records or seizure of records of Provident Fund immediately after getting the complaint, Police authorities took the unreasonable step of arresting the Chairman of the Committee of Management. It is submitted that instead of arresting the accused, the Police authorities, in reasonable exercise of their power, should have firs scrutinised the records of Provident Fund and seized records of Provident Fund, if necessary and should have ascertained as to whether the complaints made were correct or not.

(iii) The arrest of the Chairman of Committee of Management was made at his residence at 3 a.m. on May 10, 1933. This was a clear instance of mala fides.

(iv) On May 11, 1993, Police Officers went to the Mill and the office of the Trustees of Provident Fund, inspected and seized the records of Provident Fund. After seizure of the records there could not be any justification for detaining the Chairman of the Committee of Management any further. In fact, when upon scrutiny of records it was found that the arrears complained of had already been deposited, there was no justification for proceeding with the criminal prosecution any further. For late deposit by several months at the highest, Provident Fund authorities have the right under the statute to levy damages at the statutory rates.

13. It was submitted by the Respondent writ Petitioner that arbitrariness and mala fides on the part of the Police authorities being apparent from the facts of the case, the criminal proceedings are liable to be quashed. It is said that the Supreme Court has held in several judgments including the one mentioned in State of Haryana v. Choudhury Bhajan Lal (Supra) that mala fides is one of the grounds for quashing or criminal proceeding.

14. On May 10, 1993, the writ Petitioner was produced before the Magistrate and Police had prayed for only three days in Police custody. Within the said period of three days, the Police had seized all the relevant records of Provident Fund. Therefore, according to the writ Petitioner, there was no justification for continuation of detention of the writ Petitioner in custody after expiry of 3 days, namely, after May 12, 1993. On this fact, the learned First Court on May 14, 1993, that is to say, after expiry of 3 days and seizure of Provident Fund records had directed the release of the writ Petitioner subject to the conditions mentioned in the order. It is pointed out that the learned Single Judge has not stopped investigation or stayed criminal proceeding and that the learned trial Court has also taken into consideration the views of the workers of the Mill, who were the persons interested in timely payment of Provident Fund contributions.

15. It was thus submitted that there was nothing to show that the learned Court of the First Instance had exercised discretion perversely and the Appellate Court should not therefore interfere with the exercise of discretion by the First Court.

16. We have given the contentions of the Respondent writ Petitioner our anxious thoughts. We do not find any mala fides on the part of the Police authorities in subjecting the writ Petitioner to arrest pursuant to the F.I.R. which disclosed a prima facie offence.

17. In so far as the decision in the Committee of Management for Baranagore Jute Factory v. Atis Dipankar Chowdhuri (Supra) there is indeed a passing observation made in this case in so far as the prosecution u/s 138 of the Negotiable Instruments Act, 1881, is concerned. The prosecution arose on account of dishonour of a cheque which was presented to the Bank for payment more than once and there was a prosecution before serving notice u/s 138(b) of the Negotiable Instruments Act. It was observed that the Committee should for all practical purposes be deemed to be a representative of the Court and should be treated in a similar way in which a Receiver or any other officer appointed by the Court is done. The learned Single Judge while considering the argument on behalf of the accused Petitioner held inter alia also that the prosecution in that case without prior leave of the Court had been bad in law. On the other question involved as to whether the Committee of Management framed by the High Court is a limb of the company or not, it was held that the said Committee could not be liable for any offence u/s 138 of the Act by virtue of application of Section 141 of the Negotiable Instruments Act, because the latter statutory provision again related to offences committed by a company.

18. It was submitted before us that if an offence was committed by a Receiver or any of the persons mentioned in Section 197 of the Code of Criminal Procedure directly involved with the discharge of their duties in their said capacities, then such persons cannot be prosecuted without obtaining leave or sanction from the Court or competent authority as the case may be. However, we do not think that the alleged offence of criminal mis-appropriation or breach of trust had anything to do with the discharge of the official duties in the capacity of u representative of Court. On the other hand, the alleged offences involved the personal liability of said person. In that case such person can be prosecuted without obtaining any leave or sanction of the Court, as the case may be.

19. In the Committee of Management of the Baranagore Jute Factory v. State of West Bengal C.L.T. 1993 (2) H.C. 189 an identical point was raised on the question as to initiation of a criminal proceeding without the leave of the appropriate Court which appointed the Committee of Management. It was held in the case that even if the criminal proceeding was instituted without the leave of the appropriate Court, there is no bar under the law to obtain leave u/s 446 of the Companies Act subsequently. In Zahama Bee v. Reliable Corporation Pvt. Ltd. (1974) 55 Comp. Case 483 it was held by the Andhra Pradesh High Court that the object of Section 446 of the Companies Act was only to safeguard the company from being subjected to liability or being deprived of its rights and claims without the knowledge of the winding up Court and therefore the leave of the Court can be obtained even

subsequently and with retrospective effect. The Calcutta High Court''s decision approved the view taken by the Andhra Pradesh High Court in this respect. It was held that if leave could be granted by the appropriate Court subsequent to the institution of the proceeding, the same can be granted also with retrospective effect as otherwise in some cases the very purpose of granting leave may be frustrated. In some cases it was found that it would be impossible to move the appropriate Court and obtain necessary sanction u/s 446 of the Companies Act within a short period from the accrual of the cause of action, as in the case of an offence u/s 138 of the Negotiable Instrument Act and therefore, for such purposes, any leave or sanction for prosecution in a fit case could be given with retrospective effect to make the sanction meaningful, purposeful and effective. The learned Single Judge of the Calcutta High Court in the reported decision held that in appropriate cases the Court will be entitled not only to grant leave subsequent to the initiation of the prosecution or other legal action but such leave may also be granted in appropriate cases with retrospective effect to make it effective, meaningful and purposeful. The decision in the Committee of Management for Baranagore Jute Factory v. Alish Dipankar Chowdhury (Supra) was distinguished in the latter case and it was held further that prosecution in the earlier case was quashed for a different reason that the entire Committee of Management was prosecuted and there the other aspect of the question was as to whether the leave could be granted subsequently or not was never raised or considered. We agree with the view taken by the latter decision in the Committee of Management of Baranagore Jute Factory v. State of West Bengal (Supra) that although prosecution could be filed without the leave of the Court, the defect of any can be cured by obtaining leave of the Court subsequently before the proceeding is finally decided, if of course such leave is at all necessary.

20. On the other question as to whether leave would be at all necessary for initiating a prosecution against a Receiver or against an ad hoc Committee of Management appointed by a Court enjoying a position similar to that of a Receiver, it was held that leave would be necessary however where the appointment made by the Court places an appointee in the position of a officer of the Court for any particular purpose or a delegate of the Court for the purpose of managing or dealing with an affair bi ought or placed under the control and supervision of the Court making such appointment. Although the Committee of Management will be functioning -independently of the Official liquidator in the matter of re-opening and running the Mill, yet the Committee is answerable to the Court which appointed it and would be subject to the directions and guidance which such Court may give to the Committee from time to time. In fact, from the materials placed it, appeared to the learned Single Judge that such directions also have been given by the Court to such committee from time to time as was considered necessary. But at the same time this requirement of leave to sue or prosecute will not be necessarily applicable-to all cases of appointment made by the Court. Even in respect of a Receiver the requirement of leave to sue or prosecute is confined to such acts of a Receiver which

have been done in due discharge of his function as Receiver while prima facie acting within his rights. The question of leave, however, may not arise in respect of an act of a Receiver which is patently outside the scope of the entrusted functions or is manifestly in excess of the authority given to the Receiver so as to render it unreferable to his functions as Receiver. The view taken by the learned Single Judge in the reported decision was that issuing the cheques on behalf of the company or by failing to make payment in compliance with the demand of the complainant, the appointed Committee of Management or its members cannot be said to have acted in violation of or in excess of their authority to discharge their function of running the Mill for which the appointment has been made and thus a leave of the Court was found necessary for prosecuting the accused persons for which the Court granted the prosecution a further chance to obtain such leave and did not choose to quash the proceeding immediately. We cannot persuade ourselves to agree to this extreme proposition of law propounded by the teamed Single Judge in the reported decision.

21. The Legislature in its wisdom in the Code of Criminal Procedure did not incorporate any provision regarding prior sanction to prosecute a Receiver. The bar in Section 197, Code of Criminal Procedure, is applicable in respect of prosecution of Judges and public servants. In so far as the public servants are concerned, the prior requirement of sanction is necessary which is to be accorded by the appropriate Government in respect of such public servants not removable from their office save by way of a sanction of the Government and the Central Government or the State Government, as the case may be, has the discretion to determine the person by whom the manner in which and the offences for which the prosecution of such a public servant is to be conducted and may specify the Court also before which the trial is to be held. In respect of the State of Maharashtra, the State Legislature in its wisdom has made an appropriate provision incorporating Section 197A by way of a State Amendment which provides inter alia that in respect of prosecution of a Commissioner or a Receiver appointed by a Court under the provision of the Code of Civil Procedure, while such person is accused of an offence alleged to have been committed or have acted or purported to act in the discharge of the functions as Commissioner or Receiver, a sanction of the Court appointing him as such, would be necessary at the time of the criminal Court taking cognizance of such offence.

22. In the present case, in any event only a F.I.R. has been lodged and an investigation has been initiated, we are of the confirmed view that no prior sanction or leave is necessary either within the meaning of Section 197, Code of Criminal Procedure, or in respect of Section 446 of the Companies Act at the present stage for lodging the F.I.R. or initiating a criminal investigation. At the time of taking cognizance by the criminal Court, after the submission of a charge-sheet or final report, the appropriate Magistrate will consider this aspect of the matter whether a leave or sanction would at all be necessary. At present there is no case for quashing of the proceeding which started with the lodging of the F.I.R. or with the initiation of

a criminal proceeding by way of starting an investigation.

23. This has been held by the Supreme Court in the case of R.R. Chari Vs. The State of Uttar Pradesh, that the requirement of taking sanction for prosecuting a person arises only at the time of taking cognizance by the learned Magistrate and not at any stage prior to the taking of cognizance. It has further been held in the said case that during the stage of investigation and issuance of warrant of arrest, question of taking sanction does not arise, because the learned Magistrate takes cognizance only after submission of investigation report by the Police after completion of the investigation, when with due application of mind the learned Magistrate decides to issue process. Reference may also be made to the case of AIR 1945 18 (Privy Council) in this context.

24. In Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another, it has been held that the default in the payment of Provident Fund dues is a personal liability of the employer of an establishment governed by the Act. In the instant case also the consequences of default committed by the writ Petitioner have become his personal liability and he cannot escape on the plea contending, inter alia, that whatever defaults were committed along with the consequent offences were so done in due discharge of his duties as an officer of the Court because it is the Company Court which appointed him as Chairman of Committee of the Management. The Court never gave him the authority and/or power and/or indulgence and/or permission to misappropriate the employees'' share of the Provident Fund contributions and also to commit offences punishable under Sections 406/409, Indian Penal Code, by not depositing the money in question in accordance with law as alleged by the time-bound schedule.

25. We do not find that there was any justification whatsoever for the writ Petitioner invoking the extra-ordinary writ jurisdiction of this Court and obtaining the interim order which is the subject-matter of the appeal particularly when disputed facts arc involved. According to the writ Petitioner Respondent, even if the nine cheques dated April 5, 1993, were drawn from Oriental Bank of Commerce in which the Management had its current account, the said cheques were actually encashed on May 11, 1993, after the writ petition was actually moved before this Hon''ble Court and it was much after the criminal prosecution was lodged with the initiation of F.I.R. Therefore, the factual basis on which the learned Single Judge passed the order, assuming that the writ Petitioner had made the payment before May 1993, cannot be taken to be correct. We cannot ignore the submission of the Appellant in this context that it was likely that in the wake of arrest, nine back dated cheques were presented into the Bank which were already kept ready, so as to show that payments have been made before the Police arrest by the writ Petitioner.

26. Having held that the writ petition should not have been entertained and orders should not have been passed in some such manner by issuing the order impugned, we do not think that the writ Petitioner should be put into prison over again. We

would direct by way of setting aside the order impugned that the writ Petitioner is to surrender before the appropriate Court within a fortnight hereof and the appropriate Magistrate should release him on bail on such appropriate and proper terms as may be deemed just and proper. The other directions or conditions imposed in the order impugned are set aside. The investigation will continue in accordance with law.

27. The writ application need not be heard out on merits afresh. The writ application is treated as on the day''s list and is disposed of as indicated above without any order as to costs.

Ruma Pal J.

28. I respectfully agree with the order proposed to be passed in this appeal as well as the reasons enunciated in support of such order by my learned Brother.

29. I would like to add an additional reason for the purpose of holding that the sanction to prosecute the writ Petitioner was not necessary in the facts of this case. The writ Petitioner was the Chairman of the Committee of Management of the company, Baranagore Jute Factory Ltd. (hereinafter referred to as the company) at the material time as already noted.

30. The writ Petitioner has sought to rely on two decisions of two Single Judges of this Court as authorities for the proposition that the Committee of Management being appointed by the Court was for all practical purposes a representative of the Court and should be Heated in a similar way in which a Receiver or any other Officer appointed by the Court is treated. This would include the obtaining of the leave of the Court prior to launching of any prosecution against such Committee.

31. The first decision relied upon is the Committee of Management of the Baranagore Jute Factory v. The State of West Bengal (Supra). The second decision is the decision in Management, Baranagore lute Mill v. A.D. Chowdhury (Supra). Both decisions proceeded on the basis that the Committee of Management was appointed by Court. In fact, the Committee of Management was constituted by virtue of a scheme u/s 391 of the Companies Act, 1956. The status of such a Committee of Management cannot be equated with that of a Receiver or an Officer appointed by a Court.

32. An officer of Court is an impartial person who is appointed by Court to represent the Court itself to carry out specific functions. Property in the hands of such officer is considered to be properly in the hands of Court and interference with the officer of Court is punishable as contempt of the Court which appointed the officer.

33. The reason why leave of the Court is necessary to proceed against the Receiver, as stated lucidly in Woodroffe''s Law relating to Receivers, is because it is incompatible with the dignity and the authority of the Court to allow its officer to be summoned before any Tribunal in respect to the property in his hands at the will of

any and every person who had or, imagines he has a just cause of action or who, for sinister purposes might institute a fictitious proceeding against him.

34. The facts relating to the formation of the Committee of Management have been set out in the first decision. The company had been directed to be wound up and the Official Liquidator had been appointed in respect of its assets. The writ Petitioner herein had moved an application for slay of the winding up proceedings and for constitution of a Committee of Management with persons mentioned in the scheme submitted by him for revival of the company pending disposal of his application. The scheme was placed before the unsecured creditors of the company. Although there is no reference to the statutory provision under which the application of the writ Petitioner was made, the application appears to have been made u/s 446(2)(c) read with Section 391 of the Companies Act, 1956.

35. Section 391 of the Companies Act, 1956, provides inter alia, for a compromise or arrangement to be arrived at between a company and its creditors in respect of the creditors dues against the company. This compromise or arrangement is a scheme evolved by the interested parties to resolve their disputes in a manner acceptable to both. On the application cither of the company or the creditors or any member of the company, the Court directs the proposed compromise or arrangement to be placed before the creditors and members of the company for their approval. If the compromise or arrangement is approved by the statutorily prescribed majority, the Court may sanction such compromise or arrangement. In sanctioning the scheme, the Court will only consider whether the application is a bona fide and feasible one. The sanctioning of a scheme which may provide for a Committee to, manage the affairs of the company under Sections 391 and 446(2) therefore does not mean that the Committee of Management set up pursuant to such compromise or arrangement has been appointed by the Court. The decisions relied upon, proceed on the assumption that it is the Court which appointed the Committee of Management in the sense a Receiver is appointed. The assumption was incorrect.

36. Secondly, the Court does not take over the management of the company nor can the affairs of the company be said to e in custodia legis if its affairs are run by a Committee of Management appointed pursuant to a scheme u/s 391 of the Companies Act, 1956.

37. The third difference between an Officer of Court and a member of such a Committee of Management is that unlike an officer of Court, who is not a representative of any party but represents the Court, a Committee of Management chosen by the creditors or members to run the affairs of the company represents their interests.

38. Lastly, it is because a Receiver or other Officer of Court is seen as an extension of the Court itself that interference with the actions of a Receiver or Officer may amount to contempt of the Court. It cannot be contended that the interference with

the action of the Committee of Management would give rise to an action of contempt.

39. Tt may be noted that the Legislature has specifically extended the status of an Officer of Court to the Official Liquidator (vide Rules 232 and 233 of the Companies (Court) Rules, 1959). There is no such extension of status in the case of a Committee of Management appointed by virtue of a compromise between the parties to an action u/s 391 of the Companies Act, 1956.

40. For all these reasons, 1 am of the view that an officer of the Committee of Management not being an Officer of Court, there would be no question of obtaining leave of Court before initialing prosecution against him.

41. I would therefore, hold that the decisions in the case of the Committee of Management of the Baranagore Jute Factory v. State of West Bengal (Supra) and the Committee of Management for Baranagore Jute Factory v. A.D. Chowdhury (Supra) relied upon by the writ Petitioner Respondent do not represent the correct law on the issue.

42. For this reason also I would dispose of the appeal in the manner directed by M.G. Mukherji J.

43. Prayer for slay is considered and rejected.

44. Let a xerox copy of this judgment countersigned by the Assistant Registrar of this Court be given to the parties concerned on the usual undertaking.