RAJYA SABHA

Friday, lOf/i *August* 1956

The House met at eleven of the clock, Mr. CHAIRMAN in the Chair.

THE CHARTERED ACCOUNTANTS (AMENDMENT) BILL, 1956

SHRI V. K. DHAGE (Hyderabad): Sir, I beg for leave to introduce a Bill further to amend the Chartered Accountants Act, 1949.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Chartered Accountants Act, 1949."

The motion was adopted.

SHRI V. K. DHAGE: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1956

SHRI J. N. KAUSHAL (Pepsu): Mr. Chairman, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Lok Sabha, be taken into consideration."

This is a very simple and non-controversial Bill but, at the same time, it tries to remove a very serious lacuna which is found in sections 435 and 438 of the Code of Criminal Procedure. In order to appreciate the import of the Bill, I would draw the attention of the House to the provisions of section 435 which this Bill seeks to amend. The section reads as follows:

"The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limit of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

Now, the House could see that the revisional courts, under section 435 have been given very wide powers and those powers are that they can send for the record of any inferior Criminal Courts for the purpose of finding out the regularity, propriety or correctness of any sentence or order passed by the lower court. Now, the Legislature has used two words, "sentence or order", but in the latter portion of the section, when the question comes of suspending the sentence or the order passed by the lower Court, the only word used is "sentence", as, "and may, when calling for such record, direct that the execution of any sentence be suspended". Now, the House will see that the revisional Court has the power ultimately to set aside the order which has been passed but the Court cannot suspend the operation of that order. This by itself needs no further argument. Although the court has the power to do justice at the final stage, the powers of the court are limited at the interim stage, as the lawyers call it, and my submission to the House is that if these powers are not given to the Criminal Courts then so many times failure of justice occurs. It is rather surprising, Sir, that when the Code of Criminal Procedure was amended *in extenso* in both the Houses of Parliament, this lacuna escaped the notice of everybody. Now, it is more or less admitted that this lacuna is very patent, is very obvious, and that it should be remedied without any delay. This particular Bill was brought forward by a private Member in the Lok Sabha and when it was moved, Government frankly conceded that there was a lacuna which ought to be remedied but then Government took objection and said that since the administration of criminal justice was a State subject and Government had not consulted the States, it was not proper that this Bill should go through. However, the Lok Sabha though it advisable that the Bill should be stayed and the opinions of the State Governments obtained in the meanwhile. Later on, Government did not oppose the Bill and it passed though the Lok Sabha.

Now, in order further to illustrate the inconveniences and the irregularities which sometimes cannot be remedied

[Shri J. N. Kaushal.]

because of this defect, I would place a few instances before this House foi its consideration. Now, we all know that the Criminal Courts have to pass various orders which are not in the nature either of sending a man to jar or acquitting him. The Code of Criminal Procedure deals with proceeding* of various types one of which I shal bring to the notice of the House. Supposing a prosecution for theft is launched, the court, after weighing the evi dence, comes to the conclusion thai the guilt has not been proved, and decides to acquit the accused and, al the same time, passes an order thai the stolen property which was recovered from the possession of the accused be also made over to him. In such a case, the complainant might feel aggrieved and might rush to the superior court praying that a wrong order had been passed and that the property should not be handed over to the accused at all till the revision petition was disposed of. The learned Sessions Judge or the District Magistrate, whoever he may be, with the best of intentions and with the maximum amount ol sympathy with the cause of the complainant, might plead inability and say. "I am sorry, I am powerless. I cannot help you during the interim period but if, at the last stage, I come to the conclusion that actually the property should not have been handed over to the accused and that it was actually stolen property, I will pass an order that the property should come to your possession." Now, kindly look into the matter, Sir. By that time, the thief may do away with the property; he can dispose of it or do whatever he likes with it and even if the final order of the court is in the complainant's favour, it will not do him any good. This one instance shows what a serious lacuna there is in that particular section. It is very unfortunate that this section was not amended when the Code of Criminal Procedure was amended *in extenso,* as I submitted earlier.

Let us take another instance. There is another section, section 133, which deals with nuisance. Now, it is known to all the lawyers who practise in Criminal Courts that sometimes frivolous applications are made by persons who contend that a criminal nuisance has been committed by such and such a person, that another person has encroached upon his property or thai he has due; a trench and that this encroachment should be removed. Suppose the Subordinate Magistrate comes to the conclusion that that building should be removed, that the encroachment should be removed. This order may be wrong and the person aggrieved by this order may go to a superior court and say to the court that before a final order is passed, the operation of the order passed by the lower court should be stayed. The court may express its sympathy but say that it is powerless as the law, as it stands at present, does not give the court any power to suspend the execution of any order although ultimately that order may be quashed. The court might say that although it might come to the conclusion ultimately that the proceedings might be forwarded to the High Court, during the interim stage it was powerless. It might also say, "Although I feel that the merits of the case warrant the grant of such an order to you, since the jtower is not with me, I cannot help you."

The third instance that I would place before you is this. Suppose under section 488 an order is passed for the maintenance of the wife and child and then the person aggrieved with that order again approached the superior Court. In the meanwhile his property is attached in the execution of the order of maintenance which has been passed by the inferior Court and the property is under threat of being sold. The man may have a very good case for succeeding ultimately. He may ultimately get a verdict in his favour. But before that, his property would have been sold off. He will say, "The order is a most unjust order, an illegal order of the Court and that order will ultimately be quashed. Therefore, that order should be stayed till the proceedings are finally determined by the superior Court." But that Court will again plead its, what I would call, want of power or lack of jurisdiction, and, wherever there is lack of jurisdiction the Court, with the best of intentions, cannot help any party. These are a few, but serious instances that I would like to give, and these could be multiplied.

Another instance which was in the view of the hon. Member who brought this measure in the Lok Sabha was that in proceedings under section 145 of the Criminal Procedure Code, the Courts sometimes pass orders either for attachment of property or for release of property and then, when you approach the

superior court and you tell the superior court that this attachment has been wrongly made and may be quashed, that your crop will vanish and so the attachment should be stayed, during the proceedings which are pending before the court, the court will again say, "We are sorry. Ultimately we will grant relief to you, but interim relief we cannot grant." This lacuna every lawyer is familiar with and even every layman knows that there is this serious lacuna. When a court can pass the final order, why should it not be invested with the power to stay execution of the order which is doing mischief and which sometimes causes irreparable harm to the aggrieved party?

This question actually came up before the learned judge of the Allahabad High Court and the mover of this Bill in the other place had referred to the particular ruling of the Allahabad High Court, in the Statement of Objects and Reasons attached to the Bill. For the benefit of the House I would like to read a few lines from that judgment. It is reported in A.I.R. 1953, Allahabad, 498. This is the judgment of a single bench, of Harish Chandra J. It follows a Calcutta judgment which was reported in A.I.R. 1949, Calcutta, 241. The learned judge of the Allahabad High Court held:

> "Though the revisional jurisdiction under S. 435 is very wide, it does not confer upon a Court calling for the record of any proceedings of an inferior court, the power to pass any interim order except in a case in which a sentence has been passed by such inferior Court.
>
> Held that the order passed by the Sessions Judge releasing the attachment made in proceedings under S. 145 Criminal P. C. against which an application in revision was pending before him was without jurisdiction."

I submitted a minute back that the learned Judge relied on the judgment of the Calcutta High Court, as reported in A.I.R. 1949, Calcutta, 241. In my opinion, even no judgment is needed, because the lacuna is patent upon a mere reading of the thing. You can see, Sir, that the Court can ultimately say that the order be quashed, that the sentence be quashed. But in the meantime, the court cannot say that the operation of the order be stayed, although the operation of the sentence can be stayed. That is why the object of this Bill is to amend sections 435 and 438, because unless both these sections are amended, the object which the mover of this Bill has in view will not be achieved. I would, therefore, request this House that since this is a serious lacuna which works to the hardships of so many persons, we should lose no time in accepting this Bill. As I submitted, this Bill is a non-controversial one and a simple one, though it affects the rights of so many persons who go to court, and the courts themselves are helpless in the matter. Therefore, in order to invest the Court with the power which may be exercised, of course, in suitable cases, we should make this amendment. This power should be conferred upon the Courts, and this omission, I would say, seems to be unintentional on the part of the Legislature.

I, therefore, move that this Bill be taken into consideration and passed.

MR. CHAIRMAN: Motion moved:

> "That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Lok Sabha, be taken into consideration."

SHRI K. S. HEGDE (Madras): Mr. Chairman, I extend my support to the provisions of this Bill. It has harmless provisions and may probably put the point beyond any doubt in future. But I am reluctant to agree with several of the reasons given by the hon. the mover.

It is true that the Judge of the Allahabad High Court of a single bench has come to the conclusion that acting under section 435, read with 438, no order passed by the trial court or the preliminary enquiry court can be stayed unless it is an execution of a sentence. I am afraid that this decision of the learned Judge of the Allahabad High Court is not in accordance with several decisions of several other High Courts in this matter. One fundamental principle that has been always accepted by the Courts is that if a Judge has the power to pass the final order, then he has always the power to pass an interim order also to the extent to which he has got the right to pass the final order. This point specifically came up before a bench recently in the Madras High Court. Under the Motor Vehicles Act, acting

[Shri K. S. Hegde.] under section 64 of that Act, the question came up whether the State Tribunal had the right to stay the orders passed by the lower tribunal, because there was no specific power of issuing stay orders in the Motor Vehicles Act. Therefore, the learned Judges of the Madras bench which was sitting at that time, examined the entire law on the subject and came to the conclusion that wherever there was the right to pass the final order, the right to pass an interim order also was implicit and even if it was not there, the court had the inherent power of doing justice in all such matters. The Courts have always extended their jurisdiction to do what they considered ultimate justice in the matter. Sometimes the Judges did take a technical view of the matter, and they have stretched the word of the law in a, more or less, verbal form rather than get the usefulness of the wording in the section in question. Possibly, to protect ourselves against such difficulties, it is but proper that an amendment of this nature should be brought before us and it is proper that we should extend our support to it.

My intention in rising to speak now is not merely for supporting this motion, but for the reason that the working of the amended Criminal Procedure Code has brought to light several mistakes and it is time that the Home Ministry considered this matter in the light of the difficulties now brought to light. Very recently, Sir, as most of us know, there was a mass murder in the city of Bangalore. There was no identification as such, but the police examined as many as about 120 witnesses and put in a charge-sheet. There were no eye-witnesses; but in accordance with the new provision of the Code, what the police did was merely to sbumit their report under section 173 of the Criminal Procedure Code and request the magistrate to read the recorded statement under section 162 of the Code to frame charges against the accused and to commit them to sessions. Now, the question that came up was whether the magistrate could examine the accused under section 242 of the Criminal Procedure Code. That section said that only evidence can be put to the accused and his explanation -asked for. The question was: Was the recorded statement under section 162 to be considered as evidence ? Evidence has been defined in the Evidence Act. Should we accept the evidence as defined in the Evidence Act or should we take for the purpose of the Criminal Procedure Code that evidence must mean and include also the statements recorded by the police under section 162? Learned arguments were advanced on both sides and the magistrate enquiring into the case came to the conclusion that he could not accept the statement recorded by the police under section 162.

' SHRI H. C. DASAPPA (Mysore): May I just rise to a point of order? This case, as I believe, has been com mitted to sessions and the trial is on and I only submit to the House and to you, Sir, to consider whether it would be very desirable or fair to make any comment. I do not mean to say that he may not have a very good case, but it may be that all these points will be made use of at the time of the final arguments before the trial is conclud ed^ I am just suggesting that all these points may be deferred.....

SHRI K. S. HEGDE: I quite understand. I am in agreement in saying that we should not go into the merits of the case in the least nor into the question of law which might be a moot point. On these points a magistrate has given a ruling and the prosecution has accepted the ruling. There has been no revision against that order. That is why I am saying this. I am not getting into the other aspect of the case because there is now a revision that has been filed by the accused to quash the judgment. That is another aspect of the case. That again the Government will have to consider. I am not going into that aspect at all. I am merely going into the other aspect for the purpose of bringing to the notice of the Government that certain serious lacunae have been now noticed in the amended Criminal Procedure Code so that they might not think "Let us amend it after the final verdict of the High Court." Meanwhile people might suffer a lot of difficulties. That is why I am bringing it to the notice of the Government that it is time they re-examined their amended Criminal Procedure Code. All these defects had been pointed out at the time of the passing of the Bill but Government then thought'that they were not serious lacunae. But to day these difficulties are being felt in courts of law and that is why I say that it is but proper that the Government re-examine this matter and see whether they cannot correct these errors at the initial stages

so that justice may be done. That is my object. 1 am not at all going into the merits of the case. I am merely pointing out that justice in a case would suffer because of the legal lacunae. It is only with that view I suggest that this Bill may be a good pointer to examine the Act further and find out whether there are more patent defects and difficulties which the Government might think of correcting.

With these remarks I support the measure before the House.

SHRI J. S. BISHT (Uttar Pradesh): Mr. Chairman, I support this amendment. For the benefit of the House, specially for the non-lawyer Members I will just read out that relevant portion from section 435 of the Criminal Procedure Code:

> "The High Court or any Sessions Judge * * * (*/ will leave out something in between)* may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

Now unfortunately there is undoubtedly a lacuna here because in the former part it refers to "sentence or order" but here in the operative part it says: "may, when calling for such record, direct that the execution of any sentence be suspended." The words "or order" are not there. The question therefore came up before the Allahabad High Court, and two High Courts have held concurrently that the Sessions Judge or the District Magistrate, when exercising the powers of revision under this section, has no power to interfere with the order of the lower court, and if this be not corrected it practically defeats the whole purpose of the revision itself because, under the new amended Criminal Procedure Code, all those powers that have been conferred under sections 144 and 145 with regard to attachment of property or disputes relating to immovable property will be meaningless.

Now I will just read out what the Allahabad High Court has said: "The simple point that arises in this case is whether the learned Sessions Judge could pass an order releasing the attachment while an application in revision was pending before him. A perusal of S. 435, Criminal Procedure Code, seems to indicate that he has no such powers. The revisional jurisdiction under S. 435 is very wide. But it does not seem to confer upon a court calling for the record of any proceedings of an inferior court, the power to pass any interim order except in a case in which a sentence has been passed by such inferior Court. This point was considered in the Calcutta case of Mukutdhari Shao v. Ajodhya Shao, A.I.R. 1949, Cal. 241(A) ....."

SHRI AKBAR ALI KHAN (Hyderabad) : Was it a Division Bench or a single Judge ?

SHRI J. S. BISHT: Single Judge. " . . .The circumstances of that case were very much similar and Sen J., by whom the case was decided, observed:

> 'The learned Sessions Judge had no jurisdiction whatsoever to stay the order for possession granted in favour of the first party. Still less did he have any jurisdiction later to pass an order restoring possession to the second party.'

I am, therefore, of the opinion that the interim orders passed by the learned Sessions Judge of Aligarh on 15-7-1952 and 31-7-1952 respectively were passed without jurisdiction and accordingly allow the revision and set them aside. The property in dispute will remain under attachment meanwhile ....."

This is the difficulty, Sir, and all that is attempted to be done by this is that now we will have here "and may, when calling for such record, direct that the execution of any sentence or order be suspended", and that will greatly help the courts in doing justice in relevant cases.

With regard to the subsequent amendment in section 438 this is merely consequential and the relevant portion of this section after amendment with the addition of the words "or order" in the proper places would read:

> "report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence

[Shri J. S. Bisht.]

or order be reversed or altered, may order that the execution of such sentence or order be suspended."

So this will remove the lacuna. My hon. friend, Mr. Hegde, has said that there was some different ruling of the Madras High Court. May be so and that is an additional ground in fact for bringing about this amendment so that this conflict of interpretation in the different High Courts may not remain and the law may be very clear with regard to the powers of the Sessions Judge or the District Magistrate in so far as their revision powers are concerned.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Chairman, let me first say that I am not quite clear in my mind if, speaking with all respect to the learned single Judge who decided the Allahabad case, the judgment is correct. In the first place the position in the Court appears to have been that the parties were not represented by counsel.

{Interruptions.)

This is what I can see from the report. The names of counsel are not mentioned. Therefore the assumption is that the parties were not represented by counsel and the learned Judge did not have the opportunity of hearing counsel before passing the order. It is true that in Ta revision the court is not bound to hear counsel, but it is usual for counsel to be heard and invariably the practice of the court is. where the parties are represented by their counsel, to allow counsel to be heard in disposing of revisions.

The second point that I would like to make, Mr. Chairman, is that excessive importance should not be attached to the judgment of a single Judge of a State High Court. I do not say that judgments of High Courts are not binding, but there are courts other than the Allahabad High Court, which have taken a different view. The Allahabad High Court itself on many previous occasions has taken the view that under the inherent powers that it enjoys under section 561A of the Criminal Procedure Code it has the power to pass interim orders. I think this is, as far as I know, the first case in the Allahabad High Court where the view that it is not possible for courts to interfere with interim orders in revision has been taken. The learned Judge also appears to have overlooked the fact that article 227 of the Constitution gives powers of superintendence over all subordinate courts, tribunals, etc., situate within the jurisdiction of the State to the High Court.

SHRI J. S. BISHT: I do not wish to interrupt my hon. friend but may 1 just ask him one question as to whether this ruling of the Allahabad High Court since 1953 and the ruling of the Calcutta High Court since 1949 are operative in those two States ? If so, they will remain operative until superseded by a Full Bench decision or by the Supreme Court. It may take 10 years and until then what are we to do ?

SHRI P. N. SAPRU: If my hon. friend will just have a little patience, on the whole he will find that for reasons somewhat similar to those just enunciated by him I have come to the conclusion that this Bill may be allowed to go through.

SHRI K. S. HEGDE: As a halfway measure.

SHRI P. N. SAPRU: It is a halfway measure. It is a measure probably necessitated by the decisions in courts under the jurisdiction of the Allahabad and Calcutta High Courts. This does not mean that the decisions are correct. I hope it is no contempt of any court to say that a judgment of a court is wrong. Well, I am one of those who do not very much believe in single Judge juris dictions. I mean no offence to this coun try or to this legislature when I say that a single Judge of a High Court can occasionally fall into error and the pro position that I am in all seriousness placing before this House is that there are reasons .....

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): An ex-Judge of course knows more about the errors of brother Judges.

SHRI P. N. SAPRU: Possibly may be so because he himself has committed errors and been corrected by superior courts. He does not develop for that reason a totalitarian mind; he develops a humble attitude towards life.

Mr. Chairman, the point that I was emphasising was that *prima facie* this judgment does not appear to me to lay down correct law because there is sec tion 561 of the Criminal Procedure Code which gives certain inherent powers to the court .....

SHRI H. C. DASAPPA: Does it not refer only to High Courts and not to other Judges like Sessions Judge and so on ?

SHRI P. N. SAPRU: But you see, a revision cannot be disposed of finally by a Sessions Judge. What a Sessions Judge can do is merely to make a recommendation to the High Court. Therefore an order in revision has to be that of the" High Court. That point really speaking does not arise.

SHRI H. C. DASAPPA: The question is, can he recommend with reference to an order?

SHRI P. N. SAPRU: The question is whether you can have an order without a sentence. In adjudication, for example, in a case regarding 145, well, I do not know whether you can strictly call it a sentence—that would be probably an order—but can the High Court in these cases not invoke the assistance of article 227, was that the power of superinten-known has been interpreted by the Supreme Court to give to courts judicial power ? I remember that case very well because the view that had been taken by the Allahabad High Court in its old full benches on the sections the principle of which is incorporated in article 227, was that the power of superintendence was only of an administrative character. That question came up in a case before the Allahabad High Court of which I was a member at that time and I took the view that it was not competent for us, having regard to our full bench cases, to say that that article conferred quasi-judicial powers on us. The matter went up to the Supreme Court in another case and they came to the conclusion—this was the view of the other courts as they were not bound by the full Bench judgment of the Allahabad Court—that that article had conferred powers of superintendence. Those powers of superintendence are of a very wide nature and they enable the High Court to do justice in all cases where it is necessary for justice to be done. That being the state of the law, I should have thought that some counsel would raise the question about the correctness of this judgment in a suitable manner and ask the single judge to refer it to a larger Bench so that the law in that State might be set right. But that has not been done and it may be that from the point of view of the litigent public, from the point of view of the State as well, it is desirable that the law should not be in an uncertain condition in the two States of Uttar Pradesh and Bengal. For that reason 1 am even prepared. Mr. Chairman, to give my support to this Bill.

I may say that I am one of those who think that applications in revision by complainants should not be encouraged by our courts. I am one of those who think that appeals against acquittals by complainants should not be encouraged by High Courts. In fact in most systems of jurisprudence there are no appeals allowed against acquittals. We have made a departure from that healthy principle in our courts and it may be that there are good reasons for doing so so far as conditions in this country at the moment are concerned. But I think it is desirable, if I may venture to speak for a moment as a lawyer, that courts should not encourage applications from complainants or appeals from complainants. The parties in a criminal case are not the complainants and the accused. The parties in a criminal case are the State and the accused. The administration of justice is one of the highest and noblest functions that the modern State performs. Whether you call it a welfare State or whether you call it a police State, the administration of justice must always remain a very important function of the State. It is essential for the promotion of good life. Now, complainants are not encouraged because we do not want our administration of justice to be vitiated by an atmosphere of prejudice, of malice and of vindictiveness. It cannot be assumed that a complainant will not be influenced in filing appeals or revisions from magistrates or of judges subordinate to the High Court.

SHRI J. S. BISHT: What happens in the case of private complaints?

SHRI P. N. SAPRU: If I may say so, I have not been, unlike my friend, a Government counsel and, therefore, my attitude in these matters will be somewhat of the person who has always a lurking .sympathy with the accused. And I may say that it has been the consistent practice of our courts to discourage applications in revision and appeal by private individuals. Only perhaps in the most exceptional cases—-I am not at the moment aware of any actual case—have we interfered at the instance of a private party. The attitude of our courts has always been that they should not interfere with complaints by private par-interfere with complaints by private parties.

[Shri P. N. Sapru.]

Now, Mr. Chairman, a very important question was raised by Mr. Hegde, who is a very able lawyer, and that was that the entire question of the amendment of the Criminal Procedure Code should be taken up for review and reconsideration by the Central Government at an early date.

SHRI J. S. BISHT: Within one year of its passing!

SHRI P. N. SAPRU: Within one year of its passing many things have hap pened. Within nine years of the passing of the Constitution, the Constitution has been amended ten times. It is a dynamic society and a changing society and, therefore, the argument that the Bill, good, bad or indifferent, was pass ed only a year back is no argument for sticking to that Bill. The point is that during this one year the Union Govern ment has appointed a Law Commission consisting of eminent men. That Com mission is a part-time Commission and delay naturally will take place in present ing the report on behalf of the Commis sion. But what the Commission will say will be of importance and I hope that one of the questions to which the Law Commission will apply its mind in a serious manner is the amendment of the Criminal Procedure Code and the Indian Penal Code. The Indian Penal Code is in many ways an outmoded Code. The sentences in the Indian Penal Code—the maximum sentence determines the minimum—were put very high, because it was passed in the 50's, of the last century when social thought, penological thought, was not as advanced as it is today. There are many defects in the Criminal Procedure Code. Without changing the basic struc ture of our system of courts, there are directions in which justice can be expedited and I think.....

SHRI AKBAR ALI KHAN: But the Law Commission is moving very slowly.

SHRI P. N. SAPRU: Well, it is not completely the Commission's fault. The Commission is a Commission of part-time lawyers, judges and jurists and they give their spare time to the work of ihe Commission. So, you cannot blame, them for moving slow. The point is that there is a case for considering the question of the entire revision of our Criminal Procedure Code and our Penal Code and for the matter of that our other laws at the moment. We say that we are moving in the direction of a socialist pattern of society. Well, that socialist pattern should exhibit itself in the laws that are to govern the future relations.

SHRI J. N. KAUSHAL: 1 am afraid, Sir, all these questions do not arise out of this Bill.

MR. CHAIRMAN: What they say is, here is a small amendment. We have discussed it. Then, we say considerable amendments have to be made to the Criminal Procedure Code. Agreed. Indian Penal Code, agreed. Other laws also, agreed. The Law Commission is sitting and working slow, agreed. But let us come to the Bill.

SHRI P. N. SAPRU: Mr. Chairman, 1 was myself fearing that I was getting a little irrelevant, but my apology for the irrelevancy in which I have indulged is that it was desirable .....

SHRI JASPAT ROY KAPOOR: *Obiter dicta* remarks are permissible, Sir.

SHRI P. N. SAPRU: .....to emphasize that this amendment was not the only amendment that was necessary in the Criminal Procedure Code and that it would have been better if we had considered the whole problem in a connected manner. This does not, of course, mean that I do not give my support to this Bill, because as I have pointed out before, this is a harmless measure-Thank you.

THE MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR) : Sir, I would point out that so far as the provisions of this private Member's Bill are concerned, Government have accepted it in the other House. In fact, we consulted the State Governments and also the Supreme Court and other courts. There was a general consensus of opinion that this was an inadvertent omission. Now, we found that this omission was not only in respect of section 435 but also in respect of section 438. Therefore, in the other House I moved amendments. They have been accepted and the Bill as it is has the full support of Government. Therefore, I would request that this Bill should receive the assent of this House.

Sir, I may be allowed to go.

MR. CHAIRMAN: Yes. He has to go to the other House. You want to say something, Mrs. Munshi ?

SHRIMATI LILAVATI MUNSHI (Bombay): Sir, I am provoked a little by the remarks made by the hon. Mr. Sapru. If you will allow me, I will say something.

MR. CHAIRMAN: Please say something on this Bill. We are not an appellate court.

SHRIMATI LILAVATI MUNSHI: Sir, the question is not whether the judgment given by a single Judge's court is correct or not, but till the correct judgment is given by the higher authorities, by a larger court, as was suggested by Shri Sapru, the judgment operates and the party suffers. I am glad, Sir, that this amendment has been accepted. Nothing more remains to be said about it. It sometimes happens, as suggested by the hon. Member, that the judgment of a court is wrong. Very often it happens. That is why by inserting this word this lacuna is being corrected, and all the other lawyers have agreed that it is very necessary to insert this word.

Sir, there' something was said about acquittals. What the hon. Member said may be theoretically correct, but many times it has happened that acquittals have taken place where they should not have taken place. The hon. Member said that it should not be judged by prejudice, malice or vindictiveness. Nobody has suggested that such cases should be judged by these things. But sometimes it happens that there are many causes— sometimes pressure, sometimes atmosphere, sometimes influences at work and sometimes misreading of the law.

SHRI P. N. SAPRU: Mr. Chairman, it is a very serious reflection on our courts for any member to say that they are guided by influences.

SHRIMATI LILAVATI MUNSHI: Sir, I am not so very subtle. If to tell the truth is a crime, I have committed it. It is no reflection on any single person. What has come to the notice of every Member of this House, not only myself, is that these influences do work and sometimes the acquittal orders are wrongly given and the Government have to appeal against it and the private parties also have to appeal against it. Sir, we may be a dynamic State with a socialist pattern of society, but it does not mean that if any wrong judgment has been given, people should not have a right to go and appeal. So it is not vindictiveness but many other reasons which make it necessary to go into an appeal. There are many other things, but I need not go into all that has been said.

These are one or two things which occur to me. Although the hon. Member has long experience of the law, here is a layman's point of view that it does become necessary to go into an appeal.

MR. CHAIRMAN: Mr. Dasappa. Please be as brief as possible.

SHRI H. C. DASAPPA: I will be very brief, Sir. I also rise to support the motion before the House I think it merits the sympathetic consideration of all Members, and now that the Government have accepted it, 1 do not think I should say anything merely to elaborate further arguments. But, Sir, I would like to refer to only one point which Mr. Sapru mentioned, the hon. Member from U.P. It is this. Section 581 is the provision under which any relief such as is sought to be conferred new can be given, but, Sir, Section 58 L refers only to the powers of the High Court. Now Section 435 has been amended recently by which powers are conferred not on the High Court alone but on any Sessions Judge as well as any District Magistrate or any Subdivisional Magistrate, not merely to examine the records and the findings or the sentence or the order and make a report to the High Court, but himself to direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the records. So, the powers of the Sessions Judges and the other Subordinate Judges on whom revisional powers have been conferred are almostco-extensive with those of the High Court, and it becomes therefore very necessary for us to see (hat any lacuna in the provision, namely Section 435, is made up. I think this is a very salutary amendment. Otherwise T am afraid it will be impossible for any Sessions Judge or District Magistrate to give any relief such as is now sought to be given. Therefore, I feel that now that wider powers have been conferred not only on the High Court but on the Sessions Judges and the District Magistrates this disability on them not to revise any order other than a sentence is a thing which has got to be made up by means of an amendment.

SHRI P. N. SAPRU: Sir, on a point of personal explanation. At the time when I made my observations the recent amendment to the Criminal Procedure Code was not prominently in my mind. At the time when the Criminal Proce dure Code was amended I was out of the country, and it was therefore.....

MR. CHAIRMAN: That is no excuse.

SHRI J. N. KAUSHAL: Mr. Chairman, I find that there is no opposition to this measure. The Government has accepted the measure and one or two Members who have tried to advance some other arguments also have later on said that the Bill of course should be accepted. But then they have advanced reasons which I could, with all respect, say w'ftt not be very relevant to the consideration of the Bill before the House. I would therefore request the House to accept this Bill.

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1, the Title and the Enacting Formula were added to the Bill.

SHRI-J. N. KAUSHAL: Sir, I move that the Bill be passed.

MR. CHAIRMAN: The question is:

'"That the Bill be passed." The

motion was adopted.

MB. CHAIRMAN: I allowed some discussion, though somewhat irrelevant, because we had no other work. The other BUI has been postponed and Iherc-fore we adjourn now.

The House stands adjourned till 11 A. M. on Monday.

The House then adjourned at twelve of the clock till eleven of the clock on Monday, the 13th August 1956.

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