

RAJYA SABHA

Friday, 10th 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