

CODE OF CRIMINAL PROCEDURE
(AMENDMENT) BILL*(Amendment of section 435)*

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the Bill of Shri Raghunath Singh further to amend the Code of Criminal Procedure, 1898. The time allotted was one hour and a half and the time taken already is 41 minutes. So, we have 49 minutes.

Pandit K. C. Sharma (Meerut Dist.—South): Sir, though the Bill is a very small one it is a very important one. It seeks to amend section 435; that in sub-section (1) of that section after the words 'any sentence' the words 'or order' be added.

Section 435 gives the revisional power to the High Court and other appellate courts like the Court of Session and the District Magistrate. Those powers are to '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, if you analyse the section, you will see that the purpose is for verifying the correctness, legality or propriety of any finding, sentence or order and also the regularity of any proceedings. When the revision is filed, the staying or suspending of the revisional court is only the execution of the sentence, leading to the liberty of the citizen. Of course, it is important. But, in certain other cases there may be more important questions involved and much harm may be done if the power to suspend the execution of the order is not given. This question arose in a case in the Calcutta High

Court. The High Court held—it was a case under section 145 of the Code of Criminal Procedure—

"Moreover where the party is once put in possession by the trial court under section 145, the Sessions Judge, acting under section 435, has no jurisdiction to order his eviction and put some one else in possession. He has only power to decide the question of possession. The final exercise of such power would amount to usurping the powers of the High Court. All the power the Sessions Judge has in this respect is to report the matter to the High Court. The sessions judge, when calling for the record of jurisdiction will direct that the execution of a sentence be suspended. An order directing a party to put in possession in proceeding under section 145 is not a sentence in any sense of the term. The sessions judge has no powers under section 435 to suspend the order for possession."

3 P.M.

This ruling has been followed by Allahabad where it has been held that the order passed by the sessions judge releasing the attachment made in proceeding under section 145, Criminal Procedure Code, against which an application for revision was pending before him was without jurisdiction.

I would like to bring to your notice some cases. Suppose a mill is working under a municipal licence for over ten years and a magistrate on the ground that no length of enjoyment could confer a right for a nuisance to be continued, passes an order that the mill be closed. Now, a mill employing over 2,000 workers is closed and a lot of loss has occurred to the public and to the millowner. The High Court, on the other hand, can hold that a mill working under a municipal licence and under the conditions obtaining in that particular case is not a nuisance at all. If a stay order is

not within the jurisdiction of the revisional court, then lot of loss could happen to the millowner and also to the public.

Take a case under section 133. Suppose a pucca building is encroaching on the road. The magistrate holds that a citizen has the right not only to walk on the road but to have every inch of the land on the road and, therefore, even a small piece of land encroached by a pucca building is a nuisance and must be removed. The magistrate passes an order for the removal of the building under section 133 of the Criminal Procedure Code. When the case goes for revision to the high court, the high court holds that in cases like this it is the civil court that has jurisdiction and the magistrate has not the summary jurisdiction under section 133. The final order is in favour of the party, but meanwhile suppose the magistrate gets the building demolished, what an irreparable loss would have occurred!

Again, under section 145 where the case is put before a magistrate in which this ruling has been given—both in the High Court of Calcutta and High Court of Allahabad—the land passes in possession to a particular party and the possession is wrong in law. Very valuable crops are standing, they are reaped and ultimately justice is done to the party in whose favour the possession should have occurred. Meanwhile lot of valuable crops passed to the other party and he has reaped them. It is not possible now to get into the damages to the extent that the crops have value. My respectful submission is that once having given the powers to the courts.....

Shri Kamath (Hoshangabad): I am sorry to interrupt, but I do not want my friend Pandit Sharma to speak when there is no quorum in the House. There are about 30 or 35 Members now.

Mr. Deputy-Speaker: The number is 35 and not 33 as the hon. Member said.

Shri Kamath: I said 30 to 35 Members.

Mr. Deputy-Speaker: Very well, there is no quorum.

I shall have the bell rung.

Mr. Deputy-Speaker: On a non-official day, to demand quorum from time to time will be more injurious to the Opposition.

Shri Kamath: We are the President's Opposition.

Mr. Deputy-Speaker: There is quorum now and the hon. Members will kindly continue to sit here.

Shri Kamath: Or sent substitutes, when they go out.

Pandit K. C. Sharma: My respectful submission is that the purpose of calling for the record is with regard to the correctness, legality or propriety of a finding, sentence or order passed. It passes one's commonsense how an illegal order may be allowed to be carried out. If the legality is in question and the sessions judge or the high court on the face of it finds the order illegal, there is no sense in allowing that order to be carried out till a final order is passed, which takes time in the revisional jurisdiction of the high court for a case to come up for hearing. Meanwhile irreparable loss would have been done. Apart from the magnitude or the quantity or the amount of the loss, the very fact that an order is illegal is a reason why it should not be allowed to be carried out or executed. Once a revisional court, by the mere looking into the file, comes to the conclusion that the order, on the face of it, is illegal, it should be suspended or stayed, and such a power should be given to the revisional court. It is commonsense and is a simple demand of justice and nothing against it can be stated. I appeal that the House would agree that this amendment should be carried out because it is very necessary and is in the interests of justice and commonsense, and the law demands it.

Shri Mulchand Dube: (Farrukhabad Distt.—North): As far as I can see, my hon. friend loses sight of the fact that the sessions judge's order is not a final order. The powers of the sessions

[Shri Mulchand Dube]

judge are confined to making a recommendation to the high court and the high court may or may not confirm the order passed by the sessions judge. During this time, if the order of the sessions judge is carried out—to begin with, say that the possession is restored to the person from whom it had been taken away by the order of the magistrate—and if the high court comes to a different conclusion, the result will be that by the time the high court has decided the matter finally, possession may have changed twice. My submission is that in the case of a sentence of imprisonment, where the question of liberty is concerned, the session judge has been rightly given the power, but so far as the question of civil rights in regard to property is concerned, those rights are not being given to the sessions judge because the order of the sessions judge is not final.

The Deputy Minister of Home Affairs (Shri Datar): I concede at the outset that there has been an omission in this respect. But there has been an omission in the law and so far as the purpose of this Bill is concerned, there is nothing to which an objection can be taken.

Shri Raghunath Singh (Banaras Dist.—East): Thank you.

Shri Datar: My only difficulty is this—the question whether this Bill is to be accepted as it is or whether the matter should be left to the Law Commission or whether we should introduce a Bill. Government are prepared to introduce a Bill after consulting the State Governments. The policy that we generally follow in this respect is that, because the State Governments are mostly concerned with the administration of criminal law, without consulting them we do not bring forward any Bill of the nature that has been placed before the House by my hon. friend. If my hon. friend is prepared to accept my assurance that immediately we shall be making a reference to the State Governments and after obtaining their consent—about which I have no doubt whatsoever—Government will themselves

bring forward a Bill if this House considers that the matter is very simple and need not go even to the Law Commission. I again repeat my opinion that the particular omission here is inadvertent. Difficulty is likely to be felt because in the course of the same provision at an early stage you will find that in section 435 we have used the words 'findings, sentences or order'. So far as 'finding' is concerned it is not operative but 'sentence and order' are operative. Ordinarily these two words 'sentence, order' ought to have been repeated but only the word 'sentence' has been mentioned and therefore, I am in full sympathy with the desire of the hon. Member and if he consents to have the Bill withdrawn, we shall take the opinion of the State Governments immediately and we ourselves shall bring forward a Bill.

Shri Raghavachari (Penukonda): This Bill was introduced in 1953 and all these days it has been pending. I suppose the Government knew that a Bill of this kind is on the anvil of the House. Then, what prevented them from consulting the State Governments? Why should they wait till the day on which the matter has actually come up for consideration and say now that they would like to take this up with the State Governments?

Pandit Thakur Das Bhargava (Gurgaon): I beg to raise a constitutional question. My friend the Deputy Home Minister was pleased to say that the Bill was all right. But the Government take exception that they had not consulted the State Governments and that they would themselves bring a Bill. What is the use of a private Member bringing a Bill if ultimately it is good also and the Government also say so but they say that they alone will take the responsibility for bringing a Bill. I should think that the Bill be stayed for sometime. Let the hon. Minister take the views of the State Governments. If he wants to pass a Bill, let the private Member get it passed because he had found out the mistake.

Why did not the Government find out the mistake when the Criminal Procedure Code was amended. If the hon. Member agrees, I would rather like to suggest that this Bill be stayed till such time as Government take the views of the local Governments. I would urge that so far as private Members' Bills are concerned, their Bills should be treated in the same way as the Government Bills.

Shri Datar: I have no objection to accept the suggestion of my hon. friend. This Bill may be stayed over till the next session; meanwhile we shall get the opinion of the State Governments.

Shri Raghunath Singh: I agree to it.

Pandit Thakur Das Bhargava: I beg to move:

"That the debate on the Bill be adjourned till the next session."

Mr. Deputy-Speaker: We cannot fix any date now. The question is:

"That the debate on the Bill be adjourned."

The motion was adopted.

INDIAN REGISTRATION (AMENDMENT) BILL

(Insertion of New Section 20A)

Shri S. C. Samanta (Tamluk): I beg to move:

"That the Bill further to amend the Indian Registration Act, 1908, be taken into consideration."

The section that I intend to put in runs thus:

"Any document which mentions cast and religion of the parties shall be refused for registration by the Registrar or Sub-Registrar and such officers shall not enquire about them while registering documents."

The main object why I am bringing this Bill before the House is this. We in villages very often encounter some difficulties. I have seen with my own eyes so many documents refused by

Sub-Registrar in the Registrar's Office simply because one was not ready to mention one's sub-caste or religion. All castes and religions should be written in the documents. The time has now come when Government should come forward to deal with these things. We have experienced so many calamities on account of caste. Swami Vivekananda, Mamatma Gandhi and other great personalities of India—all spoke against the present system of caste because it has spoiled us and we are going to do penance for it. At this hour, should not the Government bring a full-fledged Bill to do away with the caste system? Should they not accept this simple amendment which will be much beneficial to the people?

In section 20, there is provision for refusal of registration of documents. The question may be asked: is there any provision in the Indian Registration Act of 1908 that the caste or religion should be mentioned in the documents? There is none. If you go through the whole Act, there is no mention of it anywhere. Still the Sub-Registrar can demand that there should be mention of caste and sub-castes and religion and when he asks anybody as to what caste or religion he belongs, he must give an answer; or else his document will be refused; it will not be registered. Then the man who is presenting the document may go to a court. But there are other provisions which make the Sub-Registrar safe.

Section 34(3) (b) says:

"No document shall be registered under this Act unless the persons executing such documents or their representatives or assignees or agents authorised aforesaid appear before the register office within the time allotted for presentation under sections 23, 24, 25 and 26. The registering officer shall thereupon enquire whether or not such document was executed by the persons by whom it purports to have been executed, satisfy himself as to the identity