1960

Rameshwar Dayal
v.
State of Punjab

S. K. Das J.

out any such statutory rule and except making a general grievance that too many persons have been recruited from the Bar, he was unable even to substantiate that the one-third reservation made in favour of the service members has been violated. In any case, unless there is clear proof of a breach of a statutory rule in making any of the appointments under consideration here, the point does not merit any discussion. Such proof is singularly lacking in this case.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

1960

December 5.

SHRIRAM & OTHERS

v.

THE STATE OF BOMBAY

(JAFER IMAM, K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Commitment—If can be made without recording any evidence—Duty of Committing Court—Code of Criminal Procedure, 1898 (V of 1898), s. 207-A.

On the date fixed for the inquiry the prosecution intimated to the Magistrate that it did not intend to examine any witness in the Magistrate's Court. The Magistrate adjourned the inquiry to consider whether it was necessary to record any evidence before commitment. On the adjourned date he expressed his opinion that no witnesses need be examined, framed charges against the appellants and committed them to the Sessions Court. The appellants contended that the Magistrate had no jurisdiction to commit them to Sessions without examining witnesses under sub-s. (4) of s. 207-A of the Code of Criminal Procedure.

Held, that the order of commitment was valid and the Magistrate had jurisdiction to make it without recording any evidence. The position under s. 207-A of the Code is that:—

(i) the Magistrate is bound to take evidence of only such eye-witnesses as are actually produced by the prosecution before the Committing Court;

(ii) the Magistrate, if he is of opinion that it is in the interests of justice to take evidence, whether of eye-witnesses or of others, he has a duty to do so;

(iii) the Magistrate, if he is not of that opinion and if the prosecution has not examined any eye-witnesses, he has jurisdiction to discharge or commit the accused on the basis of the documents referred to in s. 173 of the Code;

(iv) the discretion of the Magistrate is a judicial discretion which is liable to be corrected by a superior Court.

Macherla Hanumantha Rao v. *The State of Andhra Pradesh*, [1958] S.C R. 396, relied on.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 57 and 58 of 1960.

Appeals by special leave from the judgment and order dated November 5/6, 1958, of the Bombay High Court at Nagpur in Criminal Appeal No. 94 of 1958.

Jai Gopal Sethi and *G. C. Mathur*, for the appellant (in Cr. A. No. 57 of 1960).

G. C. Mathur, for the appellant (in Cr. A. No. 58 of 1960).

Gopal Singh and *D. Gupta*, for the respondent.

1960. December 5. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO, J.—These two appeals raise rather an important question on the interpretation of the provisions of s. 207A of the Criminal Procedure Code (hereinafter referred to as the Code).

The facts that have given rise to these appeals may be briefly stated. The appeals arise out of an incident that took place on November 29, 1957, when one Sadashiv was murdered in the courtyard of his house in village Nimgaon. The case of the prosecution was that the four appellants, armed with sticks, went to the house of the deceased, dragged him out of the house and beat him with sticks in the courtyard; and that as a result of the beating he died on the next day at about 5 p.m. at Bhandara Hospital. After investigation, the police submitted their report to the Magistrate under s. 173 of the Code along with the relevant documents. After forwarding the report, the officer in charge of the police station furnished

1960

Shriram & Others v. The State of Bombay

Subba Rao J.

the appellants with a copy of the report forwarded under sub-s. (1) of s. 173, the First Information Report recorded under s. 154 and all other documents or relevant extracts thereof on which the prosecution proposed to rely, including the statements recorded under sub-s. (3) of s. 161 and also intimated them of the persons the prosecution proposed to examine as its witnesses. The Magistrate posted the case for inquiry on February 10, 1958 and on that date the prosecution intimated that it did not intend to examine any witnesses in the Magistrate's Court. On behalf of the appellants no objection was raised to that course. But the Magistrate adjourned the inquiry to February 12, 1958, as he wanted to consider whether any evidence was necessary to be recorded before commitment. On February 12, 1958, he expressed his opinion that no witness need be examined at that stage; thereafter, he framed charges against accused-appellants under s. 302, read with s. 34, of the Indian Penal Code, and also under s. 448 thereof and committed the appellants to the Sessions Court.

Before the learned Sessions Judge the prosecution led four types of evidence, i.e., (1) eye-witnesses, namely, P.Ws. 6, 11, 20 and 25; (2) dying declaration, Ex. P-15, supported by P. Ws. 18, 22 and 19; (3) the identification of the appellants in jail by P.Ws. 20 and 25; and (4) recovery of various articles at the instance of the accused-appellants. The defence examined four witnesses. On a consideration of the entire evidence, the learned Sessions Judge held that the prosecution case had been amply borne out and that the four appellants entered into the house of the deceased and beat him in the manner described by the prosecution witnesses. As no less than 12 contused wounds were inflicted on the deceased, which resulted in the fracture of his ribs and injury to the lung, and as the doctor opined that the death was due to shock and haemorrhage resulting from the said fracture, the learned Sessions Judge held that the accused-appellants were guilty of murder and convicted them under s. 302, read with s. 34, Indian Penal Code, and he further convicted them under s. 448 of the Indian

Penal Code for trespassing into the house of the deceased. On these findings the learned Sessions Judge sentenced the appellants to undergo imprisonment for life on the first count and for 3 months rigorous imprisonment on the second count. The appellants preferred an appeal against their convictions and sentences to the High Court of Bombay at Nagpur. The learned Judges of the High Court, on a resurvey of the entire evidence, agreeing with the learned Sessions Judge, accepted the prosecution case, but they held that the appellants were guilty only under s. 304, Part I, read with s. 34, Indian Penal Code, and in the result they reduced the sentence from life imprisonment to 10 years' rigorous imprisonment in regard to appellant 1 and to 7 years' rigorous imprisonment in regard to appellants 2 to 4. Against the said convictions and sentences, the appellants have preferred, by special leave, appeals to this Court. Criminal Appeal No. 57 of 1960 has been preferred by the first appellant and Criminal Appeal No. 58 of 1960 by appellants 2 to 4.

Learned counsel for the appellants raised before us the following two points: (1) The Sessions Court and, on appeal, the High Court have not properly appreciated the evidence and the circumstances of the case in holding that the appellants had committed the offences. (2) The trial and conviction of the appellants by the Sessions Court were null and void, as the Magistrate had no jurisdiction to commit the appellants to Sessions without examining witnesses under sub-s. (4) of s. 207A of the Code and that, as the order of committal was without jurisdiction, the defect was not cured either under s. 532 or s. 537 of the Code.

The first question does not merit any consideration. Both the courts below have carefully considered the evidence adduced by the prosecution as well as the accused-appellants and have accepted the prosecution case. It is a well established practice of this Court not to interfere on questions of fact, particularly when they are concurrent findings, except under exceptional circumstances. We find no such exceptional

1960

Shriram & Others
v.
The State of Bombay

Subba Rao J.

circumstances in this case. We, therefore, reject the first contention.

The second contention turns upon the interpretation of the relevant provisions of s. 207A of the Code. Before attempting to construe the relevant provisions of the section it would be helpful to notice briefly the history of the said section. Under the Criminal Procedure Code, as it originally stood, in the matter of committal proceedings there was no distinction between the proceeding instituted on a police report and that instituted otherwise than on police report. The main object of the committal proceedings was to hold an inquiry to ascertain and record the case which was to be tried before the Court of Sessions. It was primarily to give an opportunity to an accused to know in advance the particulars of evidence that would be adduced against him in the Court of Sessions so that he could be in a position to prepare his defence. Another object, which was no less important, was to enable the Magistrate to discharge an accused if there was no *prima facie* case against him. This procedure prevented unnecessary harassment to such accused and at the same time saved the valuable time of the Sessions Court. In practice the committal proceeding, whether intended by the Legislature or not, served another purpose, namely, it gave an opportunity to the accused to test the credibility of witnesses by bringing out the discrepancies between their evidence in the committing court, the statements made by them to the police under s. 161 of the Code and the evidence given by them in the Court of Sessions. Though very often accused persons took full advantage of this additional opportunity to test the veracity of the witnesses, as often as not, it had turned out to be duplication of trials with the resultant long delays in the disposal of criminal cases. The advantage of committal proceeding was not solely for the accused, for the prosecution by examining the witnesses before the committing Magistrate secured their testimony in the sense that though it was tampered subsequenty—it is unfortunately a frequent phenomenon in criminal cases—it could use the said evidence as substantive

one under s. 288 of the Code. The Legislature, in its wisdom, presumably thought that undue delay in the disposal of sessions cases was due to the elaborate and prolonged committal proceedings and stepped in to amend the Code in that respect. The whole of s. 207A has been inserted by Act XXVI of 1955. While the section simplified the procedure in regard to commitment proceedings instituted on a police report, it confined the existing procedure to proceedings initiated otherwise than on a police report. This distinction between the two classes of cases had a reasonable factual basis. In the case of a police report, a thorough inquiry would have been made and the investigating officer would have sent a report to the Magistrate under s. 173 of the Code. The amended s. 173 of the Code also enjoins on the officer in charge of the police station a duty to furnish before trial, free of cost, to the accused copies of the report forwarded under that section to the Magistrate, the First Information Report recorded under s. 154 and all other documents or relevant extracts thereof on which the prosecution proposes to rely, including the statements, if any, recorded under s. 164 of the Code and those recorded under sub-s. (3) of s. 161 and a list of witnesses whom the prosecution proposes to examine as its witnesses. The Magistrate in a proceeding instituted on police report would ordinarily be in a position, on the said material, to understand the case of the prosecution and know the nature of the evidence that would be adduced on the basis of which the accused is sought to be proceeded against. The accused also would have an opportunity to know beforehand the case he would have to meet and the evidence that would be adduced against him. But in a proceeding instituted otherwise than on a police report, no such material would be available and therefore the old procedure continued to apply to such a case. With this background let us look at the provisions of s. 207A of the Code. The relevant provisions of s. 207A of the Code may now be read:

Section 207A: (1) When, in any proceeding instituted on a police report, the Magistrate receives the

1960

Shriram & Others
v.
The State of Bombay

Subba Rao J.

report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the Magistrate, for reasons to be recorded, fixes any later date.

(2) If, at any time before such date, the officer conducting the prosecution applies to the Magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged, and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.

(5) The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4), and in such case, the prosecutor may re-examine them.

(6) When the evidence referred to in sub-section (4) has been taken and the Magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate

that such person should be tried before himself or some other Magistrate, in which case he shall proceed acccordingly.

(7) When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

On the interpretation of sub-s. (4), which is the main sub-section under scrutiny in the present case, the High Courts in India have expressed conflicting views. It would not be necessary to consider the said decisions in detail, but it would be enough if we state the conflicting views, which are as follow: (1) Under sub-s. (4) the prosecution is bound to examine all the eye-witnesses indicated in the police report, and the discretion of the Magistrate to examine witnesses under the second part of the said sub-section is only in respect of witnesses other than the eye-witnesses: vide *M. Pavalappa* v. *State of Mysore* (1), *State* v. *Anadi Betankar* (2), *Ghisa* v. *State* (3) and *Chandu Satyanarayana* v. *The State* (4). (2) The Magistrate's power to examine eye-witnesses under the first part of sub-s. (4) is confined only to such witnesses as are produced in court by the officer conducting the prosecution and if he has not produced any such witnesses, the Magistrate cannot examine any eye-witnesses under the second part of the said sub-section, for, according to this view, the second part deals with only witnesses other than eye-witnesses. (3) If the prosecution has not produced any eye-witnesses the court may not in its discretion examine any witness under the second part, but can, if satisfied, discharge or commit the accused to sessions on the basis of the documents referred to in s. 173 of the Code: vide *State* v. *Lakshmi Narain* (5), *State of U. P.* v. *Satyavir* (6). (4) The first part confers a power on a Magistrate only to examine the eye-witnesses produced, but

(1) A.I.R. 1957 Mysore 61.
(2) A.I.R. 1958 Orissa 241.
(3) A.I.R. 1959 Raj. 294.
(4) A.I.R. 1959 A.P. 651.
(5) A.I.R. 1960 All. 237.
(6) A.I.R. 1959 All. 408.

1960

Shriram & Others
v.
The State of Bombay

Subba Rao J.

the second part empowers him to examine any witness other than those produced, whether eye-witnesses or not, and in a case where the prosecution failed to discharge its duty to produce any witnesses or any important eye-witnesses, the court would not be exercising its judicial discretion if it commits the accused to sessions on the basis of documents referred to under s. 173 of the Code without examining at least the important witnesses: vide *State* v. *Yasin* (1), *In re Pedda Amma Muttigadu* (2), *A. Ishaque* v. *The State* (3) and *Manik Chand* v. *The State* (4). We have gone through the judgments of the High Courts cited at the Bar and derived considerable assistance from them for deciding the question raised. But as the question is to be primarily decided on the interpretation of the relevant provisions, we think, without any disrespect to the learned Judges, that it is not necessary to consider the said decisions in detail.

Now let us look at the relevant provisions of s. 207A of the Code to ascertain its intendment. Sub-s. (4) is the most important section vis-a-vis the taking of evidence. It is in two parts, the first part provides for the examination of witnesses produced by the prosecution and the second part for the examination of other witnesses. One of the fundamental rules of interpretation is that if the words of a statute are in themselves precise and unambiguous "no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". The first part of the sub-section reads: "The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged." The word "shall" imposes a peremptory duty on the Magistrate to take the evidence; but the nature of the said evidence is clearly defined thereafter. The clause "as may be produced by the prosecution as witnesses to the actual commission of the offence alleged" governs the words "such persons";

(1) A.I.R. 1958 All. 861.
(2) A.I.R. 1959 A.P. 469.
(3) A.I.R. 1958 Cal. 341.
(4) A.I.R. 1958 Cal. 324.

with the result that the duty of the Magistrate to take evidence is only confined to the witnesses produced by the prosecution. Learned counsel for the appellants contends that it could not have been the intention of the Legislature to permit the prosecution to keep back the eye-witnesses in the committal court and therefore the word "produced" should be read as "cited". To accept this interpretation is to substitute the word "cited" in place of the word "produced": such a construction is not permissible, especially, when the plain meaning of the word used by the Legislature is clear and unambiguous, and the acceptance of that meaning does not make the section otiose. The phrase "if any" between the words "such persons" and the aforesaid clause emphasizes that the prosecution may not produce any such persons, in which case the obligation to examine such witnesses cannot arise. The wording of the second part of the sub-section is also without any ambiguity and it reads: "and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also." No doubt the word "may" in the clause "he may take evidence" imposes a duty upon the Magistrate to take other evidence; but that duty can arise only if he is of opinion that it is necessary in the interests of justice to take the evidence. The fulfilment of the condition that gives rise to the duty is left to the discretion of the Magistrate. The duty to take evidence arises only if he is of the requisite opinion. Doubtless the discretion being a judicial one, it should be exercised reasonably by the Magistrate. If he exercises it perversely, it may be liable to be set aside by a superior court. If so, what do the words "other witnesses" mean? Do they mean witnesses other than eye-witnesses or witnesses, eye-witnesses or not, other than those produced before the Magistrate by the prosecution? The witnesses who will depose to the prosecution case may be of different categories, namely, (i) witnesses who are eye-witnesses to the actual commission of the offence alleged; (ii) witnesses who speak to the facts

1960

Shriram & Others
v.
The State of Bombay

Subba Rao J.

which afford a motive for the commission of the offence; (iii) witnesses who speak to the investigation and to the facts unfurled by the investigation; and (iv) witnesses who speak to the circumstances and facts probablizing the commission of the offence, which is technically described as substantive evidence. Sub-section (4) enjoins on the Magistrate a duty to examine the first category of witnesses produced by the prosecution. The word "actual" qualifying the word "commission" emphasizes the fact that the said witnesses should be those who have seen the commission of the offence. We have held in interpreting the first part that the Magistrate should examine only such witnesses who are produced before him by the prosecution; but there may not be eye-witnesses in a case, or, if there are, the prosecution may not have produced all of them before the Magistrate. The second part of the sub-section therefore confers a discretionary power on the Magistrate to examine any one or more of witnesses of all categories, including the eye-witnesses who have not been produced by the prosecution within the meaning of the first part of the said sub-section. But it is said that sub-ss. (6) and (7) indicate that taking of evidence by the Magistrate is a condition precedent for making an order of discharge or of committal and, therefore, the provisions of sub-s. (4) must be so construed as to impose a duty on the Magistrate to examine some witnesses. Firstly, we cannot hold that the sub-sections impose any such condition. The argument is that the clause in sub-s. (6), namely, "When the evidence referred to in sub-section (4) has been taken" is a condition precedent for making an order of discharge. The adverb "when" in the clause in the context denotes a point of time and not a condition precedent. The clause means nothing more than that an order of discharge can be made under sub-s. (6) after the events mentioned therein have taken place. Secondly, the two clauses necessarily refer to the corresponding or appropriate situations under the earlier sub-sections. The first clause will not come into play if the Magistrate has not taken any evidence. So too, in sub-s. (7) also the

adverb "when" denotes the time when the Magistrate can make the order of committal. If evidence has not been taken, that sub-section is not applicable and the Magistrate proceeds to make an order of committal on other material referred to in the sub-section. On the other hand, if the said two sub-sections are construed as imposing a condition precedent for making an order of discharge or commitment, as the case may be, the said two sub-sections will directly come into conflict with the provisions of sub-s. (4). When one sub-section clearly confers a discretion on the Magistrate to take or not to take evidence, the other sub-sections take it away. It is not permissible to create conflict by construction, when by an alternative construction all the three sub-sections can be harmonized and reconciled. If the construction suggested by learned counsel for the appellants be adopted, it would also lead to an anomaly in that the Magistrate, though the documents referred to in s. 173 clearly pronounce the innocence of the accused, has to go through the pretence of examining one or more witnesses to satisfy the provisions of the sub-section.

Reliance is placed upon s. 251A of the Code relating to warrant cases whereunder the Magistrate is authorized, upon consideration of all the documents referred to in s. 173 and upon making such examination of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, to discharge the accused, if he considers the charge against the accused to be groundless; but if he is of opinion that there is ground that the accused has committed an offence alleged against him, he shall frame in writing a charge against the accused. By contrasting this provision with s. 207A, it is contended that if the construction put forward by learned counsel is not accepted, the obvious difference between the two procedures indicated by the Legislature would be obliterated. We cannot agree with this contention. The difference between the two procedures is that, in a case covered by s. 207A, evidence will have to be taken under certain

1960

Shriram & Others
v.
The State of Bombay

Subba Rao J.

contingencies, whereas under s. 251A no evidence need be taken at all. That distinguishes the different procedures under the two sections and it is not the province of the court to add any further conditions or limitations to those provided by the Legislature.

We are fortified in our view by a decision of this Court in *Macherla Hanumantha Rao* v. *The State of Andhra Pradesh* (1). There the point in controversy was whether ss. 207 and 207A, inserted in the Code by the Amending Act XXVI of 1955, violated the provisions of Art. 14 of the Constitution. In support of the contention that they violated Art. 14 of the Constitution, it was sought to be made out that the provisions of s. 207A of the Code, in comparison and contrast with other provisions of Ch. XVIII of the Code, prescribed a less advantageous position for the accused persons in a proceeding started under a police report than the procedure prescribed in other cases in the succeeding provisions of that chapter. This Court held that there was a reasonable classification to support the difference in the procedures. Sinha J., as he then was, who spoke for the Court, in order to meet the argument based on discrimination, considered the scope of the new section. In doing so, the learned Judge observed thus at p. 403:

"The magistrate then has to record the evidence of such witnesses as figure as eye-witnesses to the occurrence, and are produced before him. He has also the power, in the interest of justice, to record such other evidence of the prosecution as he may think necessary, but he is not obliged to record any evidence. Without recording any evidence but after considering all the documents referred to in s. 173 and after examining the accused person and after hearing the parties, it is open to the magistrate to discharge the accused person after recording his reasons that no ground for committing the accused for trial has been made out, unless he decides to try the accused himself or to send him for trial by another magistrate. If, on the other hand, he finds that the accused should be committed for trial, he is required to frame a charge

(1) [1958] S.C.R. 396.

disclosing the offence with which the accused is charged."

Then the learned Judge proceeded to consider the scope of s. 208 of the Code. After having found that there was obvious difference in the procedure, the learned Judge came to the conclusion that "the Legislature has provided for a clear classification between the two kinds of proceedings at the commitment stage based upon a very relevant consideration, namely, whether or not there has been a previous inquiry by a responsible public servant whose duty it is to discover crime and to bring criminals to speedy justice". It will thus be seen that the observations of the learned Judge at p. 403 cannot be said to be *obiter*, as learned counsel asks us to hold, for the construction of the provisions of s. 207A was necessary to ascertain whether there was reasonable classification or not. Assuming that the said observations are *obiter*, even then, they record the considered opinion of five learned Judges of this Court. The view we have expressed also is consistent with the said observations.

Our view could now be expressed in the following propositions: (1) In a proceeding instituted on a police report, the Magistrate is bound to take evidence of only such eye-witnesses as are actually produced by the prosecution in court. (2) The Magistrate, if he is of opinion that it is in the interest of justice to take evidence, whether of eye-witnesses or others, he has a duty to do so. (3) If the Magistrate is not of that opinion and if the prosecution has not examined any eye-witnesses, he has jurisdiction to discharge or commit the accused to sessions on the basis of the documents referred to in s. 173 of the Code. (4) The discretion of the Magistrate under sub-s. (4) is a judicial discretion and, therefore, in appropriate cases the order of discharge or committal, as the case may be, is liable to be set aside by a superior court.

Before closing we would like to make some observations. Rarely we come across cases where the prosecution does not examine important eye-witnesses, for such a procedure would entail the danger of the said witnesses being tampered with by the accused, with

1960

Shriram & Others
v.
The State of Bombay

Subba Rao J.

the result that there will not be any evidence taken by the committing Magistrate which could be used as substantive evidence under s. 288 of the Code. Even if the prosecution takes that risk, the Magistrate shall exercise a sound judicial discretion under the second part of sub-s. (4) of s. 207A in forming the opinion whether witnesses should be examined or not, and any perverse exercise of that discretion can always be rectified by a superior court. But there may be a case where the Magistrate can make up his mind definitely on the documents referred to in s. 173 without the aid of any oral evidence and in that event he would be within his rights to discharge or commit the accused, as the case may be. In this view, it is not necessary to express our opinion whether even if the Magistrate acted illegally in committing an accused without taking any evidence, the said illegality is cured either by s. 537 of the Code or any other section thereof.

In the result, the appeals fail and are dismissed.

Appeals dismissed.

1960

December 5.

M/s. RAMNARAIN SONS (Pr.) LTD.

v.

COMMISSIONER OF INCOME TAX, BOMBAY

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income Tax—Assessment—Purchase of shares for acquiring managing agency rights—Loss incurred in sale of such shares—If of a capital nature.

The appellants, a private limited company, carrying on business as brokers, managing agents and dealers in shares and securities and having as one of their objects the acquisition of managing agencies, purchased shares of the Dawn Mills at a rate much higher than the market rate for obtaining the controlling voting right and thereby acquired the managing agency of the Mills. Later on, they sold some of those shares and suffered a loss of Rs. 1,78,438. The Income-tax Officer in assessing the taxable income disallowed the loss and the Appellate