

CRIMINAL REVISION.

Before Imam and Chapman JJ.

WAZED ALI KHAN

v.

EMPEROR.*

1913

Dec. 16.

Transfer—Application for adjournment to move the High Court for transfer —“Criminal case,” meaning of—Proceedings for security to keep the peace—Criminal Procedure Code (Act V of 1898) ss. 107, 526 (8).

A proceeding under s. 107 of the Criminal Procedure Code is a “criminal case” and is subject to the application of cl. (8) of 526.

The petitioner and his son claimed to be the proprietors of the *bara taraf* division of the estate of Karatiya, in the district of Mymensingh, and Haider Ali Khan and others were alleged to have been the owners of the *chota taraf* portion which had passed into the hands of the Court of Wards in October 1910. A dispute arose between the petitioner and the Assistant Manager of the Court of Wards as to the collection of the rents of a *hat* in the village of Karatiya. On the 5th September 1913, the Assistant Manager filed a complaint before the Sub-divisional Officer of Tangail, alleging molestation and obstruction by the petitioner and his party, whereupon the Magistrate drew up a proceeding against him under s. 107 of the Criminal Procedure Code. On the 1st October the petitioner presented an application to the trying Magistrate, before the commencement of the examination of the witnesses, for an adjournment under s. 526 (8) of the Code, but it was rejected on the ground that the clause

*Criminal Revision, No. 1695 of 1913, against the order of C. M. Gurme, Sub-divisional Magistrate of Tangail, dated Oct. 3, 1913.

1913
 WAZED ALI
 KHAN
 v.
 EMPEROR.

did not apply to a proceeding under s. 107. The petitioner thereupon declined to cross-examine the prosecution witnesses and to adduce evidence on his own behalf. The Magistrate, after the examination of 11 prosecution witnesses, made an order against the petitioner under s. 107. The latter then moved the High Court and obtained the present Rule.

Mr. Eardley Norton (with him *Babu Akhil Bandhu Guha* and *Babu Probodh Chandra Chatterjee*), for the petitioners. The expression "criminal case" is used in s. 526 (8) of the Criminal Procedure Code, as distinguished from a civil case: see *Lolit Mohan Moitra v. Surja Kanta Acharjee*(1), *In re Ahmad Hossain*(2) decided on the 12th June 1899. It has been held in Calcutta that the High Court has power to transfer a case under s. 145, and it has similar power in the case of proceedings under s. 107. The answer to the Magistrate's statement in the explanation that it would be hazardous to allow such applications in urgent cases, is that s. 107 (4) provides a remedy and gives the Magistrate power to remand the accused to custody.

Babu Srish Chandra Chowdhury, for the Crown. Clause (8) of s. 526 of the Criminal Procedure Code speaks of "criminal case or appeal". The words "criminal case" must be read with the word "appeal," and refer to cases of trials for offences, and not to proceedings under s. 107 of the Code.

Cur. adv. vult.

IMAM AND CHAPMAN JJ. The petitioners in this case have been ordered to execute bonds with sureties under Section 107 of the Code of Criminal Procedure to keep the peace. At the trial of the case they applied to the Magistrate, before the examination of

(1) (1901) I.L.R. 28 Cal. 709. (2) (1899) Unreported.

1913

WAZED ALI
KHAN
v.
EMPEROR.

witnesses had commenced, for an adjournment under clause (8) of section 526 of the Criminal Procedure Code to enable them to move this Court for a transfer. The application was refused for the reason that proceedings under section 107 were not governed by clause (8) of section 526, and the Magistrate proceeded to try the case. The prosecution examined 11 witnesses but the petitioners declined to cross-examine them, the claim being that the petitioners were entitled to an adjournment under the law. When called upon to enter on their defence, for the same reason they declined to examine their witnesses. The Magistrate then made an order binding them to keep the peace. Against that order they moved this Court and obtained this Rule on the ground that the Magistrate had erred in law in holding that clause (8) of section 526 had no application to cases under section 107.

On behalf of the Crown it has been contended that a proceeding under section 107 is not a "criminal case" and inasmuch as clause (8) of section 526 refers to "criminal case or appeal" it cannot be said to apply to a proceeding under section 107. We cannot accede to this argument. It is true that every case that is governed by the Code need not necessarily be a "criminal case," but it does not from that follow that only such cases are "criminal" as relate to offences already committed or said to have been committed. Under section 107 a Magistrate is empowered in his discretion to detain a person, who is the subject of the proceeding, in custody until the completion of the enquiry. The Code further provides that if a person ordered to keep the peace does not give the necessary security, he shall suffer simple imprisonment for the period laid down in the order. Such being the provisions of the Code we cannot, in the absence of a legislative definition of the phrase "criminal case," hold

1913
 WAZED ALI
 KHAN
 v.
 EMPEROR.

that a proceeding under section 107 is not a "criminal case." In our view, cases under section 107 are subject to the application of clause (8) of section 526, and the Magistrate erred in refusing the adjournment sought.

This Rule, therefore, is made absolute and the order binding the petitioners to keep the peace is set aside. We, however, desire to remark that if in the opinion of the Magistrate there is still apprehension of a breach of the peace between the parties, it is open to him to adopt such preventive measures for the preservation of peace as he thinks proper under the law.

E. H. M.

Rule absolute.

APPELLATE CRIMINAL.

Before Holmwood and Sharfuddin JJ.

RAMAN BEHARI DAS

v.

EMPEROR.*

1913
 Dec. 17.

Charge—Misjoinder—Joinder of three charges under s. 409 with three under s. 477A of the Penal Code—Legality of trial—Criminal Procedure Code (Act V of 1898) ss. 222 (2), 233, 234.

Section 222 (2) of the Criminal Procedure Code refers to cases of criminal breach of trust or dishonest misappropriation of money, and cannot be applied to a case under s. 477A of the Penal Code.

Queen-Empress v. Mató Lal Lahiri (1) referred to.

Section 233 of the Code must be strictly followed save where the law itself provides an exception.

A joinder of three charges under s. 409 with three under s. 477A of the Penal Code relating to different transactions is not warranted by any of the

* Criminal Appeal No. 783 of 1913, against the order of S. E. Stinten, Sessions Judge, Sylhet, dated July 28, 1913.

(1) (1899) I. L. R. 26 Calc. 560.