

The result is that this appeal fails and is dismissed with costs.

1914

KHAGARAM
DAS
v.
RAMSANKAR
DAS
PRAMANIK.

BEACHCROFT J. I agree on the ground that the provision for interest at 75 per cent. was a stipulation by way of penalty.

G. S.

Appeal dismissed.

CRIMINAL REVISION.

Before Sharfuddin and Teunon JJ.

GIRISH CHANDRA RAY

v.

SARAT CHANDRA SINGH.*

1914

July 23.

Sanction for Prosecution—Offences committed in the Court of a Deputy Magistrate—Transfer of same from the sub-division—Successor in office—Application for sanction to another Deputy Magistrate, subsequently posted to the sub-division—Power of latter to grant sanction—Criminal Procedure Code (Act V of 1898), s. 195.

Where there are several Deputy Magistrates at a place, and one of them is transferred, the Deputy Magistrate who comes to fill the gap is not the successor in office of the outgoing Magistrate.

Mohesh Chandra Saha v. Emperor(1) referred to.

Where a proceeding under s. 107 of the Code, during the course of which a forged pottah was filed and evidence given in support thereof, was disposed of by H. K. G., a Deputy Magistrate, who became afterwards the officer next senior to the Subdivisional Magistrate, and on the transfer of the former, two other Deputy Magistrates became successively the next senior officers; and ultimately K. L. M., a Deputy Magistrate, joined the subdivision as the next senior officer, and an application was made to him

* Criminal Revision No. 804 of 1914 against the order of Khirode Lal Mukherjee, Deputy Magistrate of Comilla, dated April 18, 1914.

1914

GIRISH
CHANDRA
RAY

v.

SARAT
CHANDRA
SINGH.

for sanction to prosecute the petitioners for offences, under ss. 471 and 193 of the Penal Code, committed in the Court of H. K. G. :—

Held, that K. L. M. was not the successor in office of H. K. G., and had no power to grant sanction under the circumstances.

IN 1912 a proceeding under s. 107 of the Code was instituted in the Court of Babu Harendra Kumar Ghose, a Deputy Magistrate of the fourth grade, exercising first-class powers at the Sadar station of Comilla, against the first petitioner, Girish Chandra Ray. During the pendency of the case the second petitioner, who was the latter's servant, was alleged to have filed a certified copy of a *pottah*, purporting to have been executed in favour of the first petitioner's grandfather, with a list of documents signed by the first petitioner, and to have given evidence in support of the deed. The Magistrate discharged the accused on the 13th November 1912, but the genuineness of the document having been impeached, a departmental enquiry was set on foot, and it was discovered that a forged *pottah* had been substituted in the Registers for the original, and corresponding alterations made in other records kept in the Sub-Registry Office at Comilla.

In the meantime the Sadar station was created a subdivision on the 1st January 1913. Of the Deputy Magistrates then stationed at headquarters, Babu Prokash Chandra Singh was made Subdivisional Officer, and Babu H. K. Ghose and Babu S. K. Chakravarti, a Deputy Magistrate of the sixth grade, with second-class powers, were appointed by the District Magistrate to act therein. There was no formal classification made of the officers in the subdivision, but Babu H. K. Ghose was in point of fact the officer next senior to the Subdivisional Magistrate, and held charge of the subdivision during the absence, on tour, of the latter, and was considered, in this sense, to be

the "second officer." On the 7th June 1913, Babu H. K. Ghose made over charge, on transfer to Barisal, and Babu S. K. Chakravarti then became the next senior and accordingly the "second officer." Some of the cases pending in the file of the outgoing Magistrate were made over to him and the rest to other Magistrates in the subdivision for disposal. On the 20th September 1913, Mr. J. W. McDermott, a Deputy Magistrate of the sixth grade with first-class powers, but junior to Babu S. K. Chakravarti, joined the subdivision. The latter was vested with first-class powers on 12th November 1913, and transferred to Mymensingh, making over charge on the 23rd December. Thereupon Mr. McDermott became the next senior, and thus the "second officer." On the 6th April 1914, Babu Khirode Lal Mukherjee, a Deputy Magistrate of the fifth grade, with first-class powers, took charge in the subdivision and became the next senior or the "second officer." The notifications in the Calcutta Gazette of the transfers from, and appointments to, the subdivision of these several Deputy Magistrates were in general terms, and did not purport to appoint any particular officer in place of any other officer. On the 18th instant, an application was made to Babu K. L. Mukherjee by the District Sub-Registrar of Comilla for sanction to prosecute the petitioners for offences under ss. 471 and 193 of the Penal Code committed in the section 107 proceeding in the Court of Babu H. K. Ghose. He issued notices on the petitioners to show cause, and proceeded to hold a preliminary enquiry. The petitioners thereupon moved the High Court which at first directed the District Magistrate to state whether and in what sense Babu K. L. Mukherjee was the "successor in office" of Babu H. K. Ghose, and on receipt of the explanation, issued a rule in the terms set forth in the judgment below.

1914

GIRISH
CHANDRA
RAY
v.
SARAT
CHANDRA
SINGH.

1914
 GIRISH
 CHANDRA
 RAY
 v.
 SARAT
 CHANDRA
 SINGH.

In one of the explanations submitted by the District Magistrate, he stated that, when a Deputy Magistrate leaves or arrives, he does not make over charge to, or take it over from, any particular officer.

Mr. E. H. Monnier, for the Crown (after stating the facts). Sanction is not necessary for the prosecution of the second petitioner under s. 471 of the Penal Code, he having been a witness and not a party to the s. 107 proceeding, but only for his prosecution under s. 193 and that of the first petitioner under s. 471 of the Penal Code: see *Debi Lal v. Dhajadari Gashai* (1). In s. 195 of the Criminal Procedure Code the word "Court" includes the successor. The Code does not, however, define the term "successor," the only provisions in it relating thereto being those contained in ss. 11 and 350. In some of the rulings under the latter section, "successor" has been described as one *who succeeds to the office* of another, *e.g.*, *Queen-Empress v. Radhe* (2), but this definition has not been accepted, *even under s. 350*, in the recent Calcutta decisions which have laid down that a Magistrate to whom a case has been transferred under s. 528 is a successor to the Magistrate from whose file it has been removed: see *Mohesh Chandra Saha v. Emperor* (3). As remarked in this decision, Deputy Magistrates do not succeed each other, and hence *in the case of such Magistrates* the test of succession to office does not apply in determining the meaning of the word "successor." For the purposes of s. 195 "successor" cannot be limited to an officer succeeding to the post of another. In the first place such a meaning would be inapplicable to a Court composed of several Judges exercising jurisdiction in it as the

(1) (1911) 15 C. W. N. 565. (2) (1889) I. L. R. 12 All, 66, 68;

(3) (1908) I. L. R. 35 Calc. 457.

Court of Session or the Presidency Small Cause Court. It has been held, with reference to the latter in *Emperor v. Molla Fuzla Karim* (1), that the Chief Judge may grant sanction for an offence committed before the Registrar of the Court who was at the time on furlough. Next, applying by analogy the principle of the actual decision in *Mohesh Chandra Saha v. Emperor* (2), a "successor" for the purposes of s. 195 would also be a Magistrate to whom a case had been transferred under s. 528. The word "successor" may also mean one who *follows or comes next*, as in the expression "succeeding year." This interpretation was laid down in *Overseers of East Dean v. Everett* (3) and is supported by *Ali Mohamed Khan v. Tarak Chandra Banerji* (4), where there was only one Magistrate at the station. In this case Government Notifications 806A and 807A, published in the Eastern Bengal and Assam Gazette, Part I, p. 341, merely appointed one Deputy Magistrate in the subdivision to be the Personal Assistant to the Commissioner and posted another to the same subdivision, generally, and not "in place of" the latter, yet one was held to be the successor of the other.

If the identity of a Court under s. 195 is to be determined exclusively by the test of succession to office, there will be a failure of justice in the case of the death or transfer, or retirement of the Deputy Magistrate before whom the offence was committed, as the power of a Superior Court to grant sanction in such cases may be questioned unless there was a proceeding before it by way of appeal from the decision in the original case or otherwise [see *Bhadesar Tiwari v. Kampta Prasad* (5)], and s. 476 requires the pendency

1914
 GIRISH
 CHANDRA
 RAY
 v.
 SARAT
 CHANDRA
 SINGH.

(1) (1905) I. L. R. 33 Calc. 193.

(3) (1861) 3 E. & E. 574.

(2) (1908) I. L. R. 35 Calc. 457.

(4) (1908) 13 C. W. N. 420.

(5) (1912) I. L. R. 35 AH. 90.

1914
 GURISH
 CHANDRA
 RAY
 v.
 SARAT
 CHANDRA
 SINGH.

of a *judicial proceeding*; and in its absence a Court could not take action thereunder. Even if succession to office is necessary, Babu K. L. Mukherjee may, on the particular facts of the case, be treated as the successor of Babu H. K. Ghose. Though there was no formal classification of Deputy Magistrates as first and second Courts, yet the latter was the officer next senior to the Subdivisional Magistrate, and the former occupies that position now. The fact of both Magistrates being next in seniority to the Subdivisional Magistrate and thereby officers in temporary charge of the subdivision affords ground of distinction between the second and other officers in the subdivision sufficient to constitute one second officer the successor of the other and the Court of one identical with the Court of the other.

Mr. Jacob (with him *Babu Manmatha Nath Mukerjee* and *Babu Jatindra Mohan Ghose*), for the petitioner. There is no succession in office in the case of Deputy Magistrates, and Babu K. L. Mukerjee is not, therefore, the successor of Babu H. K. Ghose. Relies on *Mohesh Chandra Saha v. Emperor* (1) and *In re Debi Prasad* (2).

Mr. Monnier, in reply. The principle of *In re Debi Prasad* (2) is opposed to the actual ruling in the Calcutta case cited by my friend, besides the two Magistrates in the Allahabad case were of different ranks.

SHARFUDDIN AND TEUNON JJ. The petitioners applied to this Court for a Rule to quash the proceedings now pending against them and, on their application, we ordered, on the 18th of May last, that a copy of the petition should be forwarded to the District Magistrate with a request that he should state whether

(1) (1908) I. L. R. 35 Calc. 457.

(2) (1902) All. W. N. 9.

and in what sense Babu Khirode Lal Mukherjee was the successor in office of Babu Harendra Kumar Ghose. A long letter was received by this Court from the Magistrate giving us all information tending to show that Babu Khirode Lal Mukherjee was the successor in office of Babu Harendra Kumar Ghose. Then we issued the present Rule, on the 10th of June, on the District Magistrate and on the opposite party, to show cause why the proceedings preliminary to the granting of sanction should not be quashed on the ground that Babu Khirode Lal Mukherjee was not the successor in office of Babu Harendra Kumar Ghose.

Now, the whole matter has been argued before us. The case stands thus. There was a case under section 107 of the Criminal Procedure Code in which a certain document, namely, a *pottah* was used by the petitioners; and the present proceedings are to determine whether sanction should or should not be given for the prosecution of the petitioners for their use of that *pottah*, which is alleged to be a forged document, as a genuine document, in the said case. Now, that case was disposed of by Babu Harendra Kumar Ghose. The application for sanction was put in before Babu Khirode Lal Mukherjee. The question is whether Babu Khirode Lal Mukherjee is the successor-in-office of Babu Harendra Kumar Ghose or not. On behalf of the opposite party a lengthy argument has been placed before us in order to show that Babu Khirode Lal Mukherjee is the successor-in-office of Babu Harendra Kumar Ghose. We are, however, of opinion that in the present case Babu Khirode Lal Mukherjee can not be said to be the representative-in-office of Babu Harendra Kumar Ghose. In the case of *Mohesh Chandra Saha v. Emperor* (1), it has been held that where there are many Deputy Magistrates, and one of

1914
 GIRISH
 CHANDRA
 RAY
 v.
 SARAT
 CHANDRA
 SINGH

(1) (1908) I. L. R. 35 Calc. 457, 460.

1914
 GIRISH
 CHANDRA
 RAY
 v.
 SARAT
 CHANDRA
 SINGH.

them is transferred, the Deputy Magistrate who comes to fill the gap is not the successor in office of the Deputy Magistrate who has been transferred. Under the circumstances we hold that Babu Khirode Lal Mukherjee is not the proper officer to grant sanction for the prosecution of the petitioners in respect of their use of the document in the proceedings under section 107 of the Criminal Procedure Code before Babu Harendra Kumar Ghose.

Now, the present proceedings are under section 195 of the Criminal Procedure Code. Under clauses (b) and (c) of sub-section (1) of that section, the proper Court to give sanction is either the Court where the offence is said to have been committed or the Court to which such Court is subordinate. Sub-section (7) of section 195 of the Criminal Procedure Code clearly lays down that "for the purpose of that section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie." The proceedings in the course of which the offence is said to have been committed were before Babu Harendra Kumar Ghose. It is not for us to do more than point out the law on the subject, and it is for the parties, if they are so advised, to act under the sub-sections and clauses to which we have referred. The rule is, therefore, made absolute and the proceedings quashed.

E. H. M.

Rule absolute.