CRIMINAL REVISION.

Before Jenkins C.J., Fletcher and Teunon JJ.

1914

Oct. 23.

FAUJDAR THAKUR

v.

KASI CHOWDHURY.*

Acquittal—Revision—Practice—Interference by High Court in revision with an order of acquittal on the application of a private party—Criminal Procedure Code (Act V of 1898), s. 439.

The High Court has jurisdiction, under s. 439 of the Criminal Procedure Code, to set aside an order of acquittal, but it has now become a settled practice that it will not ordinarily interfere, in revision in such cases, at the instance of a private prosecutor.

Queen-Empress v. *Shekh Saheb Badrudin* (1), *Heerabai* v. *Framji Bhikaji* (2), *Thandavan* v. *Perianna* (3), *Queen-Empress* v. *Ala Bakhsh* (4), *Queen-Empress* v. *Prag Dat* (5), *In the matter of Sheikh Aminuddin* (6), *Qayyum Ali* v. *Faiyaz Ali* (7), *In re Municipal Committee of Dacca* v. *Bingoo Raj* (8) and *Deputy Legal Remembrancer* v. *Karuna Baistobi* (9) followed.

Rakhal Das Roy v. *Kailash Banu* (10) explained by Jenkins C.J.

THE facts of the case are briefly as follows. On 4th April 1913, one Ram Khelawan Tewari, a local zamindar, got a sale deed relating to certain land in village Hatharua executed in his favour by one Musammat Paltu. He made some attempts to take possession of the same by instituting cases in the Criminal

* Criminal Revision No. 1201 of 1914, against the order of W. H. Lewis, Subdivisional Magistrate of Samastipur, dated June 20, 1914.

(1) (1883) I. L. R. 8 Bom. 197.
(2) (1890) I. L. R. 15 Bom. 349.
(3) (1890) I. L. R. 14 Mad. 363.
(4) (1884) I. L. R. 6 All. 484.
(5) (1898) I. L. R. 20 All. 459.
(6) (1902) I L. R. 24 All. 346.
(7) (1900) I. L. R. 27 All. 359.
(8) (1882) I. L. R. 8 Calc. 895.
(9) (1894) I. L. R. 22 Calc. 164.
(10) (1909) 11 C. L. J. 113.

Courts against the party of Hari Chowdhury but failed. On the 15th March 1913, an information was lodged at the thana by his servant, Faujdar Thakur, stating that on the day previous he (the informant) and seven men had gone on the land (covered by the deed) to cut the *rahar* crop growing thereon, and that when he had reaped the ripe *rahar* and loaded it on a cart, an armed body of men consisting of Hari Chowdhury and others, 30 or 35 in number, attacked and wounded his companions. Hari Chowdhury and 22 others were placed on trial, under s. 148 of the Penal Code, before Mr. Lewis, the Subdivisional officer of Samastipur who, after a protracted trial, acquitted the accused, holding that they were in possession of the disputed land and were protected by the right of private defence. The Magistrate thereafter drew up a proceeding under s. 476 of the Criminal Procedure Code against Faujdar and Ram Khelawan and directed their prosecution under s. 193 of the Penal Code for giving false evidence in the case.

Faujdar moved the High Court and obtained a Rule from Sharfuddin and Teunon, JJ., to set aside the order of acquittal in the terms set forth in the judgment of the learned Chief Justice.

The case was heard before Jenkins C. J., and Teunon J. and their Lordships having differed in opinion delivered the following judgments :—

JENKINS C.J. A charge was framed under section 148 of the Indian Penal Code against twenty-three persons, and after a lengthy trial they were acquitted. The complainant thereupon applied to this Court for the exercise of its revisional powers under section 439 of the Indian Penal Code with the result that a Rule was issued in these terms : "Let the record be sent for and let a Rule issue calling upon the District Magistrate of Darbhanga and the opposite party to show cause why the order of acquittal complained of should not be set aside and a retrial ordered. Pending the disposal of the Rule further proceedings under section 476 of the Criminal Procedure Code will be stayed". Cause has now been shown. The petition

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on which the Rule was made does not mention proceedings under section 476 of the Criminal Procedure Code.

From the judgment, however, it appears that the trial Magistrate expressed his intention to direct, under section 476 of the Criminal Procedure Code, the prosecution of Ram Khelawan Tewari under section 193 of the Indian Penal Code, and also of two persons described as Faujdar and Bahadur. Though Faujdar alone was the petitioner, the stay apparently was intended to operate in favour of all three. The case lasted, we have been told, about three months before the lower Court. Many witnesses were examined, and an elaborate judgment was pronounced by the trial Magistrate who fully discussed the voluminous evidence in the case with the result that he came to a conclusion in favour of the accused on the two principal issues in the case. He held that the accused's party were in possession of the land in dispute, and that the injuries inflicted on the complainant's party were a justifiable exercise of the right of defence.

I understand that the Rule was granted on the ground that the Court was not satisfied with these conclusions, and that the interests of justice required an interference with the order of acquittal.

It is evident, however, that the conclusions of the lower Court must have rested largely, if not in their entirety, on the trial Magistrate's appreciation of the evidence adduced before him. The only question then is whether in the proper exercise of its discretion the Court ought to interfere for the purpose of setting aside the acquittal and sending back the case for a repetition of the lengthy trial of the case. That we have power to interfere seems clear; but to the question whether we ought to interfere I would answer in the negative.

Section 417 of the Criminal Procedure Code enables the Local Government to direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal passed by any Court other than a High Court. This provision, which first appeared in the Code of 1872 provides the valuable safeguard that an accused cannot have his acquittal questioned by way of appeal except at the instance of the Local Government But even with this safeguard the provision has met with considerable animadversion in recent times.

In this case, however, the Court, so far from having the assurance of such a safeguard, is confronted by the fact that the application to set aside the acquittal is opposed not only by the accused but also by the Deputy Legal Remembrancer on behalf of the Crown. And I can quite understand this opposition. The complainant and his companions in the theft that led to blows were obviously mere puppets, and the real moving spirit is this same Ram Khelawan Tewari who is described as the petitioner's master and has throughout been present in Court sitting behind the

eminent counsel and vakils who have appeared on behalf of the complainant. I will not discuss his merits or his frailties as disclosed by the Trial Magistrate's judgment, but it is apparent that this is one of a series of unsuccessful attempts to assert possession of the piece of land in dispute against the accused's party.

It has failed; but more than that, it has been held that possession was with the accused's party, and proceedings against Ram Khelawan Tewari have been directed. This is a serious matter for him and he obviously has an urgent personal interest in securing interference with the Magistrate's order. In view of all the circumstances before us, I am convinced that the purpose of the application is not to secure the due administration of justice, but to serve a personal end.

This, therefore, is not a case in which the Court should (in my opinion) interfere, and in expressing this view I believe I am acting in harmony with the tendency of the best judicial opinion, as also sound principle.

The pronouncements of the High Courts of Madras, Bombay and Allahabad, consistently support the view that, as a general rule it is expedient not to interfere, on revision, at the instance of a private person, with an acquittal after trial by the proper tribunal, and that applications for that purpose should be discouraged on public grounds: *Thandavan* v. *Periamna* (1), *Heerabai* v. *Framji Bhikaji* (2), *Queen-Empress* v. *Ala Bakhsh* (3), *In the matter of Sheikh Aminuddin* (4), *Emperor* v. *Madar Bakhsh* (5), *Qayyum Ali* v. *Faiyaz Ali* (6).

This too was the view that prevailed in this Court until recent times [*In re Municipal Committee of Dacca* v. *Hingoo Raj* (7), and *Deputy Legal Remembrancer* v. *Karuna Baistobi* (8)] but it is said that of late the matter has been differently regarded. If there has been any conscious departure in more recent cases from the rule of prudence, which prevailed in the authorities I have cited, I cannot agree with it.

Our attention has been invited to a decision in which I took part as though it supported the new departure: *Rakhal Das Roy* v. *Kailash Banu* (9). I am in no way impressed by the value of that decision. In the first place it appears that the vakil of the accused was not present, and the decision possesses all the infirmity of a judgment given without the assistance of argument for the accused. And apart from that, the circumstances were exceptional.

(1) (1890) I. L. R. 14 Mad. 363.
(2) (1890) I. L. R. 15 Bom. 349.
(3) (1884) I. L. R. 6 All. 484.
(4) (1902) I. L. R. 24 All. 346.
(5) (1902) I. L. R. 25 All. 128.
(6) (1904) I. L. R. 27 All. 359.
(7) (1882) I. L. R. 8 Calc. 895.
(8) (1894) I. L. R. 22 Calc. 164.
(9) (1909) 11 C. L. J. 113.

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The error was one of pure law apparent on the face of the record, while the offence was one under section 504, and I have always understood that offences of an essentially personal character, such as defamation or insult, were viewed differently for the purpose of revision, and for an obvious reason. According to my understanding, therefore, this decision is of no assistance in the present case: if, however, it contravenes what I regard as the true rule of guidance, then I do not hesitate to regard it as erroneous.

As I have already indicated, I am not prepared to say the Court has no jurisdiction to interfere on revision with an acquittal, but I hold it should ordinarily exercise this jurisdiction sparingly, and only where it is urgently demanded in the interests of public justice. This view does not leave an aggrieved complainant without remedy: it would always be open to him to move the Government to appeal under section 417, and this appears to me the course that should be followed.

The result then in this case is that in my opinion the Rule should be discharged. But as I understand from my learned colleague that he would make the Rule absolute, we are equally divided in opinion and the case with our opinions thereon must, therefore, be laid before another Judge.

TEUNON J. In this case one Kasi Chowdhury and twenty-two others were placed on their trial before the Subdivisional Magistrate of Samastipur on charges of rioting under sections 148 and 147 of the Indian Penal Code.

On behalf of the prosecution it is alleged that on the death of one Rameswar Chowdhury his lands (including the field in dispute known as plot No. 65 in village Hatharua) were inherited by his widow, Paltu, that some 1½ years before the occurrence now in question, she removed to the house of her daughter and son-in-law in a neighbouring village called Chok Salem, and on the 4th April 1913, by a registered deed, sold her inheritance to the real complainant, one Ram Khelawan Tewari. Ram Khelawan it is said took possession, and on the day now in question, 15th March 1914, sent his servant Faujdar Thakur and six or seven labourers, with two bullock carts, to bring home the crop of *rahar* from plot No. 65.

The case for the prosecution then is that while these men were loading the crop into the carts, the accused and others to the numbers of 30 or 35, armed with *lathis* and *garasas* (axes), fell upon the party of labourers, put them to flight, and inflicted upon them a number of injuries.

The medical and other evidence in fact shows that of the 7 or 8 labourers six were wounded, sustaining, in all, 28 injuries of which one is described as severe, five were on the head, and nine on the back.

In so far as the occurrence is concerned the trying Magistrate has accepted the case for the prosecution as substantially true. He finds that Faujdar and his companions were unarmed, and that they were attacked by a mob of men armed with lathis and *garasas*, and that this mob included the majority, if not all, of the accused placed on their trial.

He comes to no finding as to the complicity of the individual accused obviously because he next proceeds to acquit them all on the ground that of the accused Kasi and Narsingh (who are cousins of Rameswar) and their sons, Ramyad and Baldeo, (and Bachu) were in possession of the field in question, and that they and their companions were, therefore, acting in the exercise of the right of private defence of property.

This brings us to a consideration of the defence.

The accused have said nothing regarding either the occurrence or possession but have contented themselves with pleading not guilty. Their case, in so far as it can be ascertained from the cross-examination of the prosecution witnesses and the depositions of the few defence witnesses examined, is that Rameswar (the deceased husband of Paltu) and his brother Mahadeo were not separate, as is the case for the prosecution, but joint in mess and property, that Rameswar predeceased Mahadeo, that Mahadeo in his life time adopted Ram Golam, the son of his cousin Kasi, that since Mahadeo's death, some 18 years ago, first Ram Golam, and, on his death, Kasi, on behalf of Ram Golam's minor son Chandrika, has been in possession.

With regard to the adoption of Ram Golam, the trying Magistrate observes that "this line of defence" was dropped, and that the defence then resolved itself into a bare assertion of possession. Possibly this attitude was taken up in the course of argument, but in so far as the record goes, possession based on the adoption of Ram Golam is the only case that the defence made any attempt to establish. There is uncontradicted evidence that Mahadeo and Rameswar lived apart from their cousins (or second cousins) Kasi and Narsingh ; and of possession by Narsingh and his sons, who (P. W. 12) are again separate from Kasi and his son since the death of Mahadeo, there is not a tittle of evidence on the record.

As regards Kasi's possession, the finding is based on (i) the estate register of mutations or changes among its tenants for the years 1319 to 1321, (ii) a chowkidari assessment register, (iii) certain receipts, (iv) an oral complaint made by Ramyad to the Manager of the estate, (P. W. 14), and (v) the oral evidence of three defence witnesses.

The prosecution, it may be observed, relies upon the same receipts and upon what the trying Magistrate cursorily describes as the '*khatian*' that is the entry in respect of plot 65 in a record-of-rights finally published in or about the year 1901-02.

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That entry, it may be noted here, shows that the tenants in possession are Musammat Paltu and Ram Golam, "adopted son."

The mutation registers were produced by the defence witness No. 1, who describes himself as the mutation inspector of the circle. It is significant that the defence did not call for any register prior to 1318, and from this and the evidence of the witness, it may be safely inferred that up to 1318, or rather 1319, the estate registers are in confirmity with the record of rights. The change introduced in 1319 was the substitution of the name of Chandrika, for the name of his deceased father, Ram Golam. This change, it may be said, in no way affected the position of the widow Paltu, and, in any case, as the witness says, was made without any reference to her or to any one interested on her behalf.

The assessment register does not show the name of Paltu, but, as appears from the evidence of the witness who produces it, the register is based on hearsay, and the absence of the widow's name may further be due to its being considered that she was not liable to assessment.

Such receipts as have been produced show that from the year 1292 to 1308 (say 1901-02) the payment was made by Kasi on behalf of Mahadeo, that in 1908 and in 1912-13, the payments were by Kasi or Kasi's son, Ramyad, on behalf of Paltu and Ram Golam. The change in name, it is suggested by the trying Magistrate, is due to some change in the Malik's register, but that change was obviously due to the record-of-rights, and the receipts are in accordance with that record.

On the complaint of Ramyad to the Manager no action was taken; it was subsequent to the purchase of Ram Khelawan, and is obviously of no more value than Ram Khelawan's unsuccessful application to the same Manager for mutation.

From this resume of this portion of the evidence, it is clear that, in coming to his finding regarding possession, the Magistrate has relied on registers that are either worthless or inadmissible, has misapprehended the true significance of the receipts produced, and the acceptance of such receipts by one or more of the agnates who now claim possession on their own account, and has also wholly overlooked the probative value that, under section 103-B of the Bengal Tenancy Act, should have been given to the entry in the record-of-rights.

I need not examine the oral evidence on either side as the Magistrate's view of this evidence (both as regards Paltu's possession and as regards the possession of Ram Khelawan subsequent to his purchase) has been coloured by his erroneous view of the documents already referred to, and also by a prejudice against Ram Khelawan based largely on police reports wholly inadmissible in evidence.

There being no evidence of any adoption, and that case having been

in fact abandoned, it is clear that all the documentary evidence, and even the oral evidence adduced by the defence (*vide* for instance D. W. 3) indicates that, in so far as prior to Ram Khelawan's purchase Kasi and his son Ramyad cultivated these fields, they did so on behalf of the widow, and it is doubtless because of her complaints against them (*vide* e. g. D. W. 4) that she retired to Chok Salem and finally sold her lands to Ram Khelawan.

On my consideration of the evidence I am, therefore, satisfied that there are grave reasons for thinking that the finding as to possession is wrong. In any case on a finding arrived at by a process of reasoning vitiated by so many errors no value can be placed.

Even, however, if we assume that the Magistrate is right in his finding that possession was with Kasi and others, and that the act of the complainant, in removing or seeking to remove the crops constituted the offence of theft, we have next to consider whether the Magistrate has adequately dealt with the further questions regarding the right of private defence.

On these questions all he says is this : " As the thanah is no less than six miles from the place of occurrence, *Ganouri Lal Das* v. *Queen-Empress* (1) must clearly be distinguished. *Pachkauri* v. *Queen-Empress* (2) is followed. In that case it was held that if accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required, and using such force or violence as was necessary to prevent the aggression. This applies to the circumstances of this case."

This judgment does not show that it was present to the mind of the Magistrate that the burden of proving circumstances bringing the case within the general exception contained in section 96 of the Indian Penal Code was upon the accused. It further does not show that he had any due regard to the restrictions placed upon the exercise of the right of private defence by the 3rd and 4th clauses of section 99. True he says, the thanna is six miles off, but he makes no reference to dafadars and chaukidars, of whom one, it is in evidence, lives not more than two bighas from the field in dispute. He has not adverted to his own finding that Faujdar and his 6 or 7 companions were unarmed, nor, so far as appears, has he taken into consideration the number of persons injured and the number and position of the injuries sustained. He does not appear to have inquired whether for instance the injuries on the back were caused in the exercise of the right of private defence, nor has he made any endeavour to ascertain which of the accused is responsible for specific injuries. Even if some of the accused have succeeded in bringing themselves within the exception it does not follow that all have done so.

(1 (1889) I. L. R. 16 Calc. 206. (2) (1897) I. L. R. 24 Calc. 686

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For these reasons, I am satisfied that there has been no proper trial of this case, and I should, therefore, set aside the order of acquittal in the case of each of the accused and direct that they be retried before another Magistrate in accordance with law.

It has been urged before us that inasmuch as under section 417 of the Code the right to present an appeal against an acquittal is vested in the Local Government, and in the Local Government alone, and inasmuch as the Local Government, so far from appealing, has appeared through its accredited representative in support of the Magistrate's judgment, we ought not, at the instance of a private complainant, to interfere with or disturb the present order of acquittal. But, doubtless for good reasons, the Legislature has not constituted the Local Government the sole arbiter in these matters. An alternative remedy against injustice done to injured complainants has been provided in section 439 of the Code, (I need not here refer to the Charter) and even where, as in this case, the Local Government has taken the unusual course, in my experience the unprecedented course, of appearing to justify what is *primâ facie* riotous behaviour, it is conceded that we have ample jurisdiction to interfere and remedy the wrong, if wrong has been done. It has indeed been faintly suggested on behalf of the accused that by proceeding under section 494 of the Code the Local Government may nullify any order this Court may make. But this suggestion has not come from learned counsel appearing on behalf of the Local Government. It is not to be anticipated that the Local Government will take this course, and we need not, therefore, at the present stage consider whether the Judge's order of consent predicated by section 494 is not again an order subject to the revisional jurisdiction of this Court.

The question thus becomes one not of jurisdiction but of discretion. As to the manner in which discretion should be exercised a large number of decided cases, of which the cases *Heera Bai* v. *Framji Bhikaji* (1), *Thandavan* v. *Perianna* (2), *Queen-Empress* v. *Ala Bakhsh* (3) and *In re Municipal Committee of Dacca* v. *Hingoo Raj* (4) are examples, have been cited before us. But with all deference to the learned and experienced Judges who decided those cases I am not pressed by their decisions, nor do I consider it necessary to determine whether the present case does or does not fall within one or other of the rules or general principles therein enunciated. The enactment has set up no bars or limits to our discretion. That being so this discretion cannot be fettered by judicial decision, and in this connection it is sufficient to cite the observations of His Lordship the

(1) (1890) I. L. R. 15 Bom. 349.
(2) (1890) I. L. R. 14 Mad. 363.
(3) (1884) I. L. R. 6 All. 484.
(4) (1882) I. L. R. 8 Calc. 895.

Chief Justice to be found in the case of "*In re an Attorney* (1)." "The section is expressed in the widest terms and vests in the Court an absolute and unqualified discretion. Not one jot or tittle can be taken away from or added to the plain and express provisions of the Legislature by any decision of the Court; nor can the discretion vested by the section in the Court be crystallized or restricted by any series of cases: it remains free and untrammelled to be fairly exercised according to the exigencies of each case." With these observations I am in entire agreement and, in my opinion, they are equally apposite to the section now under consideration as to the section then in question.

In the interests of public justice it may, in certain cases, in my opinion, be as important to redress injustice done to complainants as in other cases to remedy the wrongs of persons unjustly condemned. In the view I have taken of this case and for the reasons I have given, justice in my opinion demands that there should be a retrial. I should, therefore, as I have already stated, set aside the order of acquittal and direct that the accused be retried by another Magistrate in accordance with law.

In consequence of this difference of opinion the case was referred, under s. 429 of the Criminal Procedure Code, to Fletcher J.

Babu Debendra Narain Bhattacharjee, for the petitioner.

Babu Gour Chandra Pal, for the accused, argued only the question of the right of private defence.

The Deputy Legal Remembrancer (*Mr. S. Ahmed*), for the Crown. The High Court has no authority to exercise appellate powers in cases of acquittal at the instance of a private party. Refers to s. 417 of the Criminal Procedure Code. Section 439 no doubt confers very wide powers but the Court can not, having regard to cl. (*4*), convert a finding of acquittal into one of conviction. This shows that its powers of interference lie only in the cases of a grave error of law or of such palpable and gross defect apparent on the face of the record as to amount to a nullity of trial. The Court in revision has a discretion, and should not interfere on the application of a private

(1) (1913) I. L. R. 41 Calc. 446, 457.

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party, especially one of the character of Ram Khelawan who is the real complainant. Teunon J. disposed of the case as an appeal. Refers to the cases cited in the judgment of Fletcher J. and also the following: *Empress* v. *Gayadin*(1), *Emperor* v. *Madar Bakhsh*(2), *Empress* v. *Miyaji Ahmed*(3), *In the matter of David*(4).

FLETCHER J. This case has been laid before me under the provisions of section 429, read with section 439 of the Code of Criminal Procedure, owing to there being a difference of opinion between the learned Chief Justice and Teunon J. before whom the case came.

Twenty-three persons were charged with having committed an offence punishable under section 148 of the Indian Penal Code. After a trial which lasted about three months the Magistrate acquitted all the accused. An application was then made to this Court to set aside the acquittal and to direct a retrial. That application came on before Sharfuddin and Teunon JJ. who issued a Rule on the opposite party to show cause why the order of acquittal should not be set aside and a retrial ordered. The Rule subsequently came on for hearing before the learned Chief Justice and Teunon J. who differed in opinion, the Chief Justice being of opinion that the Rule ought to be discharged, whilst Teunon J. was of opinion that the Rule should be made absolute.

The application to set aside the order of acquittal is opposed both by the accused and by the Local Government.

The present application raises a point of considerable public importance namely—ought the Court

(1) (1881) I. L. R. 4 All. 148.
(2) (1902) I. L. R. 25 All. 128.
(3) (1879) I. L. R. 3 Bom. 150.
(4) (1880) 6 C. L. R. 245

ordinarily to exercise the powers, which it undoubtedly has under section 439 of the Code of Criminal Procedure, to set aside an order of acquittal at the instance of a private prosecutor? All the High Courts in India have for many years past consistently held that they ought not so to do. It will be sufficient if I give the references to the reported cases in support of this proposition. They are *Queen-Empress* v. *Shekh Saheb Badrudin* (1), *Heerabai* v. *Framji Bhikaji* (2), *Thandavan* v. *Perianna* (3), *Queen-Empress* v. *Ala Bakhsh* (4), *Queen-Empress* v. *Prag Dat* (5), *In the matter of Sheikh Aminuddin* (6), *Qayyum Ali* v. *Faiyaz Ali* (7), *In re Municipal Committee of Dacca* v. *Hingoo Raj* (8), *Deputy Legal Remembrancer* v. *Karuna Baistobi* (9). The learned Chief Justice was of opinion that the settled practice of the Courts founded on sound judicial opinion and public grounds should be adhered to.

Teunon J., on the other hand, was of opinion that, as section 439 of the Code of Criminal Procedure is drawn in the widest terms, no previous decisions could in any manner fetter the way in which the Court should exercise the discretion vested in it under the section. In support of this view, Teunon J. referred to certain remarks of the Chief Justice in the case *In re An Attorney* (10). But with all due respect to the learned Judge those remarks of the learned Chief Justice do not affect the point under consideration. The Deputy Legal Remembrancer informed me that some four or five Rules have of recent times been granted by this Court on applications by private prosecutors

(1) (1883) I. L. R. 8 Bom. 197.
(2) (1890) I. L. R. 15 Bom. 349.
(3) (1890) I. L. R. 14 Mad. 363.
(4) (1884) I. L. R. 6 All. 484.
(5) (1898) I. L. R. 20 All. 459.
(6) (1902) I. L. R. 24 All. 346.
(7) (1900) I. L. R. 27 All. 359.
(8) (1882) I. L. R. 8 Calc. 895.
(9) (1894) I. L. R. 22 Calc. 164.
(10) (1913) I. L. R. 41 Calc. 446.

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to set aside orders of acquittal. He, however, also informed me that all these Rules excepting one were granted by the Bench which granted the Rule in the present case. That cannot, in my opinion, be taken as casting doubt on the well established rule adhered to both in this Court and in the other High Courts in India over a long series of years. That rule is founded on grounds of public interest and convenience and ought, I think, to be adhered to.

In addition to the difference of opinion of the learned Judges in the present case as to there being a settled practice that the Court will not ordinarily interfere in revision at the instance of a private prosecutor with an order of acquittal, the learned Judges also differed as to whether the circumstances in this case were such as would induce the Court in any event to interfere..

The learned Chief Justice was of opinion that there was no reason to think that the Magistrate, whose judgment rests on an appreciation of the evidence that had been given before him, came to a wrong conclusion. Teunon J., on the other hand, thought that there were strong grounds for thinking that the judgment of the Magistrate amounted to a miscarriage of justice. I see no reason to assent to the view of Teunon J.

No one can doubt that the complainant in this case is merely the creature of Ram Khelawan Tewari, and that this prosecution forms one of a series of cases in which Ram Khelawan Tewari has tried to enforce his right to the land in question.

I, therefore, agree with the view set out by the learned Chief Justice in his judgment. The Rule must, therefore, be discharged.

E. H. M. *Rule discharged.*