

**CRIMINAL REVISION.***Before Sanderson C.J. and Smither J.*

CHANDRA KUMAR GHOSE

*v.*

MAHENDRA KUMAR GHOSE.\*

1916

Aug. 16.

*Local investigation—Proper mode of conducting local investigations—  
Practice.*

Great care ought to be taken by a Magistrate who holds a local investigation to see that he is not approached by an outsider and that he does not allow his mind to be affected by outside matters.

The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side or the other; and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case.

RULE obtained by Chandra Kumar Ghose (accused).

The petitioner had purchased certain shares in three tanks (with certain pathways leading to them) from a co-sharer of the opposite party and had been using the said pathways for going to the said tanks, but for some time the opposite party had tried to put obstacles in his way. On the 24th November 1915, the opposite party lodged a complaint against the petitioner, under section 426 of the Penal Code, for cutting down certain fruit trees, and at the instance of the complainant the trying Magistrate went to inspect the place personally, on 23rd March 1916, and based his judgment on materials obtained by the said local

\*Criminal Revision No. 730 of 1916, against the order of A. H. Clayton, District Magistrate of Chittagong, dated May 2, 1916, confirming the order of Aman Ali, an Honorary Magistrate of Chittagong, dated April 3, 1916.

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inspection, when the Magistrate had indiscriminately talked to every one present. The petitioner had no chance of knowing what these materials were as the Magistrate did not take any notes. The petitioner on being convicted appealed to the District Magistrate of Chittagong, but the appeal was dismissed on 2nd May 1916. The petitioner, thereupon, moved the High Court.

*Mr. J. M. Sen* (with him *Babu Tarakeswar Nath Mitra*), for the petitioner. The conviction is under s. 426 of the Penal Code for cutting down trees. My objection is based on the ground that the (Honorary) Magistrate went to the locality, and had a talk with many persons including the complainant and accused's pleader without recording any notes thereof, and based his judgment on impressions obtained thereby. It does not matter that there may be other evidence besides this.

[*Babu Dasarathi Sanyal*. I appear for the opposite party.]

I object to the complainant appearing as the Rule was only on the District Magistrate.

*Babu Dasarathi Sanyal*, for the complainant. It has always been the practice of this Court to issue a Rule on the complainant when compensation has to be awarded and so the Rule should have been served on me.

[SANDERSON C.J. Yes, the Rule should have been served on you. Have you instructions?]

Yes. I have filed my *vakalatnama*, and I submit that the affidavit is vague being "true to my information and belief". The matter went to the Appellate Court which, on the evidence on the record, came to the same finding and therefore this order ought not to be disturbed. Both the necessary elements

constituting mischief have been found on the evidence by the Appellate Court.

SANDERSON C.J. In this case we think that the Rule should be made absolute.

It is a small case—the damage that was done was small; the fine that was imposed was small, and the compensation that was awarded was small—, and if it had not been for the fact that my learned brother and I, when we granted the Rule, thought that a question of principle is involved, we certainly would not have granted it. But inasmuch as there was an allegation that the Magistrate who tried the case had thought it right at the invitation of both parties to go and make a local inspection as to whether the land upon which the fruit trees were growing was outside the accused's land, or within the accused's land and when he got there, he had a sort of indiscriminate talk with everybody who happened to be present which might or might not have affected his judgment in the case, we issued the Rule. The Magistrate in his explanation says "I had talks with many persons including parties and their pleaders and muktears." But he says that he did not take any notes, because he was not allowed to make any notes on the spot, as one of the pleaders gave him to understand that the case would be surely compromised.

We do not think that that is the proper way of trying a case. If it is necessary to have a local investigation, great care ought to be taken by the Magistrate who holds the local investigation to see that he is not approached by an outsider and that he does not allow his mind to be affected by outside matters. The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side

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and the other, and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case. It is quite true, as the learned pleader pointed out, that this case went on appeal to the superior tribunal and that tribunal came to the same decision as the Court of first instance. But the Court of first instance came to the conclusion upon an important point in the case, which was a question of fact, after it had held this local inquiry: and, when the main question in the case is a question of fact, the Appellate Court must be naturally influenced to some extent by the finding of the first Court upon the question of fact. It is impossible for us to say that the Appellate Court was not influenced by the finding of the first Court upon the question of fact, and if the finding of the first Court was vitiated, then it may be that, having regard to the circumstances of this case, the finding of the second Court was also vitiated. For these reasons, it is safer to make this Rule absolute and direct that the case be retried, unless the parties put their heads together and settle the dispute. Really in a case like this, where the parties are related to one another and where the matter is such a small one, it is a great pity that further expenses of litigation should be incurred.

SMITHER J. I agree.

G. S.

*Rule absolute.*