

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

HRISHIKESH MANDAL

v.

ABADHAUT MANDAL.*

1916

Aug. 9.

Acquittal—Reference therefrom to High Court by District Magistrate—Revision, hearing of, on evidence, whether appeal—Appeal from acquittal by the Local Government—Criminal Procedure Code (Act V of 1898), ss. 417, 435, 438—Jurisdiction—Practice.

In the case of an acquittal, when the Local Government has not preferred an appeal under s. 417 of the Criminal Procedure Code, the High Court ought not to interfere in revision, on a reference under s. 438, where it cannot do so without practically hearing the case on the evidence as an appeal in order to satisfy itself that the opinion of the referring Court is correct, though it has jurisdiction to intervene in revision in such cases.

Faujdar Thakur v. Kasi Chowdhury (1) referred to.

REFERENCE under s. 438 of the Criminal Procedure Code by the District Magistrate of Burdwan on the motion of Hrishikesh Mandal, the complainant.

One Hrishikesh Mandal filed a petition of complaint before Babu Jagadis Chandra Lahiri, Sub-Deputy Magistrate of Katwa, against Abadhaut Mandal, Nirsingha Mandal and three others to the following effect:—There was a log of wood in a pit in front of complainant's house. Accused Abadhaut and others came up and ordered complainant's father Radhika to remove the log alleging that the land belonged to the accused. Radhika denied this and refused to take

* Criminal Revision No. 91 of 1916, in support of the order of reference by P. H. Waddel, District Magistrate of Burdwan, dated May 31, 1916, against the order of acquittal by Jagadish Chandra Lahiri, Sub-Deputy Magistrate of Katwa, dated March 9, 1916.

(1) (1914) I. L. R. 42 Calc. 612 ; 19 C. W. N. 184.

1916
 HRISHIKESH
 MANDAL
 v.
 ABADHAUT
 MANDAL.

away the log whereupon the accused began to do so forcibly, and on Radhika protesting beat him severely with *lathis*. Complainant Hrishikesh came up to help his father and was also beaten. Abadhaut struck him a blow which broke one of his fingers. Complainant's brother Harendra was also attacked. The defence story was that complainant's father Radhika pulled down part of his wall in order to make an opening for driving carts over the adjoining land of the accused (Abadhaut) who began to erect a parallel wall to stop this, and there was an altercation after which Abadhaut was beaten by complainant's party. The Sub-Deputy Magistrate of Katwa framed charges under sections 147, 325 of the Penal Code against Abadhaut Mandal and under sections 147, 323 against the other four accused, but on the 9th March 1916 acquitted all the accused under section 258 of the Criminal Procedure Code. The complainant thereupon moved the District Magistrate of Burdwan who, on 31st May 1916, made a reference to the High Court under section 438 of the Code of Criminal Procedure, with the following remarks (after analysing the evidence): "I would submit that it is an error of law on the part of the Magistrate to make statements unsupported by or at variance with the recorded evidence. The Magistrate has taken a grossly biased and distorted view of the case. His judgment shows that he did not honestly and impartially apply his mind to the actual evidence before him. A fair trial has not been had, and in my view a grave failure of justice has been occasioned. The complainant and his father have suffered grievous hurt and had no remedy. I would accordingly request that the order of the lower Court be set aside and that a retrial be ordered." In the reference the District Magistrate stated that, according to the ruling in *Kangali Sardar v. Bama*

Tharan Bhattacharjee (1), he had jurisdiction to submit that case to the High Court under section 438 of the Criminal Procedure Code, to save the time of the High Court, and also forwarded the explanation of the trying Magistrate who denied all the allegations of the petitioner and stated he was justified in giving the accused the benefit of the doubt and acquitting them.

1916
 HRISHIKESH
 MANDAL
 v.
 ABADHAUT
 MANDAL.

Babu Jyotish Chandra Hazra (with him *Babu Mahesh Chandra Banerjee*), for the petitioner (complainant). This case originally came by way of reference, and your Lordships ordered notice to be served on the accused to show cause. The question is whether it was competent for the District Magistrate, under section 438 of the Code of Criminal Procedure, to make an order of reference from an order of acquittal. There is nothing in section 438 to preclude the District Magistrate from making such an application. It is the practice to move the District Magistrate first; and if I cannot come direct to your Lordships I must go first to the District Magistrate. The High Court, District Magistrate and Sessions Judge have concurrent jurisdiction under section 435 to entertain applications against orders passed by the lower Courts.

[SANDERSON C. J. We will hear the other side.]

Babu Hira Lal Sanyal, for the accused, showed cause. This Rule was obtained by a private complainant, and therefore proceedings cannot come before your Lordships by way of an appeal under section 417 of the Code of Criminal Procedure; this is to be made by the Public Prosecutor, and your Lordships have consistently discouraged applications for revision by private persons in the case of an

(1) (1911) I. L. R. 38 Calc. 786.

1916
 ———
 HRISHIKESH
 MANDAL
 v.
 ABADHAUT
 MANDAL.

acquittal: see Jenkins C. J.'s observations in *Faujdar Thakur v. Kasi Chowdhury* (1). I submit that applications for revision by private persons against orders of acquittal should be discouraged, as the Legislature has advisedly restricted the right of appeal against acquittals to the Local Government. I don't dispute your Lordships' power to interfere, and it ought not to be exercised unless it is in the interest of public justice.

[SANDESON C.J. This is not an application by a private person but sent to us by a public servant.]

It must be in the interest of public justice. The complaint is by a private person and is therefore compoundable. The trial lasted from November to March. The judgment is very elaborate and discusses all the evidence. No doubt it is open to another Magistrate to form another opinion on the evidence. It is not a wrong decision arrived at by a perverse trial.

[SANDESON C.J. Does it not in effect follow that this case has never had a proper trial at all?]

Granting that there has not been a proper trial, still it being an order of acquittal, is it in the interest of public justice to set it aside?

[RICHARDSON J. If there has been a fair trial we ought not to interfere simply because we come to a different opinion.]

Although your Lordships have power to interfere in cases of acquittal, yet the decisions all show that your Lordships will interfere only on the ground of public interest. On the facts and findings, it will appear that the accused has been fairly tried.

[SANDESON C.J. You can deal with each point taken by the District Magistrate, and show that the Court of first instance can be supported.]

(1) (1914) I. L. R. 42 Calc. 612; 19 C. W. N. 184, 191.

The motive for assault has been omitted by the District Magistrate. On evidence it transpired that complainant and accused have been on terms of amity, and the man to be kept out of possession by the accused was a near relative of the complainant, and was it likely that accused would go to complainant for help under such circumstances, and on his refusal assault him?

[SANDERSON C.J. We can only ascertain if it was a mistake by seeing the evidence.]

Whether a certain witness has deposed to truth is a matter of opinion. There are very material discrepancies in the story of the twelve prosecution witnesses.

[SANDERSON C.J. The District Magistrate says there is none and has made some strong remarks against the trying Magistrate.]

The doctor says he does not believe the injuries to be fatal as stated by his *locum tenens*. But Radhika, with whom the quarrel originated, states another story with regard to this log of wood.

[RICHARDSON J. What is the period of limitation for appeals by the Local Government?]

Six months. The date of acquittal is 9th March 1916. In all the reported decisions in case of reference from acquittal the papers were returned to the District Magistrate with a request to place them before the Local Government: *In re Sheikh Aminuddin* (1).

[SANDERSON C. J. See *Faujdar Thakur v. Kasi Chowdhury* (2). I am afraid we can't go on.]

It is open to your Lordships to direct the papers to be placed before the Legal Remembrancer.

(1) (1902) I. L. R. 24 All. 346.

(2) (1914) I. L. R. 42 Calc. 612 ;
19 C. W. N. 184.

1916

HRISHIKESH
MANDAL
v.
ABADHAUT
MANDAL.

1916
 HRISHIKESH
 MANDAL
 v.
 ABADHAUT
 MANDAL.

[SANDERSON C.J. We ought not to do so without going through the evidence.]

Though in revision your Lordships often go into the evidence, your Lordships may only direct the papers to be placed before the Legal Remembrancer. It is not in all cases that he advises an appeal.

SANDERSON C.J. AND RICHARDSON J. In this case the Magistrate who tried the case acquitted the accused. Then the matter was brought before the District Magistrate who investigated it, examined the evidence, and after such examination referred the matter to the High Court under section 438 of the Criminal Procedure Code; and, he came to the conclusion that the acquittal of the accused was wrong. The grounds of his opinion are summed up in two sentences towards the end of his reference. "The Magistrate has taken a grossly biased and distorted view of the case. His judgment shows that he did not honestly and impartially apply his mind to the actual evidence before him."

There is no doubt about the jurisdiction of this Court, either upon an application of a private individual, or when the case is referred to this Court by a learned Magistrate, that this Court can interfere by way of revision. That has been quite clearly decided in the case to which our attention has been drawn more than once recently—the case of *Faujdar Thakur v. Kasi Chowdhury* (1). I think the headnote correctly summarises the judgment. It runs thus, "the High Court has jurisdiction under section 439 of the Criminal Procedure Code to interfere in revision with an acquittal but it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interests of public justice."

(1) (1914) I. L. R. 42 Cal. 612; 19 C. W. N. 184.

Now, it is to be remembered that where there is an acquittal the Local Government, if it is so advised and thinks right so to do, can proceed under section 417 of the Criminal Procedure Code, which says: "The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an Original or Appellate Order of acquittal passed by any Court other than a High Court." So that there is nothing to stop or prevent a decision, which involves an acquittal, being brought before the High Court in a proper case on appeal. The Legislature with respect to an appeal from an acquittal thought it advisable that it should only be done by or through the Local Government.

Now, in this case the District Magistrate having expressed the opinion that the Magistrate had taken a grossly biased and distorted view of the case and did not honestly and impartially apply his mind to the actual evidence before him, this Court, in our judgment, ought not to interfere in revision unless it was satisfied itself that that opinion of the District Magistrate is a correct one. It would not be right for this Court to take the expression of opinion of the District Magistrate and to rely upon that opinion without satisfying itself, upon the evidence and upon the conduct of the proceedings generally, that the District Magistrate's opinion was right. What does that involve? That involves that this Court should go practically through the whole of the evidence from start to finish because one of the grounds in the District Magistrate's judgment is this: he says that the prosecution case proved a consistent story without any discrepancies of importance. That is one of the main grounds upon which he relied. How can we tell whether that opinion is right without reading the whole of the evidence given on the part of the prose-

1916

HRISHIKESH
MANDAL
v.
ABADHAUT
MANDAL.

1916

HRISHIKESH
MANDAL
v.
ABADHAUT
MANDAL.

cution? And, the result would be that in effect we should be hearing an appeal, or at all events, hearing an application to admit an appeal at the instance of a private individual without the intervention of the Local Government : and, therefore, we are both of opinion that in this case we ought not to interfere in revision on the ground that we cannot do so without practically hearing the case as an appeal. I think it is inadvisable to lay down any general rule unless it is absolutely necessary. We both desire to limit our judgment to this particular case endorsing and emphasizing the fact that this Court has, without doubt, jurisdiction to intervene in revision in a proper case. We do not wish to say anything that would throw the slightest doubt upon that point. All that we say is that inasmuch as we should have to investigate the whole of the facts before we could come to the conclusion whether we ought to interfere in revision, in this case, we think we ought not to interfere ; and we feel no anxiety, because there is a right of appeal, if the Local Government thinks it advisable so to appeal, inasmuch as the time for appealing has not yet expired. If the learned District Magistrate thinks it right, there is nothing to prevent him from placing the materials which are available to him before the Legal Remembrancer and from asking him to advise the Local Government whether there ought to be an appeal in this case. If the Local Government thinks that there ought to be an appeal, the matter will come before us by way of appeal, when it will be right and proper, at the instance of the Local Government, to investigate, under section 417 of the Criminal Procedure Code, all the facts by way of appeal.

For these reasons, we think, we ought not to interfere by way of revision.

G. S.

Rule discharged.