

CRIMINAL REVISION.

Before Chitty and Richardson JJ.

CHANDI CHARÁN GIRI

v.

GADADHAR PRADHAN.*

1917

Aug. 10.

Sanction for Prosecution—Sanction by Deputy Collector in appraisal proceedings—No appeal from orders in such proceedings—Jurisdiction—Subordination of such Deputy Collector to the District Judge or Commissioner of the Division—Bengal Tenancy Act (VIII of 1885), ss. 69 and 70—Criminal Procedure Code (Act V of 1898), s. 195 (6), (7) (b) (c).

A Collector, or a Deputy Collector exercising the powers of a Collector, under ss. 69 and 70 of the Bengal Tenancy Act (VIII of 1885), is a "Court" within s. 195 of the Criminal Procedure Code.

Raghoobuns Sahoy v. Kokil Singh (1) followed.

Abdullah Khan v. Emperor (2) referred to.

Proceedings under s. 69 of the Bengal Tenancy Act are civil in nature, and the Court of the Deputy Collector acting thereunder is subordinate to that of the District Judge under s. 195 (7).

Per CHITTY J. S. 195 (7) (c) is intended to apply only where no appeal lies from any decision of a particular Court, and not where a particular order is non-appealable.

Appeals from the Collector under the Bengal Tenancy Act, do not *ordinarily* lie to the Commissioner of the Division. In some cases they lie to him, and in others to the Civil Court. The Collector, in proceedings under ss. 69 and 70 of the Act by reason of s. 195 (7) (b) of the Criminal Procedure Code, is subordinate to the Court of the District Judge.

Per RICHARDSON J. Clause (c) includes both a particular case or class of cases in which no appeal lies, and a Court from which no appeal lies in any case.

Nibaran Chandra Chakrabarty v. Akshoy Kumar Banerjee (3) referred to.

* Criminal Revision No. 707 of 1917, against the order of W. N. Delevingne, Sessions Judge of Midnapore, dated March 24, 1917.

(1) (1890) I. L. R. 17 Calc. 872. (2) (1909) I. L. R. 37 Calc. 52.

(3) (1917) 21 C. W. N., 948.

Per CHITTY J. The words "Principal Court of Original Jurisdiction" do not refer to a Court of any particular class, but to a Civil, Criminal or Revenue Court according to the nature of the case in which the question of sanction arises.

Ajudhia Prasad v. Ram Lal (1) referred to by RICHARDSON J.

ON the 13th November 1916 the petitioners filed an application before the Subdivisional Officer of Contai, who was also the Deputy Collector exercising the powers of a Collector, under section 69 of the Bengal Tenancy Act (VIII of 1885), for appraisement of their produce. The Deputy Collector thereupon ordered the second officer to enquire and report on the matter. The latter held a local inquiry and submitted his report, on the 12th December, stating that certain receipts had been filed by the petitioners which appeared to have been forged. The Deputy Collector dismissed the petitioners' application, on the 3rd January 1917, and granted sanction to prosecute them, under sections 209 and 471 of the Penal Code, at the instance of the opposite party. The petitioners then appealed to the Commissioner of the Burdwan Division, who refused to interfere by his order, dated 5th March, holding that the District Judge of Midnapore had jurisdiction in the matter under section 195 (7) (c) of the Criminal Procedure Code and not his Court. The petitioners thereafter applied to the District Judge for revocation of the sanction, but he dismissed the application on the ground that the proper Appellate Court under section 195 (7) of the Code was the Commissioner. The petitioners then moved the High Court and obtained the present Rule.

Babu Jyotish Chandra Hazra and Babu Santosh Kumar Pal, for the petitioner.

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Babu Jogendra Narain Mazumdar, for the opposite party.

Cur. adv. vult.

CHITTY J. In this case the petitioners, Chandi Charan Giri and Gajendra Barik, applied to the Subdivisional Officer of Contai, exercising the powers of a Collector, for appraisal of produce under section 69 of the Bengal Tenancy Act. In those proceedings the officer deputed to hold a local enquiry reported that the petitioners had made use of forged receipts. On this report the Subdivisional Officer refused their application, and at the instance of their opponents granted sanction for their prosecution under sections 471 and 209 of the Indian Penal Code. From that order the petitioners appealed to the Commissioner of the Burdwan Division. The Commissioner held that he had no jurisdiction, and that the Court to which the Subdivisional Officer's Court was subordinate was that of the District Judge of Midnapore under section 195 (7) (c) of the Criminal Procedure Code. The petitioners then applied to the District Judge, but he too threw out their application on the ground that he had no jurisdiction to entertain it. He was of opinion that the Commissioner's Court had jurisdiction, as the Court to which appeals from the decisions of a Collector, or officer exercising the powers of a Collector, under the Bengal Tenancy Act would ordinarily lie. Against the District Judge's order the petitioners applied to this Court to exercise its revisional powers, and this Rule was issued. It should be noted that, in proceedings under section 69 of the Bengal Tenancy Act, by section 70 (5) "the Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but subject as aforesaid, his order shall be final, and shall, on

application to a Civil Court by the landlord or the tenant, be enforceable as a decree." There is consequently no appeal from an order of the Collector under section 70.

The Collector acting under sections 69 and 70, is a "Court" within the meaning of section 195 of the Criminal Procedure Code: see *Raghoobuns Sahoy v. Kokil Singh* (1). The question is, to what authority he is to be regarded as subordinate for the purposes of section 195 (6). Section 195 (7) purports to supply the answer, but it is so unfortunately worded as to leave the enquirer in much the same doubt and uncertainty as he was before. The difficulty of interpretation will be apparent if clauses (a) and (b) be omitted. Section 195 (7) will then read:—"For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, that is to say, (c) where no appeal lies such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first mentioned Court is situate." The difficulty seems to have arisen from the attempt to provide in one clause for cases where an appeal lies as well as for those where no appeal lies.

No doubt the words "where no appeal lies" are wide enough to cover cases, where all decisions of a particular Court are made final by law, *e.g.*, a Small Cause Court, and also cases where a particular order is non-appealable, *e.g.*, the case before us. I am inclined to think that the former class of cases only was referred to by the Legislature in this section 195 (7). If it were not so, the word "ordinarily" in the earlier part of the sub-section would be meaningless. Further, there does not seem

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to be any good reason for possibly transferring jurisdiction from a Court of one class to a Court of another simply because an appeal from the particular order in question is forbidden. Nor am I prepared to say that the principal Court of original jurisdiction must necessarily refer to a Court of any particular class. It is a Civil or Criminal or Revenue Court, as the case may be.

In this particular case, however, I think that the difficulty may be surmounted. I cannot agree with the learned District Judge when he says that appeals from the decisions of the Collector under the Bengal Tenancy Act *ordinarily* lie to the Commissioner of the Division. A perusal of the Act will show that while in some cases an appeal is allowed to the Commissioner, *e.g.*, section 40 (5), in other cases an appeal lies to the Special Judge, *i.e.*, to a Civil Court. If that be so, then under section 195 (7) (b) the nature of the case has to be considered. Proceedings, under sections 69 and 70, are clearly of a civil nature. The Collector may state a case for the decision of a Civil Court and his order may be enforced as decree of a Civil Court. The Collector's Court may, therefore, be deemed to be subordinate to the Civil Court, *i.e.*, the Court of the District Judge, for the purposes of section 195. This is on the assumption that the words "where no appeal lies" refer only to the case where *all* decisions of a particular Court are not appealable.

If they also refer to a case like the present, where a particular order is not appealable, we arrive at the same result. In that view, it being a matter of a civil nature, the Collector's Court must be regarded as subordinate to the principal Court of original civil jurisdiction, that is, to the Court of the District Judge.

The matter is by no means free from doubt, but this is the conclusion to which I have come after

giving the matter my best consideration. I would accordingly make the Rule absolute, set aside the order of the District Judge, and remand the application of the petitioners to his Court to be disposed of on the merits.

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RICHARDSON J. The opening words of clause (7) of section 195 were apparently intended as a general definition or explanation of the term "subordinate" as applied in the previous clauses to a Court.

The sub-clauses of clause (7) were meant, I think, to indicate the result of applying the opening words of the clause to the particular cases dealt with in the sub-clauses. The words "that is to say" at the end of the opening paragraph refer to the preceding words as a whole, with the sense "*which means,*" or "*the result being.*" The language is not very happy, but that seems to me to be its effect.

This Court has held, in *Raghoobuns Sahoy v. Kokil Singh* (1), that a Collector acting in appraisement proceedings under sections 69 and 70 of the Bengal Tenancy Act is a "Court" within the meaning of section 195 of the Criminal Procedure Code. Reference may also be made to *Abdullah Khan v. Emperor* (2).

Under clause (5) of section 70 of the Bengal Tenancy Act the Collector's order is final. There is, therefore, no appeal and the case would seem to fall within clause (7), sub-clause (c), of section 195. The words "where no appeal lies" in that sub-clause are wide enough to include both a particular case or class of cases in which no appeal lies and a Court from which no appeal lies in any case, such as a Small Cause Court: *Nibaran Chandra Chakrabarty v. Akshoy Kumar Banerjee* (3).

(1) (1890) I. L. R. 17 Calc. 872. (2) (1909) I. L. R. 37 Calc. 52.

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J.

As to the expression "principal Court of original jurisdiction" in sub-clause (c), it has been held, in *Ajudhia Prasad v. Ram Lal* (1), that it means the principal Court of Civil, Criminal or Revenue jurisdiction according to the nature of the case in which the question of sanction arises. I am not aware of any express decision on the point in this Court, and I am not sure that it has not been generally assumed in this province that under the clause as it stands, "the principal Court of original jurisdiction" is in a district the Court of the District Judge who is also in the great majority of cases the Sessions Judge. However that may be, it is unnecessary in the present case to carry the discussion further. I agree that proceedings before the Collector under sections 69 and 70 of the Bengal Tenancy Act are in their nature civil proceedings, and I concur in the order proposed by my learned brother.

E. H. M.

Rule absolute.

(1) (1911) I. L. R. 34 All. 197.