

In the appeal to the High Court arising out of suit 101, they will get their costs as decreed by that Court.

And their Lordships will humbly advise His Majesty accordingly.

J. V. W.

*Appeal 2 of 1911 allowed.*

*Appeal 3 of 1911, decree varied.*

Solicitors for the appellants : *T. L. Wilson & Co.*

1918

GUR  
NARAYAN  
v.  
SHEOLAL  
SINGH.

## CRIMINAL REVISION.

*Before Chaudhuri and Newbould JJ.*

PRAMATHA NATH BARAT

v.

P. C. LAHIRI.\*

1919

April 9.

*Police-officer—Detention in custody of suspended police officer—Legality of detention—Police Circular Order No. 1159—Legality of the Circular—Calcutta Police Act (Beng. IV of 1866) s. 13.*

The Commissioner of Police has no authority in law to order the detention of a police-officer on suspension as he ceases to be a police-officer thereafter, and the Police Circular Order No. 1159, published in the *Calcutta Police Gazette*, dated the 9th June, 1917, empowering him to do so, is illegal.

ONE Provat Nath Barat was a writer head-constable attached to Sec. A, Town Police. Some serious allegations having been made against him, on 3rd January, 1919, in connection with the arrest of an accused person in a petty case, he was suspended pending enquiries into his conduct, and was sent to the Lal Bazar Police Quarters, in conformity with Circular Order No. 1159, published in paragraph 1318

\*Criminal Revision No. 227 of 1919, against the order of D. Swinloe, Chief Presidency Magistrate, Calcutta, dated Feb. 25, 1919.

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of the *Calcutta Police Gazette*, dated the 9th June, 1917, the material portions of which are as follows :—

Officers of all ranks, when placed under suspension, are subject to the same rules, regulations and discipline as when not suspended.

All head-constables and constables placed under suspension are to be ordered to report themselves to the Superintendent, Head Quarters Force. They will be confined to quarters, and not be allowed to leave the Lal Bazar compound without the specific permission of the Superintendent, Head Quarters Force, or any other officer detailed by him for the purpose.

Provat was placed before Mr. Keays, Second Presidency Magistrate, on the 14th February, charged with offences under ss. 352, 504 and 342-114 of the Penal Code, and s. 13(c) of the Calcutta Police Act (Beng. IV of 1866), and was ordered by him to be released on bail of Rs. 100 which he furnished. Thereafter, learning that one Manik Lal Sadhu, an inspector of Sec. A, Town Police, was on the look out for him under the orders of Rai Bahadur P. C. Lahiri, Deputy Commissioner of the Northern Division, Provat went to the Shampukur *thana* on the 15th, and was sent by Manik Lal in custody, under Lahiri's order, to the Central Lock-up Guard at Lal Bazar, and was in detention there at the time of the application to the High Court. On the 20th Pramatha Nath Barat, the brother of Provat, filed a complaint before Mr. Keays against Lahiri, Manik Lal and Inspector Marsden under ss. 342 and 342-109, of the Penal Code, and prayed for a warrant under s. 100 of the Criminal Procedure Code for the production of Provat in Court. The Magistrate thereupon endorsed a note on the complaint that the matter was one for the Chief Presidency Magistrate. The complaint was accordingly presented to Mr. Swinhoe who referred it to Mr. Clarke, the Commissioner of Police, for report. A report was submitted by the latter on the 24th, alleging, *inter alia*, that Provat had been sent to the Lal Bazar Police Quarters under orders of the Deputy Commissioner of the district, that

Manik Lal and Marsden had nothing to do with the case, and that the former acted throughout under the orders of his superior officer, whilst the latter was in charge of the Traffic police without any other duty. The Chief Presidency Magistrate after perusing the report dismissed the complaint under s. 203 of the Code on the 25th. Pramatha Nath then moved the High Court for further enquiry and obtained the present Rule.

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*Mr. N. Sen* (with him *Moulvi A. K. Fazlul Huq* and *Babu Probhat Chunder Dutt*), for the petitioners, stated the case.

*The Advocate-General* (*Mr. T. C. P. Gibbons, K.C.*) (with him *the Deputy Legal Remembrancer, Mr. Orr*), for the Crown. I wish to explain the position. Two Allahabad decisions under Act V of 1861, s. 8, held that a police-officer ceased to be so after suspension. Section 8 of the Act was consequently amended by Act VIII of 1895, but the amendment does not apply to the Calcutta Police Act. A Circular Order No. 1159 was issued in consequence, and appears in the *Calcutta Police Gazette*. I cannot support the Magistrate's order dismissing the complaint, or the Circular Order, as legal.

CHAUDHURI AND NEWBOULD JJ. The learned Advocate-General stating that he cannot support the order, we direct a fresh enquiry into this matter.

The learned Advocate-General very fairly states that he finds great difficulty in upholding the contention that a police-officer in Calcutta, after suspension, continues to be a police-officer. He also finds difficulty in supporting the contention that the Circular relied upon is authorized by law. Having regard to the note made by the Commissioner of Police that Marsden had nothing to do with the case, the complainant withdraws his charge against him. Order is

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made to the effect that the case is only to proceed against the Deputy Commissioner, Rai P. C. Lahiri Bahadur, and Manik Lal Sadhu. We also understand from complainant's counsel that he will consider whether he should proceed against Manik Lal Sadhu, having regard to the fact that he was merely an inferior police-officer who was bound to carry out the orders of his superior.

The learned Advocate-General, on behalf of the Crown, says that he would advise that the man should be at once let out on bail as ordered by Mr. Keays, and upon that no order need now be made by us.

We see no reason why the case should not be tried by the Chief Presidency Magistrate. We leave it to him to try it himself or to make it over to some other Magistrate.

E. H. M.

*Rule absolute.*

## APPEAL FROM ORIGINAL CIVIL.

*Before Sanderson C. J. and Woodroffe J.*

SUKHLALL CHANDANMULL

v.

THE EASTERN BANK, LTD.\*

1918  
 Aug. 21.

*Bills of Exchange—Foreign bills—"Dishonour," what constitutes—Notice of dishonour—Acceptance—Drawees' obligation to accept—Drawers' right to notice—Custom and Trade usage—Effect of war on performance of contract—Negotiable Instruments Act (XXVI of 1881), s. 135—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61) ss. 42, 50 (2) c. (iv).*

Before the outbreak of war the defendants shipped certain goods to London firms in enemy vessels destined ultimately to enemy ports. These goods were covered by bills of exchange drawn in Calcutta on the said firms with their addresses given in the bills as London. They were then

\* Appeal from Original Civil No. 84 of 1917 in Suit No. 1271 of 1914.