

CRIMINAL REVISION.

Before Shams-ul-Huda and Ghose JJ.

HASAN ALI BEPARI

v.

EMPEROR.*

1919

Nov. 8.

Criminal Tribes—Criminal Tribes Act (III of 1911), ss. 8 and 28—District Magistrate acting under s. 8 of the Act, not a Court—Jurisdiction of the High Court to interfere, on revision, with such order—Inquiry by District Magistrate, necessity of.

A District Magistrate, in granting or refusing an application, under s. 8 of the Criminal Tribes Act (III of 1911), to remove the name of a person from the register as a member of a criminal tribe, acts administratively, and not judicially as a Court; and the High Court has, therefore, no power to interfere, on revision, with his order under the section.

Rajani Khemtawali v. Pramatha Nath Chowdhry (1), *In the matter of Rohoman Sirkar* (2) referred to.

The fact that s. 28 of the Act has expressly excepted certain orders from the jurisdiction of the Courts of Justice does not necessarily imply that all other orders are subject to such jurisdiction.

The District Magistrate is not bound, under s. 8 of the Act, to make any inquiry himself, but may act on the report of an Additional District Magistrate, though it does not disclose materials sufficient in a Court of Law for refusing the removal of a person's name from the register.

ON 9th September, 1918, the Governor-in-Council, purporting to act under s. 3 of the Criminal Tribes Act, issued a proclamation, published in the *Calcutta Gazette*, dated the 11th September, 1918, declaring a gang, commonly known as Abdul Sheik's gang, ordinarily residing in certain specified villages, to be a criminal tribe, and directing every registered member

* Criminal Revision No. 791 of 1919 against the order of S. G. Hart, District Magistrate of Dacca, dated July 22, 1919.

(1) (1910) I. L. R. 37 Calc. 287. (2) (1872) 10 B. L. R. App. 4.

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of the said gang to report himself, in the prescribed manner, at fixed intervals, and to notify his place of residence, changes thereof and any absence from his residence. A notice under s. 5 of the Act, dated the 20th October, and purporting to be signed on behalf of the District Magistrate, was issued on the petitioner No. 1, and his servant, the second petitioner, stating that they had been declared members of a criminal tribe, and ordering them to appear before the Superintendent of Police, Dacca, on the 7th November. They did so and were entered in the register as members of such tribe. They thereupon filed an application, under s. 8 of the Act, before the Additional District Magistrate, who held an enquiry, took the evidence only of some of the witnesses, called for the police records of the petitioners' previous convictions, and sent up the case to the District Magistrate, by his order, dated the 16th July 1919, in the following terms:—

The Additional District Magistrate has no power to deal with these applications, and I accordingly send them to the District Magistrate. Hasan Ali is described as one of the leaders of Abdul Sheik's gang and Nimchand is his servant. Hasan Ali was named in the confession respecting the dacoities of 1905, 1907 and 1914: he was sentenced in 1893 to 10 stripes under s. 411, I. P. C. Other convictions under s. 109 are alleged against him. He denies the last, and there appears to be no copy of the convictions with the record. Nimchand was named in the 1907 dacoity, and is said to have been convicted under s. 109 in 1910, but the record has apparently not been traced. I am disposed to think that Hasan Ali has dealings with the gang in which his servant shares, and that his name should be retained on the Register.

(Sd.) G. E. L.

A. D. M.

On receipt of the above report the District Magistrate of Dacca, without notice to the petitioners or hearing them, passed the following order, on the 22nd July:—“*Petition rejected.*”

The petitioners thereupon obtained the present Rule on the 2nd, 4th and 5th grounds of the petition to the High Court.

"2. That the inquiry by the Additional District Magistrate having been without jurisdiction, the order of the District Magistrate based thereon is illegal.

"4. That in the absence of a clear finding that the petitioners were members of Abdul Sheik's gang, the District Magistrate was wrong in rejecting the petitioners' application.

"5. That the records of the previous convictions not having been traced, and the petitioners having denied the fact of conviction, the District Magistrate ought to have held that there was nothing against them."

Babu Upendra Lal Roy (with him *Babu Suresh Chandra Talukdar* and *Babu Jitendra Nath Sen Gupta*), for the petitioners. The District Magistrate acts judicially under section 8 of the Criminal Tribes Act, and this Court has power to interfere: *Rajani Khemtawali v. Pramatha Nath Chowdhry* (1). See also s. 28 of the Act, which by implication makes all orders, other than those excepted, subject to the jurisdiction of the Courts of Law. The Additional District Magistrate did not examine all the witnesses and relied on unproved convictions. His inquiry was further *ultra vires*. The District Magistrate should have held an inquiry himself into the allegations in the petitioners' application, and this Court should now direct him to do so.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The District Magistrate acted executively, and the High Court has no power to interfere: *In the matter of Rohoman Sirkar* (2).

No inquiry by the District Magistrate is necessary under s. 8 of the Act: he could act on the report of the Additional District Magistrate.

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SHAMS-UL-HUDA AND GHOSE JJ. In this case the names of the petitioners were entered in a register made in accordance with the provisions of section 5 of the Criminal Tribes Act, and on the register being lodged with the Superintendent of Police, an application was made to the Magistrate to the effect that the petitioners' names should be removed from the register. The Additional District Magistrate thereupon made an inquiry and submitted a report to the District Magistrate; and the latter on a consideration of that report rejected the petition. Against this order, upon an application by the petitioner, a Rule was issued on the District Magistrate calling upon him to show cause why that order should not be set aside; and the learned vakil has in support of the Rule urged that we should direct the District Magistrate to make an enquiry into the facts alleged by the petitioners in support of the application for the removal of their names from the register.

The first question that arises for our consideration is the question of the jurisdiction of this Court to interfere with such an order. Having considered the provisions of the Act, it seems to us that the District Magistrate, in granting or refusing an application to take the name of a person out of the register, does not perform any judicial functions, that his functions are administrative, and that upon this view of the case this Court is not entitled to interfere with the order complained of.

In support of the contention that this Court has jurisdiction to deal with the order, reliance has been placed on a decision of this Court in the case of *Rajani Khemtawali v. Pramatha Nath Chowdhry* (1). That case deals with an order passed under the Eastern Bengal and Assam Disorderly Houses Act, an

(1) (1910) I. L. R. 37 Calc. 287.

Act to provide for the discontinuance of brothels and disorderly houses in certain localities in Eastern Bengal and Assam. The provisions of that Act are very different from the provisions of the Criminal Tribes Act. That Act gives jurisdiction to a Magistrate of the first class to order an owner, tenant, manager or occupier to discontinue the use of any house as brothel. "A Magistrate of the first class" itself signifies a Magistrate exercising certain judicial powers, and is a Criminal Court within the meaning of section 6, Criminal Procedure Code. In this case power is given to the District Magistrate who has executive as well as judicial functions to discharge. That case, therefore, is not, in our opinion, sufficient to show that this Court has jurisdiction to deal with an order of this kind. The learned vakil for the petitioner has also relied on the provisions of section 28 of the Criminal Tribes Act which lays down that certain orders passed under the Act cannot be questioned by a Court of justice. It has been contended that the present is not one of the orders so excepted. That is no doubt correct. But the fact that the Legislature expressly excepted certain orders from the jurisdiction of Courts of justice does not by necessary implication make all other orders subject to such jurisdiction.

In support of the opposite contention, the Deputy Legal Remembrancer has relied on the case of *In the matter of Rohoman Sirkar* (1). That case seems to us to apply more directly to the question under our consideration than the case relied on by the other side. We are, therefore, of opinion that the Magistrate in making the order did not act as a Court, and that this Court has no jurisdiction to interfere with that order.

(1) (1872) 10 B. L. R. App. 4.

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But apart from this it seems to us that the Magistrate is nowhere required by law to make any enquiry. The matter is left absolutely to his discretion. Section 8 of the Act says: "Any person deeming himself "aggrieved by any entry made, or proposed to be made, "in such register, either when the register is first made "or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall "retain such person's name on the register, or enter it "therein, or erase it therefrom, as he may see fit." It does not appear that the law requires that the Magistrate should enter into any enquiry, and the fact that he has not made any enquiry himself is not fatal to the validity of the order. There was an enquiry by the Additional Magistrate, and on the authority of that enquiry the Magistrate rejected the application. It is true that that report of the Additional Magistrate does not disclose materials which in a Court of Law would have been considered sufficient for an order refusing the removal of the petitioners' names. But we do not think that we can go behind the order. The Rule is accordingly discharged.

E H. M.

Rule discharged.