

## CRIMINAL REVISION.

*Before Chaudhuri and Newbould JJ.*

T. R. PRATT

v.

EMPEROR.\*

1920

Jan 22.

*Summons to produce Documents—Books of a firm—Materials on which such order may be made—Complaint and subsequent application for summons and examinations of complainant thereon—Propriety of service—Directions to Magistrate to decide what books were necessary for the purpose of the inquiry—Directions as to mode of inspection—Criminal Procedure Code (Act V of 1898) s. 94.*

Where a complaint was made against a certain person before the Chief Presidency Magistrate, who examined the complainant and directed a local investigation, and an application was made thereafter by the complainant for summons under s. 94 of the Criminal Procedure Code and granted after his further examination thereon :—

*Held*, that there were sufficient materials on which an order under s. 94 could properly be made and that it was so made.

Where in obedience to a previous order of the High Court the Magistrate's head-clerk delivered certain books to M, who gave a receipt for them as the agent of the petitioner, but the latter further appointed Q without the knowledge of the Magistrate, to take them over immediately from M :—

*Held*, that the summons under s. 94 was properly served on M, and even if it was not so, that the High Court would not order the return of the books to the petitioner, but would direct the issue of an amended summons to be served on him.

The High Court directed the Magistrate to inquire and determine, in the presence of the petitioner, how many and which of the books were necessary for the purposes of the complaint before him, taking into consideration any undertaking given by the petitioner for production of the books as required but which he now ordered to be returned.

The Magistrate was further directed to give definite instructions as to when and where and by which officer the inspection was to be held. The inspection was also directed to be made in the presence of the petitioner.

\* Criminal Revision No. 53 of 1920, against the order of D. Swinhoe, Chief Presidency Magistrate of Calcutta, dated Jan. 10, 1920.

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THE facts of the case up to the stage when the High Court set aside the search warrant granted by the Magistrate on the 21st December 1919, and directed the return of his books to the petitioner, have already been reported.

The Magistrate, on receipt of the above order, on the 9th January 1920, served it the same night on Mr. Armstrong and directed him to produce the books in Court the next day before 12-30 P.M. He also issued a notice to the petitioner requiring him to attend at that hour personally or by agent to take delivery.

On the morning of the 10th, apparently before 12-30 P.M., D. B. Meek, Controller of the Indian Munitions Board, Bengal Circle, made a complaint before the Chief Presidency Magistrate against C. S. Waite of offences under ss. 409, 467, 471, 379, 420 and 161, of the Penal Code, and prayed for process. Below the signature of the complainant and the date on the complaint, there appeared a statement that certain commandeering orders on C. N. Kundu & Co., T. R. Pratt, and Seldana & Co., had been altered. The Magistrate examined the complainant and ordered a local investigation by Mr. Armstrong.

The petitioner appeared at the appointed time through counsel, and the Magistrate requested the latter to nominate some one who would take delivery of the books on behalf of the petitioner and grant a receipt, and the name of McLean was given. The books, which were lying in the corridor of the Court, were then made over by the Magistrate's head clerk to McLean who gave a receipt for them. Thereafter the complainant filed an application before the Magistrate for a summons under s 94 of the Criminal Procedure Code, stating that the petitioner had large dealings with the Munitions Board, that Waite purchased

materials from him for stock and against indents and on commandeering orders; that several purchasing orders were antedated, and certain specified books of the petitioner would throw light on the character of the transaction; that it was necessary to inspect the account books to ascertain whether purchases against indents were effected after Waite's authority to make them had ceased; and that inspection of the books was necessary to ascertain whether the interpolation in the commandeering order was fraudulent. The petition then prayed for summons on McLean under s. 94. The Magistrate examined the complainant and recorded the following order "Summon Mr. Pratt to produce the said books and documents before me to-day after having taken delivery from this Court."

The Magistrate's head clerk then served the following summons on McLean.

To Mr. McLean, agent and representative of T. R. Pratt Whereas production of the books and documents set out in the annexure hereto, and now in your possession, is considered necessary for the purposes of an inquiry now being made in the case of D. B. Meek v. C. S. Waite and others, you are required to produce the same before me at once.

(Sd.) D. SWINHOE,  
*Chief Presidency Magistrate.*

The head-clerk next gave McLean a receipt for the books and documents. It was alleged by the petitioner that Quayle, an assistant of his, had taken possession from McLean immediately the latter received them and before the service of the summons under s. 94. The petitioner thereupon moved the High Court, on the 13th January, and obtained a rule on the Chief Presidency Magistrate to show cause why the books should not be returned to him.

*The Advocate General (Mr. T. C. P. Gibbons' K. C.) (with him Babu Manindra Kumar Bose), for*

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the Crown. The order of the Magistrate was based on proper materials. There was the complaint of D. B. Meek. The Magistrate examined him and ordered a local investigation. Then, on the application under s. 94 of the Code, he has examined the complainant again. S. 94 requires a summons to be served on the person in whose possession a document is *believed* to be. McLean received the books and was rightly served.

*Mr. Langford James* (with him *Babu Manmatha Nath Mukerji*), for the petitioner. The order under s. 94 is illegal as the books were then in the possession of the Court. The service on McLean was illegal as Quayle was then in possession. The Magistrate had no power to summon all the books, irrespective of the question of their relevancy to the complaint filed before him. He should have required what books were necessary for the inquiry (Reads the charges mentioned in the complaint and discusses the question.) Inspection should now be held in the presence of the petitioner.

CHAUDHURI AND NEWBOULD JJ. We think that this Rule ought to be discharged. There were materials before the Magistrate upon which an order under section 94 could properly be made, and was properly made. A point was made by Mr. Pratt that he had authorized Mr. McLean to take over the books. He says that almost simultaneously he gave a direction to his officer, Mr. Quayle, to remove the books after Mr. McLean had taken them over. It is difficult to understand why this further order was made. It had the effect of misleading the Court. The Court made an enquiry at the time as to who was the person to give a receipt and take the books, and Mr. McLean was one of the persons named. Immediately thereafter, though authority was given to Mr. McLean

remove those books and to sign a receipt for them. Mr. Pratt by an order which was not made known to the Court authorized another person to take over the books from Mr. McLean. The order under section 94 was accordingly made on Mr. McLean who was going to take delivery of the books and who was going to give a receipt for them, and it was not known to the Court at that time that Mr. Quayle was authorized in manner aforesaid. If the Court knew that there would have been no difficulty in the matter, the order would have been on him to produce. We think that the order under section 94 was properly made, and the books which were taken charge of ought to be in the custody of the Magistrate in the circumstances of the case.

We must say that the charges made against the Magistrate in paragraphs Nos. 14 and 17 of the petition are altogether unfounded. They certainly ought not to have been made. It is to be noted that both these paragraphs are merely based upon belief. The charges have been made on belief, but in his affidavit Mr. Pratt swears that they are true to his knowledge. What he means, it is impossible to understand. Paragraph 14 of the petition runs thus:—"That your petitioner believes and charges that the giving of directions to the said Mr. Armstrong as aforesaid to bring the books to the Court of the Chief Presidency Magistrate, and the serving of the said notice, were acts done in furtherance of a scheme planned in concert by the Chief Presidency Magistrate and the said Mr. Armstrong to render nugatory the orders of this Court, and he further charges that the said scheme was *malâ fide*, in the following circumstances."

It is merely a charge upon belief, the grounds for such belief are not stated, no facts are given, and we are strongly of opinion that a charge of that character

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should never have been introduced in the application. Learned Counsel undoubtedly made his observations basing them upon the affidavit, but when charges of this character are made in Court by learned counsel, I do not think that it will ever be disputed that it is his duty to see upon what the charges are based before he makes them. It seems to us that the learned counsel was misled by the paragraph as worded. He did not carefully examine the wording. We do not think that any case has been made out of *malá fides* against the Magistrate. The charges are altogether improper and unjust. Even if we had come to the conclusion that the books were not strictly properly, or lawfully obtained from Quayle, we would certainly not have directed the books to be returned, but simply directed the issue of an amended notice to be served upon Mr. Pratt for the production of those books, and Mr. Pratt could not then have avoided producing them. Learned counsel appearing for the petitioner is quite justified in putting before us the circumstance that all the books which were taken by the Police under the search warrant, which has been declared by this Court as illegal, have again been taken possession of by the Magistrate. The way in which it was done rather indicates that it was not sufficiently considered at the time as to how many of these books were necessary for the purpose of the investigation. That undoubtedly is matter for complaint, and just complaint. But we think that in the circumstances of this case an enquiry now would sufficiently safeguard the interests of the petitioner.

The learned Advocate-General, appearing for the prosecution, says that he is prepared to have such an enquiry made in the presence of the other side, and we direct the Chief Presidency Magistrate to have that enquiry as quickly as possible in the presence of

the other side, and to determine which of the books are necessary to be kept. He must in this connection take into consideration any undertaking which may be given by the petitioner or his attorney for the production of the books as required, but which the Magistrate may now direct to be returned. We need hardly point out that only such books as may be urgently required for purposes of the case ought to be kept and no more. Mr. Pratt complains that his business has been seriously prejudiced, and the retention of current books interferes with his work. The learned Advocate-General says that he is prepared to give him facilities for carrying on his business, and will help him to get such books as may be necessary. This matter also ought to be taken into consideration by the Magistrate.

Then there is a further matter, about the method of inspection of the books which may be kept. We direct the Magistrate to give definite instructions as to when and where the inspection is to be held, and by which officer. It is conceded that such inspection ought to be made in the presence of the petitioner. We direct that to be done. With these directions we discharge the Rule.

Mr. Langford James wants it to be added that he takes the fullest responsibility for the observations which were made by him based upon paragraphs 14 and 17. Since he takes the responsibility, we have nothing further to say. We only wish to emphasize what we have already said that charges of this character ought not to be made except on facts, and then only after due consideration. We hope the profession will bear that in mind.