CRIMINAL REVISION.

Before Greaves and Panton JJ.

TARAPADA BISWAS

v.

KALIPADA GHOSE.*

1924

March 5.

Commitment to the Sessions—Power of committing Magistrate to deal with the evidence—Duty when prima facie case established.

It is open to the committing Magistrate to form his opinion with regard to the credibility of the witnesses, but it is not his duty to closely criticize their evidence. If a *prima facie* case is made out, he should clearly leave the question of credibility to the jury. But if, after hearing the evidence, he is satisfied that it is not trustworthy and that a conviction will not result, he is entitled to record a finding that the witnesses cannot be believed and that a conviction will not result.

Rash Behari Lal Mandal v. *Emperor* (1), *Re Kalyan Singh* (2), *Re Bai Parvati* (3) referred to.

THE facts of the case were as follows. On the 18th September 1922 one Kalipada Ghose lodged a complaint, before the Subdivisional Officer of Krishnagar, alleging that the petitioner had forged a *kabuliat* purporting to have been executed by him. A summons was issued against the latter under s. 465 of the Penal Code. The case was then transferred to a Deputy Magistrate who took evidence and discharged the petitioner under s. 209 of the Criminal Procedure Code, on the 12th October. Kalipada then moved the District Magistrate of Nadia to set aside the order of discharge and to commit the prisoner to the Court of Sessions on charges under ss. 467 and

* Criminal Revision, No. 1121 of 1923, against the orders of the District Magistrate of Nadia, dated Nov. 10 and 19, 1923.

(1) (1907) 12 C. W. N. 117. (2) (1899) I. L. R. 21 All. 265.
(3) (1910) I. L. R. 35 Bom. 163.

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471 of the Penal Code. On the 20th November the District Magistrate framed charges under ss. 465, 467 and 471 of the Penal Code, and directed his commitment.

Sir B. C. Mitter (with him *Babu Amarendra Nath Bose* and *Babu Radhika Ranjan Guha*), for the petitioner. No motive has been established. The *kabuliats* related to a period subsequent to that for which mesne profits were claimed. The District Magistrate erroneously admitted the judgments of the Civil Court: *Raj Kumari Debi* v. *Bama Sundari Debi* (1), *Gogun Chunder Ghose* v. *Empress* (2). He should have considered whether there was a *prima facie* case at all. The committing Magistrate had power to discharge the accused: *Rash Behari Lal Mandal* v. *Emperor* (3), *Re Kalyan Singh* (4), *Re Bai Parvati* (5), *Sankarayya* v. *Kerala Subba Aiya* (6)

Mr. S. K. Sen (with him *Babu Ramani Mohan Chatterjee* and *Babu Rebati Mohan Chatterjee*), for the opposite party. The judgments of the Civil Courts were admissible under s. 41 of the Evidence Act. The motive was fully substantiated. The case was rightly sent to the jury under s. 437 of the Criminal Procedure Code.

GREAVES AND PANTON JJ. This Rule is directed against two orders of a District Magistrate, dated the 10th of November 1923 and 19th of November 1923, whereby he committed the four petitioners before us for trial to the sessions in respect of charges of having forged certain *kabuliats*. In making his order the District Magistrate reversed the decision of the

(1) (1896) I. L. R. 23 Calc. 610.
(2) (1880) I. L. R. 6 Calc. 247.
(3) (1907) 12 C. W. N. 117.
(4) (1899) I. L. R. 21 All. 265.
(5) (1910) I. L. R. 35 Bom. 163.
(6) (1894) 2 Weir. 260.

Deputy Magistrate who had dismissed the complaint disbelieving the evidence of the witnesses who were cited before him and holding that no motive for the forgery of the *kabuliats* by the accused, either of their own accord or at the instance of their master, had been established. The learned District Magistrate in reversing the Deputy Magistrate's order states that he does so relying on the judgments of two Civil Courts which suspected the genuineness of these *kabuliats*, and also on the ground that there was ample evidence of motive for forgery of the *kabuliats*. The reasons given by the District Magistrate are clearly wrong. He had no right, we think, to rely on the judgments of the Civil Courts which clearly influenced his decision; and as to the ground of motive it seems to us that this is not established. Nafar Chunder Pal Choudhury, the master of the four accused, had a claim for mesne profits against his co-sharers, but the *kabuliats* related to a period subsequent to the period for which mesne profits were claimed, and it seems to us that the *kabuliats* could not have assisted the master of the accused in making his claim for mesne profits. We, accordingly, think that the District Magistrate was wrong in finding, as he has done, that there was ample motive for the forgery.

The only question that remains is whether it was open to the Deputy Magistrate, as he has done, to disbelieve the evidence of the witnesses who were called before him in support of the complaint against the accused. If it is the duty of the Deputy Magistrate merely to record the evidence and leave it to the jury at the sessions to decide as to the credibility of the evidence, then clearly the Deputy Magistrate was wrong in expressing an opinion, as he has done, with regard to the credibility of the witnesses who were before him. Some of the witnesses were cross-examined at

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the time the accused showed cause and consequently the Deputy Magistrate had more opportunity than ordinarily arises for arriving at an opinion with regard to their credibility. It seems to us, however, having regard to the authorities that have been cited, namely, the case of *Rash Behari Lal Mandal* v. *Emperor* (1) and the other authorities cited from other High Courts: *Re Kalyan Singh* (2), *Re Bai Parvati* (3) and the case from Madras, that it is open to a Deputy Magistrate to form his opinion with regard to the credibility of the witnesses called before him. In so saying we do not suggest that it is his duty to closely criticise their evidence. If a *prima facie* case is made out he should clearly leave it to the jury at the sessions to form their own view as to the credibility of the evidence. But if, after hearing the evidence, he is satisfied that it is not trustworthy and that a conviction will not result, we think that he is entitled to do, as the Deputy Magistrate has done in this case, namely, to record his finding that the witnesses who spoke in support of the charge cannot be believed and that a conviction will not result. Under the circumstances we do not think that the District Magistrate was justified in reversing the order of the Deputy Magistrate, and we accordingly make the Rule absolute. The accused will be discharged from their bail-bonds.

E. H. M.

(1) (1907) 12 C. W. N. 117. (2) (1899) I. L. R. 21 All. 265.
(3) (1910) I. L. R. 35 Bom. 163.