

1928
 DHIRENDRA
 NATH DEB
 v.
 DHARANI
 MOHAN ROY.
 RANKIN C. J.

this case. The point is not particularly clear and, speaking for myself, I am much obliged to the learned vakils for their arguments. In my opinion the intention of the statute is the intention which the learned Subordinate Judge imputes to the Statute. In my opinion this appeal should be dismissed with costs.

GHOSE J. I agree.

S. M.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Rankin C. J. and C. C. Ghose J.

KERAMAT ALI

v.

EMPEROR.*

1928
 Feb. 20.

Prosecution—Order to prosecute—Contradictory evidence—When enquiry to be directed—Criminal Procedure Code (Act V of 1898), s. 476—Penal Code (XLV of 1860), s. 193.

To prosecute people, because they give evidence which is contradictory merely on the basis of that contradiction, is a very doubtful procedure.

It is only where a Court is expressly of opinion that "it is expedient in the interests of justice that an enquiry should be made" into the offence of giving false evidence that an order under s. 476 of the Code of Criminal Procedure can be made.

CRIMINAL APPEAL.

The appellant was a witness for the prosecution in a case before the Sessions Judge of Noakhali. The Sessions Judge, after the termination of the trial, lodged a complaint before the Subdivisional Magistrate.

*Criminal Appeal, No. 630 of 1927, against the order of K. C. Chander, Sessions Judge of Noakhali, dated June 4, 1927.

of Noakhali, on the application of the Public Prosecutor. The Sessions Judge did not give the witness an opportunity of being heard before the sanction and prosecution. In the letter of complaint, the learned Judge simply set out three passages from the evidence and directed necessary steps to be taken in the matter.

Hence this appeal.

Babu Mahendra Kumar Ghosh (with him *Babu Suresh Chandra Talukdar*), for the appellant. The prosecution is bad without any enquiry as contemplated by law. The findings in the complaint are, moreover, not sufficient in law to warrant prosecution, as it was absolutely necessary for the Judge to come to a finding that "it is expedient in the interests of justice that an enquiry should be made" before he could make the complaint.

Babu Anil Chandra Ray Chaudhuri, for the Crown. Though it did not appear in so many words, the Judge must have found that the enquiry was necessary for the interests of justice before he made complaint.

RANKIN C. J. This is an appeal from an order made under section 476, Criminal Procedure Code, directing a complaint to be made. The complaint is for an offence under section 193 of the Indian Penal Code, *i.e.*, complaint for giving false evidence. It appears that the appellant was the first witness for the prosecution in a case in which 14 persons were charged with rioting and arson in connection with some *char* lands and it would seem that in the course of his deposition he made contradictory statements and that upon that basis the order complained of has been made. The formal complaint sets out different passages and leaves the matter there with a request to take necessary steps.

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When we look at the order-sheet of the learned Sessions Judge we find that this order was made on the application of the Public Prosecutor. It seems to have been a fact that the present appellant did his best to say by way of explanation that he was tired and confused and that he did not contradict himself out of malice or wilfully. It does seem to me that to prosecute people, because they give evidence which is contradictory, merely on the basis of that contradiction, is a very doubtful procedure. In the present case, the learned Sessions Judge has taken no pains to do what he is ordered to do by section 476. I look in vain for any recorded finding to the effect that "It is expedient in the interests of justice that an enquiry should be made" into the offence in this case. As the learned Sessions Judge has not recorded that finding I do not feel it incumbent on me to assume that he properly considered this matter and came to a right conclusion. In my judgment the case is not one which appears to me from a mere existence of contradiction to require, in the interests of justice, that an enquiry should be made. I would allow the appeal and set aside the order directing a complaint to be made.

S M.

Appeal allowed