

## CRIMINAL REVISION.

Before Mukherji J.

SADAGAR CHAUDHURI

v.

KING-EMPEROR.\*

1929.

Feb. 5.

*Accused—Statement—Memorandum—Entry “Denies”—Criminal Procedure Code (Act V of 1898), ss. 370, 342, 362, 364, sub-s. (4)—Criminal Procedure (Amending) Code (Act XVIII of 1923), ss. 97, 98.*

Failure to keep a memorandum of the statement of an accused cannot vitiate a trial by a Presidency Magistrate.

But the column provided for this purpose in the form prescribed by section 370 of the Code of Criminal Procedure must be filled up somehow.

Even the entry of the word “denies” may be sufficient.

CRIMINAL RULE obtained by Sadagar Chaudhuri, accused.

The accused, a boat *manjhi*, was prosecuted, on 3rd July, 1928, before an Honorary Presidency Magistrate, under rule 65 of the Port Rules framed under the Calcutta Port Act, Beng. III of 1890, for obstructing the fairway of the Babu Ghat female bathing *ghat* with his *dinghi* at 5 a.m. on the 2nd July, 1928. On the first day of the trial, the accused, being asked if he had caused the alleged obstruction, stated he had not done so and would adduce evidence.

After examining a police constable, the learned Presidency Magistrate adjourned the case to the 10th July, 1928, when two witnesses, including the aforesaid constable, were examined by the prosecution and cross-examined by the accused, who also examined four defence witnesses. On this day, the learned Presidency Magistrate convicted the accused under section 65 of the Calcutta Port Rules and sentenced him to pay a fine of Rs. 5 in default to undergo 7 days' simple imprisonment. Against this order of the 10th July, 1928, the accused moved the High Court, alleging in his sworn petition that there was no obstruction to

\*Criminal Revision, No. 1234 of 1928, against the order of D. Jah, Honorary Presidency Magistrate of Calcutta, dated July 10, 1928.

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the bathing *ghat*, that, after the close of the case for the prosecution, the learned Presidency Magistrate did not examine the accused at all and that the witnesses had proved that the accused's boat was tied to the jetty, about 50 yards away from the female bathing *ghat* at Babu Ghat, that there was no obstruction to the fairway by reason of the accused's boat being tied to the adjoining jetty, where 20 or 30 other boats were also moored, that being the usual place for such *dinghis* to stop at and that no memorandum of the evidence of the witnesses had been recorded even. At the hearing of this Criminal Rule, it appeared that the records of this case had been destroyed, but the learned trying Magistrate stated, in his explanation, that he did examine the accused under section 342 of the Code of Criminal Procedure.

*Mr. Mrityunjay Chattopadhyaya* and *Mr. Sachindranath Banerji*, for the petitioner.

*The Offg. Deputy Legal Remembrancer, Mr. Debendranarayan Bhattacharya*, for the Crown.

*Cur. adv. vult.*

MUKERJI J. The petitioner has been convicted under section 65 of the Port Rules framed under the Calcutta Port Act, III (B.C.) of 1890, and sentenced to pay a fine of Rs. 5 or in default to undergo simple imprisonment for 7 days.

The grounds on which this Rule has been pressed are that the petitioner was not examined by the Magistrate after the examination of the prosecution witnesses and no memorandum of the examination of the petitioner was kept by the Magistrate. The records have been destroyed, but the learned Magistrate has stated, in his explanation, that he did examine the petitioner under section 342 of the Code of Criminal Procedure. This explanation must be accepted, and the only question is, whether the failure to keep a memorandum of the statement of the petitioner can be held to have vitiated the trial. The entry

in the column of the form provided for making a record of the plea and the examination of the accused is "Denies."

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Now section 370, Criminal Procedure Code, itself does not say how the particulars are to be recorded, but there are two other sections in the Code from which light has to be gathered on this matter, namely sections 362 and 364. The last words of sub-section (4) of section 364, namely "or in the course of a trial held by a Presidency Magistrate" were inserted by the amending Act of 1923, thus making the other sub-sections of that section inapplicable to a record made by a Presidency Magistrate of an examination of an accused person in the course of a trial held by him. The same amending Act introduced two sub-sections in section 362, namely (2A) and (4). Sub-section (4) dispensed with the recording of evidence and the framing of a charge in non-appealable cases in trials held by Presidency Magistrates, but said nothing about the record of the accused's examination. Sub-section (2A) expressly provided for a memorandum of the substance of the examination of an accused being kept by the Presidency Magistrate, signed by the Magistrate with his own hand, in appealable cases only. The result is that non-appealable cases are now left severely alone, confined to the protection that section 370 by its own terms would afford. It is idle to imagine that the legislature, while expressly taking away the necessity to record the evidence and to frame a charge, as it has done by enacting sub-section (4) of section 362 in non-appealable cases, thought of a record in full or of the substance of the examination of the accused in such cases. The result in my opinion, is that it should be held that, while the column provided for this purpose in the form prescribed by section 370 must be filled up, no hard and fast rule was contemplated as to how that should be done. In the present case the word "Denies" has been written in the column. It may be that, when the plea was taken and again when the petitioner was examined, as I

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must hold that he was examined, he merely denied having committed the offence. If that was the fact, the entry was sufficient.

The Rule should, therefore, be discharged, and I order accordingly.

G.S.

*Rule discharged.*

## TESTAMENTARY JURISDICTION.

*Before Lord-Williams J.*

### IN THE GOODS OF SHIB CHARAN DAS, DECEASED.\*

1929.

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*Hindu law—Will—Probate—Remote reversioner, when may oppose—Grant—Practice.*

Where the nearest reversionary heir to a Hindu testator refuses without sufficient cause to oppose grant of probate, the next person in the line of succession may intervene.

The principle enunciated in the case of *Rani Anand Kunwar v. The Court of Wards* (1) applied.

APPLICATION by the Administrator-General of Bengal for grant of probate of a will.

It was alleged that, on the 2nd of April, 1928, one Shib Charan Das died leaving, amongst others, his brother Harinath Das, his nephew (the said brother's son) Anath Nath Das and a young widow Ranibala Dasee. On the 5th of June, 1928, the Administrator-General of Bengal obtained an order under section 11 of Act III of 1913 to take possession of the assets belonging to the estate of the deceased and to hold, deposit, release, sell, and invest the same in approved securities at his discretion. Probate of a will, dated the 22nd of October, 1914, left by the said Shib Charan Das was then applied for by the Administrator-General of Bengal, who was thereunder appointed the sole executor and trustee. Thereupon, the said Anath Nath Das, who had entered caveat, opposed the same, although his father Harinath Das, the nearest reversioner to the testator, was then alive. Thereafter, the Administrator-General of Bengal made the

\*Application in Original Civil suit.

(1) (1880) I. L. R. 6 Calc. 764; L. R. 8 1. A. 14.