

## CRIMINAL REVISION.

Before Lord-Williams and S. K. Ghose J.J.

AMBIKACHARAN DAS

v.

EMPEROR.\*

1931

Jan. 15, 16.

*Affidavit—Affidavit in a criminal case, how should be stamped—Affidavit by an accused, if can be acted upon—Explanation of a magistrate, if can be taken into consideration—Enquiry—Code of Criminal Procedure (Act V of 1898), s. 476.*

Under General Rules and Circular Orders (Criminal), the stamps upon affidavits to be used in a criminal case shall be court-fee stamps. Affidavits stamped with non-judicial stamps are inadmissible in evidence.

It is doubtful whether a counter-affidavit by an accused person in a criminal case or the explanation by the trying magistrate can be acted upon for the purpose of deciding whether a complaint should be made against the complainant for filing a false affidavit. The difficulty can be overcome by directing an enquiry under section 476 of the Code of Criminal Procedure.

## CRIMINAL APPEAL.

The material facts appear from the judgment of the Court.

*Narendrakumar Basu, Radhikaranjan Guha and Prabodhkumar Chatterji for Debendranarayan Bhattacharya for the petitioner.*

*Maneendranath Mukherji for the Crown.*

LORT-WILLIAMS J. In this case, a Rule was issued to show cause why a certain complaint should not be withdrawn and the proceedings quashed.

The facts were that an application for the transfer of a certain criminal case had been made to the Additional District Magistrate at Barisal. The complainant put in an affidavit stating that the accused person had been seen coming away from the compound of the magistrate to whom the case had been sent for disposal. A counter-affidavit was put in, sworn by

\*Criminal Revision, No. 1029 of 1930, against the order of A. K. Mukherji, Additional District Magistrate at Barisal, dated 25th June, 1930.

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the accused person, denying this statement *in toto*. The learned Additional District Magistrate called for an explanation from the magistrate to whom the case was sent for disposal. The learned magistrate made a statement to the effect that there was not a word of truth in the statement made in the affidavit. Upon that, the learned Additional District Magistrate, on the 25th June, 1930, made an order stating that the complainant had filed such an affidavit and that the explanation of the trying magistrate showed that this statement in the affidavit was false and that, therefore, a formal complaint should be drawn up against him. In the formal complaint, which was drawn up as a result of the order of the 25th June, 1930, he also refers to the counter-affidavit sworn by the accused as being part of the material upon which he had made the complaint.

Mr. Basu, on behalf of the petitioner, has raised certain objections, one being, that this was an affidavit of the accused person and ought not to have been received in evidence. If this objection be sound in a matter such as this, there would be no way of challenging the statement which has been made by the complainant, namely, that he had seen the accused coming out of the compound, because the only person living who could give affirmative evidence upon that point would be the accused himself. No one else, not even the magistrate himself, could say more than that he had never seen him in the compound. The result would be that a most serious charge could be made against the trying magistrate with impunity by the complainant. I am not prepared to say, therefore, that such a counter-affidavit would be inadmissible, for the purpose of deciding whether a complaint ought to be made, especially as it seems to me that the Additional District Magistrate might have asked the accused to make a statement on this point and might have acted upon it. But the learned Additional District Magistrate in fact does not seem to have acted upon the counter-affidavit but has relied upon the statement of the learned

magistrate. Again, personally, I am not prepared to say that he would not be entitled to take such a statement into consideration, when coming to a conclusion whether a complaint should be made or not. But, it seems to us that where technical objections of this kind can be raised against the reception of the evidence upon which the Additional District Magistrate purports to act, it was unwise—and it would always be unwise—to act upon it, when the difficulty can be overcome by directing an enquiry, such as is mentioned in section 476 of the Code of Criminal Procedure.

The last point taken by the learned advocate seems conclusive, although it is purely technical. It appears that both the affidavits were stamped with non-judicial stamps, whereas, the General Rules and Circular Orders (Criminal) require that the stamps upon such affidavits shall be court-fee stamps. Therefore, both these affidavits should have been rejected as being inadmissible in evidence.

The result is that this Rule is made absolute, the order of the Additional District Magistrate is set aside and the complaint withdrawn.

GHOSE J. I agree that the Rule should be made absolute.

*Rule absolute.*

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