CIVIL REVISION.

Before Rankin C. J. and Mallik J.

NAWABALI KHAN

v.

CHANDRAKANTA BANERJI.*

1930

Dec. 5.

Prosecution—Order to prosecute—Expediency, if must be recorded—Code of Criminal Procedure (Act V of 1898), s. 476.

In some cases, it is very important to consider not merely whether there is a good *prima facie* ground for thinking that an offence was committed, but also other matters upon the question whether it is expedient in the interest of justice that a prosecution should take place.

But, in cases where the offence is of considerable gravity, it will be manifestly unreasonable to take the view that the court can have directed a complaint without considering whether it is expedient in the interest of justice so to do, merely because the court has failed to record a finding to the effect that it is so expedient.

Keramat Ali v. *Emperor* (1) explained.

CIVIL REVISION CASE.

Certain judgment-debtors applied to have a sale in execution of the decree set aside. Process was issued and was alleged to have been served on the judgment-creditors at their native village, which was two days' journey, by boat, from Khulna, on the 11th October, 1929. The process-server, Nawabali Khan, filed his return on the 4th November, stating that the process had been served by affixation after refusal to accept service by the judgment-creditors, who had been identified by the opposite party Raicharan Sardar. On 26th November, 1929, one judgment-creditor, Chandrakanta Banerji, applied for the prosecution of the process-server and the identifier. It was in evidence that on the 11th October, 1929, none of the judgment-creditors was at their native village; Chandrakanta was at Khulna, with his family; Hemnath Banerji was at Muttra, Ramnath Banerji at Deoghur and Sashibhushan at Benares.

*Civil Revision Case No. 24 of 1930.

(1) (1928) I. L. R. 55 Calc. 1312.

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The appellant was given opportunity to adduce evidence of persons on whom service was attempted, in order to substantiate his defence of good faith. On his failure to do so, the Munsif made a complaint. On appeal, the District Judge refused to interfere. The petitioner obtained a Rule.

Sureshchandra Talukdar and *Sarojkumar Chatterji* for the petitioner.

RANKIN C. J. In this case, the Munsif made a complaint against a peon of his court on the footing that he had made a return purporting to have served several persons, at a certain place, with process of the court while, in fact, those persons were not at that place at all and never were served. The defence, which the peon set up, was that he had served some people on the identification of the identifier and that it was just possible that the identifier arranged for certain persons to personate the persons upon whom the process was to have been served. This matter went on appeal to the District Judge and the District Judge did not consider that this defence was a sufficient ground for interfering with the order directing a complaint. In this Court, the main point relied on is that neither the Munsif nor the District Judge has obeyed the terms of section 476, Criminal Procedure Code and recorded a finding to the effect that it is expedient in the interest of justice that an enquiry should be made into the offence alleged. There can be no doubt that the question whether there is a case against the person charged is not the sole question in deciding whether it is expedient in the interest of justice that an enquiry should be made. It may be that, in any particular case, there is reason to think that the offence was committed and yet it may be abundantly plain that there is no sufficient evidence to make it desirable to direct a prosecution. There may be other cases of offences which, because they are trifling or otherwise, are not such that it is expedient in the interest of justice that an enquiry should be made. I rather protest against the idea,

however, that, if there is a *prima facie* ground for thinking that a serious offence has been committed, there is necessarily very much more in the case to enquire into. Some people seem to think that, even in spite of the gravity of the offence, it is very doubtful whether the question of the commission of the offence should be enquired into. I do not take that view at all. Still it is in some cases very important to consider not merely whether there is a good *prima facie* ground for thinking that the offence was committed but also other matters upon the question whether it is expedient even so that the proceedings should go on. In one case,* where it was proposed to prosecute a man merely by showing that he had made contradictory statements, it seemed to me to be very doubtful whether the case was such that in any view of it a prosecution should take place. I pointed out that the lower court had not recorded the finding as required by the section and I then said in that case that, as the finding had not been recorded, I did not see fit to infer that the matter had been properly considered. I did not mean to lay down as a rule of thumb that, in all cases where those words of the section were not copied out in the judgment, this Court would necessarily interfere in revision. In particular, in cases where the offence is of considerable gravity, it will be manifestly unreasonable to take the view that the court can have directed a complaint without considering whether it is expedient in the interest of justice so to do. If one finds that the courts have not obeyed the terms of the section, one is rather inclined to doubt whether they had the terms and conditions of the section present in their minds. In this case, however, both the lower courts have come to the conclusion that there is a *prima facie* case against this peon for making this false return and for taking part in what is certainly a very grave fraud upon the court. It does not seem to me to be one of those cases where there is anything much to consider except the question whether or not

* (1928) *Keramat Ali* v. *Emperor*, I. L. R. 55 Calc. 1312.

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the evidence is such as to make it likely that the offence is brought home to the peon. On this ground, it seems to me that it would not be right to interfere in the present case and that the Rule should be discharged.

MALLIK J. I agree.

Rule discharged.

S. M.