

## CRIMINAL REFERENCE.

Before Mukerji and S. K. Ghose JJ

1934

Feb. 13, 20.

BIBHOOTIBHOOSHAN ADHIKARI

v.

KHEMCHAND CHURURIA.\*

*Court—Collector holding investigation under Patni Regulation, if a court—Court acting without jurisdiction, if a court—Complaint—Code of Criminal Procedure (Act V of 1898), s. 195—Bengal Patni Tâluku Regulation (VIII of 1819), s. 14—Indian Penal Code (Act XLV of 1860), s. 193.*

The word "court" as used in section 195 of the Code of Criminal Procedure has a wider meaning than the expression "Court of Justice" as defined in the Indian Penal Code and, as therein used, it would include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on the matter.

*Raghoobuns Sahoy v. Kokil Singh* (1) referred to.

The Collector holding a summary investigation under section 14 of the *Patni* Regulation is a court within the meaning of section 195 of the Code of Criminal Procedure and a complaint by that court or some court to which that court is subordinate is necessary for the prosecution for an offence under section 193 of the Indian Penal Code committed in relation to a proceeding before it.

*Raja of Pachete v. Kumud Nath Chatterji* (2) distinguished.

Such court is a court all the same though it may be acting without jurisdiction.

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In this case a certain *patni tâluk* was put up for sale under the *Patni* Regulation. Under section 14 of the Regulation, the *tâlukdâr* contested the demand and the Collector called upon the *zemindâr* to furnish his proofs and some rent receipts were filed; and it is these receipts which the *tâlukdâr* asserted to be false, and instituted proceedings against the *zemindâr's* men under section 193 of the Indian

\*Criminal Reference, No. 229 of 1933, made by H. G. S. Bivar, Sessions Judge of Murshidabad, dated Dec. 2, 1933.

(1) (1890) I. L. R. 17 Calc. 872.

(2) (1918) I. L. R. 46 Calc. 1;  
L. R. 45 I. A. 103.

Penal Code. No sanction of the Collector under section 195 of the Code of Criminal Procedure had been obtained. The Collector himself did not hold the summary enquiry under section 14 of the *Patni* Regulation, but transferred it to a Sub-Deputy Collector passing final orders on his report. The accused raised an objection on the ground that, without a proper complaint by the court, the trial could not proceed. The trial court rejected the application. The Sessions Judge of Murshidabad, on being moved against the order, made the present reference to the High Court recommending that the proceedings should be quashed.

*Narendrakumar Basu, Panchanan Ghosh, Saureendranarayan Ghosh and Pareshnath Mukherji (Jr.)* for the accused.

*Saratchandra Basu and Narendrakrishna Basu* for the complainant.

*Cur. adv. vult.*

MUKERJI J. In the case of *Raghoobuns Sahoy v. Kokil Singh* (1), it was pointed out that the word "court" as used in section 195 of the Code of Criminal Procedure has a wider meaning than "court of justice" as defined in the Indian Penal Code, and that, as therein used, it would include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter. The summary investigation which a Collector holds under section 14 of the *Patni* Regulation (VIII of 1819)—and in the present case that is the investigation that was held by the officer concerned,—is one in the course of which proofs can be called for and as the result of which an award may be made. The Collector, holding the investigation, therefore, was a tribunal which would come within the meaning of the word "court" as explained in the aforesaid case. That being the position, we think the ground, on which this

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Reference has been made, is well-founded, and the complaint under section 193 of the Indian Penal Code against the petitioners could not be taken cognizance of, except upon the complaint of the said court or of some court to which such court is subordinate. *Vide* section 195 (1) (b), Criminal Procedure Code. To this conclusion Mr. Basu has objected on four grounds.

He has argued in the first place that the Judicial Committee in the case of *Raja of Pachete v. Kumud Nath Chatterji* (1) have made some observations indicating the position that a Collector acting under section 14 of the Regulation is not a "court". We have carefully read these observations and we are of opinion that their Lordships in that case had no occasion to consider the meaning of the word "court" as used in section 195 of the Criminal Procedure Code, and all that their Lordships laid down was that the Collector, acting under section 14 of the Regulation, was not "an ordinary court", and that he acts thereunder not magisterially but ministerially and that the true view of his functions, in such a case, is that he has no capacity as regards inquiring into title comparable to the capacity possessed by an ordinary judicial tribunal.

The second argument of Mr. Basu is that there is nothing expressly stated anywhere indicating that the Collector can, in such circumstances, take evidence on oath and that, accordingly, he is not a "court". This argument does not help him; for, if the proceedings be not judicial proceedings, then no false *evidence* was given or fabricated within the meaning of the second part of section 193 of the Indian Penal Code, nor was any false evidence given in any *judicial proceeding* or fabricated for the purpose of being used in *any judicial proceeding*, within the meaning of the first part of section 193 of the Indian Penal Code. It is contended that the receipts were fabricated for being used in a regular

(1) (1918) I. L. R. 46 Cal. 1; L. R. 45 I. A. 103.

suit to be brought afterwards. But there was no such suit pending, nor does it appear that any such suit was in contemplation, at the time; and on that ground no case under section 193 of the Indian Penal Code would be disclosed on the complaint.

Thirdly, it has been contended by Mr. Basu that the Deputy Collector who held the investigation under section 14 of the Regulation had no authority to hold it and so no complaint was necessary. The Deputy Collector was, in our opinion, a "court" all the same, though he may not have been a court acting with jurisdiction. The argument cannot be countenanced that an offence under section 193 of the Indian Penal Code, which is an offence against public justice and so not cognizable without the complaint of the court concerned or some court to which it is subordinate, would be cognizable on the complaint of some other person or body when the court itself was acting without jurisdiction.

Lastly, it has been argued by Mr. Basu that the complaint discloses an offence of cheating. The complaint and the examination of the complainant on oath, properly read, show that if any deception was practised, it was practised for fabricating the receipts. But if it is intended to proceed against the accused on a charge of cheating, that cannot be done on the basis of the present complaint nor at the instance of the present complainant. First hand materials, disclosing all the elements which are requisite to make out such an offence, must be before the court before any process can issue in respect of it.

The present proceedings are under section 193 of the Indian Penal Code only and, in our opinion, they cannot proceed. The Reference is accepted and the processes issued under section 193 of the Indian Penal Code are quashed.

S. K. GHOSE J. I agree.

*Reference accepted.*

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