

CRIMINAL REVISION.

Before Mitter J.

YASIN MORAL

v.

ISAF KHAN.*

1932

Jan. 4.

Revision—Conviction by union court, if liable to revision—Code of Criminal Procedure (Act V of 1898), s. 439—Government of India Act (5 & 6 Geo. V, c. 61), s. 107—Village Self-Government Act (Beng. V of 1919), ss. 71, 93.

The High Court cannot interfere under section 439 of the Code of Criminal Procedure with the conviction and sentence passed by the union bench or union court under the Village Self-Government Act (Beng. V of 1919). In a proper case, the High Court might interfere under section 107 of the Government of India Act.

CRIMINAL REVISION.

The material facts appear from the judgment.

Kshiteeshchandra Chakrabarti and Manmathanath Das Gupta for the petitioners.

Lalitkumar Sanyal for the Crown.

Trailokyanath Ghosh and Prasantabhooshan Gupta for the complainant.

MITTER J. The present Rule is directed against the conviction and sentence passed by the union bench under the provisions of the Village Self-Government Act (Bengal Act V of 1919).

A preliminary objection has been taken to the hearing of this Rule by Mr. Sanyal who appears for the Crown, and he contends that, having regard to the provisions of the Village Self-Government Act, this Court cannot interfere under section 439 of the Code of Criminal Procedure, as it is said that the procedure laid down in the Code of Criminal Procedure, 1898, excepting Chapter XXXIII, shall

*Criminal Revision, No. 831 of 1931, against the order of K. Maitra, Subdivisional Magistrate of Munshiganj, dated July 9, 1931.

not apply to any trial, suit or proceedings before a union bench or a union court: see section 93 of Bengal Act V of 1919. It is further argued that section 71 of the said Act provides that—

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried by a union bench: Provided that the district magistrate or sub-divisional magistrate, if satisfied that a failure of justice has occurred, may, of his own motion, or on the application of the parties concerned, cancel or modify any order of conviction or of compensation made by a union bench or direct the retrial of any case by a court of competent jurisdiction subordinate to him.

The accused persons did move the sub-divisional magistrate, who thought that there was no failure of justice in this case and who, consequently, did not take the course of cancelling or modifying the order or of directing a retrial as is provided for by section 71 of the Act. The present petition is headed as one under section 439 of the Code of Criminal Procedure and it appears to me that, having regard to the provisions of sections 71 and 93, this Court's revisional power under section 439 of the Code seems to be restricted. The powers of superintendence given to the High Court under section 107 of the Government of India Act might justify, in a proper case, interference with an order of conviction made by the union bench. It is not, however, necessary to express any final opinion on any of these points, for it seems to me, after hearing Mr. Kshiteeshchandra Chakrabarti, who has appeared for the petitioners, that the conviction is right. There was no justification in any view of the case for the assault on the complainant. It was a case of boundary dispute and the members of the union bench are right in observing that the accused persons should have resorted to the civil court to have the boundary line determined instead of using force to the complainant. It seems to me that there was no justification for the assault.

The result is that the Rule is discharged.

Rule discharged.