CIVIL REVISION.

Before Lort-Williams and Jack JJ.

NITAI CHARAN GHOSH

v.

KSHETTRA NATH GANGULI.*

1936

Jan. 7.

Cognizance—Cognizance, if of an offence— Magistrate taking cognizance of an offence on complaint by Court, if can proceed against others—Code of Criminal Procedure (Act V of 1898), s. 476.

A Magistrate who has legally taken cognizance of an offence under s. 476 of the Code of Criminal Procedure has jurisdiction to proceed against any one who may be proved by the evidence to be concerned in that offence.

When a Court in making a complaint against some persons has refused to complain against others, the Magistrate enquiring into the complaint may proceed against such others if during the enquiry he finds that they are concerned in the offence.

The Code of Criminal Procedure provides for taking cognizance of offences and not of offenders.

Essan Chunder Dutt v. *Prannauth Chowdhry* (1) and *Giridhari Lal Serowgee* v. *King-Emperor* (2) followed.

Mahomed Bhakku v. *Queen-Empress* (3) distinguished.

CIVIL REVISION on behalf of the defendants.

One Kshettra Nath Ganguli and others brought a title suit against Satya Kinkar Ghosh and others as defendants. At the hearing of the case on January 16th, 1935, a woman called Charu Bala Debee was examined as a witness for the defence. She stated that her name was Barid Barani Debee, plaintiff No. 2 in that suit. Later, on the same date, she

* Civil Revisions, Nos. 14 and 21 of 1935, against the order of R. Gupta, Sessions Judge of Burdwan, dated July 10, 1935, modifying the order of Narendra Nath De, third Munsif of Burdwan, dated May 15, 1935.

(1) (1863) W. R. (F.B. Vol.) 71. (2) (1916) 21 C.W.N. 950.
(3) (1896) I. L. R. 23 Cal. 532.

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appeared before the Court and made a statement admitting that she was not Barid Barani but Charu Bala and that she had been tutored to speak falsely by defendants Satya Kinkar Ghosh and Amrita Lal Ghosh. Later on, the Court issued notice on Charu Bala, the five defendants and the pleader for the defendants, Hara Das Banerji, to show cause why they should not be prosecuted. After holding an enquiry, the Court made a complaint under s. 476 of the Code of Criminal Procedure against two of the defendants in the case for prosecution under s. 196 of the Indian Penal Code, but refused to complain against the others including Hara Das Banerji. Two appeals were filed before the Sessions Judge, one by the plaintiffs and the other by the two defendants against whom the complaint had been made. The appeal preferred by the defendants was dismissed. The appeal of the plaintiff was allowed to the extent that the order of the Court below was set aside leaving it open to the Magistrate who would hold the enquiry to take any action against the persons against whom the civil court refused to make a complaint, if the evidence before him justified such a course.

Santosh Kumar Basu and *Purnendu Shekhar Basu* for the petitioners in Civil Revision No. 14.

Suresh Chandra Talukdar for the petitioner in Civil Revision No. 21.

Sudhangshu Shekhar Mukherji for the opposite party in both.

The judgment of the Court was as follows:—

In these cases, Rules were issued to show cause why certain orders should not be set aside. These orders were the subject of one judgment of the learned Sessions Judge of Burdwan.

The matter arose out of a civil suit tried by a Munsif. It was alleged that certain of the parties were guilty of an offence under s. 196 of the

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Indian Penal Code. An application was made to the learned Munsif, asking him to make a complaint against these persons under s. 476 of the Code of Criminal Procedure. The Munsif held an inquiry and eventually made a complaint against the defendants Satya Kinkar Ghosh and Amrita Lal Ghosh: but he refused to make a complaint against the pleader Hara Das Banerji or defendants Nos. 3 to 5 in the suit, because he considered that no *prima facie* case against them had been made out.

There was an appeal to the Sessions Judge, and he agreed with the Munsif in making a complaint against Satya and Amrita, but disagreed with him with regard to the pleader and the other defendants, because in his opinion the effect of the order of the Munsif refusing to make a complaint against them was to debar the Magistrate, whose duty it would be to hold an inquiry, from taking action against those persons, even though after going into the case in much more detail than had been possible before the Munsif a criminal case against them was disclosed. The learned Judge proceeded to say as follows:—

> I do not think that it is desirable "that the learned Magistrate's hands should be fettered in this fashion. I must not be understood in the present case to be holding that a *prima facie* case has been made out against these persons. All that I wish to point out is that if the learned Magistrate, in the course of his enquiry, finds from the materials before him that the interests of justice require that criminal action should be taken against all or any of these persons, he should be free to take such action. In this view of the case, I set aside the order of the learned Munsif discharging the rules against the pleader Babu Hara Das Banerji and against defendants Nos. 3 to 5, leaving it open to the Magistrate, who holds the inquiry, to take any action against them, if the evidence before him, justifies such a course,

and he allowed the appeal to that extent.

It seems to us that the learned Sessions Judge correctly stated the legal position of the learned Magistrate who will hold the inquiry. In the case of *Essan Chunder Dutt* v. *Prannauth Chowdhry* (1), Sir Barnes Peacock C. J. and two other Judges held that under the corresponding 171st section of Act XXV of 1861, a Court has power to order that the

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Magistrate shall investigate whether forgery has been committed with reference to a particular document offered in evidence before such Court, without particularising any individual as the suspected person. The learned Chief Justice remarked that it had been urged that this section (as does the present s. 476 of the Code of Criminal Procedure) referred to an accused person and that this showed that the section must refer to an individual selected, after an investigation, by the Court before whom the alleged offence may have been committed, and that the section could not justify an order for the Magistrate to investigate and fix upon some person who shall be then convicted by the Magistrate. But the Court refused to concur in this view of the law and held that the section gave power to any Court to send the case for investigation to any Magistrate and directed that such Magistrate should thereupon proceed according to law.

> If there be a person distinctly accused, of course the Magistrate can proceed equally against *him*, as he can in investigating a *case* sent to him. But there is nothing in the section to prevent the investigation of a case where no particular individual is as yet accused. The investigation is to show whether any or what person is to be charged under the law. ....Moreover, no injustice is done....to any one. If, on investigating the case, it appears to the Magistrate that there is no proof to warrant his committing anyone, no one can be injured. If, on the other hand, the result of the investigation shows that someone has committed forgery, that person ought to and will be proceeded with according to law, and, if found guilty by a competent court, he will be punished for his crime.

In *Mahomed Bhakku* v. *Queen-Empress* (1), it was held by a Division Bench of this Court that the provisions of s. 476 of the Code of Criminal Procedure clearly indicate that a Court must not only have ground for enquiry into an offence of the description referred to in the section but must also be *prima facie* satisfied that the offence has been committed by some definite person or persons against whom proceedings in the criminal Court are to be taken. That was a case in which the learned Munsif had sent the case to the Magistrate for investigation

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and trial of charges under s. 193 and other sections of the Indian Penal Code "against the plaintiff or "some other person or persons". "Thereby showing," as the learned Judges remarked, "that he did not "arrive at any definite conclusion as to whether the "investigation, which he directs, should go on either "against the plaintiff or against some other person or "persons". The case in the Weekly Reporter does not seem to have been cited before that Court, and the cases upon which the learned Judges relied, especially the case of *Mahomed Bhakku* v. *Queen-Empress* (1) does not seem to support the view which they took.

In *Giridhari Lal Serowgee* v. *King-Emperor* (2), this matter was again considered by a Division Bench of this Court. The District Judge had made an order under s. 476 against a person who had applied for probate of a will, which, in the judge's opinion, was *prima facie* a forgery. Before the Magistrate who held the enquiry, on the application of the Public Prosecutor, the petitioner, who was not a party to the probate proceedings, was also summoned in the same proceeding which was pending against the first accused. The Court held that the petitioner was not a party to the proceedings in the civil Court, and neither sanction under s. 195 of the Code of Criminal Procedure nor a complaint under s. 476 was a necessary precedent to the proceedings against him. They further held that the Criminal Procedure Code provides for taking cognizance of offences and not of offenders, and that the Magistrate who had legally taken cognizance of an offence under s. 476, had jurisdiction to proceed against anyone who might be proved by the evidence to be concerned in that offence whether he was mentioned in the order under s. 476 or not, and they distinguished the case of *Mahomed Bhakku* v. *Queen-Empress* (1) above referred to. In our opinion, the law is correctly

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stated by the learned Judges in this case, and in the case of *Essan Chunder Dutt* v. *Prannauth Chowdhry* (1).

But the learned Sessions Judge, having correctly directed himself on this point of law, went on to set aside the order of the Munsif discharging the Rules against the pleader Babu Hara Das Banerji and defendants Nos. 3 to 5. This, in our opinion, was unnecessary for the purpose which the learned Sessions Judge intended, and there seems to be no justification for setting aside the Munsif's order. The order, in our opinion, was no bar, as suggested by the learned Sessions Judge, and the question whether the Magistrate ought to and can in law proceed against any other persons except the defendants Satya and Amrita will have to be decided at the trial. If the learned Sessions Judge had thought fit himself to make a complaint against some person or persons unknown, in our opinion he would have been acting within his powers. But the effect of his judgment is to do neither the one thing nor the other. He blows hot and cold. He has not decided to make a complaint against persons unknown, and yet he has set aside the Munsif's order refusing to make a complaint. In our opinion, therefore, the learned Judge's order cannot be supported and must be set aside. The Rules in these two cases are made absolute.

Rules absolute.

(1) (1863) W. R. (F.B. Vol.) 71.

A. C. R. C.