

CRIMINAL REVISION.

Before Klundkar and Rau JJ.

JNANENDRA NATH PRAMANIK

1939

Feb. 20.

v.

NIL MONY DE*.

Jurisdiction—Receiver—Complaint against a receiver without leave of Court, if maintainable—Discharge—Code of Criminal Procedure (Act V of 1898), s. 253 (2).

Quære. Whether a criminal Court has jurisdiction to entertain a complaint against a receiver without the leave of the Court appointing him as such ?

There is a great deal of force in the contention that, in the absence of any specific provision in the Code of Criminal Procedure barring the taking of cognizance of a complaint against a receiver without the leave of the Court appointing him, a criminal Court has jurisdiction to entertain such complaint, although in certain circumstances it may be improper to proceed with it.

Santok Chand v. Emperor (1) distinguished.

Assuming that the criminal Court has jurisdiction to entertain such complaint, it would not be proper for the Magistrate to proceed with it, when there was no specific leave from the Court, although such leave had been specifically asked for, the Court's order being silent on the point, and when the Court having granted leave to institute a civil suit, the complainant had not done so within the time allowed.

An order of discharge of an accused person on a preliminary point after the issue of process and the appearance of the accused in Court is one under s. 253 (2) of the Code of Criminal Procedure and not under s. 203.

CRIMINAL REVISION.

The material facts of the case and arguments in the Rule appear sufficiently from the judgment.

Santosh Kumar Basu and Pashupati Ghosh for the petitioner.

*Criminal Revision, No. 1066 of 1938, against the order of S. Wazid Ali, Third Presidency Magistrate of Calcutta, dated Sep. 10, 1938.

1939
*Jnanendra Nath
 Pramanik*
 v.
Nil Momy De.

Probodh Chandra Chatterjee and *Jajneswar
 Majumdar* for the opposite party.

*The Officiating Deputy Legal Remembrancer,
 Debendra Narayan Bhattacharyya* for the Crown.

Cur adu vult.

RAU J. In this Rule we are invited to set aside an order of the Third Presidency Magistrate of Calcutta dismissing under s. 203 of the Code of Criminal Procedure a complaint made by the petitioner Jnanendra Nath Pramanik against Nil Momy De on July 14, 1938, under s. 420 of the Indian Penal Code. The complaint was that on December 22, 1937, Nil Momy De obtained a loan of Rs. 500 (subsequently increased by further advances) from the petitioner, secured on certain property, namely, 2 "talkie" machines, 400 seats, 4 tables, and 12 chairs, which Nil Momy De falsely represented to be the unencumbered property of the Talkie Show House, of which he (Nil Momy De) was then receiver. In fact, it was alleged, the entire stock-in-trade and assets of the Show House, including some of the hypothecated articles, were at the time under attachment, to the receiver's knowledge. There was a police inquiry, and as the result a warrant was issued against him on July 26, 1938. He surrendered next day. Before examining any witnesses, the Third Presidency Magistrate (to whom the case had been transferred) heard the parties on a preliminary point of law and on September 10, 1938, dismissed the complaint under s. 203 of the Code of Criminal Procedure, on the ground that the case being against a receiver appointed by the High Court in respect of property forming part of the assets of the estate, for which he had been appointed receiver, the previous permission of the High Court was necessary before he could be proceeded against in a criminal Court.

It is conceded by the learned Magistrate and is now common ground that the order should have been one of discharge under s. 253 (2) of the Code of Criminal Procedure, the accused having already appeared in Court after the issue of process. This is, however, a formal defect and we do not think it necessary to set aside the order merely on that account. The question is whether there are any other grounds for interfering with the order.

1939
 Jnanendra Nath
 Pramanik
 v.
 Nil Mony De.
 Rau J.

It appears from para. 12 of the petition before us that, prior to the institution of these proceedings, the petitioner moved the High Court in its Ordinary Original Civil Jurisdiction praying for leave to file civil and criminal cases against the receiver, and that the Court, on May 31, 1938, granted leave to file a civil suit, the order being silent as to the criminal case. We are informed by learned counsel appearing for the petitioner that no civil suit has yet been instituted, although the Court, in granting leave, had ordered that the suit should be instituted on or before August 15, 1938.

For the purpose of disposing of this Rule, it is unnecessary to enter into any detailed discussion of the question whether, in the absence of leave from the High Court by whom the receiver had been appointed, the criminal Courts had or had not jurisdiction to entertain the complaint. There is a great deal of force in the argument that s. 190 (1) (a) of the Code of Criminal Procedure which states that—

Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Subdivisional Magistrate, and any other Magistrate empowered in this behalf, may take cognizance of any offence upon receiving a complaint of facts which constitutes such offence

is conclusive on the question of jurisdiction and that save as provided in the Code itself or in any other law such as is referred to in s. 1 (2) of the Code.

1939

*Jnanendra Nath
Pramanik
v.
Nil Mony De.
Rau J.*

there is no warrant for denying or limiting the power to take cognizance of offences upon complaint. For the purposes of this Rule, we shall assume that the Additional Chief Presidency Magistrate, who took cognizance of the offence alleged in the present case, had jurisdiction to do so, even in the absence of leave from the High Court, such leave not being required by any provision of the Code (or any other law); and we shall also make the consequential assumption that the Third Presidency Magistrate, to whom the case was subsequently transferred, had jurisdiction to go on with it, if he had chosen to do so.

We may observe at this stage that we have seen no reported decision which actually conflicts with these assumptions. Even in the case *Santok Chand v. Emperor* (1), which comes nearest to a conflict, the learned Judges did not go quite so far as to deny jurisdiction to the criminal Courts. It is true that in one place of their judgment they did say that it was "not open" to the complainant to commence proceedings against the accused without previous leave; but this was more fully explained in a late passage, where they said—

We think that the criminal proceedings against Santok Chand were improperly instituted against him, because the complainant was not the person then directly interested in the property, and because the leave of this Court was not first obtained.

Thus the decision was rested on the impropriety of the complaint rather than any lack of jurisdiction in the Court.

But even assuming that the Magistrate had jurisdiction to proceed with the present complaint, the question still remains whether it would have been proper for him to do so. We have no doubt that it would not. In the first place, there was no specific leave from the High Court for the institution of a criminal case, although leave had been specifically asked for. As we have already said, this may not

(1) (1918) I. L. R. 46 Cal. 432. 440-1.

be a bar to jurisdiction, but it is certainly relevant on the question of the propriety or desirability of criminal proceedings. Secondly, a vital point in the criminal case was whether the sum of Rs. 500 said to have been lent by the petitioner on the hypothecation-deed of December 22, 1937, had in fact been so lent; the same issue would have arisen in a civil suit to enforce the deed. Now, the petitioner actually obtained the High Court's leave to bring a civil suit before August 15, 1938, but, curiously enough, he did not choose to bring one. In these circumstances we think that this is not a proper case for interference and the Rule must therefore be discharged.

1939

*Jnanendra Nath
Pramanik*

v.

*Nil Mony De.**Rau J.*

KHUNDKAR J. I agree.

Rule discharged.

A. C. R. C.