1879

THI RAM v. KEY LAL.

Judge, cannot the purchaser appear in appeal and defend the order made in his favour? It would be very hard if he could not appear. Again, if it is part of the Court's duty where an objection has been disallowed to confirm the sale as regards the parties to the suit and the purchaser, it is surely a part of the Court's duty to hear the purchaser if he appear to answer the judgment-debtor or decree-holder's objection to the sale, and if he be heard in the first Court, may he not be heard in the second, and, if so, why not as appellant as well as respondent?

In this case the judgment-debtor made the objection. The auction-purchaser put in a statement refuting the grounds upon which the objection was made. The statement was admitted by the Court, and he was allowed to examine four witnesses. The order of the Court was against him. An appeal is allowed by law, and he appeared before the Judge as appellant. We can find no illegality in the Court's entertainment of this appeal on the merits, in that we hold that, though the auction-purchaser may not be the *applicant* under s. 311, he yet may be a party to the proceedings after the application has been made, and then if there is an order against him he can appeal under letter *m*, s. 588 of the Code.

1879
June 11

CRIMINAL JURISDICTION.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

EMPRESS OF INDIA *v.* LACHMAN SINGH.

Court of Session, powers of—High Court, powers of revision of—Act X of 1872 (Criminal Procedure Code), ss. 297, 472.

L made a complaint against *S* by petition, in which he only charged *S* of having committed offences punishable under ss. 193 and 218 of the Indian Penal Code, but in which he also accused *S* of acts, which, if the accusation had been true, would have amounted to an offence punishable under s. 466 of that Code with seven years imprisonment. The Magistrate inquired into the charges against *S* under ss. 193 and 218 of the Indian Penal Code and directed his discharge. *L* then applied to the Court of Session to direct *S* to be committed for trial on the ground that he had been improperly discharged, which the Court of Session did, and *S* was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X of 1872, charged *L* with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Indian Penal Code, and committed him for trial.

1879

EMPRESS OF INDIA v. LACHMAN SINGH.

Held that such commitment was not bad by reason that an offence under s. 193 of the Indian Penal Code is not exclusively triable by a Court of Session.

Held also, *per* STUART, C. J., (SPANKIE, J., doubting), that the High Court is competent, in the exercise of its power of revision under s 297 of Act X of 1872, to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act.

Held also, *per* SPANKIE, J., that the Court of Session was competent, notwithstanding that *L* had only charged *S* with offences under ss. 193 and 218 of the Indian Penal Code, to charge *L* with offences under ss. 195 and 211, if such offences had come under its cognizance.

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Conlan* and Mr. *Colvin*, for the petitioner.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

The following judgments were delivered by the Court:

STUART, C. J.—In this case the accused Lachman Singh was, by an order of the Sessions Judge of Aligarh, directed to be committed, under s. 472 of the Criminal Procedure Code, for trial before the Sessions Court on charges under s. 193, as well as under ss. 195 and 211 of the Indian Penal Code, and as an abettor under s. 109. In revision it is objected before us, on behalf of the accused, that this commitment is bad, because it includes the charge under s. 193, such an offence, although triable by, not being exclusively triable by the Court of Session, and that thereby the whole commitment was vitiated and rendered invalid It is further contended on behalf of the accused that the commitment being bad it can be quashed by this Court under the powers of revision given to it by s. 297 of the Criminal Procedure Code.

On the other hand it is argued for the prosecution that such a commitment by order of the Sessions Judge was regular and valid, but that whether it be so or not, this Court has no power to interfere with the Sessions Judge's order, as the only section of the Criminal Procedure Code which provides for the quashing of a commitment is that in the case of one made by a "competent Magistrate." It

1879

EMPRESS OF INDIA v. LACHMAN SINGH.

would appear that there was some mistake in stating that the petitioner had been expressly committed under s. 193, an examination of the record showing that even if the Judge had ordered it, no such commitment was actually made, for the record shows no charge against Lachman Singh under s. 193, and the case, therefore, against Lachman Singh rests on his commitment and charge under ss. 195 and 211, and contingently as an abettor under s. 109.

I am, however, clearly of opinion, against the contention of the accused's counsel, that even if the commitment by the Sessions Judge had included s. 193, it was perfectly regular and according to law. If the charge on which the order of commitment was made related exclusively to that section, the objection might have been allowed, seeing that an offence under s. 193, although triable by, is not one exclusively triable by a Court of Session. But in the present case the order of the Sessions Judge for the commitment of Lachman Singh, not only directed a charge under s. 193, but also two other charges of greater magnitude under ss. 195 and 211, the offences defined in which being exclusively triable by a Court of Session, a commitment on them necessarily carried with it and involved the right to inquire into and try the offence under s. 193. From the nature of the case there is one set of facts relating to all the charges, and it cannot be anticipated under which of them a conviction may take place. That will be ascertained when the trial is over, and either the innocence of the accused or the nature and extent of his guilt has been determined. But for the purposes of the accused's commitment it is perfectly competent to the Sessions Judge, while committing on the graver charges, to include the less, and, indeed, if the latter offence was excluded, the sentence on either of the other more serious offence might not be greater than that allowed under s. 193.

As to the power of this Court to interfere in such a case in revision, I have no doubt whatever. It was argued on behalf of the prosecution that the only section of the Code which provides for the quashing of a commitment by the High Court is that relating to a commitment by a "competent Magistrate," and no doubt such a power is provided for by s. 197. But we are not to understand that this was done and intended in any exclusive sense, and it cannot be

1879

EMPRESS OF INDIA v. LACHMAN SINGH.

read as depriving the High Court of its large powers of revision under s. 297, and which powers in my judgment clearly cover such a case as the present.

The present application, therefore, for revision and quashing of the Sessions Judge's order of commitment must be refused, and the record will be returned to the Sessions Court for trial of the accused according to law.

SPANKIE, J.—Sundar Lal, patwari, was tried on the 2nd May, 1879, by the Sessions Judge of Aligarh, under s. 218 (1) of the Indian Penal Code, and acquitted under the following circumstances: On the 1st October, 1877, Baldeo Singh, karinda and agent of Lachman Singh, zemindar, accused Sundar Lal of making alterations in his diary and khata regarding certain sums received from cultivators. The entries in the diary on the 27th April showed the payment of the sums marginally noted (*a*.) by the tenants whose names are given. These figures were said by the karinda to have been altered, and to have been originally entered as they appear in the margin (*b*.) Sundar Lal at this time was patwari of Lalpur, but was about to be transferred to another village, of which Ratan Lal was patwari, both villages belonging to the same zemindar. On the 8th May Sundar Lal complained to the Collector that the zemindars of Lalpur would not sign his diary, which was sent to the Tahsíldar, and reached him on the 10th May. The diary had thus passed out of the patwari's possession. On the 11th May Sundar Lal and Ratan Lal exchanged papers, and Ratan Lal gave Sundar Lal a receipt for his, stating that he had compared and found them all correct. On the 13th May Ratan Lal wrote a petition informing the Tahsíldar that he had received the papers on the 12th, and that he had found erasures in them. Inquiry followed, and finally there was the complaint of the 1st October, and the patwari Sundar

(*a*.) Bijay Ram, Rs. 184.
Dip Chand, Rs. 200.
Murli, Rs. 200.
(*b*.) Bijay Ram, Rs. 104.
Dip Chand, Rs. 240.
Murli, Rs. 240.

(1) Whoever, being a public servant and being as such public servant charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows is incorrect with intent to cause or knowing it to be likely that he will thereby cause loss or injury to the public or any person, or with intent thereby to save or knowing it to be likely that he will thereby save any person from legal punishment, or with intent to save or knowing that he is likely thereby to save any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

1879

EMPRESS OF INDIA v. LACHMAN SINGH.

Lal was discharged in December, 1877. Then an application was made to the Sessions Judge to direct a commitment, on the ground that Sundar Lal had been improperly discharged. This application was made by Baldeo Singh, karinda and agent of Lachman Singh, aforesaid, and was granted by the Sessions Judge on the 8th April, 1879. After the case had been gone into in the Sessions, and Sundar Lal had been acquitted, the Sessions Judge, under s. 472 of Act X of 1872, committed Lachman Singh, Baldeo Singh, Ratan Lal, and Dip Chand, witnesses, to the Sessions Court on various charges.

Lachman Singh, the petitioner now before us, was charged in the calender in that he on the 1st October, 1877, "with intent to cause injury to Sundar Lal, instituted, or caused to be instituted, a criminal proceeding against him, knowing that there was no just or lawful ground for such proceeding against him, and that such criminal proceeding was instituted on a false charge of an offence punishable with imprisonment for seven years, *viz.*, forgery of a document purporting to be kept by a public servant as such; and thereby committed an offence punishable under s. 211 of the Indian Penal Code." He was also charged with abetment of the offence. In the order for the commitment of Lachman Singh, dated 17th May, it is stated that Lachman Singh and Baldeo Singh are charged under ss. 193, 195, 211, and 211 and 109. Baldeo Singh was charged in a similar way, Ratan Lal under s. 195, and Dip Chand under ss. 193 and 195 of the Indian Penal Code.

It is contended that the Sessions Judge exceeded his powers: a charge under s. 193 is not exclusively triable by the Sessions Judge, nor had Lachman Singh ever given any deposition in the case: a charge under s. 211 was not exclusively triable by the Court of Session; any charge under s. 195 is groundless as regards petitioner, inasmuch as the charge in support of which the offence under s. 195 is alleged to have been committed was a charge made under s. 218 of the Indian Penal Code, in which the punishment prescribed does not exceed three years imprisonment: these are the main contentions into which we can go. We cannot enter into the merits of the case which involve either the guilt of Sundar Lal, or rather the truth of the charges preferred against him by Lachma

1879

EMPRESS INDIA v. LACHMAN SINGH.

Singh and Baldeo Singh, or the guilt or innocence of these persons on the charges upon which they are to be tried. The minor objections may be good or bad, they might be properly pleaded on the trial.

I entertain doubts myself whether we are at liberty to cancel a commitment made by a Sessions Judge under s. 472 of Act X of 1872. No provision has been made in the Code which expressly gives us power to do so, whereas there is a provision by which a commitment once made by a competent Magistrate can, under s. 197, be quashed by the High Court only, and only on a point of law. On the other hand if a Court of Session which is competent, under s. 472, to charge a person for certain offences committed before it, or under its own cognizance, if the offence be triable by the Court of Session exclusively, charges a person for offences not triable by itself exclusively, the commitment might, perhaps, be regarded as "a material error in a judicial proceeding," and be set aside under the first paragraph of s. 297 of Act X of 1872. We are told in the statement of objects and reasons of the draft bill as now prepared for the amendment of Act X of 1872, that s. 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself,—"a power of which such Courts were unintentionally deprived by s. 472 of the present Code." If the commitment had been made solely on a charge of giving false evidence, the charge would not have been one exclusively triable by the Court of Session and I should have then felt a very pressing difficulty as to my power of cancelling the commitment before trial, though I should have found no difficulty in doing so *after* trial, if the case had come before the Court in any shape of appeal or revision. Happily it is not necessary now to consider whether I have power under s. 297 before trial to set aside the commitment made by a Sessions Judge under s. 472 of the Code.

I have already noticed the charge actually preferred against the petitioner Lachman Singh. It is a charge under s. 211, and the offence charged was one punishable with imprisonment for seven years and upwards. Such an offence is exclusively triable by a Court of Session—s. 211, column 7, sch. IV., Act X of 1872. The complaint of the 1st October, 1877, disclosed what,

1879

EMPRESS OF INDIA v. LACHMAN SINGH.

if true, would have been forgeries on the part of the patwari Sundar Lal and would have amounted to an offence under s. 466 of the Indian Penal Code, which is an offence punishable with imprisonment for seven years. It is true that the complaint of the 1st October, 1877, was headed under ss. 193, 218 of the Indian Penal Code. But the offence disclosed in the body of the complaint went beyond these sections, and, as observed above, placed the patwari in a position which might have resulted in his commitment and conviction under a charge punishable with imprisonment for seven years. It is also true that the patwari was committed under s. 218, and that the Sessions Judge had directed the commitment. But the Sessions Judge was not bound to go so minutely into the case, under s. 296, as to order an inquiry into other offences of which the accused might have been guilty. He had to see whether he had been improperly discharged on the charge preferred against him. When the case was tried under s. 218, and what appeared to the Sessions Judge to be the true facts came under his notice, and very serious offences, exclusively triable by himself, appeared to have been committed by the original complainants and others, he had, under the terms of s. 472, the power to charge them with these offences. They were not committed before the Court of Session but came under its cognizance. The words adopted in the amended Act are "committed before it or brought under its notice in the course of a judicial proceeding." But the words in s. 472 "committed before it or under its own cognizance" will bear the same interpretation as "brought under its notice in the course of a judicial proceeding," and in point of fact these words appear to have been adopted in consequence of the ruling of the Calcutta High Court in *Reg.* v. *Nomal* (1), and which is also marginally cited opposite s. 477 of the proposed amended Act. In this way Mr. Justice Norman's remarks refer to s. 172 of Act XXV of 1861, but the same words are used in that Code as in s. 472 of Act X of 1872.

I now pass on to the actual wording of the order of commitment, dated 17th May. I would say that as s. 211 involves an offence which in the latter part of the wording of the section is exclusively triable by the Court of Session, and which from the proposed charge was evidently the offence which the petitioner was considered by

(1) 4 B. L. R., A. Cr. 9.

1879

EMPRESS INDIA. v. LACHMA SINGH.

the Court of Session to have committed, the Sessions Judge was not acting illegally in adding other charges for offences which, had they stood alone, would not have been exclusively triable by him. The graver charge carried the others into Court with it. But the offence under s. 195 is also triable exclusively by the Court of Session, and if this was an offence which came under the notice of the Court of Session when trying the charge under s. 218, he was at liberty under s. 472 to charge the petitioner with it. Whether the charge can be supported on the trial is not for us to determine before trial.

The offence under s. 193 is not exclusively triable by a Court of Session, but, as already insisted on, when the Court of Session had already ordered the commitment under s. 211 (the latter part of the section) and s. 195 for offences which were exclusively triable by him, there was no illegality in adding the other charge under s. 193. He might have omitted to do so in the order of commitment, and have added the charge after the commitment had been actually made and during trial.

If the petitioner, as he alleges, never committed this offence, he can obtain a good deliverance for himself by proving his innocence. I would dismiss the petition.

Petition dismissed.

Before Mr. Justice Oldfield.

1879
June 13

EMPRESS OF INDIA *v* SUKHARI.

Contempt of Court—Act XLV of 1860 *(Penal Code) s.* 174 — *Act X of* 1872 *(Criminal Procedure Code), ss.* 471, 473.

Where a settlement officer, who was also a Magistrate, summoned, as a settlement officer, a person to attend his Court, and such person neglected to attend, and such officer, as a Magistrate, charged him with an offence under s. 174 of the Indian Penal Code, and tried and convicted him on his own charge, *held* that such conviction was, with reference to ss. 471 and 473 of Act X of 1872, illegal.

THIS was a reference to the High Court by the Sessions Judge of Azamgarh under s. 296 of Act X of 1872. Mr. J. Vaughan, who was a settlement officer appointed under Act XIX of 1873,