CRIMINAL REVISIONAL.

1889
April 1.

Before Mr. Justice Straight.

QUEEN-EMPRESS *v.* PAIAMBAR BAKHSH.

Practice—Contempt of court—Act XLV of 1860 *(Penal Code), s.* 228*—Criminal Procedure Code, ss.* 480, 537.

The procedure laid down in s. 480 of the Criminal Procedure Code should be strictly followed. The provisions of the section should be applied then and there, at any rate before its rising, by the Court in whose view or presence a contempt has been committed which it considers should be dealt with under s. 480.

Where a Magistrate in whose presence contempt was committed, took cognizance of the offence immediately, but, in order to give the accused an opportunity of showing cause, postponed his final order for some days,—*held* that such action, though it might be irregular, was not illegal, and, as the accused had not been in any way prejudiced, was covered by s. 537 of the Criminal Procedure Code.

Held also that, under the circumstances, it was doubtful whether there was any necessity for the Magistrate to postpone the final order until the accused had had an opportunity of showing cause against it, and that he should have directed the detention of the accused, and dealt with the matter at once or before his rising.

THE petitioner in this case was convicted by the Deputy Magistrate of Allahabad of contempt of court under s. 480 of the Criminal Procedure Code, and sentenced to a fine of Rs. 50, or, in default, one week's simple imprisonment. He was a mukhtar, and on the 1st August, 1888, was conducting the case of an accused person then being tried by the Magistrate for an offence punishable under s. 9 of Act XII of 1882. During the argument in the case, the petitioner appeared to have lost his temper with the Inspector of the Customs Department, who was prosecuting on behalf of the Crown, and spoke to him in such a way that the Magistrate interposed and checked him. He then repeatedly said excitedly, "Produce it, produce it," *i.e.*, produce the law on the subject, and continued to argue the case in an excited manner. The Magistrate having observed that any reasonable argument would receive due attention, the petitioner replied, "Perhaps, perhaps," in a manner implying a doubt of the Court's impartiality. After continuing for some time, the Magistrate desired him to address the Court in a pro-

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per manner and to desist from talking nonsense (*"behuda guftagu"*), or further measures would be taken with him. To this the petitioner replied, *"Bahut se adalat roz ate hain"*—many a Court comes every day. The Magistrate thereupon made a note of the expression used, and requested the petitioner to explain what he meant by it, but he declined to reply on the ground that no formal proceeding had been drawn up. He also refused to sign his statement to this effect. The Magistrate then prepared a proceeding embodying the facts just stated, and while this was being done the petitioner left the Court, and, though searched for, could not be found up to the time when the Court rose. Next day (the 2nd August) he applied for a copy of the proceeding before giving his reply. The Magistrate declined to grant a copy, and, on the next day, the reply was filed. On the 6th August the petitioner applied to have the proceedings stayed until he could apply for a transfer under the provisions of ss. 526 and 526A of the Criminal Procedure Code. The Magistrate declined to stay proceedings, and, on the 9th August, proceeded to convict and sentence the petitioner as above stated.

The petitioner appealed to the Sessions Judge, who dismissed the appeal and confirmed the conviction and sentence. It was contended on behalf of the appellant that the Magistrate could not legally call upon him to reply until a formal proceeding had been recorded, that he did not refuse to sign the statement which he had made, that he did not leave the Magistrate's Court or conceal himself, that the Magistrate had taken evidence against him in his absence, that the Magistrate ought not to have refused to stay proceedings, that, under s. 480 of the Criminal Procedure Code, the Magistrate was bound to pass sentence on the day when the offence was committed, and that the offence was committed under provocation. In the course of his judgment the Sessions Judge observed :—

"The Magistrate was not, in my judgment, bound to pass sentence on the same day. He was bound to take cognizance of the matter the same day, and did so. He would have been justified in taking time to consider the sentence if the appellant had replied,

and it was desirable that he should not pass his order in the heat of the moment. The appellant's refusal to file a reply put him in a difficulty. I do not know that he was called upon to wait for a reply, but there was nothing illegal in doing so, and the accused was clearly not prejudiced by that course. It is argued that the Magistrate ought, when the matter was not or could not be concluded in one day, to have proceeded according to s. 482 of the Criminal Procedure Code. But a Court is required to resort to the provisions of that section only when it considers that the person accused should be imprisoned otherwise than in default of payment of fine. It is not open to the accused to force a Court to have recourse to those provisions by refusing or delaying to reply.....I feel no doubt that the words and bearing and the whole attitude of the appellant were insolent and disrespectful from the beginning. He disregarded the Court's admonition to urge his point with less heat and excitement, implied an offensive doubt as to the Court's impartiality, and said finally (using his own version of what he said), "Many Courts have come and gone", words of obviously disrespectful import, implying that he had seen a good many Courts come and go, and that therefore he was not particularly impressed by the dignity of the particular Court before which he stood. The appellant was no doubt guilty of a gross and continuous contempt of Court."

The petitioner applied to the High Court for revision of the orders of the Magistrate and the Sessions Judge. The first ground stated in the petition for revision was, "Because the learned Magistrate not having elected to follow the procedure laid down by s. 480 of the Criminal Procedure Code, the conviction and the sentence passed upon the petitioner are illegal."

Mr. *W. M. Colvin*, for the petitioner.

The *Public Prosecutor* (Mr. *G. E. A. Ross*), for the Crown.

STRAIGHT, J.—In my opinion the first ground taken for revision, though it has some force in it and has deserved consideration, cannot prevail.

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I agree with Mr. *Colvin*, that the provisions of s. 480 of the Criminal Procedure Code were intended to be applied *then and there*, or at any rate before its rising by the Court in whose view or presence a contempt has been committed, which it considers could be properly and adequately dealt with under that section, and that they did not ordinarily contemplate such action as was adopted by the Deputy Magistrate in the present case. But while it may be his procedure was irregular, to pronounce it illegal is quite another thing, and knowing as I do the difficulty native magisterial officers must necessarily at times be placed in to preserve order in their Courts, I should not be disposed to take that view unless coerced to do so by the terms of the statute. It is perfectly clear that the postponement of his final orders in the matter was adopted by the Deputy Magistrate for the purpose of affording the petitioner an opportunity of showing cause why such order should not be made, though I doubt if under the circumstances disclosed there was any necessity for the Deputy Magistrate to take that course. Anyhow I cannot hold that the petitioner in any way was prejudiced by the Deputy Magistrate's action, and as I think at most it amounted to no more than an irregularity of procedure, I think it was cured by s. 537 of the Criminal Procedure Code. The first ground for revision therefore fails. I may add, however, that Courts when resorting to a use of s. 480 of the Criminal Procedure Code would do well to strictly follow the procedure therein laid down. Had the Deputy Magistrate in the present instance directed the detention of the petitioner and dealt with the matter at once or before his rising, this application would probably have never been made. Upon the findings of fact recorded by the learned Judge in appeal which I must accept, and the statement of what actually occurred as recorded by the Deputy Magistrate, I cannot say that there was no contempt of the kind covered by s. 228 of the Penal Code, at any rate in the nature of prolonged and offensive interruption to the Magistrate's getting on with the case he was engaged in trying. I cannot, however, help thinking that the incident was inflamed somewhat by the unfortunate remark of the Deputy Magistrate in the course of which the word "*behuda*" was used, with what

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context is not quite clear. At the same time the petitioner would have been better advised when time was given him for reflection, had he apologised and expressed his regret for any apparent, but as he maintained not intended, discourtesy or interruption to the Court. Looking to all the circumstances, I decline to disturb the order of the learned Judge confirming that of the Deputy Magistrate, but as I do not regard the conduct of the petitioner as of a very gross or serious character, I reduce the fine to Rs. 20, or, in default, one day's simple imprisonment. If realized, the difference between that and the Rs. 50 fine inflicted will be returned.

Conviction affirmed, sentence varied.

APPELLATE CIVIL.

1889
April 27.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

DILDAR FATIMA (PLAINTIFF) *v.* NARAIN DAS AND ANOTHER (DEFENDANTS). *

Court-fee—Suit to obtain a declaratory decree—Suit to set aside a summary order—Consequential relief—Prayer to have property released from attachment—Act VII of 1870 (*Court Fees Act*), *sch ii, No.* 17 (*i*) *and* (*ii*).

Held that the court-fee payable on the plaint and memorandum of appeal in a suit under s. 283 of the Civil Procedure Code praying (*a*) for a declaration of right to certain property, and (*b*) that the said property might be released from attachment in execution of a decree, was Rs. 10 in respect of each of the reliefs prayed.

THIS was a reference by the Officiating Registrar as taxing-officer of the High Court, under s. 5 of the Court-fees Act (VII of 1870). The order of reference was as follows :—

"In this case there seem to be two prayers :—

"(*a*) For a declaration of right to certain property.

"(*b*) That the said property may be released from attachment.

"The former taxing-officer held that consequential relief was sought, and that therefore an *ad valorem* stamp was due. The

* Miscellaneous application in S. A. No. 259.