

REVISIONAL CRIMINAL.

1898
May 11.

Before Mr. Justice Dillon.

QUEEN-EMPRESS v. TIRBENI SAHAI.*

Criminal Procedure Code, section 342—Evidence—Accused persons under trial separately for a substantive offence and for abetment of that offence competent witnesses on each other's behalf.

Prisoner *A* was tried for an offence under section 403 of the Indian Penal Code and was convicted, but was sent to a Magistrate of higher powers than the convicting Magistrate to be sentenced. Whilst his case was pending before the second Magistrate, prisoner *B*, being on his trial separately for abetment of the offence for which *A* had been tried, applied for *A* to be summoned as a witness on his behalf. *B*'s application was refused. *Held*, that section 342 of the Code of Criminal Procedure was no bar under the circumstances to *A*'s giving evidence for *B*, and that *B*'s application ought to have been granted.

ONE Ram Narain picked up a currency note for Rs. 100, which had been dropped by a person on his way from the Currency Office, and in the presence, and, as was found by the Court, with the assistance of one Tirbeni Sahai, got the note cashed and appropriated the proceeds. Ram Narain was tried for an offence punishable under section 403 of the Indian Penal Code and convicted, but the trying magistrate having only third class powers, sent the case, under the provisions of section 349 of the Code of Criminal Procedure, to the Cantonment Magistrate. While Ram Narain's case was pending before the Cantonment Magistrate, Tirbeni Sahai was put upon his trial before the same Magistrate who tried Ram Narain for an offence punishable under section 403 read with section 109 of the Indian Penal Code. In the course of his trial he applied to have Ram Narain summoned as a witness on his behalf. The Magistrate, however, declined to summon Ram Narain, being of opinion that he was debarred from so doing by section 342 of the Code of Criminal Procedure. Tirbeni Sahai was convicted and sentenced. He applied in revision to the High Court—his appeal to the Sessions Judge having been dismissed

* Criminal Revision No. 216 of 1898.

—on the main ground that the Magistrate was wrong in refusing his application to summon Ram Narain as a witness.

Mr. *Roshan Lal*, for the applicant.

The Government Pleader (*Munshi Ram Prasad*), for the Crown.

DILTON, J.—This is an application for revision of an order passed by the Cantonment Magistrate of Allahabad, convicting the petitioner of an offence under section 403 read with section 109 of the Indian Penal Code, and sentencing him to three months' rigorous imprisonment. The conviction and sentence were affirmed by the Sessions Judge on appeal. Amongst other points taken on behalf of the petitioner, there is one which refers to the procedure of the Magistrate in refusing to summon and examine as a witness on behalf of the petitioner one Ram Narain, who had been convicted of the substantive offence under section 403 of the Indian Penal Code by a third class Magistrate of Allahabad, but whose case had been referred by the said Magistrate for a severer sentence under section 349 of the Code of Criminal Procedure. Ram Narain's case was pending before the Cantonment Magistrate under section 349 of the Code of Criminal Procedure, at the time the application to summon him as a witness was made, and therefore it cannot be said that his trial was concluded. At the same time he had not been jointly indicted with the petitioner, nor was the offence of which he had been convicted the same offence as that with which the petitioner was charged. Under these circumstances I do not think that the prohibition contained in the last clause of section 342 of the Code of Criminal Procedure applies. On a careful perusal of that section it will be apparent that the examination of the accused person for which that section provides, is an examination touching the matter on which he is being tried, and the inference is therefore obvious that the prohibition contained in the last clause of section 342 applies to the examination referred to in that section, and does not apply to an examination in another case in which the person who is being examined is not himself an accused person.

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If the Magistrate's view were correct, it would follow that no man while he stood charged with a criminal offence could possibly be examined as a witness in any criminal trial whatever. I do not think that the Legislature intended this. In this view of the case I hold that the petitioner was entitled to have Ram Narain summoned and examined as a witness, and that he has been prejudiced by the Magistrate's refusal to summon and examine the said Ram Narain. Under these circumstances I set aside the conviction and sentence had before the Cantonment Magistrate of Allahabad, and direct that the petitioner's case be restored to his file, and that he take it up at that stage when he called on the accused for his defence, and that then with reference to the above remarks he proceed according to law.

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May 12.

APPELLATE CIVIL.

Before Mr. Justice Burkitt and Mr. Justice Dillon.

ONKAR SINGH AND ANOTHER (JUDGMENT-DEBTOR) v. MOHAN KUAR
(DECREE-HOLDER)*

Execution of decree—Civil Procedure Code, sections 320, 322A—Decree transferred for execution to Collector—Collector not authorized to hear objections to execution of decree so transferred.

Held that where a decree for money has been transferred for execution to the Collector under the provisions of section 320 of the Code of Civil Procedure, the Collector is not authorized under section 322A to hear any objection by the parties interested in the property advertised for sale to the sale of that property, nor is it any part of the Collector's duty to decide whether the property has or has not been properly attached.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondent.

BURKITT and DILLON, JJ.—This is a case of an execution of a decree for money. The original judgment-debtor died since the decree, and his sons have been brought on the record as his

* First Appeal No. 265 of 1897, from an order of Syod Muhammad Siraj-ud-din, Subordinate Judge of Agra, dated the 28th August 1897.