

continued in occupation of that property, a suit by the landlord might be brought under the Specific Relief Act for recovery of possession by reason of discontinuance by the ryots to pay him rent.

For these reasons we think that this rule must be discharged with costs.

T. A. P.

Rule discharged.

1887
 TARINI
 MOHUN
 MOZUMDAR
 v.
 GUNGA
 PRASAD
 CHUCKER-
 BUTTY.

CRIMINAL MOTION.

Before Sir W. Comer Fetheram, Knight, Chief Justice, and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF ISWARCHUNDER GUHO AND
 OTHERS.*

1887
 June 30.

False evidence—Affidavit affirmed before a Deputy Magistrate—Prosecution on facts stated in an affidavit affirmed before a Deputy Magistrate—Penal Code, Act XLV of 1860, ss. 193, 199—Declaration by law receivable as evidence—Sanction to prosecute, Order for, quashed.

A Deputy Magistrate has no power to administer an oath to a person making a declaration in the shape of an affidavit; and such person cannot, on the facts stated in such declaration, be prosecuted for committing an offence either under s. 193 or s. 199 of the Penal Code.

THIS was a rule calling upon the District Magistrate of Mymensingh to show cause why an order passed by him sanctioning a prosecution under s. 199 of the Penal Code should not be quashed.

The sanction referred to was given under the following circumstances:—

One Dherai Duffadar, a cattle dealer, had preferred a complaint against Sarat Chunder Bhoomick and Gazi Shaik, charging them with wrongful restraint in having prevented his cattle from being taken to a certain mela. Baboo Shama Chunder Dass, a Deputy Magistrate of Jamalpur, referred the complaint to the police for investigation, and the police subsequently sent up the two accused with a report that the charge was true. On the appli-

* Criminal Motion No. 163 of 1887, against the order passed by E. G. Glazier, Esq., District Magistrate of Mymensingh, dated the 27th of April, 1887.

1887
 IN THE
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cation of Gazi Shaik the Magistrate of the District made an order transferring the case to the Court of Baboo Akhoy Coomar Bose, Deputy Magistrate of Mymensingh, but the order not having for some reason or another reached Baboo Shama Chunder Dass, the case was heard by him. Before, however, the case was actually entered into, one Iswar Chunder Guho, at the request of Sarat Chunder Bhoomick, drafted a petition praying Baboo Shama Chunder Dass not to proceed with the case, inasmuch as he was practically the prosecutor in the case, and an order for transfer had already been made, but that that order not having been received the petitioner was desirous of renewing his application for such transfer.

This petition was presented by Sarat Chunder Bhoomick together with an affidavit affirmed before the Deputy Magistrate, which contained an allegation that the police had started the case with the assistance, and under the direction, of the Deputy Magistrate himself, and that the charge was false. The case was, however, proceeded with, and the accused acquitted.

Baboo Shama Chunder Dass subsequently to this applied to Mr. Glazier, the District Magistrate, for sanction to prosecute Sarat Chunder Bhoomick and Iswar Chunder Guho for giving false evidence in a stage of a judicial proceeding, the alleged false evidence being the statement contained in the affidavit of Sarat Chunder Bhoomick charging the Deputy Magistrate with having inspired the prosecution in that case. Mr. Glazier thereupon sanctioned the prosecution of those persons, and made over the case to Moulvie Mahomed, a Deputy Magistrate of Mymensingh, for trial.

The accused applied for and obtained the rule above mentioned—calling upon Mr. Glazier, the District Magistrate of Mymensingh, to show cause why the order directing proceedings to be taken against them should not be quashed.

Mr. *Monomohun Ghose* for the accused contended that Sarat Chunder Bhoomick had committed no offence, the Deputy Magistrate having no authority to receive an affidavit in the course of a criminal trial nor any authority under the Criminal Procedure Code to administer an oath to a person making a declaration to an affidavit, and the accused could not,

therefore, be prosecuted under s. 199 of the Penal Code; that Iswar Chunder Guho had merely drafted the petition; and that the proceedings held by Baboo Shama Chunder Dass were *coram non judice*, they being held at a time when the order for transfer was in force.

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 GUHO,

No one appeared to show cause.

The order of the Court (PETHERAM, C.J., and GHOSE, J.) was as follows:—

This rule was obtained to set aside certain pending proceedings taken against two persons for perjury. They have been ordered to be prosecuted, but no commitment has taken place, and the question is whether there is any evidence of their having committed perjury. What is alleged is that they have made an affidavit under the sanction of an oath or affirmation before the Deputy Magistrate who was enquiring into the case of one of them for the purpose of intimating to him that he intended to apply under s. 526 of the Code of Criminal Procedure to have the case removed for trial to some other Court.

Upon that statement of the case the question arose whether he had power to administer an oath to a person for the purpose of swearing an affidavit so as to make it binding upon them under s. 199 of the Indian Penal Code.

We have searched the Code and have enquired about this matter, but we can find no power in a Deputy Magistrate to administer an oath to a person making a declaration in the shape of an affidavit.

Under these circumstances we do not see how this case can come under s. 199 of the Indian Penal Code, inasmuch as this was not a declaration which any public servant was bound or authorised by law to receive as evidence of the facts stated in it.

Under these circumstances we think that upon the admitted facts of this case these persons are not alleged to have made any affirmation or taken any oath within the meaning of the Penal Code, and therefore they are not liable to prosecution for perjury under s. 199 or s. 193. The proceedings pending before the Deputy Magistrate against Iswar Chunder Guho and Sarat Chunder Bhoomick will, therefore, be quashed.

T. A. P.

Rule absolute.