

REVISIONAL CRIMINAL.

1899
January 6.*Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Knox.*

IN THE MATTER OF THE PETITION OF MADHO RAM.*

Act No. XVIII of 1879 (Legal Practitioners' Act), section 36—Order including a person's name in the list of touts—Revision—Statute 24 and 25 Vic., Cap. CIV, section 15—Powers of superintendence of the High Court.

Held that in the case of an order passed under section 36 of Act No. XVIII of 1879, the High Court could only interfere in the exercise of the powers of superintendence conferred upon it by section 15 of the Indian High Courts Act, 1861, and that it would not interfere even then, where the sole ground upon which its interference was asked for was that the decision of the District Judge was against the weight of the evidence.

In this case, the committee of the local Bar Association at Saharanpur having represented to the District Judge that certain persons named by them were persons against whom action ought to be taken under section 36 of the Legal Practitioners' Act, the Judge took evidence and heard such of the persons proceeded against as appeared and tendered evidence in their own exculpation, and finally recorded an order, the substance of which, so far as the present report is concerned, is as follows:—
 "As to the other four men, against Madho, Sri Ram, and Sajjad Husen, there is ample ground for concluding that they are touts. This would appear from the evidence of their own witnesses almost as clearly as from their general reputation as evidenced by members of the local Bar." * * * * *

"The result is that I order that the following men be proclaimed as touts, *viz.*:—

"Bhura, age 35, Gujar, residence Chandanpur.

"Madho, age 35, son of Ganpat Rai, mahajan, of Saharanpur.

"Sri Ram, age 34, son of Parbhu Lal, mahajan, of Saharanpur.

"Sajjad Husen, age 28, son of Zulfikar Ali, Syed, of Saharanpur.

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“The names of these men will be posted in my Court and in every Court subordinate to mine in the Judicial Division, and I hereby order, under section 36 (4), Legal Practitioners’ Act, (Act No. XVIII of 1879 as amended by Act XI of 1896), that the above-mentioned men be excluded from the precincts of each of the Courts above-mentioned.”

Against this order Madho Ram applied in revision to the High Court.

Mr. G. P. Boys, for the applicant.

STRACHEY, C. J.:—This is an application to the Court to set aside an order passed by the District Judge of Saharanpur under section 36 of the Legal Practitioners’ Act, XVIII of 1879, as amended by section 4 of Act No. XI of 1896. That order of the District Judge was an order including the name of this petitioner in the list of persons proved to the satisfaction of the Judge habitually to act as touts. The only ground stated in the petition to us is:—“Because the finding is against the weight of the evidence.” We are of opinion that this Court ought not to interfere, on any such ground as that, with an order passed by a subordinate Court under section 36 of the Legal Practitioners’ Act. The law gives no right of appeal to this Court from any such order. As regards revision, such cases are clearly not criminal proceedings to which the revisional powers of the High Court under section 439 of the Code of Criminal Procedure would apply. They do not fall within the powers of civil revision conferred by section 622 of the Code of Civil Procedure. There remain only the powers of superintendence conferred by section 15 of the High Courts Act. Under that section this Court has, no doubt, very wide powers of superintendence over the proceedings of subordinate Courts; and it is possible to imagine cases in which, in the exercise of those powers, it might be the Court’s duty to interfere with an order passed under section 36 of the Legal Practitioners’ Act. Although under section 36 the Courts have an extremely large discretion in framing lists of touts and including the

names of particular individuals in such lists, the conditions prescribed by the section must of course be observed: for instance, no person's name is to be included unless he has had an opportunity of showing cause against such inclusion, and in all cases the person must be proved to the Court's satisfaction habitually to act as a tout, and must be so proved by evidence, whether of general repute or otherwise. But in considering whether this Court should interfere in the exercise of its powers of superintendence, one must bear in mind, first, that the test prescribed by section 36 is proof to the satisfaction of the Court framing the list and of no other tribunal; and, secondly, that it is settled that this Court is not competent, under section 15 of the High Courts' Act, to interfere with the order of a Subordinate Court, merely on the ground of error in law or error in fact. Its powers of superintendence are not applicable where the only question is whether the decision of the lower Court is against the weight of evidence. That is the only question raised by the present petition. It is admitted that there is evidence upon which the lower Court has acted—evidence on the one side and on the other. We must, therefore, decline to interfere and must dismiss the application.

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APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

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January 11.

RAGHUBANS KUNWAR AND ANOTHER (DEFENDANTS) v. BHAGWANT KUNWAR (PLAINTIFFS).*

Hindu law—Hindu widow—Maintenance—Suit for arrears of maintenance—Discretion of Court in allowing arrears.

Where a Hindu widow sues for maintenance from the family and estate of her deceased husband, with arrears of such maintenance, the allowance of arrears of maintenance is a question for the discretion of the Court, and the Court, if it allows arrears of maintenance at all, will not necessarily allow arrears at the same rate as it may allow future maintenance, especially where the plaintiff has made serious delay in bringing her suit for maintenance.

* First Appeal No. 206 of 1896, from a decree of Babu Prag Das, Officiating Subordinate Judge of Meerut, dated the 26th June 1896.