

1902

TEJ SINGH  
v.  
CHABELI  
RAM.

(21), from an order allowing an objection under section 372; and secondly, that the order passed in the present case was not a decree within the meaning of section 2, *viz.* an adjudication so far as regards the Court expressing it which decided the suit pending before the Court at the time when the order was passed.

We decree the appeal with costs, and set aside the judgment of the lower appellate Court.

*Appeal decreed.*

1902

March 18.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Knox and Mr. Justice Blair.*

IN THE MATTER OF SHEIKH AMIN-UD-DIN.\*

*Criminal Procedure Code, sections 435, 438, 439—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.*

In the case of an acquittal by a Subordinate Magistrate, where the Local Government does not appeal, or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule, entertain a reference direct from the District Magistrate under section 438 of the Code of Criminal Procedure.

THIS was a reference made by the District Magistrate of Aligarh under section 438 of the Code of Criminal Procedure. The circumstances out of which the reference arose are thus stated in the Magistrate's order:—

‘On the 16th of November, 1901, seven logs of wood—three of *siris* and four of *semal* wood—were imported by Sheikh Amin-ud-din. As they passed the Russelganj octroi barrier, the six carts which carried them were stopped by the octroi officials for payment of duty. A question arose as to whether the logs were to be charged as fire wood at the rate of three pies per rupee of their value or as building material at the rate of eight pies per rupee. The octroi muharrir and also the octroi superintendent, who happened to arrive on the spot, were of opinion that they were building material and should be charged accordingly. Amin-ud-din, accused, who had also turned up, wanted the duty to be levied as on fire wood. The dispute came to an end by the accused assuming a tone of authority, and ordering the octroi officials to charge the logs as fire wood, which he declared them to be. The octroi officials submitted against their own judgment, and allowed the logs to pass into the town on payment of the lower duty, although the prosecution alleged they were not fire wood, and were consequently liable to be charged as ‘building

\* Criminal Reference No. 149 of 1902.

material.' The Secretary of the Municipality discovered these facts on his morning rounds and reported them to the Chairman. The logs were removed by the Secretary's orders from the accused's timber shop to the Municipal bonded warehouse where they were kept till the close of the trial. Two days later the Chairman himself visited the warehouse and inspected the logs, and being satisfied that they were not fire wood, ordered the prosecution of Sheikh Amin-ud-din, as there could be no doubt that Sheikh Amin-ud-din, himself a timber merchant, could not have made a mistake as to how the logs could be used, and the only motive for making a statement so wilfully false could be the evasion of payment of the proper duty."

The case was tried by an Assistant Magistrate, Mr. Badhwar, who acquitted the accused upon various grounds to which it is unnecessary now to refer.

The Magistrate of the District, being of opinion that the order of acquittal was entirely wrong, referred the case to the High Court, asking that the order of acquittal might be set aside.

On this reference

*Colvin*, for the person acquitted, raised a preliminary objection that the High Court could not interfere in revision, because an appeal might have been preferred by the Local Government from the order of acquittal passed by the Assistant Magistrate. He referred to section 439, clause (5) of the Code of Criminal Procedure.

The Assistant Government Advocate (*Porter*), in support of the reference, argued that the hearing of the present reference, though it might be considered as "proceedings by way of revision," was not "at the instance of the party who could have appealed." The District Magistrate (who was not to be confounded with the Local Government) could not have appealed from the order of his assistant; but under section 435 of the Code of Criminal Procedure he could call for the record, and under section 438 of the Code he could examine the record, and report for the orders of the High Court the result of such examination. It made no difference whether the record under examination happened to terminate with an order of acquittal and not an order of conviction.

KNOX and BLAIR, JJ.—A preliminary objection has been taken to the hearing of this reference. It is contended that the provisions of the last paragraph of section 439 apply. We are not prepared to accede to this contention, or to say that we shall

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in no case entertain a reference simply because of what is laid down in that paragraph. At the same time the fact remains that it was open to the Local Government to present an appeal from this acquittal. Where the Local Government do not adopt this procedure, or where the Magistrate does not move the Local Government to adopt this procedure in cases where it could be adopted, and sends to us direct, we think it expedient, as a general rule, not to exercise our powers of revision. We refuse to entertain the reference. Let the record be returned.

1902

April 2.

## FULL BENCH.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Burkitt.*

IN THE MATTER OF THE PETITION OF PADMA DAT JOSHI.\*

*Act No. XVIII of 1879 (Legal Practitioners Act), sections 6 and 8—Act No. XIV of 1874 (Scheduled Districts Act), sections 3, 5 and 6—Kumaun Rules, 27th July, 1894, rules 2 and 11—Jurisdiction of the High Court as regards enrolment of vakils in the province of Kumaun and Garhwal.*

For the purposes of the Legal Practitioners' Act, 1879, the Commissioner of Kumaun is the High Court for the Province of Kumaun and Garhwal. A vakil, therefore, whose name is enrolled in the High Court of Judicature for the North-Western Provinces is not, by virtue of such enrolment, entitled to practise in the Courts of Kumaun and Garhwal, nor has the High Court of Judicature for the North-Western Provinces any jurisdiction to reverse an order of the Commissioner of Kumaun refusing to enrol a vakil on the roll of legal practitioners entitled to practise in the Courts of Kumaun and Garhwal.

This was an application by one Padma Dat Joshi, a pleader, who had been enrolled as such by the High Court for the North-Western Provinces, praying that certain orders of the Commissioner of Kumaun refusing to enrol him as a pleader under section 8 of the Legal Practitioners Act, 1879, qualified to practise in the Court of the Sessions Judge of Kumaun and of the Subordinate Magistrates, in all Revenue Offices and also in the Commissioner's Court in respect of the cases referred to in rule (11) of the Kumaun Rules might be set aside, and that the

\* Miscellaneous No. 175 of 1901.