

REVISIONAL CRIMINAL.

1902
March 18.*Before Sir John Stanley, Knight, Chief Justice.*

IN THE MATTER OF THE PETITION OF NATHU MAL.*

*Statute 24 and 25 Vic., cap. civ., section 15—Criminal Procedure Code, sections 145, 435, 439—Order of Magistrate in case of a dispute relating to immovable property—High Court's powers of revision.**Held* that the High Court cannot exercise revisional powers in respect of proceedings under Chapter XII of the Code of Criminal Procedure unless in a case where the Magistrate has acted without jurisdiction. *Doulat Koer v. Rameswari Koeri* (1) followed.

THIS case arose out of a dispute as to the right to collect dues in a certain bazar. The facts were briefly as follows. On the 3rd of December 1901 one Bodhai Ram and others presented a petition to a Magistrate of the Allahabad District, complaining that one Nathu Mal through his agent and servants had on the 2nd December 1901 taken forcible possession by collecting bazar dues of a certain bazar called bazar Jasra, which, the complainants alleged, had up to that date been in their possession. This application was referred to the Tahsildar for inquiry and report. On the 9th of December Bodhai Ram and others applied to the Magistrate under section 144 of the Code of Criminal Procedure, for an order restoring them to possession, which was granted. On the 10th of December an application presented on behalf of Nathu Mal was dismissed. Subsequently on the 17th December the Magistrate, in consequence of the report submitted by the Tahsildar, commenced proceedings under section 145 of the Code of Criminal Procedure. Both sides filed written statements, and a large number of witnesses were summoned by both sides, one party applying for the summoning of 57 witnesses and the other for the summoning of 50 witnesses. These numbers were afterwards reduced to 21 and 12 respectively. Before, however, the witnesses named in the amended lists filed by the parties had been summoned, the Magistrate had examined the most important of the witnesses, and having arrived at the conclusion that Nathu Mal had forcibly dispossessed Bodhai Ram and that he was supporting a false claim by means of perjured witnesses and forged

* Criminal Revision No. 111 of 1902.

(1) (1899) I. L. R., 26 Calc., 625.

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documentary evidence, made an order under section 145(4) of the Code in favour of Bodhai Ram. Against this order an application in revision was presented to the High Court, the principal ground of which was that none of the witnesses named in the second list of 21 witnesses put in by Nathu Mal had been examined by the Magistrate. This application was made not under the Code of Criminal Procedure, but under section 15 of the Charter Act.

Babu *Sital Prasad Ghosh*, for the applicant.

The Assistant Government Advocate (*Mr. W. K. Porter*), in support of the order of the Magistrate.

STANLEY, C.J.—A rule in this case was issued, calling upon the Magistrate to show cause why his order of the 21st of January, 1902, passed under section 145 of the Code of Criminal Procedure, should not be set aside, on the ground that the same was passed without hearing the evidence of any of the witnesses who were produced on behalf of the second party, Lala Nathu Mal, and such other order passed as the Court might think fit. The rule was issued by me under a misapprehension as to the facts. I understood from a statement of the learned vakil who made the application that none of the witnesses who were called on behalf of the second party had been examined. It, however, now transpires that no less than ten witnesses were examined on his behalf. It appears that in addition to these ten witnesses summonses had been issued for the attendance of 21 other witnesses, and that none of these last-mentioned witnesses were examined by the Magistrate, inasmuch as he believed that the evidence which was being produced by the second party was worthless, and that it was only a waste of public time to examine further witnesses. In his explanation the Magistrate has stated to this effect, and shown that the order which he passed was not made until he had examined a great number of witnesses, and had satisfied himself as to the propriety of the order. Under these circumstances it is clear that the Magistrate did not act without jurisdiction. He considered the case and heard as many as ten witnesses on behalf of the second party and five on behalf of the first party. The present application in revision is made under the provisions of section 15 of the Charter Act. Under the

Code of 1898 the revisional powers of the Court in proceedings under Chapter XII were withdrawn, and therefore, as it seems to me, the Court is not empowered to exercise revisional jurisdiction in such proceedings unless in cases where the Magistrate has acted without jurisdiction. According to the present state of the law, since the passing of the Act of 1898, the power of revision to be exercised by the Court is limited to matters of jurisdiction, that is, to cases in which it is found that the Magistrate taking proceedings under Chapter XII has acted without jurisdiction. If an order purporting to be made under section 145 is made without jurisdiction, there is no doubt this Court can exercise its powers under section 15 of the Charter Act; but that is not the present case. Here the Magistrate acted within his powers, and if anything has been done by him to which objection can be taken, it was at the most an irregularity, and this Court is precluded from interfering by the express provisions of the Act of 1898. I find that this was so laid down in a case decided by a Bench of the High Court of Calcutta, consisting of Mr. Justice Prinsep and Mr. Justice Wilkins. That is the case of *Doulat Koer v. Rameswari Koeri* (1). It appears to me that the law is there correctly laid down, and that the High Court cannot exercise revisional powers in proceedings under Chapter XII unless in a case where the Magistrate has acted without jurisdiction. For these reasons the rule must be discharged. I accordingly discharge it.

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APPELLATE CIVIL.

1902
March 20.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkhitt.

DUDHNATH KANDU (DEFENDANT) v. MATHURA PRASAD
(PLAINTIFF).*

Suit for damages for malicious prosecution—Plaintiff not prosecuted by defendant, though named by him as having some connection with an assault made upon him—Prosecution initiated by Magistrate suo motu.

One Dudhnath Kandu lodged a complaint before a Magistrate that he had been assaulted and severely beaten by four persons whom he named. He

* First Appeal No. 123 of 1899, from a decree of Babu Jai Lal, Subordinate Judge of Azamgarh, dated the 16th June 1899.

(1) (1899) L. L. R., 26 Calc., 625.