

REVISIONAL CRIMINAL.

1903

January 23.*Before Mr. Justice Blair.*

HASAN SHAH AND GANGA PRASAD v. HARDEO SAHAI.*

Criminal Procedure Code, sections 195, 476—Sanction to prosecute—Order directing prosecution—Order framed in the alternative held to be bad—Revision.

A District Magistrate having before him an application for the grant of sanction to prosecute a certain person for perjuries alleged by the applicants to have been committed by that person in the Court of the District Magistrate, passed an order in the following form:—"I . . . District Magistrate, Bulandshahr, hereby charge you . . . that you on the 21st day of June, 1902, at Bulandshahr, in the course of the hearing of the appeal, *Shib Dayal v. K.-E.* stated in evidence before this Court," etc., etc. (here follow the specific assignments) "or I sanction proceedings against you under section 132, Indian Penal Code, with giving false information," etc., etc. "I make the case over to B. Dipchand for disposal. B. Hardeo Sahai will furnish P. R. in Rs. 500, and one surety in like amount to appear when called on."

Held that this order being framed in the alternative, was a bad order, and could not be acted upon.

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

Mr. W. K. Porter, for the applicants.

Mr. C. C. Dillon and Mr. Udai Vir Singh Raghubansi, for the opposite party.

BLAIR, J.—This is an application in revision made on behalf of certain gentlemen who are Honorary Magistrates of the city of Bulandshahr, and it is an application asking this Court to reverse the decision of an Additional Sessions Judge passed in revision whereby a certain sanction was revoked. The sanction revoked was one purporting to have been given by the District Magistrate of Bulandshahr. The order of the Magistrate was in the following form:—"I, George Bower, District Magistrate of Bulandshahr, hereby charge you Hardeo Sahai, Barrister-at-Law, that you on the 21st day of June, 1902, at Bulandshahr, in the course of the hearing of the appeal, *Shib Dayal v. K.-E.*, stated in evidence before this Court that Shib Dayal was not examined in my presence by the Honorary Magistrate Agha Hasan Shah—(1) 'but when I reached his

* Criminal Revision No. 730 of 1902.

Court the Agha read over to me Shib Dayal's statement. The following sentence was not read over at the time by the Agha; (2) '*inhonne mujhse kaha tum jakar sarhe satrah ser tel ka rawanna karlae.*' This was added afterwards or changed; (3) '*I remember that the following sentence was read to me:—Mujhse skikram-walane sarhe satrah ser tel batlaya,*' which statement (as italicized above and between the inverted commas) you either knew or believed to be false, or did not believe to be true, and thereby committed an offence under section 193 of the Indian Penal Code; or I sanction proceedings against you under section 182, Indian Penal Code, with giving false information in respect of the very same sentences on the same date, and at the same time and place (italicized and between the inverted commas above) to a public servant, viz. the District Magistrate, with a view to cause him to use his lawful power to the injury or annoyance of M. Ganga Prasad and Agha Hasan Shah, or to do something which such public servant would not have done if the true state of facts concerning which the above information was given were known by him. I make the case over to B. Dip Chand for disposal. B. Hardeo Sahai will furnish P. R. in Rs. 500 and one surety in like amount to appear when called on." The first part of the order, it is argued, if it is an order at all, was probably an order made under section 476 of the Code of Criminal Procedure. The second part of that order, if it is an order at all, was made under section 195 of the Code of Criminal Procedure. In the former case it was for the Magistrate to order the case to be put for disposal before some Magistrate having jurisdiction. As to the latter part of the order, it would be for the parties who had obtained the sanction to prosecute to pursue their own course for that purpose. It would seem somewhat extraordinary that an order should be made by the Court for the disposal of certain cases, and that alongside of that order another should have been drawn up dealing with the same facts, but simply looking upon them as falling within some other section, and thereby, had this been a double order, prescribing two concurrent remedies for that which is substantially the same offence. However, I hold that there were not two

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orders at all, and that the directions given by the District Magistrate amounted not to an order, but to an option. He says, to put it briefly "I charge you with perjury, and I make this case over to a certain competent Magistrate, or in the alternative, I sanction the prosecution for an offence under section 182, Indian Penal Code, by the person asking for that sanction." I hold as a matter of law, that an option of that kind is not an order at all, and, as such, is absolutely invalid. I therefore set it aside, and leave the parties, if they be so advised, to take up the matter again, as a matter upon which no adjudication has been passed. The application in revision is dismissed.

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11, 12 and 13.

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March 4.

PRIVY COUNCIL.

BAQAR ALI KHAN (DEFENDANT) v. ANJUMAN ARA BEGAM AND ANOTHER (PLAINTIFFS) AND SADIQ ALI KHAN (DEFENDANT) v. ANJUMAN ARA BEGAM AND ANOTHER, PLAINTIFFS.

Two appeals consolidated.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Muhammadian law—Endowment—Power of Shia to create valid waqf by will—Admissibility of evidence—Statements as to heirs made in accordance with practice of public office—Proof of legitimacy of heirs named in such statements.

By the law of the Shia sect of Muhammadans, as well as by that of the Sunni sect, a valid waqf can be created by will. *Agha Ali Khan v. Altaf Hasan Khan* (1) dissented from.

A series of statements, extending from 1860 to 1890 by a wasiqadar, made in accordance with the practice of the wasiqah office, a department under Government, as to who were her heirs, and made at a time when no controversy on the subject was in contemplation, and letters written by her, in reply to inquiries by the wasiqah officer, explaining and confirming such statements, was held to be admissible in evidence in support of the legitimacy of such heirs, and, under the circumstances, to be conclusive in their favour.

CONSOLIDATED appeals from a judgment and decree (24th February 1899) of the Court of the Judicial Commissioner of Oudh reversing a decree (15th July 1897) of the Additional Civil Judge of Lucknow, by which the respondents' suit had been dismissed.

Present :—Lord MACNAGHTEN, Lord LINDLEY, SIR ANDREW SCOBLE,
SIR ARTHUR WILSON, and SIR JOHN BONSER.

(1) (1892) I. L. R., 14 All., 429.