

Chakrabati v. The Official Liquidator, Cotton Ginning Company, Limited, Cawnpore (1). I am asked to infer from this ruling that a decree passed on a Sunday should be held null and void. No such inference, in my opinion is warranted. For the respondents it is contended that the Court of first instance in disposing of the case on a Sunday committed a mere irregularity, which is covered by the provisions of section 578 of the Code of Civil Procedure. The proceedings were held on the Sunday by consent of parties. I am of opinion that under these circumstances the Munsif in disposing of the case the same day committed merely an irregularity. It is not shown that this irregularity affected the merits of the case or that the Munsif had no jurisdiction.

In a case of *Ununto Ram Chatterjee v. Protab Chunder Shiromonee* (2), the objection taken was against the admission of a plaint on a Sunday. The objection was overruled.

I dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1907

SHERO RAM
TIWARI
v.
THAKUR
PRASAD.

1907
May, 4.

Before Mr. Justice Banerji.

IN THE MATTER OF THE PETITION OF DAMMA. *

Criminal Procedure Code, section 435—Revision—Executive order—Order of District Magistrate dismissing head-man.

Hold that an order passed by a District Magistrate under the rules framed by Government under section 45 (8) of the Code of Criminal Procedure is an executive order and not subject to the revisional powers of the High Court.

IN this case proceedings were instituted against one Damma under section 110 of the Code of Criminal Procedure. The Magistrate before whom those proceedings were, after holding an inquiry, discharged Damma under section 119 of the Code. At the same time he directed that the record of the case be laid before the District Magistrate with the request that Damma, who was the head-man of his village, might be removed from his office, and that the District Magistrate might, if necessary, direct the police to watch the movements of Damma. The District Magistrate accepted the Deputy Magistrate's recommendation and dismissed Damma from his post as head-man and also directed the

* Criminal Revision No. 143 of 1907.

(1) (1887) I. L. R., 9 All., 366. (2) (1871) 16 W. R., C. R., 230.

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TION OF
DAMMA.

police to watch and report upon his movements. Damma applied to the High Court in revision.

Mr. *R. Malcomson*, for the applicant.

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

BANERJI, J.—This is an application for the revision of an order passed by Babu Surajbhan Prasad, Magistrate of the first class of Fatehpur. The learned Assistant Government Advocate raises a preliminary objection that the application is not maintainable under the Code of Criminal Procedure. The facts were these:—Proceedings were instituted against the applicant Damma under section 110 of the Code of Criminal Procedure. The Magistrate after holding an inquiry discharged Damma under section 119 of the Code. At the same time he directed the record of the case to be laid before the District Magistrate with the request that Damma, who was the head-man of the village, might be removed from that office, and that the District Magistrate might, if necessary, direct the police to watch the movements of Damma. Mr. *Malcomson* who appears for the applicant informs me that it is this order relating to the dismissal of Damma from the office of head-man and to his conduct being watched by the police that he complains of. I may mention that upon the papers being laid before the District Magistrate he made an order dismissing Damma from the office of head-man and directing the police to watch and note the acts of Damma and make a report, if necessary, to him. It is clear that the order is an executive order passed by the District Magistrate in his executive and not in his judicial capacity. When the subordinate Magistrate who heard the case under section 110 of the Code of Criminal Procedure ordered the discharge of Damma, that case came to an end. In directing the papers of the case to be laid before the District Magistrate with a certain recommendation he did so, not in his capacity of a Criminal Court, but as a subordinate of the District Magistrate, with a view that the District Magistrate might, if he thought fit, take action against the head-man of the village. The rules framed by the Local Government under section 45 (3) of the Code of Criminal Procedure authorize a District Magistrate to appoint and dismiss a

head-man. The order of the District Magistrate dismissing the applicant is an executive order, and so is the order directing the police to watch his conduct. This latter order was apparently passed by the District Magistrate as the executive head of the police. I am unable to hold that the order made by the District Magistrate can be regarded as proceedings of an inferior Criminal Court within the meaning of section 435 of the Code of Criminal Procedure. The portion of the order of the Subordinate Magistrate of which the applicant complains was, as pointed out above, clearly not a judicial order. The application to this Court for revision of that order and of the order of the District Magistrate is not therefore maintainable. I accordingly dismiss it.

Before Mr. Justice Dillon.

EMPEROR v. MEHDI HASAN. *

Act No. XLV of 1860 (Indian Penal Code), sections 425, 426—Definition—Mischief—Act (Local) No. I of 1900 (N.-W. P. and Oudh Municipalities Act), section 167.

Certain cattle belonging to one M. H. upon various occasions when in charge of a servant of M. H. strayed, or were driven, into the Government Gardens at Saharanpur and there caused damage. *Held* that M. H. could not on these facts be convicted of the offence of mischief. *Forbes v. Grish Chunder Bhuttaaharjoe* (1) and *Empress v. Bai Baya* (2) followed. *Held* also that section 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. *King Emperor v. Patan Din* (3) followed.

ON the 13th of October 1906 certain cattle belonging to one Mehdi Hasan were found straying in the Government Gardens at Saharanpur and were sent to the pound. As the cattle had done considerable damage, and as it was not the first time that these cattle had been found trespassing in the Government Gardens, proceedings were taken against their owner under section 167 of the Municipalities Act. These proceedings ended in the conviction of Mehdi Hasan under section 426, and he was fined Rs. 25. Mehdi Hasan applied to the Sessions Judge to revise this order, and the Judge referred the case to the High Court under the provisions of section 438 of the Code of Criminal Procedure. Notice was also issued to Mehdi Hasan to show cause why his conviction

1907

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DAMMA.

1907
April, 11.

* Criminal Reference No. 157 of 1907.

(1) (1870) 14 W. R., 31.

(2) (1883) 1. L. R., 7 Bom., 126.

(3) Weekly Notes, 1905, p. 19.