1907

BALAK PURI v. DURGA.

We now make the order which the Subordinate Judge should have, in our opinion, passed, and declare that the suit abated on the death of the original plaintiff, Musammat Parbhawati, and that the order substituting Musammat Durga as plaintiff in her stead should not have been made. We give the costs of the appeal to the appellant.

We think it right to say that our judgment in this appeal is not to be taken as in any way prejudicing the right of Musammat Durga to institute any suit she may be advised against the appellant in respect of the mortgaged property.

Appeal decreed.

1907. *November* 13.

REVISIONAL CRIMINAL.

Before Mr. Justice Sir George Knox.

EMPEROR *v.* TABARAK ZAMAN KHAN. *

Act No. XLV of 1860 *(Indian Penal Code), sections* 182, 211—*Criminal Procedure Code, section* 195—*Information given to the police alleged to be false—Procedure—Notice.*

Where a District Magistrate upon a report made by the police that information given to them charging a person with a specific crime is false, orders the person giving such information to be prosecuted under section 211 of the Indian Penal Code, such order is not an order to which section 195(*b*) of the Code of Criminal Procedure applies, neither is the order passed without jurisdiction if no previous notice to show cause is given to the accused. The more proper course, however, would be to let the informant bring his witnesses into Court, hear them out, and then, if the case was considered to be a false case, to pass an order that the informant should be tried under section 211 of the Indian Penal Code. *Queen Empress* v. *Ganga Ram* (1), *Emperor* v. *Tula* (2) and *Haibat Khan* v. *Emperor* (3) distinguished.

THE facts of this case are as follows:—

One Tabarak Zaman Khan on the 7th June last sent a letter written by himself through his servant Sumera to the Sub-Inspector of Kampil Police Circle, charging one Sukha Ahir with having committed the offence of theft. The police investigated the case, and, considering the charge not proved, sent in what is known as *naksha B*. They asked that the case might be expunged from the register of crimes and that a case might be

* Criminal Reference No. 585 of 1907, by Muhammad Ishaq Khan, Sessions Judge of Farrukhabad, in respect of an order of D. Calnan, District Magistrate of Farrukhabad, dated the 18th of July 1907.

(1) (1885) I. L. R., 8 All., 38. (2) (1907) I. L. R., 29 All., 587.
(3) (1905) I. L. R., 33 Calc., 31.

instituted against Tabarak Zaman Khan for having given false information to the Police. The proceedings never went any further and never reached any Court. The District Magistrate after perusing them passed an order to the effect that a case might be instituted against Tabarak Zaman Khan and that he should be charged with having committed an offence under section 211 of the Indian Penal Code. Against this order Tabarak Zaman Khan applied in revision to the Sessions Judge, who, being of opinion that the Magistrate's order was irregular as having been passed without notice to Tabarak Zaman Khan, submitted the record to the High Court under section 438 of the Code of Criminal Procedure with the recommendation that the Magistrate's order should be set aside.

KNOX, J.—Tabarak Zaman Khan on the 7th June last sent a letter written by himself through his servant Sumera to the Sub-Inspector of Kampil Police Circle, charging one Sukha Ahir with having committed the offence of theft. The police investigated the case, and, considering the charge not proved, sent in what is known as *naksha B*. They asked that the case might be expunged from the register of crimes and that a case might be instituted against Tabarak Zaman Khan for having given false information to the Police. The proceedings never went any further and never reached any Court. The District Magistrate after perusing them passed an order to the effect that a case might be instituted against Tabarak Zaman Khan and that he should be charged with having committed an offence under section 211 of the Indian Penal Code. The learned Sessions Judge was asked to consider this order and to send it on to this Court for revision. He has done so. He considers that in passing the order he did, the Magistrate took action under section 195, clause (*b*) of the Code of Criminal Procedure. He is of opinion that the applicant should have been given an opportunity to prove the charge which had been brought by his servant, and that an order of this kind, being an order prejudicial to Tabarak Zaman Khan, should not have been passed without notice given to Tabarak Zaman Khan. The order passed by the District Magistrate could not have been an order under section 195(*b*) of the Code of Criminal Procedure. By making his report at the police thana

1907

EMPEROR v. TABARAK ZAMAN KHAN.

at Kampil, Tabarak Zaman Khan had committed no offence in, or in relation to, any proceeding in any Court, the more so, as he did not follow up his report by complaint in any Court. Section 195(*b*) has no application to the case, and the argument based by the learned Sessions Judge upon it falls to the ground. The cases which the learned Sessions Judge has referred to in his letter of reference to this Court, *viz.*, *King Emperor* v. *Ganga Ram* (1) and *Emperor* v. *Tula* (2), refer to complaints which had been lodged in a Criminal Court, and in both these cases no further action could be taken against the complainant except under a sanction expressly given under section 195 (*b*) of the Code of Criminal Procedure. The case of *Haibat Khan* v. *Emperor* (3) was a case in which "a judicial inquiry" had been held by a Court. Here also a sanction under section 195 (*b*) would have been necessary before any action could be taken against the complainant.

The argument that the order should not have been passed without notice to Tabarak Zaman Khan, in my opinion proceeds too far. If the view taken by the learned Sessions Judge be correct, then an order passed by the District Magistrate upon what is known as *naksha B.* to the effect that an accused person should be sent up for trial for murder or theft, when the Police considers that there is no case of murder or theft, would be an order without notice given to the supposed murderer or thief, to show cause why such prejudicial order should not be passed against him. As a rule in cases like the one before me, the safer and more proper course is undoubtedly to let the informant bring his witnesses to the Court, hear them out, and then pass an order, if the case is considered to be a false one, to the effect that the informant be tried for having instituted a false case; but I am not prepared to hold that the Magistrate while passing an order like the one under reference is acting without jurisdiction merely because the informant had not an opportunity given him to show cause why a case under section 211 should not be instituted against him. The case before me is really one for inquiry under section 182 of the Indian Penal Code, and not under section 211

(1) (1885) I. L. R., 8 All., 38. (2) (1907) I. L. R., 29 All., 587.
(3) (1905) I. L. R., 33 Calc., 31.

of the Indian Penal Code. After these remarks I decline to interfere, and return the record to the Court below for such action as it may think necessary to take.

1907

EMPEROR v. TABARAK ZAMAN KHAN.

1907 *November* 21.

APPELLATE CIVIL.

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

RUP CHAND (PLAINTIFF) *v.* DASODHA AND ANOTHER (DEFENDANTS).*

Guardian ad litem—*Appeal—Guardian* ad litem *not made a party by appellant—Limitation.*

Where a guardian *ad litem* of a defendant respondent was not made a party to an appeal filed by the plaintiff until after the period of limitation for filing such appeal had expired, it was *held* that the appeal was not for this reason time-barred. *Khem Karan* v. *Har Dayal* (1) followed.

THE facts of this case, so far as they are necessary for the purposes of this report are as follows. The suit was brought by one Rup Chand, for a declaration that he and his uncle Hardwari Lal, were beneficially entitled as members of a joint Hindu family to all the ancestral property derived from one Narain Das. The defendant Musammat Dasodha, the widow of Lalu Mal a great grandson of Narain Das, defended the suit upon the ground that the family was separate. Musammat Dasodha was a minor, and was represented in the Court of first instance by a guardian *ad litem*. The suit was dismissed. The plaintiff appealed, but did not implead the guardian *ad litem*. When the mistake was discovered an application was made to the High Court to rectify the mistake; but this was not done until after the period of limitation for the appeal had expired. At the hearing a preliminary objection was taken by the respondents that the appeal was barred by limitation.

Mr. *W. Wallach*, the Hon'ble Pandit *Sundar Lal* and Babu *Jogindro Nath Chaudhri*, for the appellant.

Pandit *Moti Lal Nehru* and Dr. *Satish Chandra Banerji*, for the respondents.

STANLEY, C.J., and BURKITT, J.—Mr. *Moti Lal* for the respondents raised a preliminary objection to the hearing of this

*First Appeal No. 190 of 1905 from a decree of Nihal Chandra, Subordinate Judge of Saharanpur, dated the 26th of April 1905.

(1) (1881) I. L. R., 4 All., 87.