

of the case the learned Judge, in disposing of the argument that the petitioner's act was not criminal as his entry was for the purpose of having connexion with Bhaba Sundari, remarks: "There is no evidence that the woman invited him in, or consented to his intrusion, and when seized he was guilty of extreme violence," and we should do wrong, were we, in the existing state of the evidence in the case, to assume, as we were invited to do by the pleader who appeared before us on behalf of the petitioner, that the intrusion of the petitioner was less distasteful to Bhaba Sundari than to any other member of the complainant's household. The learned Judge refused to accept that view, and on that ground, as we understand his judgment, declined to disturb the conviction. What we have then to deal with is the case of a man, a stranger, who uninvited and without any right whatever to be there, effects an entry in the middle of the night into the sleeping apartment of two women, members of a respectable household, and who, when the attempt is made to capture him, uses great violence in the effort to make good his escape. Under such circumstances we think a Court ought to presume that the entry was effected with an intent such as is provided for by s. 441 of the Penal Code. This is the view upon which the learned Judge has acted, and we therefore think that his decision ought to be upheld.

Conviction upheld.

H. T. H.

Before Mr. Justice Prinsep and Mr. Justice Hill.

KEDARNATH DAS (PETITIONER) v. MOHESH CHUNDER CHUCKERBUTTY AND ANOTHER (OPPOSITE PARTIES).*

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May 18.

Criminal Procedure Code (Act X of 1882), s. 195—Sanction to prosecute—Notice to accused—Revisional power, Exercise of, by High Court.

When Subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not.

* Criminal Motion No. 175 of 1889 against the order passed by Moulvie Abdul Jubber, Officiating Presidency Magistrate of Calcutta, Northern Division, dated the 11th of April 1889.

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A Magistrate, in disposing of a charge of theft, delivered the following judgment: "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted."

There was no further record of the proceedings. Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that it was not the proper time fixed by him to hear applications.

The attorney for the complainant, who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to and in the absence of the complainant or his attorney, and the Magistrate granted the sanction asked for.

On an application to the High Court to revoke the sanction: *Held*, that the Magistrate did not exercise a proper discretion under the circumstances in neglecting to give the complainant notice of the application, and an opportunity of being heard.

Held, further, that the mere fact of the charge laid by the complainant not having been proved, was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the record to show that there were sufficient grounds for granting the sanction, it should be revoked.

THE facts which gave rise to this application were as follows:—

The petitioners, Kedarnath Das and his brother, were, according to the allegation of the petitioners, the owners of the southern portion of No. 6 Bholanath Coondoo's Lane in Calcutta, which had been allotted to them under a decree for partition passed by the High Court in its ordinary original civil jurisdiction. In an affidavit filed in support of his application Kedarnath Das stated that in the Bengali year 1293 (1886-87), Mohesh Chunder Chuckerbutty and Nobo Coomar Chuckerbutty, the opposite parties, who were their purohits, requested him and his brothers to allow them to reside in the portion of the second premises so allotted to them, promising to vacate as soon as they were asked to do so, and that he and his brother allowed them to reside there.

In his affidavit he went on to state that on the first day of March he called on the said Nobo Coomar Chuckerbutty and Mohesh Chunder Chuckerbutty, and informed them that the house

was badly in need of repairs, and that he and his brothers wished to repair the same and desired them to leave the house as soon as possible, and he placed two of his servants, Jooman and Hem Raj, in the house.

That on the 5th March, having received information that the said Nobo Coomar Chuckerbutty and Mohesh Chnuder Chuckerbutty had ordered his servants to leave the house, he called there and met Nobo Coomar Chuckerbutty, who threatened to break his head if he entered the house, but that he entered the house and told his servants not to leave it, and finding that the sudder-door was wholly out of repair and about to fall in pieces, he removed the same to his dwelling-house.

That on the 9th March, having received information that his servants had been turned out of the said house, he called there, and on seeing him Nobo Coomar Chuckerbutty left the house and proceeded towards the direction of the Burtollah thannah. That he went into the house and found that the cook-room had no door, and certain doors and windows, which he had stored in one of the godowns, were missing, and he found a carpenter employed in sawing certain rafters. Seeing this he went to the thannah and informed the jemadar of what had happened, and thereupon the jemadar wrote something in a book and desired him to put his signature thereto, which he did.

That thereafter and on the same day a jemadar of police went to the house, but he did not make any enquiries into the petitioner's charge, while he made certain enquiries into a certain complaint preferred by Nobo Coomar Chuckerbutty against the petitioner, and made him produce the sudder-door which he had removed on the 5th March, but which did not in any way relate to the subject-matter of his complaint. Thereafter, the Inspector of the thannah reported to the Deputy Commissioner of Police that the petitioner's complaint was a false one, whereupon he directed the Inspector to prosecute him. Subsequently, at the instance of the said Inspector, a summons was issued against him.

That on the day of the hearing of the said complaint, he appeared in the Calcutta Police Court with his attorney, Baboo Kali Nath Mitter, who informed the Hon'ble Syed Amir Hossein,

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the Magistrate of the Northern Division of Calcutta, of the circumstances under which the complaint was made, and the action taken by the police, and that there was no judicial enquiry as to the truth or otherwise of the said complaint; thereupon the said Magistrate ordered summons to issue against Nobo Coomar Chuckerbutty and Mohesh Chunder Chuckerbutty, on the complaint preferred by the petitioner, and, accordingly summonses were issued against them, returnable on the 10th day of April instant.

That on the 10th day of April, the petitioner appeared with his attorney, Baboo Kali Nath Mitter, before Syed Abdul Jubber, who was officiating as Presidency Magistrate, and his attorney explained to the Magistrate the circumstances under which the case was placed before him, and in support of the petitioner's complaint, his attorney examined him and his brother Amrita Lal Das and also Luckhimoney, Koosum, Hurry Mati, Falgu Mistry and Netto Lall Chunder, as witnesses, but the Magistrate did not take any notes of their evidence, and after the case for the prosecution was closed delivered his judgment.

That he and his witnesses proved the existence of the doors and windows in the house at the time when Nobo Coomar Chuckerbutty and Mohesh Chunder Chuckerbutty were in possession of the same, but that he could not give and did not attempt to give any evidence of the taking thereof by Nobo Coomar Chuckerbutty and Mohesh Chunder Chuckerbutty or either of them.

That after the defendants were discharged, their pleader, Mr. Cranenburgh, applied to the Magistrate for sanction to prosecute him, when the Magistrate stated that he would not hear any application then, as it was not the proper time to hear applications. That his attorney then and there requested the Magistrate not to grant any sanction without notice to the petitioner, when the said Magistrate stated that, when the application for sanction was made to him, he would then consider whether he would issue any notice or not.

That thereafter on the 11th of April, the Magistrate, without any notice to the petitioner or his attorney, granted sanction for the prosecution of the petitioner.

The judgment of the Magistrate, delivered on the 10th of April, was as follows:—

"Kedarnath Das v. Nobo Coomar Chuckerbutty and Mohesh Chunder Chuckerbutty.

Decision:

"The charge of theft of doors and windows is not proved at all against the accused. They are acquitted.

(Sd.) ABDUL JUBBER,

Offg. Presidency Magistrate."

The sanction granted by the Magistrate on the 11th April was in the following terms:—

"Sanction is hereby given to Mohesh Chunder Chuckerbutty and Nobo Coomar Chuckerbutty, under s. 195 of the Criminal Procedure Code, to prosecute Kedarnath Das, under ss. 211 and 182 of the Penal Code, for having, on the 25th March last, in the said Court, with intent to cause injury to the said complainants, instituted a criminal proceeding against them, and falsely charged them with having, on the 9th March last, in Bholanath Coondoo's Lane, committed theft of two pairs of doors two windows and 25 rafters, knowing that there was no just or lawful cause for such proceeding or charge.

11th April 1889.

Prosecution sanctioned.

(Sd.) A. J.

11th April 1889.

Issue summons, ss. 182 and 211.

(Sd.) A. J."

On the 26th of April, Mr. *M. P. Gasper* applied to the High Court (*MACPHERSON and RAMPINI, JJ.*), for a rule, calling on the Presidency Magistrate and the opposite parties to show cause why the order granting the sanction should not be set aside and the sanction revoked, and a rule in these terms was granted.

The application was based on a petition and affidavit of Kedarnath Das setting out the above facts.

The rule now came on to be heard.

Mr. *M. P. Gasper* and Babu *Kali Nath Mitter* in support of the rule for the petitioner.

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Baboo *Mohun Chand Mitter* for the opposite parties.

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The judgment of the High Court (PRINSEP and HILL, JJ.) was as follows :—

This is a rule issued on an application made by the petitioner for the revocation of a sanction granted by the Presidency Magistrate of the Northern Division of the Town of Calcutta under s. 195, Code of Criminal Procedure, to prosecute him under ss. 182 and 211, Penal Code, in respect of certain proceedings taken by him in the Court of that Magistrate. We have nothing really amounting to any record of the proceedings in that case beyond the judgment of the Magistrate to the effect that "the charge of theft of doors and windows made by the petitioner was not proved at all against the accused." It appears that after the dismissal of that case, an application was made for sanction to prosecute the petitioner Kedarnath Das, in the presence of his attorney, and that the Magistrate declined to hear that application at once, and stated that it should be made at the hour fixed by him for the hearing of such applications. This order, we are told, was made, although the attorney for the petitioner Kedarnath Das expressed his willingness to have the application then heard in his presence, and intimated that he was prepared to oppose it. The application, it seems, was subsequently renewed in the absence of that attorney and granted.

Now, although it has been recently held by a Full Bench of this Court that service of notice before a sanction is given under s. 195 is not absolutely necessary, still, under the circumstances stated, we think that the Magistrate did not exercise a proper discretion in neglecting to give the other side through his attorney an opportunity of being heard, especially after he had intimated that he was prepared to oppose that application; and, further, we think that the Magistrate did not exercise a proper discretion because, so far as we can learn the facts of this case, he should not have readily granted the sanction asked for. Under s. 195, a discretion is granted to us to revoke any sanction which may have been granted by any authority, such as a Presidency Magistrate of Calcutta, subordinate to us, and therefore the law imposes upon us a responsibility in such matters to consider

whether the application has been properly granted or not. It is therefore incumbent upon the Subordinate Courts so to frame the proceedings before them as to satisfy this Court as a Court of revision. In the present case we have absolutely nothing before us except the judgment of the Magistrate recording that the charge preferred by the petitioner Kedarnath was not proved. Now, the fact that that charge was not proved was in itself no sufficient ground for granting the accused in that case permission to prosecute the complainant with having intentionally and falsely charged him with such offence. Under such circumstances, we think that there were no sufficient grounds for granting the sanction to prosecute the petitioner, and that that order should accordingly be revoked.

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Rule made absolute.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

IN THE MATTER OF BICHITRANUND DASS AND OTHERS (PETITIONERS)
v. BHUGBUT PERAI (OPPOSITE PARTY).

IN THE MATTER OF BICHITRANUND DASS AND OTHERS (PETITIONERS)
v. DUKHAI JANA (OPPOSITE PARTY).*

1889
May 20.

Jurisdiction of Criminal Court—Tributary Mehals—Kheonjur—“Local Area”—Code of Criminal Procedure (Act X of 1882) ss. 182 and 531.

The Penal Code and Criminal Procedure Code have no application to the Tributary Mehal of Kheonjur which is on precisely the same footing in that respect as Mohurbhunj.

Certain persons, officers of the Maharajah of Kheonjur, one of whom was a resident of the Cuttack district, and the others residents of Kheonjur, were charged before the Deputy Magistrate of Tajpore with certain offences under the Penal Code. They were convicted, and on appeal to the Sessions Judge, the conviction was upheld. It was found by the Sessions Judge that the scene of the occurrence which gave rise to the charges was within the Territory of Kheonjur.

Held, that the Deputy Magistrate and Sessions Judge had no jurisdiction to try the case, and that the conviction must be set aside.

* Criminal Motions Nos. 4 and 6 of 1889 against the order passed by J. B. Worgan, Esquire, Sessions Judge of Cuttack, dated the 27th of September 1888; modifying the order passed by J. S. Davidson, Esquire, Deputy Magistrate of Tajpore, dated the 6th of February 1888.