

REVISIONAL CRIMINAL.

1912
January, 17.

Before Mr. Justice Karamat Husain.

ABDUL GHAFUR AND ANOTHER v. RAZA HUSAIN.*

Criminal Procedure Code, section 476—Preliminary inquiry—Revision.

When a Magistrate takes action under section 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry, nor, if he does hold preliminary inquiry, is it necessary that he should give the person against whom such inquiry is being held an opportunity of cross-examining the witnesses. *Queen-Empress v. Matabadal* (1) followed.

Maulvi Muhammad Rahmat-ullah, for the applicants.

The Assistant Government Advocate (Mr. R. Malcomson) (with whom Babu Durga Charan Singh) for the opposite party.

In this case an Assistant Collector of the first class acting under section 476 of the Code of Criminal Procedure directed certain persons to be prosecuted under section 193 of the Indian Penal Code. The persons against whom this order was made appealed to the District Judge, who rejected their appeal. They then applied to the High Court on the criminal side for revision, but this was held to be barred. They then prayed that their application might be considered as one on the civil side and contended that the Assistant Collector was wrong in that he had not allowed the applicants an opportunity of cross-examining the witnesses examined before him in the inquiry under section 476 of the Code of Criminal Procedure.

KARAMAT HUSAIN, J:—In this case an Assistant Collector of first class acting under section 476, Criminal Procedure Code, directed the applicants to be prosecuted under section 193 of the Indian Penal Code. The applicants appealed to the learned District Judge of Banda, for revoking the sanction. The application was rejected by the learned District Judge and the order of the Assistant Collector was confirmed. The applicants came to this Court in revision on the criminal side. The learned vakil for the opposite party, relying on the Full Bench ruling of this Court in *In the matter of the petition of Bhup Kunwar* (2), contends that the High Court has no jurisdiction, in the

* Criminal Revision No. 653 of 1911, from an order of Muhammad Ali, District Judge of Banda, dated the 31st of July 1911.

(1) (1893) I. L. R., 15 All., 392. (2) (1903) I. L. R., 26 All., 249.

1912

ABDUL
GHAFUR
v.
RAZA
HUSAIN.

exercise of its revisional powers on the criminal side under section 439 of the Code of Criminal Procedure to interfere with such orders. The Full Bench ruling in the case referred to is binding upon me. The learned vakil for the applicants prays that permission may be given to him to alter the application into a civil revision, inasmuch as the order passed by the Assistant Collector of the first class is based on the statements of the witnesses who were not allowed to be cross-examined by the applicants. In *Chota Sadoo Peadah v. Bhoobun Chuckerbutty* (1) it was laid down that the preliminary inquiry need not be held in the presence of the accused, and in *Queen-Empress v. Matabadal* (2), it was ruled that when a Magistrate takes action under section 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. I am, therefore, of opinion that the Magistrate in refusing to give the applicants an opportunity to cross-examine the witnesses did not act in the exercise of his jurisdiction illegally or with material irregularity. For the above reasons, I reject the application.

Application rejected.

APPELLATE CIVIL.

1912

January, 18.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

JUGAL KISHORE AND OTHERS (DEFENDANTS) v. RAM NARAIN AND OTHERS
(PLAINTIFFS).*

Act No. IV of 1882 (Transfer of Property Act), section 101—Purchase—Satisfaction of mortgage on property purchased—Intention of purchaser to keep mortgage alive for his benefit—Presumption.

In considering the question whether an incumbrance should be deemed to continue to subsist on the ground that the continuance of it was for the benefit of the person who has acquired the property, the point of time to be regarded is the date of the acquisition of the property. If an intention to keep alive a charge on property is inconsistent with the real intention of the parties to the deed by which the purchaser of the property takes an assignment of it, the charge cannot be treated as still subsisting simply because the purchaser afterwards finds that it would have been better for him to have kept the charge alive. *Liquidation*

* Second Appeal No. 416 of 1911, from a decree of H. E. L. P. Dupernex, District Judge of Mainpuri, dated the 21st of February, 1911, confirming a decree of Banke Behari Lal, Subordinate Judge of Mainpuri, dated the 29th of June 1910.