

1911

DEBI
MANGAL
PRASAD
SINGH
v.
MAHADEO
PRASAD
SINGH.

favour of the appellant for the one-third of the share with mesne profits which came to Dulhan Sahibzad Kunwari on partition and was held by her.

The respondents will pay the costs of the appeal.

Appeal allowed.

Solicitors for the appellant:—*Barrow, Rogers and Nevill.*

Solicitors for the respondents:—*T. L. Wilson & Co.*

J. V. W.

REVISIONAL CRIMINAL.

1911
November 29

Before the Hon'ble Mr. H. G. Richards, Chief Justice.

EMPEROR v. LAL SINGH.*

Criminal Procedure Code, section 407—Sanction to prosecute—Application to Magistrate of the first class—Appeal to District Magistrate—Transfer—Jurisdiction.

Section 407 of the Criminal Procedure Code does not entitle a District Magistrate to send appeals under section 195 of that Code to a Magistrate of the first class subordinate to him. That section deals with appeals from convictions. *Sadhu Lal v. Ram Churn Pasi* (1) followed.

This was an application in revision arising out of an application for sanction to prosecute. The original application was made more than three months after the decision of the case from which it arose. The Magistrate, who originally heard the case, had been transferred in the mean time. The successor of the Magistrate granted sanction. The opposite party appealed under section 195 of the Code of Criminal Procedure to the District Magistrate, who transferred the appeal to a Magistrate of the first class subordinate to him.

The appeal was dismissed and thereupon the opposite party applied in revision to the High Court.

Mr. C. Dillon (with him Babu Balram Chandra Mukerji), for the applicant, contended that the application for sanction was made more than three months after the case was over. The other party waited till the officer who decided the case went away on leave. Under such circumstances sanction should not have been granted.

* Criminal Revision No. 614 of 1911, from an order of Kasim Beg Chagta, Magistrate, first class, of Budaun, dated the 11th of October, 1911.

The Collector had no jurisdiction to transfer the appeal to another Magistrate. He referred to *Sadhu Lal v. Ram Churn Pasi* (1).

The Hon'ble Pandit *Moti Lal Nehru*, for opposite party, was heard in reply.

RICHARDS, C. J.—This is an application to set aside the orders of two Magistrates of the first class, granting sanction to prosecute under sections 193 and 211 of the Indian Penal Code. The application for sanction was not made before the same Magistrate as had originally tried the case, but it was made to his successor, who granted sanction. There was an appeal to the District Magistrate, who apparently directed that the appeal should be heard by another Magistrate of the first class subordinate to him. The learned District Magistrate was evidently exercising what he considered to be the power vested in him under section 407. In my opinion this section does not entitle the District Magistrate to send appeals under section 195 of the Criminal Procedure Code to a Magistrate of the first class subordinate to him. The section deals with appeals from convictions. This view of the section was taken in the case of *Sadhu Lal v. Ram Churn Pasi* (1). I therefore allow the application, set aside the order of Mr. Kasim Beg Chagtai, and send back the case to the District Magistrate with directions that he should hear the appeal himself. I expressly abstain from stating any view upon the merits.

(1) (1903) I. L. R., 30 Calc., 994.

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