

REVISIONAL CRIMINAL.

1912
September, 3.

Before Mr. Justice Muhammad Rafiq.

EMPEROR v. RAM PRASAD AND ANOTHER.*

Act No. XLV of 1860 (Indian Penal Code), section 199—Sanction to prosecute — Prosecution based on alleged false declaration—Declaration inadmissible in evidence.

A declaration, before it can be made the foundation of a prosecution under section 199 of the Indian Penal Code, must be one which is admissible in evidence, and which the court before which it is filed is bound or authorized by law to receive in evidence.

The facts of this case were as follows :—

On the 19th of February, 1912, three complaints were filed in the court of the City Magistrate of Cawnpore, namely, (1) Musammat Rupia v. Ram Dial and Ram Sahai, (2) Ram Dial v. Gauri Shankar, (3) Ram Sahai v. Gauri Shankar. The learned City Magistrate transferred the three complaints to a Bench of Honorary Magistrates, composed of Nawab Khakan Husain and Pandit Kundan Lal, for disposal. There were several postponements during the trial of the three cases, and on the 21st of May, 1912, charge sheets were framed. On the 31st of May, 1912, three applications were filed in the court of District Magistrate of Cawnpore, by Ram Sahai and Ram Dial, for the transfer of the three cases from the Bench of the Honorary Magistrates to some other court. The applicants for transfer made certain allegations against the Honorary Magistrates. The three applications were accompanied by three declarations, the latter being made by Ram Prasad, Puttan Lal and Ala Bakhsh. The three declarations were not sworn to before any officer of a court. The District Magistrate called upon the Honorary Magistrates for an explanation, which was submitted on the 26th of June, 1912. On the 29th of June, 1912, an order of the transfer of the three cases to the court of the City Magistrate was made. On the 1st of July, 1912, the opposite party, namely, Musammat Rupia and Gauri Shankar, objected to the order of transfer on the ground that no notice of the application for transfer had been given to them. The District Magistrate cancelled his order of the 29th of June, 1912, and fixed the 6th of July, 1912, for the hearing and disposal of the transfer applications. On

* Criminal Revision No. 581 of 1912 against an order of H. Bomford, District Magistrate of Cawnpore, dated the 30th of July, 1912.

that date some oral evidence was recorded by the District Magistrate and an order of transfer was made. On the 15th of July, 1912, Pandit Kundan Lal and Nawab Khakan Husain, the Honorary Magistrates, addressed a letter to the District Magistrate, denying the allegations contained in the three declarations of Ram Prasad, Puttan Lal and Ala Bakhsh, and submitting their own affidavits contradicting the said declarations. After hearing the parties concerned the learned District Magistrate sanctioned the prosecution of Ram Prasad, Puttan Lal and Ala Bakhsh, under section 199 of the Indian Penal Code. Against this order Ram Prasad applied in revision to the High Court.

Mr. C. Dillon (with Mr. W. Wallach), for the applicants.

Babu Satya Chandru Mukerji, for the opposite parties.

MUHAMMAD RAFIQ, J.—This is an application in revision, praying that the order of the District Magistrate of Cawnpore, dated the 30th of July, 1912, sanctioning the prosecution of the applicants under section 199 of the Indian Penal Code be set aside. The circumstances which led to the grant of the sanction are as follows:—On the 19th of February, 1912, three complaints were filed in the court of the City Magistrate of Cawnpore, namely, (1) Musammat Rupia v. Ram Dial and Ram Sahai, (2) Ram Dial v. Gauri Shankar, (3) Ram Sahai v. Gauri Shankar. The learned City Magistrate transferred the three complaints to a Bench of Honorary Magistrates, composed of Nawab Khakan Husain and Pandit Kundan Lal, for disposal. There were several postponements during the trial of the three cases, and on the 21st of May, 1912, charge sheets were framed. On the 31st of May, 1912, three applications were filed in the court of District Magistrate of Cawnpore, by Ram Sahai and Ram Dial, for the transfer of the three cases from the Bench of the Honorary Magistrates to some other court. The applicants for transfer made certain allegations against the Honorary Magistrates. The three applications were accompanied by three declarations, the latter being made by Ram Prasad, Puttan Lal and Ala Bakhsh. The three declarations were not sworn to before any officer of a court. The District Magistrate called upon the Honorary Magistrates for an explanation, which was submitted on the 26th of June, 1912. On the 29th of June, 1912, an order for the transfer of the three cases to the court of City Magistrate was made. On the 1st of July, 1912, the opposite party,

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namely, Musammat Rupia and Gauri Shankar, objected to the order of transfer on the ground that no notice of the application for transfer had been given to them. The District Magistrate cancelled his order of the 29th of June, 1912, and fixed the 6th of July, 1912, for the hearing and disposal of the transfer applications. On that date some oral evidence was recorded by the District Magistrate and an order of transfer was made. On the 15th of July, 1912, Pandit Kundan Lal and Nawab Khakan Husain, the Honorary Magistrates, addressed a letter to the District Magistrate, denying the allegations contained in the three declarations of Ram Prasad, Puttan Lal and Ala Bakhsh, and submitting their own affidavits contradicting the said declarations. After hearing the parties concerned the learned District Magistrate sanctioned the prosecution of Ram Prasad, Puttan Lal and Ala Bakhsh, under section 199 of the Indian Penal Code. It is against this order that the applicant, Ram Prasad, has filed the present application. It is contended by his learned counsel that the order of the learned District Magistrate is *ultra vires*; that no valid ground for granting the sanction has been made out, and that no offence under section 199 of the Indian Penal Code has been committed by the applicant. I shall take up the last objection first. It is admitted by the applicant for the purposes of this application that a declaration was filed by him in the court of the District Magistrate with his application for transfer. It is, however, argued that the declaration was not one which the District Magistrate was bound or authorized by law to receive in evidence and to act upon it, and indeed he did not consider it evidence, for he examined some witness on the basis of whose statements an order of transfer was made. Therefore, if the declaration in question contained any false statement, no offence under section 199 of the Indian Penal Code has been committed. In support of this contention the following cases have been cited:—(1) *In the matter of the petition of Iswar Chunder Guho and others* (1), *Abdul Majid v. Krishna Lal Nag* (2), *Chandi Pershad v. Abdur Rahman* (3). I think that the contention for the applicant must prevail. A declaration, before it can be made the foundation of a prosecution under section 199 of the Indian Penal Code, must be one which is admissible in evidence, and which the court

(1887) I. L. R., 14 Cal., 653.

(2) (1893) I. L. R., 20 Cal., 724.

(3) (1894) I. L. R., 22 Cal., 131.

before which it is filed is bound or authorized by law to receive in evidence. The suggestion that there is no prohibition against the reception of such declaration in evidence does not render it admissible or the declarant amenable to the provision of section 199 of the Indian Penal Code. It is not pointed out for the opposite party that the declaration filed by Ram Prasad was one which under the Criminal Procedure Code, or any other law, the court before which the proceedings were pending was bound or authorized to receive in evidence. I therefore hold that the sanction granted by the learned District Magistrate for the prosecution of the applicant under section 199 of Indian Penal Code, cannot be upheld. It is unnecessary to discuss the other objections taken on behalf of the applicant. I, therefore, set aside the order of the learned District Magistrate, dated the 30th July, 1912, as against Ram Prasad.

Application allowed.

Before Mr. Justice Muhammad Rafiq.

GIGA v. MUHAMMAD AMIN*

Act No. XIII of 1859 (Workman's Breach of Contract Act)—Procedure—Special procedure under the Act not applicable to ordinary loans between master and workman.

Held that the special procedure provided by Act No. XIII of 1859 for the recovery of money advanced in the circumstances therein described is not applicable where money is advanced to a workman, not for the purpose of assisting him to complete a specific piece of work, but as an ordinary loan to be repaid out of the workman's wages. *In the matter of Anusoori Sanyasi (1)* referred to.

The applicant Giga, having employed one Muhammad Amin to work at his shop, lent Muhammad Amin some money under an agreement by which the loan was to be repaid out of Muhammad Amin's wages. Before, however, the loan was repaid, Muhammad Amin left the service of Giga. Giga thereupon filed a complaint against Muhammad Amin under Act No. XIII of 1859 in the court of the Cantonment Magistrate of Cawnpore. The Magistrate referred the matter in dispute to arbitration. The majority of the arbitrators filed an award decreeing the sum of Rs. 51-4 to Giga, and that sum was paid. Giga, however, applied in revision to the Sessions Judge to set aside the order of the Cantonment Magistrate, and failing there, made a further application to the High Court.

* Criminal Revision No. 732 of 1912 from an order of W. F. Kirton, Sessions Judge of Cawnpore, dated the 7th of September, 1912.

(1) (1904) I. L. R., 28 Mad., 37.

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