

case of *Abdus Salam v. Wilayat Ali Khan* (1) has been cited. It is unnecessary for us to express any opinion upon this case. It is clearly distinguishable from the present because at the date when the money in that case was attached and paid out the pre-emption decree stood good and the money was payable to the vendee. In the present case, when the money was paid over the decree of the court of first instance had been set aside by the District Judge, and the money, if it belonged to any one, belonged to the pre-emptor. We allow the appeal to this extent that we vary the decree both of this court and of the lower appellate court by directing that the plaintiff *Najib Khan* shall have possession upon the terms of his paying into court the sum of Rs. 193-4-6, within two months from this date. We direct that the appellants do have their costs of both hearings in this Court. In the court below each party will bear his own costs.

Decree modified.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

AHSAN-ULLAH KHAN. v. MANSUKH RAM.*

Criminal Procedure Code, sections 195 and 439—Sanction to prosecute—Revision—Powers of High Court.

Section 195 of the Code of Criminal Procedure does not enable the High Court to reconsider an order of a Sessions Judge, refusing under clause (6) to grant a sanction to prosecute which was refused by the Magistrate, and although the revisional jurisdiction of the High Court under section 439 of the Code of Criminal Procedure can always be exercised in order to prevent a gross and palpable failure of justice, it should not be exercised in such a way as to practically give a right of appeal in cases where such right is definitely excluded by the Code.

IN this case one Mansukh Ram brought a criminal charge against Ahsan-ullah Khan, and others alleging the commission by them of offences punishable under sections 427 and 147 of the Indian Penal Code. The accused persons were acquitted. Thereafter Ahsan-ullah Khan applied to the trying Magistrate for sanction to prosecute Mansukh Ram, and his principal

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* Criminal Revision No. 175 of 1914, from an order of L. Johnston, Sessions Judge of Meerut, dated the 7th of November, 1913.

(1), Weekly Notes, 1897, p. 81.

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witnesses for the offence of giving false evidence punishable under section 193 of the Indian Penal Code. The Magistrate, for reasons stated by him in his order, granted sanction in respect of Mansukh Ram, but rejected the applications in respect of the witnesses, and on a further application under section 195 of the Code of Criminal Procedure, this order was upheld by the Sessions Judge. Ahsan-ullah Khan thereupon applied in revision to the High Court.

Mr. G. P. Boys, for the applicant.

Mr. R. K. Sorabji, for the opposite party.

PIGGOTT, J.—I have before me a series of connected applications by one Ahsan-ullah Khan, arising out of the following circumstances. Mansukh Ram brought a criminal charge against Ahsan-ullah Khan and others, alleging the commission by them of offences punishable under sections 427 and 147 of the Indian Penal Code. After a very careful trial the accused persons were acquitted. Some two months after the order of acquittal, Ahsan-ullah Khan presented to the court of the trying magistrate a series of applications asking for sanction to prosecute Mansukh Ram and his principal witnesses for the offence of giving false evidence punishable under section 193 of the Indian Penal Code. In connection with the said prosecution the magistrate found that one of Mansukh Ram's witnesses had made a statement in support of which he produced a certain document, and that an examination of that document affords strong reasons for supposing that the statement made by him was false. He sanctioned the prosecution of that witness. He rejected the remaining applications in an order the substance of which I understand to be that there was no reason to believe that the offences alleged by Mansukh Ram had in fact been committed; that his judgement of acquittal could not be considered as amounting to more than this; that Mansukh Ram had failed to prove by convincing evidence that these offences had been committed by Ahsan-ullah Khan and others; that in his opinion a conviction upon the materials available, when once Mansukh Ram and his fellow witnesses were placed in the dock instead of the witness-box, was decidedly improbable, and that finally the case as a whole seemed to him to be one in which a court should either have taken action of its own motion under section 476 of the

Code of Criminal Procedure or should decline to take any action at all. Ahsan-ullah took this order, as he was perfectly entitled to do, before the Sessions Judge under clause (6) of section 195 of the Code of Criminal Procedure. The Sessions Judge in a brief order has expressed a general concurrence with the view of the magistrate. I take it to be settled law that nothing in section 195 of the Code of Criminal Procedure itself justifies this Court in reconsidering the order of the Sessions Judge. The question is whether the case is one in which this Court after examining all the records in question, should in its discretion exercise powers conferred on it by section 439 of the Code of Criminal Procedure. The revisional jurisdiction of this Court can always be exercised in order to prevent a gross and palpable failure of justice. At the same time it should not be so exercised as to make one portion of the Code of Criminal Procedure conflict with another, as would be the case were this Court to permit the practice to grow up of invoking its interference in revision so as to give a right of appeal where such right is definitely excluded by other provisions of the Code of Criminal Procedure. I called for the record of this case and issued notice to Mansukh Ram and the other accused persons in order to satisfy myself whether the case was one in which it could be said that the orders of courts below had proceeded upon clearly erroneous principles of law, or were likely to result in obvious failure of justice. I have now fully considered the whole question in the light more particularly of the elaborate judgement written by the trying magistrate when he acquitted Ahsan-ullah Khan and the persons accused along with him. I think it sufficient to say that, having done this, I do not regard the present case as a suitable one for the exercise of the revisional jurisdiction of this Court. The applications will stand dismissed and the records will be returned.

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Application dismissed.