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in the latter case apply equally well to the present case. They said: "We do not think that the Legislature by using the words 'or otherwise' in section 438 intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to this Court upon that ground." The Bombay High Court seems to take the same view in the matter. [See *Emperor v. Krishnaji Shyam Rao* (1), in which the order passed by the Sessions Judge was an appellate order]. I doubt very much whether the District Magistrate is entitled as a matter of law to make this reference, but, assuming that he is so entitled, I think it is extremely inconvenient that a District Magistrate should criticize an order of a court superior to him in this way. In the present case it seems that the District Magistrate having failed to induce the Sessions Judge to send the case to this Court asked the Commissioner of the Division to send the case up to the Local Government with a view to having the case brought to the notice of this Court by the Government Advocate, but the Commissioner declined to do so. It is quite clear that this Court ought not to interfere in a case of this kind except for special reasons. There appear to be no special reasons in the present case. All that can be said is that the sentence inflicted is some what lighter than is generally inflicted in a case of this kind. In the circumstances I decline to interfere. Let the papers be returned.

APPELLATE CIVIL.

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April, 28.

Before Mr. Justice Muhammad Raftq and Mr. Justice Piggott.

MATHURA PRASAD (PETITIONER) v. DURGAWATI AND OTHERS (OPPOSITE PARTIES).*

Act No. VII of 1889 (*Succession Certificate Act*), section 4—*Application for certificate—Applicant alleging himself to be joint with deceased and entitled to his estate by survivorship.*

Where an applicant for a succession certificate stated in his application that he was a member of a joint Hindu family with the deceased to whose estate he had succeeded by survivorship. *Held*, that a succession certificate was unnecessary and the application must fail.

* First Appeal No. 203 of 1913 from an order of C. W. Grant, District Judge of Bareilly, dated the 28th of August, 1913.

THIS was an application for a succession certificate under Act No. VII of 1889. The applicant came into court on the allegation that Gaya Prasad, his brother, died joint with him, and as the banks in which his money was deposited would not give him the money without the production of a succession certificate he made the present application. He also said that a will had been executed by the deceased, the validity of which, however, he disputed. He was not a legatee under the will, though one of his sons was. The application was opposed by two of the other three legatees. The Judge rejected the application on the ground that as the applicant admitted he was joint with the deceased he could not be given a certificate. He also found that the deceased did not die joint with the applicant.

Babu Benode Behari, for the appellant :—

It was a matter of common knowledge that banks insisted on the production of succession certificates. There were cases which showed that a surviving member of a joint family need not get a succession certificate, but there was nothing in the Act to prevent his getting one if he wanted.

Mr. Sham Nath Mushran (with him Pandit Ramakant Malaviya), for the respondents cited *Pateshvari Partap Narain Singh v. Bhagwati Prasad* (1) and *Jagmohandas Kilabhai v. Allu Maria Duskal* (2).

MUHAMMAD RAFIQ and PIGGOTT, JJ.—This is an appeal from an order rejecting the application of the appellant for grant of a succession certificate under Act VII of 1889. The appellant in his application to the lower court stated that the deceased Gaya Prasad, in respect of whose estate the certificate was wanted, was his brother and lived with him as a member of a joint undivided Hindu family. There were certain other allegations made in the application which need not be referred to. The application was opposed and the learned Judge rejected it. No evidence was given by either side in the court below in support of the allegations made in the application. The learned Judge in rejecting the application said that he thought that the two brothers were separate and that one of the legatees under the will of the deceased was a more likely person to apply for and to be granted a succession

(1) (1895) I. L. R., 17 All., 578.

(2) (1894) I. L. R., 19 Bom., 338.

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certificate. We do not think that there was any evidence before the learned Judge to enable him to come to a decision with regard to the character of the family of the appellant and his deceased brother Gaya Prasad. Taking the application as it stands we think that it must fail. If the appellant was joint with his brother Gaya Prasad, he, the appellant, has succeeded to the estate of the deceased by survivorship, and in such a case, a certificate under Act VII of 1889 is unnecessary. The application, therefore, fails and the appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

BINDHACHAL PRASAD RAI v. LAL BIHARI RAI AND OTHERS.*

Criminal Procedure Code, sections 107 and 250—Fivolous or vexatious complaint—Compensation—Application to Magistrate to bind over certain persons to keep the peace.

A person in respect of whom information has been laid before a Magistrate to the effect that he is likely to commit a breach of the peace or is otherwise liable to the provisions of section 107 of the Code of Criminal Procedure is not a person accused of any "offence". Order for payment of compensation cannot, therefore, be made against a man who has petitioned a Magistrate to take action under section 107 of the Code.

ONE Bindhachal Prasad Rai presented a petition to a Magistrate of the first class of the Gorakhpur district praying that action might be taken under section 107 of the Code of Criminal Procedure against the petitioner's brother, Lal Bihari Rai, and other persons therein named. The Magistrate heard evidence in support of the petition and came to the conclusion that there existed no grounds whatever for his taking action under section 107, and that in fact "the four accused had been wantonly and maliciously dragged into court by the complainant out of potty spite and in revenge for his own defeat in the case brought against him by Lal Bihari I." The Magistrate accordingly, purporting to act under section 250 of the Code, ordered the petitioner to pay Rs. 50 as compensation to each of the persons named in the

* Criminal Revision No. 198 of 1914 from an order of R. T. Booth, first class Magistrate of Gorakhpur, dated the 17th of February, 1914.