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and in fact was a necessary party. If, on the other hand, she had repudiated the action of her servants as being beyond the scope of their authority (as indeed their action was as found by the court) then in all probability she could have put a stop to their illegal behaviour for the future and no orders of the court would have been necessary.

As it is the order of the court secures no permanent result. It is a personal order binding four individual servants of the lady. If she is really desirous of obtaining the dues now paid to Rameshwar, all she has to do is to re-place these individuals by others who will not be bound by the order and the whole trouble will begin again.

If, on the other hand, the finding had been against Rameshwar, all that he need have done, was to get a substitute appointed in his stead and so proceedings might go on *ad in finitum.*

In my opinion section 145 was not intended to meet a case precisely like this one, and on the second ground taken, I set aside the order as being one without jurisdiction under that section.

In my opinion section 107, Criminal Procedure Code, was the appropriate section, and it will be open to the court to take proceedings under that section, if it is of opinion that such action is called for.

Order set aside.

Before Mr. Justice Tudball and Mr. Justice Piggott.

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Criminal Procedure Code, sections 119 *and* 437—*Security for good behaviour—"Release" or "discharge"—Competence of District Magistrate to order further inquiry under section* 437 *against a person in whose favour an order under section* 119 *has been passed.*

Held that a person who has been "released" or "discharged" under section 119 of the Code of Criminal Procedure is so far in the position of "an accused person who has been discharged" within the meaning of section 437 of the Code that it is competent to the District Magistrate to take further action against such a person under the last named section.

Where, however, proceedings had twice been taken under section 110 without result, and the District Magistrate had not given the person concerned any opportunity of showing cause against the order which might be passed, his

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* Criminal Revision No. 867 of 1913 from an order of H. G. S. Tyler, District Magistrate of Cawnpore, dated the 14th of August, 1913.

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proceedings were set aside. *Queen Empress* v. *Ahmad Khan* (1), *Sheo Din* v. *King-Emperor* (2), *Muhammad Khan* v. *King-Emperor* (3), *Velu Tayi Ammal* v. *Chidambaravelu Pillai* (4), *Queen Empress* v. *Imam Mondal* (5), *Dayanath Taluqdar* v. *Emperor* (6), *Hopcroft* v. *Emperor* (7), *King-Emperor* v. *Fyaz-ud-din* (8), *Queen Empress* v. *Mutasaddi Lal* (9) and *Queen Empress* v. *Ratti* (10) referred to.

THE facts of this case were as follows:—

One Kharga was called upon to show cause why he should not furnish security for good behaviour. The Magistrate before whom the proceedings took place came to the conclusion, after hearing the evidence produced by the police, that no case had been made out for taking security from Kharga. He ordered Kharga to be released under section 119 of the Code of Criminal Procedure. The District Magistrate, on examining the record, made an order under section 437 of the Code of Criminal Procedure directing further inquiry into the case, and the case went before another Magistrate. The latter drew up fresh proceedings under section 112 of the Code of Criminal Procedure and made a fresh inquiry. On the evidence produced he was of opinion that no necessity for requiring security for good behaviour was established against Kharga, and released him. Thereupon, the District Magistrate again examined the record and again directed further inquiry under section 437. Against this order Kharga applied in revision to the High Court.

Babu *Sital Prasad Ghosh*, for the applicant:—

The first question for determination is whether the District Magistrate had authority to order further inquiry under section 437, Criminal Procedure Code, in this case; in other words, whether proceedings terminating with an order under section 119 of the Code of Criminal Procedure, can be deemed to be a "case of any accused person who has been discharged" within the meaning of section 437. I need not, in this case, raise the contention whether a person who is proceeded against under Chapter VIII B of the Criminal Procedure Code is or is not an "accused person"; it has been ruled by this Court that he is. The question is what is the

(1) Weekly Notes, 1900, p. 206.
(2) (1903) 6 Oudh Cases, 262.
(3) (1905) Punj. Rec., Cr. J., p. 102.
(4) (1909) I. L. R., 33 Mad., 85.
(5) (1900) I. L. R., 27 Calc., 662.
(6) (1905) I. L. R., 33 Calc., 8.
(7) (1908) I. L. R., 36 Calc., 163.
(8) (1901) I. L. R., 24 All., 148.
(9) (1898) I. L. R., 21 All., 107.
(10) Weekly Notes, 1899, p. 203.

meaning of the word "discharged" in section 437. I submit it means "discharged from an offence charged" against the accused person. The case of a person discharged under section 119 cannot come within this meaning, for he has never been charged with the commission of any offence. "Discharged" in section 437 must be deemed equivalent to "discharged within the meaning of sections 209, 253 and 259, Criminal Procedure Code." Section 437 has, therefore, no application to an order of "discharge" passed under section 119; *Velu Tayi Ammal* v. *Chidambaravelu Pillai* (1) *Queen-Empress* v. *Imam Mondal* (2), *Queen-Empress* v. *Ahmad Khan* (3), *Muhammad Khan* v. *King-Emperor*, (4) *Sheo Din* v. *King-Emperor* (5), *Dayanath Taluqdar* v. *Emperor* (6).

Apart from this, the present case clearly does not come within the scope of section 437. Here, the man has not been "discharged" at all; he has been "released" under section 119. Both the words "released" and "discharged" occur in that section; they are used in contra-distinction with each other. The applicant was in custody during the inquiry under Chapter VIII, and so the order under section 119 passed in his case was an order of "release". The Legislature having intentionally made a distinction between the two terms it cannot be said that a person "released" under section 119 is a person who has been "discharged," and so section 437 cannot apply to his case.

The next question is whether, assuming section 437 applies, the order directing further inquiry is a proper order in the circumstances of the case. The applicant was twice subjected to an inquiry under Chapter VIII and two different magistrates came to the conclusion that no case had been made out for demanding security from him. Under these circumstances the order directing further inquiry is uncalled for.

Assistant Government Advocate, (Mr. *R. Malcomson*) for the Crown:

Section 437 of the Code of Criminal Procedure applies to the case of a person released or discharged under section 119. A person who is proceeded against under Chapter VIII is an "accused

(1) (1909) I. L. R., 33 Mad., 85.
(2) (1900) I. L. R., 27 Calc., 662.
(3) Weekly Notes, 1900, p. 203.
(4) (1905) Punj. Rec., Cr. J., p. 102.
(5) (1903) 6 Oudh Cases, 262.
(6) (1905) I. L. R., 33 Calc., 8.

person" *Queen-Empress* v. *Mutasaddi Lal* (1) and *Hopcroft* v. *Emperor* (2).

Under the Criminal Procedure Code the only modes by which an accused person is let off are acquittal and discharge. The order releasing the applicant under section 119 is certainly not an acquittal, it is a discharge. The case, therefore, comes within the clause "case of an accused person who has been discharged" of section 437. The word "discharged" has, no doubt, been used in the Criminal Procedure Code with different meanings at different places; for example 'discharging a witness", "discharging a bail-bond," "discharging a jury" as well as "discharging an accused person." But confining the term to an accused person, it cannot be said that it has one meaning in section 119 and a different meaning in the other parts of the Code. I rely on the following cases: *Queen-Empress* v. *Ratti* (3), *King-Emperor* v. *Fyaz ud-din* (4), *Queen Empress* v. *Mutasaddi Lal* (1).

Then, although both the words "release" and "discharge" are used in section 119, it does not follow that there is such a distinction between them—that the case of a person released under that section does not come within the scope of the words "case of an accused person who has been discharged" in section 437. The distinction is based merely on the circumstance whether the person is in custody or on bail; in the former case he is "released" or allowed to depart, and in the latter case he is "discharged," that is to say, the bail-bond is cancelled. The case in 19 A. W. N., 203, already cited, is direct authority for the proposition that the word "released" in section 119 is not used in contra-distinction to "discharged" in section 437, and that a person "released" under section 119 comes within the scope of section 437. Of the cases cited by the applicant, the case in 20 A. W. N., 206, merely follows the case in 27 Calc., 662; it does not give any reasons. In the case in 6 O. C., 262, the District Magistrate did not profess to act under section 437; the case is beside the point and goes too far. In the case in 33 Calc., 8, the scope of section 437 was not considered; there the District Magistrate had on appeal ordered further inquiry and directed security to be taken for a large amount and

(1) (1898) I. L. R., 21 All., 107.
(2) (1908) I. L. R., 36 Calc., 163.
(3) Weekly Notes, 1899, p. 203.
(4) (1901) I. L. R., 24 All., 148.

for a long period, and it was held that he had no power to order the further inquiry in the terms in which he did so. On the merits of the case, no doubt the applicant had been twice discharged; but if the District Magistrate, who is responsible for keeping the peace and maintaining good behaviour, in his district, is of opinion after inspecting the record that it is necessary to bind the applicant over to be of good behaviour, his discretion should not be lightly interfered with.

Babu *Sital Prasad Ghosh*, in reply :—The case in 21 All., 107, does not discuss the meaning of the word " discharged " in section 437. In the case in 24 All., 148, the District Magistrate had not acted under section 437 at all; and Knox, J., distinguished that case from the case in 20 A. W. N., 206, on this ground.

TUDBALL, and PIGGOTT, JJ:—This is an application in revision against an order of the District Magistrate of Cawnpore, purporting to have been passed under section 437 of the Code of Criminal Procedure in regard to proceedings taken against the applicant under section 110 of the Code. The facts of the case are simple. Proceedings were instituted against Kharga and he was called upon to show cause why he should not give security for his good behaviour. The Magistrate before whom he appeared inquired into the matter and, after recording the evidence, discharged him. The District Magistrate examined the record and directed further inquiry. This was made by another Magistrate, who, after recording evidence, held that there was no necessity to bind over the man to be of good behaviour. The District Magistrate, without issuing any notice to Kharga, has again sent for the record and has again directed further inquiry.

We note here that at the second of the two above inquiries the Magistrate drew up a fresh formal order under section 112 of the Code.

Two grounds are taken before us:

(1) " That section 437 of the Code does not apply to proceedings under this Chapter (VIII) at all and the Magistrate had no power to direct a further inquiry as he has done.

(2) " That, even assuming that the order passed is within the District Magistrate's powers, still the applicant having undergone the ordeal of two inquiries and having been discharged by two

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different magistrates, ought not to be subjected to any further proceedings, at least for the present."

Strictly speaking, by reason of the view which we take of the merits, it is unnecessary for us to decide the first point for the purposes of this case, but as it has been raised in another case (*King-Emperor* v. *Sheobher and Jageshar*) which has been heard in conjunction with the present one we deem it fit to consider and decide it.

Section 437, Criminal Procedure Code, authorizes a District Magistrate to make or direct the making of further inquiry into *(a)* any complaint which has been dismissed under section 203 or sub-section (3) of section 204; or *(b)* the case of any *accused* person who has been *discharged.*

It is clear that the action taken by the District Magistrate, if taken under this section, could only fall under the latter of the two above-mentioned sets of circumstances, i.e., the case of any accused person who has been discharged. In view of the rulings of this Court, it is conceded for the applicant that he is an "accused" person within the meaning of this section, but it is pleaded that he is not a person who has been "discharged" within its meaning, inasmuch as the word "discharged" here means "discharged from an offence charged against him" and in proceedings under Chapter VIII the accused is not charged with any offence and if the Magistrate does not deem it necessary to make his order absolute he either releases the accused, if in custody, or discharges him, i.e., allows him to leave the court, only if he is on bail. In support of this plea the attention of the Court has been called to the following rulings:—*Queen-Empress* v. *Ahmad Khan* (1), *Sheo Din* v. *King-Emperor* (2), *Muhammad Khan* v. *King-Emperor* (3), *Velu Tayi Ammal* v. *Chidambaravelu Pillai* (4), *Queen-Empress* v. *Imam Mondal* (5), *Dayanath Taluqdar* v. *Emperor* (6) and *Hopcroft* v. *Emperor* (7).

On the other hand, it cannot be overlooked that there are the following rulings of our own Court which are against the applicant's contention:—*King-Emperor* v. *Fyaz-ud-din* (8),

(1) (1900) Weekly Notes, 1900, p. 206.
(2) (1903) 6 Oudh Cases, 262.
(3) (1905) Punj. Rec., Cr. J., p. 102.
(4) (1909) I. L. R., 33 Mad., 85.
(5) (1900) I. L. R., 27 Calc., 662.
(6) (1905) I. L. R., 33 Calc., 8.
(7) (1908) I. L. R., 36 Calc., 163.
(8) (1901) I. L. R., 24 All., 148.

Queen-Empress v. *Mutasaddi Lal* (1) and *Queen-Empress* v. *Ratti* (2).

It is urged also that the section would not apply to the case of a person who had been "released" under section 119, who clearly is not, in view of the language of the section, a person "discharged."

The question is what meaning the Legislature intended to give to the word "*discharged*" in section 437. If the matter were "*res integra*" we should be inclined to hold that section 437 was never intended to apply at all to proceedings under Chapter VIII, chiefly for the reason, as pointed out in *Muhammad Khan* v. *King-Emperor* (3) and *Dayanath Taluqdar* v. *Emperor* (4), that there is apparently no reason, so far as the provisions of the Code go, why the District Magistrate should not at any moment institute fresh proceedings under the Chapter, for good and sufficient reasons, against a person in whose case an order of release or discharge has been passed under section 119. We are aware of the ruling in the Oudh case mentioned above where it was laid down in the judgement that such fresh proceedings should not be instituted at least for "some months," but neither the Code nor good reasoning lays down any period. All that is necessary in our opinion for such action is "good and sufficient reason." It is not inconceivable that a wrong order of release or discharge may be passed in the case of a man who is a real and serious danger to society and in whose case it may be imperatively necessary for the public welfare to take fresh steps: and in taking these fresh steps we can see no reason why the District Magistrate should not examine the record of the former proceeding.

But, as we have pointed out, the trend of the decisions in this Court is clearly to the effect that the language of section 437 is wide enough to cover the case of a person in whose case an order of release or discharge (both of which are really to the same effect) has been passed under section 119. The only decision to the contrary is that of Aikman J., in *Queen-Empress* v. *Ahmad Khan* (5), and his decision was based merely on the Calcutta ruling mentioned therein, without giving any other reason.

(1) (1898) I. L. R., 21 All., 107. (3) (1905) Punj. Rec., Cr. J., p. 102.
(2) Weekly Notes, 1899, p. 203. (4) (1905) I. L. R., 33 Calc., 8.
(5) Weekly Notes, 1900., p. 206,

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The District Magistrate has jurisdiction over the entire district and is responsible for the preservation of peace and order therein; his responsibility has been recognized in a peculiar manner by the Criminal Procedure Code, in that he is made the court of appeal from the orders of first class magistrates in proceedings under Chapter VIII. It was clearly intended that he should have authority to take further action in the event of his feeling satisfied that a person who had been called on to show cause why he should not furnish security had been improperly discharged by a magistrate subordinate to him. His authority in the matter does not appear to have been doubted in any of the reported cases, except in the Oudh case, with which we are unable to concur. The only question then is as to the procedure which the District Magistrate should adopt in the circumstances stated. Other High Courts have, by excluding his jurisdiction under section 437 of the Code of Criminal Procedure, left it open to him to take cognizance of the matter upon such information as he may consider satisfactory and sufficient, to pass a fresh order under section 112 of the Code, and then (if he thinks proper) to transfer the case thus instituted to some subordinate court for disposal. Our High Court has in the main preferred the view that the District Magistrate, when he is in effect taking up in revision a case decided by a subordinate magistrate, should do so formally under the section provided for the purpose, viz., section 437 of the Code of Criminal Procedure. The words of that section do not, in our opinion, definitely exclude this interpretation. We are not disposed, therefore, to disturb the general trend of authority in this Court, merely in order to compel District Magistrates to appeal to their wider territorial jurisdiction for the sake of getting round the order of a subordinate court. By putting a reasonably wide interpretation on the word "discharged" in section 437, Criminal Procedure Code, our High Court has regularized the entire proceeding, and has incidentally brought it under the operation of sound principles of law, such as the principle that an order directing further inquiry into a case like the present should not have been passed without first giving the accused person an opportunity of showing cause against it.

As to the merits of this case we feel no hesitation. The applicant has been through two inquiries by two different magistrates

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who have both discharged him. Without giving him an opportunity of showing cause the District Magistrate has directed at once (and on what, as far as we can see, are insufficient grounds) a third inquiry. We do not think that this order can be supported and we accordingly set it aside.

Application allowed.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
January, 17.

PRAG AND ANOTHER (DEFENDANTS) *v.* SITAL PRASAD AND ANOTHER (PLAINTIFFS)*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 10—*Exproprietary tenant—Contract to pay a higher rate of rent than that prescribed by law invalid.*

Held that a proprietor who becomes, by the operation of section 10 of the Agra Tenancy Act, 1901, an exproprietary tenant cannot enter into a valid agreement to pay rent for his exproprietary holding at a higher rate than that prescribed by the section.

THE facts of this case were as follows:—

The defendants were *proprietors of certain sir land.* They mortgaged it to the plaintiff. Having under the law become exproprietary tenants of the land they agreed to pay rent at a higher rate than was payable under section 10 of the Agra Tenancy Act. The plaintiff sued for rent at the rate agreed upon. The defence was that the rate agreed upon was in contravention of the law. The first court dismissed the suit. The lower appellate court decreed it, and a single Judge of the High Court confirmed the appellate decree in the following judgement:—

"In my opinion the lower appellate court's decision was correct. The appellants parted with their proprietary rights in the land and agreed to pay rent therefor at a rate considerably in excess of that laid down in section 10 of the Tenancy Act. That section lays down that they should be entitled to held the land at a certain rent. But this does not in my opinion preclude them from entering into an agreement to pay at a higher rate. Several rulings have been quoted to show that an agreement to resign exproprietary rights is not enforcible. But the section lays down that a proprietor who parts with his proprietary rights *shall* become a tenant. It does not lay down that he shall be *entitled* to become a tenant. As I read the section, there is nothing to prevent such a tenant from contracting to pay rent at any rate that may be

*Appeal No. 63 of 1913 under section 10 of the Letters Patent.