

has already referred to put the case on clear, and, I think, absolutely unassailable ground. If it is *bond fide*, it is clearly in aid of execution. The result is that *prima facie* such an application is in aid of execution until it is shown to be *malâ fide*. I do not think there is really any conflict between these cases.

BY THE COURT.—The application is allowed, the order of the court below set aside, and the case remanded to that court with directions to re-admit the application for execution to its pending file and to proceed with it according to law. The decree-holder is entitled to his costs.

Application allowed.

Before Mr. Justice Muhammad Rafiq.

EMPEROR v. KASHI SHUKUL AND ANOTHER.*

Criminal Procedure Code, section 476—Practice—Order for prosecution for perjury—Court bound to set out assignments of perjury alleged—Civil Procedure Code, section 115—Revision—Material irregularity.

Held that when a civil court makes an order under section 476 directing that a person should be prosecuted for perjury, such court is bound to set forth in its order the specific assignments of perjury alleged against the accused. Failure to do so is a material irregularity within the meaning of section 115 of the Code of Civil Procedure.

THE facts of this case were as follows:—

One Kashi Shukul brought a suit against Rameshar Misra for recovery of money on the basis of a *chitthi*, or letter, dated the 16th of March, 1911. The defendant denied the writing of the *chitthi* and the passing of the consideration. The Munsif who tried the suit held the claim to be false and the *chitthi* not genuine.

He accordingly dismissed the suit on the 16th of September, 1914. Several months afterwards, the defendant applied for sanction to prosecute the present applicants on charges of forgery and perjury. On the 3rd of May, 1915, this application was refused, but a notice was issued to the present applicants by the Munsif who tried the suit to show cause why an order for their prosecution should not be made. The notice was given presumably under section 476 of the Code of Criminal Procedure. Subsequently, another Munsif came in place of the Munsif who had tried the

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suit, and he passed the order on the 26th of February, 1916, directing prosecution of the present applicants under sections 193, 467, and 471 of the Indian Penal Code, and also for such other offence or offences they may be found to have committed. Against this order the present application in revision was made.

Mr. J. M. Banerji, for the applicants :—

The order of the Munsif is more of the nature of a roving commission. There were several statements made and unless the order specifies clearly what statements are false, the order, as it stands, is bad. Numerous Calcutta rulings were cited in support of this contention.

Mr. W. K. Porter, (with him Mr. A. E. Ryves), for the opposite party :—

This is not a case in which the High Court should interfere having regard to section 115 of the Civil Procedure Code; *In the Matter of the Petition of Bhup Kunwar* (1). The applicants here are coming up, as they are bound to do, on the Civil side of the Court, not the Criminal side, and the revisional powers of this Court on the Civil side are not nearly so wide as those on the Criminal side. This is apparent from a comparison of sections 195 and 476 of the Code of Criminal Procedure with section 115 of the Code of Civil Procedure. Section 476, Criminal Procedure Code, regards the order of the Munsif as a complaint, though it is a complaint made by a judicial officer and not by a private person. Being a complaint it need not be specific, and it is against the practice of this Court to interfere with complaints except under very special circumstances.

There is no doubt that the Munsif might have been more specific. It is, however, absolutely ridiculous for the other side to say that they do not know what they are prosecuted for. The accused are not taken by surprise. They did not even take the trouble to appear to show cause against the notice issued to them.

Mr. J. M. Banerji, was not heard in reply.

MUHAMMAD RAFIQ, J.—This is an application in revision from the order of the Munsif of Gorakhpur, made under section 476 of the Criminal Procedure Code, directing the prosecution of the applicants on charges under sections 193, 471 and 467 of the

Indian Penal Code. It appears that Kashi Shukul, one of the applicants, brought a civil suit against Rameshar Misir for the recovery of Rs. 522, principal and interest, on the basis of a *chitthi* or letter, dated the 16th of March, 1911. Rameshar Misir denied the execution of the *chitthi* and the receipt of consideration. The learned Munsif who tried the civil suit held that the claim was a false one and that the *chitthi* was not genuine, and the claim was accordingly dismissed on the 16th of February, 1914. Several months after, an application was made by Rameshar Misir for sanction to prosecute the present applicants on charges of perjury and forgery. The application, it is said, was rejected on the 3rd of May, 1915. A notice, however, was issued by the Munsif to the present applicants to show cause why they should not be committed to take their trial on the charges of perjury and forgery. The notice was presumably given under section 476 of the Criminal Procedure Code. In the meantime the learned Munsif who had tried the suit and issued the notice was transferred and another Munsif came in his place. He passed an order on the 26th of February, 1916, directing the prosecution of Kashi Shukul under sections 193, 471 and 467 of the Indian Penal Code, of Sarab Sukh under section 193 of the Indian Penal Code and of Bhagirath Shukul under sections 193 and 467 of the Indian Penal Code. He further added that the "Magistrate will convict the three applicants of any other charge that may be proved." In his order the learned Munsif did not specify the statements of the three applicants in respect of which he wanted them to be prosecuted for the charges of perjury, nor did he specify the portion of the document in respect of which he was of opinion that Kashi Shukul and Bhagirath Shukul had committed forgery. The applicants, in their application in revision to this Court, contend that the order of the Munsif is bad in law inasmuch as it is vague and gives a general direction to the Criminal Court to try them and convict them on any charge that may be proved. For the opposite party the objection is that this revision is a civil revision and the powers of this Court on the Civil side are narrower than those on the Criminal side. The omission by the learned Munsif in his order to specify the foundations of the charges is not such as would entitle this Court to

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exercise its powers under section 115, Civil Procedure Code. I am unable to accede to this contention. In my opinion even if the Civil revisional jurisdiction of the Court is less wide than that on the Criminal side, the omission by the learned Munsif to specify the statements in respect of which he bases the charge of perjury against the three applicants and to mention the forged portion of the document amounts at least to a material irregularity. And the direction by the learned Munsif to the Magistrate, to convict the three applicants of any other offences that may be proved is clearly without jurisdiction. I have read the judgement in the civil suit and I find that there are several statements made by the three applicants and the order of the Munsif does not specify in respect of which of the statements he wants the three applicants to be prosecuted for perjury. The document, i.e., the *chitthi*, purports to be signed by Rameshar Misir. The learned Munsif in his order does not say whether he considers the signature of Rameshar also to have been forged. I think that the applicants are entitled to know what are the statements in respect of which they are charged with perjury and which portion of the document is said to have been forged by them, and to object to their committal on a general charge embracing any and all the offences mentioned in the Indian Penal Code. The delay in taking the proceedings under section 476 of the Criminal Procedure Code has not also been explained. In a case, where steps under section 476, Criminal Procedure Code, are to be taken, it is highly desirable that they should be taken as soon as possible and not delayed so long as has been done in this case. For these reasons I allow the application and set aside the order of the learned Munsif, dated the 26th of February, 1916.

Application allowed.