

been dismissed on the ground that the appellants were *benami-dars*. As between the appellants and Sheo Prasad and Tulshi Ram on the one hand and the judgement-debtors on the other we hold that the application of the appellants is maintainable. We put it in this form because we have been told that in consequence of the decision of the court below one Gopal Das who held a decree against Sheo Prasad and Tulshi Ram has in execution of that decree attached, brought to sale and purchased himself the rights of Sheo Prasad and Tulshi Ram under the decree *nisi* of January, 1904, and we have also been informed that the present appellants have brought a suit for a declaration of their rights as beneficial owners of the decree *nisi*. It will be for the court below to consider and determine the effect of the alleged purchase by Gopal Das and of any decision that may be arrived at in the suit brought by the appellants for a declaration of their rights. We would also point out that Gopal Narain and others resisted the application for an order absolute on the ground that they are purchasers of two-thirds of a village called Pale Kalan and they say that the suit was dismissed by the High Court against them and their property. This is a point which must be taken up and decided by the court below. We set aside the order of the court below and sending the case back to that court we direct that the appellant's application be restored to the pending file and disposed of according to law. Costs of this appeal will be costs in the cause.

Appeal decreed—Cause remanded.

Before Mr. Justice Chamier and Mr. Justice Piggott.

EMPEROR v. RAHMAT AND OTHERS.*

Criminal Procedure Code, sections 345 and 439—Compromise—Assault in the course of which the person assaulted received fatal injuries—High Court's revisional juri diction.

Four persons assaulted one P with the result that P died.

Held that it was not competent to the widow of P to compound the case with P's assailants in respect of the injuries caused to P.

Held further, that when several persons were acquitted by the Sessions Judge and on being moved by the Government, the High Court issued warrants

* Criminal Appeal No. 186 of 1915, by the Local Government from an order of Mohan Lal Hukku, Officiating Sessions Judge of Agra, dated the 12th December, 1914.

1915

KAMTA
PRASAD
v.
INDOMATI.

1915
April 21.

1915

EMPEROR
v.
RAHMAT.

for their arrest, only one was arrested but the others were absconding, the High Court in the exercise of its revisional jurisdiction is competent to set aside the order of their acquittal.

THE facts of this case are as follows :—

One Pir Bakhsh was assaulted by four men with *lathis* and the injuries he received were so serious that he died. The Magistrate, who inquired into the case framed a charge under section 325, Indian Penal Code, but committed the accused persons for trial before the Court of Session. In the Court of Session the prosecution applied for an amendment of the charge into one under section 304, Indian Penal Code, or one under section 302, Indian Penal Code. The Sessions Judge rejected this application.

Thereupon the accused persons and the wife of the deceased applied for permission to compound the offence. The Sessions Judge permitted them to compound the offence and acquitted the accused persons. The Local Government appealed from this order of acquittal.

The Government Advocate (Mr. *A. E. Ryves*) for the Crown.

Mr. *J. M. Banerji* (for Mr. *C. Ross Alston*, with Munshi *Benode Behari*) for the opposite party.

CHAMIER and PIGGOTT, JJ.—This is a Government appeal against an order of acquittal and is brought under the following circumstances. There were four accused persons, Rahmat, Moti, son of Pir Bakhsh, Jhandu and Moti, son of Khilari, all of the Banjara caste, and the case against them was that they had beaten with *lathis* their caste fellow, Pir Bakhsh, inflicting serious injuries which as a matter of fact resulted in the death of the said Pir Bakhsh. The Magistrate who inquired into the case, for reasons given by him, framed a charge under section 325, Indian Penal Code, but committed the accused persons for trial before the Court of Session. The case unfortunately came before a Sessions Judge of very limited experience. He rejected an application made on behalf of the prosecution for amendment of the charge into one under section 304, Indian Penal Code, or section 302, Indian Penal Code, and then permitted the case to be compounded upon an arrangement come to between the accused persons and the widow of the deceased. He thus acquitted the accused without taking any evidence at all. The order

1915

EMPEROR
v.
RAHMAT

is obviously illegal. An offence punishable under section 325, Indian Penal Code, is no doubt compoundable with the permission of the court, but it is compoundable by the person to whom the hurt was caused. In this case the person to whom the hurt was caused was dead and the case was certainly not compoundable by his widow.

In dealing with this matter to-day we are placed in a certain difficulty. Moti, son of Pir Bakhsh, has been arrested and has had notice of to-day's hearing. He has been represented before us by counsel. The other three accused persons cannot be found and are presumably absconding. The warrant issued by this Court for their arrest has not hitherto been executed. Notices of to-day's hearing were issued to them and they have been served on their near relatives, but they themselves cannot be found. The Government Advocate, who appears in support of the appeal, informs us that he is willing to withdraw the appeal as against the three absconding accused provided this Court is prepared to take up the case so far as they are concerned in the exercise of its revisional jurisdiction. The case is a very clear one and there is no question of convicting any of the accused on evidence upon the record. Over and above setting aside an order of acquittal, all that we could do would be to direct these persons to be tried. Under these circumstances we think that the three absconding accused have been given a reasonable opportunity of being heard to-day in their defence, within the meaning of the 2nd clause of section 439, Code of Criminal Procedure, and that we can take up the question as regards them in the exercise of our revisional jurisdiction.

With regard to Moti, son of Pir Bakhsh, therefore we so far accept this appeal that we set aside the order of acquittal passed in respect of the said Moti and direct that he be put on his trial before the Court of Session. As regards Rahmat, Jhandu and Moti, son of Khilari, the Government appeal against their acquittal is withdrawn. Taking up the matter in the exercise of our revisional jurisdiction we set aside the order acquitting these three men, which is clearly an illegal order. We leave the local authorities to take such steps with regard to the prosecution of these three men as they may consider suitable.

Appeal decreed.