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the learned Sessions Judge to have recorded evidence in the case, or at any rate the evidence particularly bearing on the question of the recovery of the pair of earrings already alluded to. In passing an order of acquittal without taking any evidence, and without any withdrawal of the prosecution by a public prosecutor properly authorized to withdraw the same under section 494 of the Code of Criminal Procedure, the learned Sessions Judge adopted in our opinion an irregular procedure. At the same time, under the circumstances of this particular case, we are not disposed to interfere. The fact of the matter is, as already pointed out, that the courts concerned, and we have no doubt also the District Magistrate, were placed in a difficulty by the irregular order passed by the Sessions Court on the 26th of May, 1914. Apparently, in the opinion of those responsible for conducting the prosecution, Gangua had not given false evidence, either in respect of this pair of earrings or in any other matter of importance. Consequently, when the learned pleader instructed by the District Magistrate was called upon to inform the Sessions Judge what evidence there was on which he relied as showing that Gangua had forfeited his pardon, he was unable to state that evidence to the satisfaction of the Sessions Court. It would seem that this prosecution ought never to have been instituted and would never have been instituted, but for the Sessions Judge's order of the 26th of May, 1914. For these reasons we decline to interfere in this matter, and merely order that the record be returned. If Gangua is under arrest he should be at once released; otherwise his security is hereby discharged.

*Record returned.*

*Before Mr. Justice Chamier.*

EMPEROR v. BHAJAN TEWARI.\*

*Civil Procedure Code (1908), sections 68 and 70; schedule III—Execution of decree by Collector—Delegation to Assistant Collector of functions of Collector—Application to Assistant Collector to take action ultra vires—Act No. XLV of 1860 (Indian Penal Code), section 182.*

A obtained a decree for money against B. In execution thereof certain immovable property was ordered to be sold, and the execution was transferred to the Collector of Basti under section 68 of the Code of Civil Procedure. The

\* Criminal Revision No. 117 of 1915, from an order of Shibhan Lal, Magistrate, first class, of Basti, dated the 8th of January, 1915.

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property was sold and purchased by C. B applied for permission to deposit the sum decreed and five per cent. of the purchase money. He next presented a petition saying that he had made the required deposit. Subsequently he put in a petition to the effect that some unauthorized person had paid the money into the Treasury, and that he had been compelled to put his thumb impression on a blank paper which was used for the petition aforesaid. This petition was presented to the Assistant Collector and that officer ordered B's prosecution under section 182, Indian Penal Code.

*Held*, that inasmuch as the Assistant Collector had no power to deal with B's applications except by passing them on to the Collector, section 182 of the Indian Penal Code did not apply and the Assistant Collector had no jurisdiction to order B to be prosecuted thereunder.

THE facts of this case were as follows:—

One Bindhachal Tewari obtained a decree for money against Bhajan Tewari and others in the court of the Munsif of Basti. In execution of that decree immovable property was ordered to be sold, and the execution of the decree was transferred under section 68 of the Code of Civil Procedure to the Collector of Basti. On the 23rd of October, 1914, a sale took place, and the property was knocked down to one Ramphal Misra. On the 3rd of November, 1914, the judgement-debtor presented a petition under rule 30 of the rules made by the Local Government under sections 68 and 70 of the Code of Civil Procedure praying for permission to pay the sum decreed and five per cent. of the purchase money. Next day he presented a petition in which he said he had paid in the sum required by rule 30, and he prayed that the sale might be set aside. On the 5th of November, he put in a petition saying that some unauthorized person had paid the money into the Treasury and he charged Bansi and others with having compelled him to put his thumb impression on a blank paper which was subsequently used for the petition under rule 30.

The Assistant Collector on perusal of this application directed the prosecution of Bhajan Tewari under section 182 of the Indian Penal Code. Bhajan Tewari applied in revision against this order to the High Court.

Mr. R. K. Sorabji, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson) for the Crown.

CHAMIER, J.—This is an application for revision of an order passed by an Assistant Collector of the first class in the Basti

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district directing the prosecution of the applicant for an offence under section 182 of the Indian Penal Code. A question might arise as to whether this application should not have been presented under section 115 of the Code of Civil Procedure and not under chapter 32 of the Code of Criminal Procedure. But in the view I take of the case it is unnecessary to discuss the question. It appears that one Bindhachal Tewari obtained a decree for money against Bhajan Tewari and others in the court of the Munsif of Basti. In execution of that decree immovable property was ordered to be sold, and the execution of the decree was transferred under section 68 of the Code of Civil Procedure to the Collector of Basti. On the 23rd of October, 1914, a sale took place, and the property was knocked down to one Ramphal Misra. On the 3rd of November, 1914, the judgment-debtor presented a petition under rule 30 of the rules made by the Local Government under sections 68 and 70 of the Code of Civil Procedure praying for permission to pay the sum decreed and five per cent. of the purchase money. Next day he presented a petition in which he said he had paid in the sum required by rule 30, and he prayed that the sale might be set aside. On the 5th of November, he put in a petition saying that some unauthorized person had paid the money into the Treasury and he charged Bansi and others with having compelled him to put his thumb impression on a blank paper which was subsequently used for the petition under rule 30. It is quite clear that the Assistant Collector to whom these applications were presented was a public servant, and I will assume that a charge might properly be brought against Bhajan Tewari under section 182 of the Indian Penal Code in respect of the statements made by him in his third petition. On behalf of Bhajan it is, however, contended that the Assistant Collector, who ordered his prosecution, had no power to do so, not being a civil, criminal or revenue court. The Assistant Collector has the powers of a Magistrate of the first class; but the application was not made to him as a Magistrate, it is clear that it was not made to him as a revenue court, and it is beyond question that even if the officer in question could be regarded as a criminal or revenue court, the alleged offence was not committed before him or brought under his notice in the course of any judicial proceeding of a

criminal or revenue court. The question is whether the Assistant Collector was, or had the powers of a Civil Court in respect of the application made by Bhajan Tewari. The rules made by the Local Government, above referred to, contain provisions authorizing a Collector to make over to any Assistant Collector of the first class any of the powers and duties conferred by the rules upon the Collector with certain exceptions. It seems that in respect of powers and duties delegated by the Collector to an Assistant Collector of the first class the latter may be a Civil Court, for section 70 of the Code of Civil Procedure authorizes the Local Government to make rules conferring upon a Collector or any gazetted subordinate of the Collector all or any of the powers which the court, that is, the Civil Court, might have exercised in the execution of the decree, if the execution had not been transferred to the Collector. Among the powers of a Collector which may not be delegated to an Assistant Collector under the rules are the powers to order a sale under paragraph (1) (c) and certain other paragraphs of the third schedule to the Code of Civil Procedure and the power to confirm a sale or set aside a sale under rule 32 of the rules made by the Local Government. It thus appears that the Assistant Collector who has ordered the prosecution of the applicant had not power either to sell the property as a court or to confirm the sale or to set it aside. The application in respect of which the prosecution has been ordered was presented to the Assistant Collector. Possibly no objection could be taken to this; but the Assistant Collector could not deal with the application. He could only pass it on to the Collector who would then dispose of it with the powers of a Civil Court. It appears to me that so far as the application in question was concerned, the Assistant Collector had not powers of a Civil Court and the application was not presented to him in the course of a judicial proceeding. That being so, I must hold that the Assistant Collector had no power to order the prosecution of the applicant. I therefore set aside his order.

*Order set aside.*

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