

REVISIONAL CRIMINAL.

1918
March, 1.

Before Mr. Justice Figgott.

EMPEROR v. ABDUL LATIF.*

Criminal Procedure Code, section 437—Accused discharged by Magistrate—Order for further inquiry—Notice—Judicial discretion—Practice.

Nothing in section 437 of the Code of Criminal Procedure requires previous notice to be given to any accused person who has been discharged before further inquiry into his case is ordered by a competent authority, that is, by the High Court, or the Sessions Judge, or the District Magistrate. Nevertheless as a matter of judicial discretion it is advisable that previous notice should issue when the matter for consideration is the setting aside of an order of discharge in favour of the accused person who has been actually before the court to answer the facts alleged against him. *Queen-Empress v. Ajudhia* (1) referred to.

THE facts of this case were as follows:—

On the 17th of July, 1917, a woman named Dojia was struck by a bullet while she was with her husband in a field where he was working. The shot had been fired by some sportsman in the immediate neighbourhood, and it was not suggested that the injury to Musammat Dojia was anything but accidental. A number of villagers were attracted to the spot and proceeded to arrest two Muhammadans, named Abdul Latif Khan and Badal Khan, as being responsible for the injury caused to Musammat Dojia. These two men were taken to the Kasganj Police Station, some five miles distant, along with the injured woman and her husband, and at the same time there was produced at the police station a double-barrelled muzzle-loading gun. The two Muhammadans arrested on suspicion were admittedly strangers to Musammat Dojia and her neighbours. The police eventually sent up one of these men, Abdul Latif Khan, for trial in respect of offences under section 338 of the Indian Penal Code and section 19 of the Indian Arms Act. The Magistrate who took cognizance of the matter began by issuing process against the other stranger, Badal Khan; but after taking the evidence, discharged both the accused persons. The order of discharge is dated the 21st of September, 1917. The gun in question, although

* Criminal Revision No. 945 of 1917, from an order of E. P. Fawcett, District Magistrate of Etah, dated the 10th of November, 1917.

(1) (1898) I.L.R., 20 All., 339.

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bearing a serial number and therefore having apparently at some time or other been held lawfully under a licence, could not be traced in the Etah district, and it is admitted that Abdul Latif Khan and Badal Khan held no licence to possess fire-arms of any description. Representations were made to the District Magistrate as to the impropriety of the order of discharge, and on the 10th of November, 1917, the District Magistrate, after examining the record, passed an elaborate order, reviewing the evidence, discussing the comments made on the same by the trying Magistrate and finally directing further inquiry to be made as regards Abdul Latif Khan. Against this order Abdul Latif applied in revision to the High Court.

Mr. *A. H. C. Hamilton*, for the applicant.

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

PRIGGOTT, J.:—This application in revision arises on the following state of facts:—On the 17th of July last, a woman named Dojia was struck by a bullet while she was with her husband in a field where he was working. The shot had been fired by some sportsman in the immediate neighbourhood, and it is not suggested that the injury to Musammat Dojia was anything but accidental. A number of villagers were attracted to the spot and proceeded to arrest two Muhammadans, named Abdul Latif Khan and Badal Khan, as being responsible for the injury caused to Musammat Dojia. These two men were taken to the Kasganj Police Station, some five miles distant, along with the injured woman and her husband, and at the same time there was produced at the police station a double-barrelled muzzle-loading gun. The two Muhammadans arrested on suspicion were admittedly strangers to Musammat Dojia and her neighbours. The police eventually sent up one of these men, Abdul Latif Khan, for trial in respect of offences under section 338 of the Indian Penal Code and section 19 of the Indian Arms Act. The Magistrate who took cognizance of the matter began by issuing process against the other stranger, Badal Khan; but after taking the evidence, discharged both the accused persons. The order of discharge is dated the 21st of September, 1917. The gun in question, although bearing a serial number and therefore having apparently at some

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(1) (1898) I. L. R., 20 All., 339.

which itself follows certain older decisions, has ever been disapproved of in any subsequent decision of this Court. I am myself of opinion that in a matter of this sort it would have been better for the District Magistrate to give Abdul Latif Khan previous notice and an opportunity of arguing the case before him. I am not disposed, however, to interfere with the order of the court below merely on this ground. If the only result of my doing so were to compel the District Magistrate to issue notice now to Abdul Latif Khan, this might only lead to the passing of another order under section 437 of the Code of Criminal Procedure, and the only result would have been inconvenience to the courts and undesirable delay in the disposal of the matter. If, on the other hand, I were to take it upon myself to direct that no further proceedings be taken, I conceive that I should be straining the powers of this Court, and I am not satisfied that I should not be prejudicing the interests of justice. I have preferred to deal with the matter by asking the learned advocate who represents Abdul Latif Khan to take this opportunity of showing cause why further inquiry should not be ordered. In substance I have dealt with the matter as if the record had been called for directly by this Court with a view to considering the propriety of the order of discharge. I do not think it would be advisable for me to enter into detail with regard to the very different opinions expressed by the trying Magistrate and by the District Magistrate in respect of the value and reliability of the evidence produced at the original hearing. I do think, however, that the District Magistrate's order shows good and sufficient cause for further inquiry into this matter in the interests of justice. It seems practically beyond question that an offence punishable under the Indian Arms Act, as well as an offence punishable under Indian Penal Code, were committed by some person or other on the occasion in question. I agree with the District Magistrate that it is in the interests of justice that there should be further inquiry into the question whether the commission of one or both of these offences is or is not brought home to the accused Abdul Latif Khan. I think it advisable under the circumstances that this inquiry should take place outside the limits of the territorial jurisdiction of the District Magistrate of

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Etah. My order, therefore, is that this application for revision do stand dismissed, and that the further inquiry against Abdul Latif Khan directed by the order of the 10th of November, 1917 be held in the district of Aligarh. I transfer the case in question to the court of the District Magistrate of Aligarh, who may either dispose of it himself or transfer it for disposal to the court of any first class Magistrate subordinate to himself.

With regard to one matter of detail which has been pressed upon my notice, I may say that I agree with the District Magistrate that the proceedings taken against Badal Khan were injudicious, and that the fact of his having been in the position of an accused person during the inquiry which resulted in the order of discharge should in no way be considered to prevent his being summoned as a witness in the further inquiry now ordered.

Application dismissed.

APPELLATE CRIMINAL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

EMPEROR v. GHULAM HUSAIN.*

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Act No. XI of 1878 (*Indian Arms Act*), section 19 (f)—*Arms—Finding as to factum of possession of unlicensed arms—Minor, nearing majority, living with his elderly parda-nashin mother—Possession attributed to son.*

A *parda-nashin* lady and her minor son, a young man of some 17 years of age, lived together in the family house. In their house was a small collection of arms of various kinds which had belonged to the father, who, as an honorary magistrate, was exempt from the operation of the Arms Act. There was evidence that the arms were kept clean and that the son at all events took a certain amount of interest in them.

Held that a finding that the son was in possession of these arms, and, not having a licence for them, was liable to conviction for an offence under section 19 (f) of the Indian Arms Act, 1878, was not open to objection.

THE facts of this case are stated in the judgment of the Court.

The Government Advocate (Mr. A. E. Ryves), for the Crown. Mr. C. Ross Alston and Mr. Abdul Raoof, for the opposite party.

BANERJI and TUDBALL, JJ. :—This is a Government appeal against an order of acquittal passed by the Additional Sessions

* Criminal Appeal No. 93 of 1918, by the Local Government from an order of acquittal passed by Abdul Ali Khwaja, Additional Sessions Judge of Gorakhpur, dated the 24th of November, 1917.