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different from the position of ordinary Subordinate Judges; he is Additional Sessions Judge and he is Subordinate Judge for civil cases. Under orders issued by the High Court under section 21 (4) of the Bengal, Agra, and Assam Civil Courts Act, 1887, (vide notification no. 1703/15-114, dated the 25th April, 1913) appeals from the court of the Munsif of Jaunpur are preferred to his court and "ordinarily lie" to his court. Therefore the Subordinate Judge must be deemed to be the authority to which the Munsif of Jaunpur is subordinate within the meaning of section 195, and he was competent to entertain the application made to him, whether that application be regarded as one under paragraph (6) or as an original application under clause (b) of paragraph (1). As to the merits of the case, the Subordinate Judge was, I think, competent to take and consider additional evidence for the purpose of satisfying himself whether sanction should or should not be granted. This is the view which was taken by a learned Judge of this Court in *Rahmatullah v. The Emperor* (1). The learned Judge of the court below has not, it is true, set forth at length the reasons for the conclusion at which he arrived, but having regard to the additional evidence, which was produced before the Munsif and also before the Subordinate Judge, it cannot be said that there was no *prima facie* case against the applicant. I am therefore of opinion that the present application is without force and I accordingly reject it. The order staying proceedings is discharged and it is directed that the record be sent back to the court below.

Application rejected.

Before Mr. Justice Piggott.

EMPEROR v. GANGA RAM.*

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August, 18.

Criminal Procedure Code, section 476—Jurisdiction—Order for prosecution of persons not parties to a proceeding before the Court.

A court in taking action under section 476 of the Code of Criminal Procedure is not restricted, as regards the person against whom an order may be made, to the parties to a proceeding pending before it. *Jadu Nandan Singh v. Emperor* (2) dissented from.

THE facts of this case were as follows:—

There was a litigation going on in the court of the Munsif of Bisauli, in which one of the parties was seeking to establish the

* Civil Revision No. 88 of 1917.

(1) (1916) 82 Indian Cases, 157. (2) (1909) I. L. R., 37 Calo., 250.

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proposition that a certain house had at one time belonged to one Ganga Ram. As a piece of evidence bearing on this question, he undertook to prove to the court that Ganga Ram had granted a ten years' lease of this house in favour of one Tulshi Ram, since deceased. It was said that Tulshi Ram had executed on stamp paper an agreement to hold this house as tenant of Ganga Ram at a certain rent. A summons was issued to Ganga Ram, calling upon him to produce this document. He appeared in court in obedience to this summons, tendered in evidence an agreement of the nature suggested, purporting to have been executed in his favour by Tulshi Ram, deceased, as long ago as the year 1895. He gave evidence on oath supporting the story of the lease in question and the genuineness of the document. A marginal witness to the said document, named Nathu Lal, was also called and examined by the court, and he gave evidence in support of the genuineness of the document. The Munsif came to the conclusion that the document in question was a forgery; that there never had been any such contract of lease; that it was proved by evidence that Tulshi Ram had never occupied the premises in question; that the appearance of the document was in itself suspicious, and that, if the transaction had been a genuine one, the document would have been registered, which it was not. He issued notice to Ganga Ram and Nathu Lal, as well as to two other persons to show cause why their prosecution should not be ordered under the provisions of section 476 of the Code of Criminal Procedure, and in the result he ordered the prosecution of Ganga Ram in respect of offences punishable under sections 193 and 471 of the Indian Penal Code and of Nathu Lal in respect of offences under sections 193 and 471/109 of the same Code.

Against these orders both Ganga Ram and Nathu Lal applied in revision to the High Court,

Babu Satya Chandra Mukerji and *Munshi Panna Lal*, for the applicant.

Mr. W. Wallach, for the opposite party.

PIGGOTT, J.—These are two applications which come before the Court under the following circumstances: There was a litigation going on in the Court of the Munsif of Bisauli, in which one of the

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parties was seeking to establish the proposition that a certain house had at one time belonged to one Ganga Ram. As a piece of evidence bearing on this question, he undertook to prove to the court that Ganga Ram had granted a ten years' lease of this house in favour of one Tulshi Ram, since deceased. It was said that Tulshi Ram had executed on stamp paper an agreement to hold this house as tenant of Ganga Ram at a certain rent. Summons was issued to Ganga Ram calling upon him to produce this document. He appeared in court in obedience to the summons, tendered in evidence an agreement of the nature suggested, purporting to have been executed in his favour by Tulshi Ram, deceased, as long ago as the year 1895. He gave evidence on oath supporting the story of the lease in question and the genuineness of the document. A marginal witness to the said document, named Nathu Lal, was also called and examined by the court, and he gave evidence in support of the genuineness of the document. The learned Munsif came to the conclusion that the document in question was a forgery; that there never had been any such contract of lease; that it was proved by evidence that Tulshi Ram had never occupied the premises in question; that the appearance of the document was in itself suspicious, and that, if the transaction had been a genuine one, the document would have been registered, which it was not. He issued notice to Ganga Ram and Nathu Lal, as well as to two other persons, with whose cases I am not now concerned, to show cause why their prosecution should not be ordered under the provisions of section 476 of the Code of Criminal Procedure, and in the result he has ordered the prosecution of Ganga Ram in respect of offences punishable under sections 193 and 471 of the Indian Penal Code and of Nathu Lal in respect of offences under sections 193 and 471/109 of the same Code. The applications before me are in revision by Ganga Ram and by Nathu Lal against the said order. The principal point taken is that the provisions of section 476 of the Code of Criminal Procedure must be regarded as governed by those of section 195 of the same Code, in such a manner that an offence, for instance, of using as genuine a forged document, punishable under section 471 of the Indian Penal Code, would not fall within the purview of section 476 unless it had been committed

by a party to the proceeding pending before the court at the time when the offence in question was brought under the notice of that court. There is authority for that proposition in the case of *Jadu Nandan Singh v. Emperor* (1). I am informed that there has been a decision of the Madras High Court to the same effect and one of the Bombay High Court to a contrary effect. With all respect to the learned Judges who have taken a different view, I have little doubt that the provisions of section 476 of the Criminal Procedure Code are complete as they stand, and that it is sufficient to bring those provisions into operation if the offence in question be one of the kind referred to in section 195 of the Criminal Procedure Code and if it be either committed before the court which takes action under section 476, or brought under the notice of that court in the course of a judicial proceeding. So far as the cases now before me are concerned, however, this is of purely academical interest. The learned Munsif was of opinion that Ganga Ram and Nathu Lal had intentionally given false evidence before him in the course of a judicial proceeding and he was entitled to direct their prosecution for the said offence. He saw reason to suspect that these two men had also committed some further offence punishable under section 471 of the Indian Penal Code, or had abetted the commission of some such offence, in connection with the document about which they gave evidence. Now as Ganga Ram and Nathu Lal were not parties to the suit pending in the court of the Munsif when this document was produced in evidence, there is nothing in the provisions of section 195 of the Code of Criminal Procedure to prevent the Magistrate from taking cognizance of the alleged commission by either of these men of the offences above referred to, if he finds upon inquiry that the evidence laid before him discloses the commission of such offence or offences. That portion therefore of the order of the learned Munsif which directed the prosecution of these two men in respect of an offence under section 471 or 471/109 of the Indian Penal Code was really superfluous.

I have been asked further to consider the question whether the facts disclosed by the order of the learned Munsif are

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sufficient to warrant the conclusion that Ganga Ram, when he produced this document in court in obedience to a summons, was fraudulently or dishonestly using that document within the meaning of section 471 of the Indian Penal Code. I think it sufficient to say that this is a point which will require careful consideration by the trying Magistrate, and the decision of which may depend on the nature of the evidence produced by the prosecution. One possible view of the case is that, whatever offence punishable under section 471 of the Indian Penal Code was committed in the present case, was committed by that party to the suit who caused the production of this document by obtaining the issue of process against Ganga Ram, and that the matter to be considered by the trying Magistrate will be whether there is reason to suppose that Ganga Ram or Nathu Lal, or either of them, abetted the commission of that offence. Further than this it is impossible for me to deal with the point on the facts now before me. I find no reason in law for holding that the orders complained of were outside the jurisdiction of the court below and in my opinion they were well within the discretion of that court and call for no interference. I dismiss both these applications with costs. The learned Government Advocate who has appeared to oppose the applications will be entitled to charge as costs the fee actually received by him.

Applications dismissed.

REVISIONAL CRIMINAL.

Before Justice Sir Pramada Charan Banerji.

EMPEROR v. MADHO AND ANOTHER.*

1917,
 August, 18.

Act No. XLV of 1860 (Indian Penal Code), sections 332, 323—Criminal Procedure Code, section 144—Public servant in execution of his duty as such—Police constable assaulted whilst attempting to enforce an order which in fact had become obsolete.

A police constable was assaulted whilst endeavouring to enforce an order passed by the District Magistrate as to the carrying of *lathis* by Pragwals, which order, if originally lawful, had in any case become obsolete.

Held that in the circumstances the persons who assaulted the constable could not be convicted under section 332 of the Indian Penal Code, but

* Criminal Revision No. 576 of 1917, from an order of F. D. Simpson, Sessions Judge of Allahabad, dated the 16th of June, 1917.