

1919

MAHABIR
PRASAD
PANDE
v.
GANGA DIBHAL
RAI.

realizing the intentions of the Legislature if it construes these provisions so as to ensure that the monetary loss accruing to the judgment-debtor be as little as possible." This view of the matter has exercised considerable influence upon our judgment in this case. So far from these contracts being against public policy, they are really in the interests of judgment-debtors alone with a view if possible at the eleventh hour to rescue the property from a forced sale at an under-value, and the view which the defendant presses upon us that we ought to take of this contract must, if accepted by us, have the effect of very much discouraging other persons coming to the rescue of the judgment-debtor and putting down money to be deposited in court to prevent the confirmation of the auction sale, if they are to do so at the risk of losing their money entirely in the event of some unforeseen accident making the contract impossible of completion. The result of the view taken of this case by the first court would really be contrary to natural justice. It is satisfactory to find that the law as codified enables us in this case to do what we feel satisfied is really substantial justice. The result is that the appeal must be dismissed and we accordingly dismiss it with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR v. BABU RAM.*

Criminal Procedure Code, section 537—Two false suits filed by same plaintiff—Order directing prosecution ambiguous as to whether it referred to both suits or only one, but construed by trying magistrate as referring to both—Convictions upheld.

Two suits were filed on the same day by the same plaintiff (1) against one B. P. in the Court of the City Munsif of Bareilly and (2) against G. D., a relative of B. P., in the Court of the Subordinate Judge. It was alleged and found that both suits were instituted with the same object of harassing B. P. Both suits were dismissed as false. In relation to the suit in his court the Subordinate Judge took proceedings against the plaintiff under section 476 of the Code of Criminal Procedure, and in the course of these proceedings sent for and examined the record of the case in the City Munsif's court. The Subordinate Judge then recorded an order under section 476 of the Code directing the prosecution of the plaintiff under section 209 of the Indian Penal Code. This order was ambiguously worded, and did not leave it beyond doubt whether the Subordinate Judge intended to direct the prosecution of the

*Criminal Revision No. 293 of 1919, from an order of H. E. Holme, Sessions Judge of Bareilly, dated the 15th of April, 1919.

1919
June, 23.

plaintiff in respect of both suits or only in respect of the suit in his own court. The magistrate, however, before whom the case came tried the plaintiff for offences in relation to both suits and convicted him in respect of both.

Held on application in revision—it not being made to appear that the accused had suffered any prejudice—that the case was covered by section 537 of the Code of Criminal Procedure, and the conviction of the plaintiff of offences in relation to both suits was not illegal. *Emperor v. Zahir Singh* (1) referred to.

THIS was an application in revision against an appellate order of the Sessions Judge of Bareilly.

The facts of the case are fully set forth in the judgment of Court.

Dr. J. N. Misra, for the applicant.

The Officiating Assistant Government Advocate (Babu *Lalit Mohan Banerji*) for the Crown.

PIGGOTT, J.:—This application in revision arises out of the following facts. On the 6th of April, 1918, the applicant Babu Ram instituted two civil suits in two different courts against two different persons. In one case he claimed a sum of Rs. 33-10-0 from one Badri Prasad. This suit was instituted in the Court of the City Munsif of Bareilly, was tried on the Small Cause Court side, and was dismissed on the 23rd day of April, 1918. In the other suit Babu Ram claimed a sum of Rs. 140 from one Musammat Ganga Dei in the Court of the Subordinate Judge of Bareilly. This suit also was tried on the Small Cause Court side, and was also dismissed. The learned Subordinate Judge then took proceedings under section 476 of the Code of Criminal Procedure against Babu Ram and against certain persons who had appeared as witnesses before his court in support of Babu Ram's claim against Musammat Ganga Dei. In the course of those proceedings he sent for and examined the file of the suit against Badri Prasad in the City Munsif's Court. On the 1st of June, 1918, he recorded an order directing the prosecution of Babu Ram under section 209 of the Indian Penal Code and of three other persons under section 193 of the same Code. The Magistrate who took cognizance of the matter inquired into the conduct of Babu Ram in respect of both the suits filed by him. He framed charges alleging against Babu Ram that he had fraudulently or dishonestly, or with intent to injure Badri Prasad

1919

 EMPEROR
 v.
 BABU RAM.

1919

EMPEROR
v.
BABU RAM.

and Musammat Ganga Dei, made against each of them, on one and the same day, a claim in two different courts of justice which he knew to be false. After the charges had been framed Babu Ram entered on his defence. The prosecution witnesses were re-called and cross-examined and witnesses for the defence were heard on three subsequent dates, last of which one month and eleven days after the framing of the charges. It is quite clear that in the Magistrate's court no objection was taken as to the jurisdiction of the court to take cognizance of both offences, or as to the validity of the procedure adopted in trying both these charges at one and the same trial. It was an essential part of the case for the prosecution that these two false claims had been preferred by Babu Ram out of enmity against Badri Prasad, his reason for proceeding against Musammat Ganga Dei being that that lady is related to Badri Prasad and lives in one and the same house with him. So far, therefore, as concerns the trial of these two charges together, the procedure adopted is not merely warranted by section 234 of the Code of Criminal Procedure, but the case actually falls within the purview of section 235 (1) of the same Code, the case for the prosecution being that the bringing of two false claims against Badri Prasad and Musammat Ganga Dei respectively formed part of the same transaction. The trying Magistrate, and also the Sessions Judge on appeal, have found that the case for the prosecution was fully made out on the facts, that the two claims preferred by Babu Ram were false to his knowledge, and were preferred dishonestly and with intent to injure Badri Prasad and Musammat Ganga Dei. In his memorandum of appeal to the Sessions Court Babu Ram protested against the joinder of the two charges, and also against the action of the Magistrate in taking cognizance of the offence alleged to have been committed by the filing of the false claim against Badri Prasad in the court of the City Munsif. He has stated in the said petition of the appeal that he was taken by surprise by the course adopted by the Magistrate, that he believed himself to be on his trial only in respect of the claim brought against Musammat Ganga Dei and that he was greatly prejudiced in his defence by this belief. An examination of the record shows that these assertions are absolutely false. Babu

1919

EMPEROR
v.
BABU RAM.

Ram had fair warning that he was charged in respect of both offences. He did in fact defend himself in respect of the both charges. He had abundant opportunity of doing so, and he never in the Magistrate's court challenged the legality or propriety of the procedure adopted. The learned Sessions Judge, concurring with the view taken of the facts by the Magistrate, has declined to interfere on any legal ground, holding that the joinder of the charges was justified; that, if any error was committed in respect of the Magistrate's taking cognizance of the offence alleged to have been committed in respect of the filing of the suit in the City Munsif's court, the accused had not been prejudiced thereby, and that the provisions of section 537 (b) of the Code of Criminal Procedure, more particularly when considered in connection with the explanation appended to the aforesaid section, forbid interference on appeal or revision on the mere ground of want of sanction in respect of this particular offence, or of irregularity in the proceedings taken under section 476 by the learned Subordinate Judge.

In the petition of revision to this Court these points are again raised. I have to consider, first of all, whether the learned Subordinate Judge had jurisdiction to take proceedings in respect of the false claim alleged to have been preferred in the City Munsif's court. My answer on this point is that on the materials at present available I am unable to answer this question positively either in the affirmative or in the negative. It was made a part of Musammat Ganga Dei's defence in the suit before the learned Subordinate Judge that the preferring of this false claim against her was part of a conspiracy, another step in which had been the filing of a false claim against Badri Prasad in the City Munsif's court, and if in consequence the learned Subordinate Judge sent for and examined the record of the trial in the City Munsif's court, and if in fact the question of the false claim preferred against Badri Prasad was brought to his notice in the course of a judicial proceeding, that is to say, in the course of his trial of the claim brought against Musammat Ganga Dei, then he had jurisdiction to direct the prosecution of Babu Ram for having preferred a false claim against Badri Prasad in

1919

EMPEROR
v.
BABU RAM.

the City Munsif's court as well as for having preferred a false claim against Musammat Ganga Dei in his own court. If I thought it essential in the interests of justice to do so, I should adjourn the present proceedings in order to call for the record of the suit No. 320 of 1918 on the Small Cause Court side, in the court of the Subordinate Judge of Bareilly in order to inquire further into these matters. For reasons which will become sufficiently obvious in the course of this order, I do not think this necessary. If these were the only points to be determined on this application, I should be perfectly justified in holding that the order passed by the learned Subordinate Judge under section 476 of the Code Criminal Procedure must be presumed to be a good and valid order, unless and until the applicant can satisfy this Court to the contrary. A more serious difficulty has, however, been raised in respect of the same order. It is, undoubtedly, ambiguous in its terms, and lays itself open to the contention that the learned Subordinate Judge, although he had examined the file of the suit in the City Munsif's court in order to form a sound opinion regarding the transaction as a whole, did not as a matter of the fact intend to direct the prosecution of Babu Ram in respect of the claim preferred in the City Munsif's court, but only in respect of the claim preferred against Musammat Ganga Dei in his own court. I am not prepared to go further than to say that the order of the learned Subordinate Judge of the 1st of June, 1918, is ambiguous, and does not make it as clear as it should do whether he intended to direct the prosecution of Babu Ram in respect of two offences under section 209 of the Indian Penal Code, or of one only. Now I am content to deal with matter upon this basis. I take it that the Magistrate who tried Babu Ram on these two charges had before him an ambiguously worded order, as to which it can fairly be contended that it does not make it clear whether the prosecution of Babu Ram in respect of the claim preferred in the City Munsif's court is or is not ordered. I take it that the Magistrate in all good faith believed that the order of the 1st of June, 1918, directed Babu Ram's prosecution in respect of both offences. He acted upon that belief, and the accused, who had every opportunity of doing so, and who had full warning from the date on

which the charge was framed of the fact that he was being put upon his trial in support of both offences, acquiesced in the view taken by the Magistrate and never at any stage of the trial in that court raised the question of the court's want of jurisdiction in respect of the offence alleged to have been committed in the City Munsif's court. On this state of facts, I am prepared to hold that the case is covered by the provisions of section 537 (b) of the Code of Criminal Procedure. When all is said and done, the words which occur in that sub-section, "the want of any sanction required by section 195 or any irregularity in proceedings taken under section 476," must have some meaning; it is contrary to the canons of sound interpretation to press the words, "passed by a court of competent jurisdiction," in the first part of the said section so as to make it impossible for the words quoted from this sub-section (b) to have any meaning at all, that is to say, to be applicable in any possible case. I have before me a ruling of this Court on which I desire to found myself. It is the case of *Emperor v. Zahir Singh* (1), decided by Mr. Justice TUDBALL. With regard to section 537 of the Code of Criminal Procedure, the learned Judge remarks, "the section was intended to prevent a mere technicality from interfering with the course of justice, the error, omission etc., being one which had escaped all parties at the beginning of the proceeding." The present seems to be precisely such a case. The error, if it was an error, committed by the Magistrate in the present case, was in interpreting the Subordinate Judge's order of the 1st of June, 1918, as covering both the offences under section 209 of the Indian Penal Code to which reference is made in the course of the said order. The error, if it was one, certainly escaped observation, not merely at the beginning of the proceedings in the Magistrate's court but throughout the entire trial in that court. I am satisfied that in no event could it be said that Babu Ram was prejudiced by the procedure adopted. It was an essential part of the case for the prosecution that two false claims had been brought by Babu Ram, on one and the same date, in two different courts, in pursuance of the same vengeful purpose, and that the bringing of those two false claims

1919

EMPEROR
v.
BABU RAM.

1919

EMPEROR
v.
BABU RAM.

constituted two acts so connected together as to form part of one and the same transaction. Even if Babu Ram had been on his trial only in respect of the false claim preferred against Musammat Ganga Dei, the evidence given by Badri Prasad would have been relevant under more than one section of the Indian Evidence Act.

Sentence reduced.

REVISIONAL CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

ABDUL AZIZ (DEFENDANT) v. SHEKHAR CHAND (PLAINTIFF)*

Civil Procedure Code (1908), section 115—Jurisdiction—Revision—Powers of High Court.

1919.
June, 26.

A Munsif, having before him a suit on a promissory note, first passed an order (illegal in the circumstances of the case) dismissing the suit for want of prosecution. On this a decree followed, which was signed by the Munsif. Subsequently, the Munsif cancelled his first order and decree, and, having reinstated the suit, fixed a day for its hearing. On that date the plaintiff appeared and tendered some evidence, but the defendant did not appear. The Munsif thereupon passed a decree in favour of the plaintiff *ex parte*.

Held, on application by the defendant for revision of the Munsif's second order reinstating the suit, that the High Court had the power and ought to set aside, not only the order complained of, but all the proceedings of the Munsif and restore the suit to its original position. *Hingu Singh v. Jhari Singh* (1) and *Gobind Singh v. Kalayn Dass*, (2) referred to.

THIS was an application in revision against an order passed by the Munsif of Nagina cancelling a previous order dismissing a suit "for default," and fixing a date for its hearing. The facts of the case are fully set forth in the order of the Court.

Mr. S. A. Haidar, for the applicant.

Dr. Surendra Nath Sen, for the opposite party.

PIGGOTT and WALSH, JJ. :—This was a suit on a promissory note. We find that three issues were framed as to which we should not have been prepared to say that there was not one issue at least on which the burden of proof would in the ordinary course of things lie on the plaintiff. However that may be, the learned Munsif who framed the issues recorded at the time a

* Civil Revision No. 129 of 1918.

(1) (1918) I. L. R., 40 All., 590. (2) (1916) 15 A. L. J., 24.