

## REVISIONAL CRIMINAL.

*Before Justice Sir Pramada Charan Banerji.*

EMPEROR v. TILAK RAI AND OTHERS.\*

*Criminal Procedure Code, section 106 (3).—Security for keeping the peace—  
Powers of appellate court to order security not limited by jurisdiction of  
trial court.*

The power conferred on an appellate court by clause (3) of section 106 of the Code of Criminal Procedure is not limited by the fact that the court whose decision is under appeal had no power to direct security to be taken. *Emperor v. Dharam Das* (1) followed.

THE applicants in this case were convicted by a Magistrate of the second class of offences under section 352 of the Indian Penal Code and sentenced to small fines. They appealed. The appellate court dismissed their appeals; but held that, as there was a long-standing feud between the complainant and the accused, it was desirable to order the accused to furnish security under section 106 of the Code of Criminal Procedure. The accused applied in revision to the High Court, and their main contention was that, inasmuch as the trying Magistrate had no jurisdiction to order the applicants to find security, such an order was also beyond the competence of the appellate court.

Mr. J. M. Banerji, for the applicants.

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

BANERJI, J. :—This is an application for revision of an order of an appellate court directing the applicants to furnish security to keep the peace under section 106 of the Code of Criminal Procedure. The applicants were convicted by a Magistrate of the second class of the offence punishable under section 352 of the Indian Penal Code and each of them was sentenced to a fine of Rs. 10. They appealed. The appellate court dismissed their appeals, but held that as there was a long-standing feud between the complainant and the accused, it was desirable to order the accused to furnish security under section 106 of the Code of Criminal Procedure. It is contended on behalf of the applicants that as the court of first instance, which had the powers of a

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\* Criminal Revision No. 645 of 1920 from an order of Anrudh Lal Mahendra, Magistrate, First Class, of Ballia, dated the 9th of September, 1920.

second class Magistrate only, was not competent to order security to be furnished under section 106, the appellate court was also incompetent to make such an order, and it is urged that the appellate court could not only exercise such powers as the court of first instance could have done, and as in the present instance the court of first instance could not have ordered security to be furnished under section 106, the appellate court could not have made an order under that section. It is further contended that the case was not one in which an order under section 106 ought to have been made. As regards the first point the matter is concluded by the decision of this Court in *Emperor v. Dharam Das* (1). That was a decision of a Division Bench of two Judges and I am bound to follow it. There are no doubt decisions of the Calcutta and Madras High Courts to the contrary, but the learned Judges who decided the case referred to above did not agree with the rulings of the Calcutta and the Madras Courts and agreed with a decision of the Bombay High Court to which they referred in their judgment. It seems to me that sub-section (3) of section 106 is wide enough to include an appellate court, whatever may have been the powers of the original trial court from whose decision the appeal was heard. Sub-section (1) specifies the different descriptions of courts which could make an order under the section and sub-section (3) adds another class of courts to the courts mentioned in sub-section (1), namely, appellate courts. Had the object of the Legislature been to limit the powers of the appellate court, one would expect to find in that sub-section a limitation of the powers of the appellate court such as we find in section 439 of the Code of Criminal Procedure in the case of enhancement of a sentence passed by a Magistrate of the first class. However, as there is a decision of two Judges of this Court on the subject which is against the applicants, I feel myself bound by that decision and I see no reason to differ from it. As regards the second point raised, it appears that there has been enmity between the parties for some time and that the accused deliberately lay in wait to commit an assault on the complainant. In these circumstances, although the assault actually committed was not so severe as to justify a heavy

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sentence, the appellate court cannot be held to have exercised its discretion unwarrantably in directing the applicants to furnish security. For these reasons I dismiss the application.

*Application rejected.*

## FULL BENCH.

*Before Justice Sir Pramada Charan Banerji, Mr. Justice Tudball and Mr. Justice Gokul Prasad.*

SRI RAM JANKIJI BIRAJMAN MANDIR (DEFPENDANT) v. JAGDAMBA PRASAD (PLAINTIFF).\*

*Hindu law—Hindu widow—Widow's estate—Property acquired by widow without the aid of the husband's estate and without detriment to it—Widow's power of disposition over property so acquired—Widow not trustee for reversioner—Act No. II of 1882 (Indian Trusts Act), section 90.*

A Hindu widow in possession as such of her husband's estate acquired certain property through the exercise of a right of pre-emption which she had in that capacity. The pre-emptive price was not, however, paid from the husband's estate, but was raised by means of a mortgage on part of the pre-empted property.

*Held* that the property thus acquired did not, in the absence of evidence of any intention on the part of the widow that it should do so, form part of the husband's estate, but it remained the separate property of the widow.

*Held* also that section 90 of the Indian Trusts Act, 1882, had no application to the facts of the case.

IN this case the widow of a separated Hindu, being in possession as such widow of her husband's estate, purchased, in the exercise of a right of pre-emption possessed by her in virtue of the possession of her husband's estate, certain property which had belonged to one of the reversioners of the estate. The widow, however, did not pay the pre-emptive price out of money derived from her husband's estate, but she raised the necessary funds by mortgaging part of the pre-empted property. She held the property so acquired till her death, when she made an endowment of it by will in favour of an idol. After the death of the widow one of the husband's reversioners brought a suit to recover the pre-empted property upon the ground that it formed

\*Second Appeal No. 1288 of 1917 from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 13th of November, 1917, reversing a decree of Laddi Prasad, Subordinate Judge of Cawnpore, dated the 31st of May, 1916.

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