

1922

CHATARPAL
SHARMAv.
JAGANNATH
DAS.

This appeal, therefore, must be allowed with costs, and an injunction must issue to the defendant in the above terms. We make no order for an account.

Appeal allowed

REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

NIZAM-UD-DIN KHAN v. MUHAMMAD ZIA-UL-NABI KHAN.*
*Criminal Procedure Code, section 125—Security for keeping the peace—
Grounds for cancellation of bond.*

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The only ground on which a District Magistrate can cancel a bond for keeping the peace or to be of good behaviour under section 125 of the Code of Criminal Procedure is that something has supervened since the date of the first court's order which satisfies the District Magistrate that in view of the facts since come to light there is no longer any necessity for keeping the accused person under bond. A District Magistrate cannot use the section as if he were sitting as a court of appeal nor is he justified in passing an order under the section merely because he takes a different view of the evidence which has been submitted to the court of first instance.

Banarsi Das v. Partab Singh (1) and Emperor v. Shankar Lal (2) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

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

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

LINDSAY, J.—These two applications in revision arise out of certain proceedings which were taken in the court of an Assistant Magistrate of the Agra district under section 107 of the Code of Criminal Procedure. It was apparently reported to the Magistrate that two persons, namely, Nizam-ud-din Khan and Muhammad Zia-ul-Nabi Khan were on very bad terms and were likely to commit a breach of the peace. The report was made to the Magistrate with a view to both parties being bound over to keep the peace. The parties, it appears, are relations.

Separate proceedings were instituted against each of the parties, and in the result the Assistant Magistrate bound over both parties for a period of one year.

Zia-ul-Nabi Khan made an application to the Officiating District Magistrate of Agra under section 125 of the Criminal Procedure Code and that officer passed an order cancelling the order of the Assistant Magistrate by which Zia-ul-Nabi Khan was bound over to keep the peace.

* Criminal Revision No. 93 of 1922, from an order of Ainuddin, Officiating District Magistrate of Agra, dated the 24th of October, 1921.

(1) (1912) I. L. R., 35 All., 108.

(2) (1919) I. L. R., 41 All., 561.

The case of Nizam-ud-din Khan, the other accused, came up before the permanent District Magistrate at a later stage under section 125 of the Code of Criminal Procedure. So far as Nizam-ud-din Khan was concerned, the District Magistrate passed an order refusing to interfere with the order passed by the Assistant Magistrate.

I have now before me two applications in revision, both presented on behalf of Nizam-ud-din Khan. As regards his own case Nizam-ud-din Khan contends that he was not liable, on the evidence offered at the trial court, to be bound over to keep the peace. As regards the case of Zia-ul-Nabi Khan the contention is that the order passed by the Officiating District Magistrate cancelling the bond under the provisions of section 125 of the Code of Criminal Procedure was an illegal order. Notice has been issued to Zia-ul-Nabi Khan in this case to show cause why the order under section 125 should not be set aside.

Dealing first with the case of Nizam-ud-din Khan, which is case No. 94 of 1922, I have examined the evidence which was led in the court of the Magistrate, and, after perusal of that evidence which was not rebutted by any evidence on the part of Nizam-ud-din Khan himself, I am satisfied that there was ample ground justifying the order passed by the Magistrate. I may further observe that when Nizam-ud-din Khan was called upon to show cause, he expressed his willingness to be subjected to a bond. So much for the case No. 94. The application of Nizam-ud-din is dismissed.

As regards the other case, in which Zia-ul-Nabi Khan is the accused (Case no. 93 of 1922), it appears to me that on the authorities of this Court the order passed by the Officiating District Magistrate is an illegal order. I may refer to two cases, one of which is that of *Banarsi Das v. Partab Singh* (1). In that case it was held that a District Magistrate taking action under section 125 of the Code of Criminal Procedure cannot treat an application made under that section as an appeal and reverse the order of the first class Magistrate on the facts. If he considers the order to be wrong on the merits, he can exercise his revisional powers and submit the record to the High Court. But the cancellation of bonds contemplated by section 125 can only be on the

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ground that the bonds are no longer necessary. This case was followed in another case, that of *Emperor v. Shankar Lal* (1). I agree with this interpretation of section 125 of the Criminal Procedure Code. It appears to me that the only ground on which a District Magistrate can cancel a bond for keeping the peace or to be of good behaviour is that something has supervened since the date of the first court's order which satisfies the District Magistrate that in view of the facts since come to light there is no longer any necessity for keeping the accused person under bond. I do not think section 125 can be used by a District Magistrate as if he were sitting as a court of appeal or that he is justified in passing an order under the section merely because he takes a different view of the evidence which has been submitted to the court of first instance. If he thinks that the order of the first court is not maintainable on the evidence as presented, his duty is not to pass an order under section 125 but to refer the case to the High Court on its revisional side. I, therefore, set aside the order of the Officiating District Magistrate dated the 24th and restore the order of the Assistant Magistrate which bears the date 17th of September, 1921.

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 May, 4.

Before Mr. Justice Lindsay and Mr. Justice Gokul Prasad.

SHEO NARAIN (PLAINTIFF) v. BALA RAO (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 201 (3)—Suit for profits—Presumption—Joint Hindu family.

The presumption of law provided for by section 201 (3) of the Agra Tenancy Act, 1901, is none the less applicable because the parties to a suit for profits may be members of a joint Hindu family.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Haribans Sahai*, for the appellant.

Pandit *Uma Shankar Bajpai*, for the respondent.

LINDSAY and GOKUL PRASAD, JJ. :—This appeal and the connected second appeal No. 24 of 1921 arise out of suits for profits brought by the plaintiff appellant against his brother, lambardar, defendant. The suits were for profits of two mahals for the years 1923, 1924 and 1925. The defendant pleaded in answer that he and his brother were members of a joint Hindu family and that such a suit was not maintainable.

* Second Appeal No. 23 of 1921, from a decree of H. J. Bell, District Judge of Jhansi, dated the 4th of June, 1920, modifying a decree of Thakur Phul Singh, Assistant Collector, first class, of Orai, dated the 12th of January, 1920.