

REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

MUHAMMAD ABDUL HADI v. BALDEO SAHAL.*

Criminal Procedure Code, section 213(2)—Discharge—Case exclusively triable by Court of Session—Competence of Magistrate to discharge accused after taking into consideration the evidence produced for the defence.

A magistrate inquiring into a case exclusively triable by a Court of Session is not bound to commit the case solely because the evidence for the prosecution discloses a *prima facie* case against the accused; but if the magistrate after hearing the defence witnesses comes to the conclusion that their evidence rebuts that produced for the prosecution or renders it so incredible or unreliable that a conviction will not follow, he may act upon his opinion and pass an order of discharge under section 213(2) of the Code of Criminal Procedure. *Dharam Singh v. Jobi Prasad* (1) followed.

THIS was an application in revision against an order of discharge under section 213(2) of the Code of Criminal Procedure passed by a Magistrate of the first class.

The facts of the case sufficiently appear from the judgment of the Court.

The Hon'ble Saiyid Raza Ali, for the applicant.

Babu Satya Chandra Mukerji, for the opposite party.

LINDSAY, J.:—I am asked in this application to interfere with an order of discharge passed by a first class magistrate in a case which was brought by Muhammad Abdul Hadi against one Baldeo Sahai.

The former is the lambardar in a village and the latter is the patwari.

It appears that a certain suit for profits was brought against Abdul Hadi by a co-sharer in the village and in the course of the trial of that case the patwari was examined for the purpose of showing what the collections of rent had been during the years in suit.

In connection with one tenant named Majju the patwari deposed that his rent was Rs. 58 a year. On the contrary, the lambardar produced certain evidence for the purpose of showing that a lease had been given by him to Majju at the rent of Rs. 34

* Criminal Revision No. 290 of 1921, from an order of V. B. G. Hussey, Sessions Judge of Moradabad, dated the 17th of February, 1921.

(1) (1915) I. L. R., 37 All., 355.

1921

MUHAMMAD
ABDUL HADI
v.
BALDEO
SAHAJ.

only. The result in the Revenue Court was that when the account came to be taken between the parties the rate of Rs. 34 per annum was accepted and the plaintiff's claim decreed accordingly.

Abdul Hadi then applied for an order to prosecute the patwari Baldeo Sahai on a charge under section 218 of the Indian Penal Code, that is, a charge of having framed an incorrect record. A charge under this section is triable by the Court of Session only.

The Magistrate took the evidence for the prosecution; framed a charge, and, acting under the powers conferred upon him by section 212 of the Code of Criminal Procedure, examined certain witnesses whom the accused had cited in his defence. After hearing these witnesses he wrote an order of discharge under the provisions of section 213, sub-section (2), of the Code of Criminal Procedure.

The complainant Abdul Hadi went to the Sessions Judge in revision. The learned Judge refused to interfere with the order of discharge.

In this application before me it is broadly contended that the order of discharge is an improper one, inasmuch as the Magistrate has practically usurped the functions of the Sessions Judge and has tried the case himself. I have examined the judgment of the Magistrate very carefully, and, after due consideration, I am not prepared to say that there was anything improper or illegal in the order which the Magistrate passed. It is true that in a number of cases it has been laid down that it is the duty of a Magistrate who is dealing with a case triable only by a Court of Session to commit the accused for trial to the latter court if any reliable evidence is produced before him which satisfies him that there is sufficient ground for taking such a course. The earlier law on the subject was altered by the provision which was introduced for the first time into the Code of Criminal Procedure of 1898, by which the Magistrate became entitled to examine defence witnesses whom the accused desired to be produced in court, and since that time it has been held in more than one case that if the Magistrate, after hearing the defence witnesses, comes to the conclusion that their evidence

rebutts that produced for the prosecution or renders it so incredible or unreliable that a conviction will not follow, he may act upon his opinion and may pass an order of discharge under section 213 of the Code of Criminal Procedure. That was the view taken by Mr. Justice PIGGOTT in the case of *Dharam Singh v. Joti Prasad* (1). I agree with the view taken by the learned Judge. That was also a case in which defence evidence had been called in the committing magistrate's court and the Magistrate had come to the conclusion that the defence witnesses were more worthy of belief than those produced by the prosecution. I have decided, therefore, that this case should not be allowed to go any further. The order of discharge was in my opinion correct. I dismiss this application.

Application rejected.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

ZAMIR-UL-HASAN KHAN (DEPENDANT) *v.* IMDAD ALI KHAN.
(PLAINTIFF).*

Act No. IX of 1887 (Provincial Small Cause Courts Act), section 35—Jurisdiction—Appeal—Suit instituted in Court of Munsif having Small Cause Court Jurisdiction—Munsif succeeded by another not having such jurisdiction—Suit tried by latter officer—Appeal.

A suit for damages for cutting a branch of a tree was instituted in the Court of a Munsif having Small Cause Court powers. Before the suit was heard the Munsif went on leave and was succeeded by a Munsif who had not Small Cause Court powers, and who accordingly tried the suit as a regular suit.

Held that this procedure was correct and an appeal lay from the decree passed in it. *Sarju Prasad v. Mahadeo Fande* (2) referred to.

THIS was an application for revision under the Provincial Small Cause Courts Act, 1887.

The facts of the case sufficiently appear from the judgment of the Court.

Mr. *S. Abu Ali*, for the applicant.

The opposite party was not represented.

BANERJI, J. :—This is an application for revision against an order of the First Additional Subordinate Judge of Aligarh, refusing to entertain an appeal preferred by the applicant and

* Civil Revision No. 137 of 1920.

(1) (1915) I. L. R., 37 All., 355. (2) (1915) I. L. R., 37 All., 450.

1921

MUHAMMAD
ABDUL HADID
v.
BALDEO
SAHAJ.

1921
July, 7.