REVISIONAL CRIMINAL.

Before Mr. Justice Iqbal Ahmad.

EMPEROR *v.* ALAM.*

1927
April, 20.

Criminal Procedure Code, section 437—Discharge—Further inquiry—Circumstances in which the power to order further inquiry should not be exercised.

Sessions Judges and Magistrates should, in a case where a man has been discharged, use the powers given to them by section 437 of the Criminal Procedure Code sparingly and with great caution and circumspection, especially in cases where the questions involved are mere matters of fact. Where the order of discharge is one which cannot be said to be either perverse or *primâ facie* incorrect and there is no suggestion that any further evidence is forthcoming, no further inquiry should be directed under section 437 of the Code.

Queen-Empress v. *Chotu* (1), and *Bindesri Dube* v. *Emperor* (2), followed.

THESE were two applications in criminal revision. The facts are fully set forth in the judgement of the Court.

Munshi *Shambhu Nath Seth*, for the applicant.

Dr. *N. C. Vaish*, for the opposite party.

IQBAL AHMAD, J. :—Criminal Revisions Nos. 127 and 182 of 1927 are connected with Criminal Revisions Nos. 179 and 206 of 1927 that have been disposed of by me today.

The applications in Revisions Nos. 127 and 182 of 1927 are directed against an order of the learned Sessions Judge, by which he has set aside the order of discharge passed by a Magistrate of competent jurisdiction, and has ordered further inquiry into the case in which the applicants before me were charged with

* Criminal Revision No. 127 of 1927, from an order of Abdul Halim, Additional Sessions Judge of Cawnpore, dated the 23rd of December, 1926.
(1) (1886) I.L.R., 9 All., 52. (2) (1920) 18 A.L.J., 1185

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offences punishable under sections 147 and 325 of the Indian Penal Code.

It appears that the relations between the tenants of village Gauhani and Thakur Bishwanath Singh, zamindar of that village, have been strained for a number of years, with the result that there have been cases between them in the civil and the revenue courts. On the 13th of January, 1926, a riot took place in village Gauhani and a report of the incident was made in the police station of Majhgawan by some of the tenants and another report was made by the zamindar's men at Rath police station.

It was stated in the report made by the tenants that the fight originated in an attempt made by the zamindar's men to cut a *mahua* tree belonging to them and the resistance offered by them. They alleged that three tenants named Dhanwan, Rajaiyan and Parichhat went to the spot on being informed that the zamindar and his servants were cutting a *mahua* tree standing in or about their field, and when the above named tenants asked the son of the zamindar, who was present on the spot, not to get the tree cut, they were at the instance of the zamindar's son beaten by his men.

The case set up on behalf of the zamindar was that a party consisting of zamindar's servants was taking a sum of Rs. 1,000 from Rath to Malehta, where the zamindar resides, and that the party was waylaid by a number of tenants who were named in the report lodged at the Rath police station, and was attacked by them and robbed of the entire money. The case was investigated by an Inspector of Police who eventually sent up the applicants before me to stand their trial under sections 147 and 325 of the Indian Penal Code.

Some of the tenants filed a complaint against the zamindar's men under the same sections, while another complaint was filed by Gajadhar Prasad, one of the servants of the zamindar, against the applicants and certain other tenants of Gauhani. That complaint was with respect to offences under sections 147, 326, 395, 397 and 149 of the Indian Penal Code.

The learned Magistrate, after a protracted trial, came to the conclusion that some of the men of the zamindar's party were guilty under sections 147 and 324 of the Indian Penal Code and accordingly convicted them. The conviction of some of them was upheld by the learned Sessions Judge but their conviction has been set aside by me today. The learned Magistrate also held that the case of dacoity set up by the zamindar was positively false. He gave convincing reasons for holding that all the evidence for the prosecution was tainted, and that implicit reliance could not be placed on the testimony of even one individual witness for the prosecution examined on behalf of the zamindar. Disbelieving the entire evidence for the prosecution against the tenants, he discharged all of them and observed in the course of his judgement that "it is true that a case of serious rioting goes unpunished, though committed in broad daylight and witnessed by a number of persons. The blame for it goes to the prosecution—both to police prosecution and to the complainant prosecution." In my judgement the learned Magistrate adopted the right course in discharging the applicants. If the prosecution did not choose to put the correct version of facts before the court and itself attempted to spoil a true case by adducing false and perjured evidence, the learned Magistrate could not but discharge the accused.

On an application for revision against the order of discharge being filed by the zamindar's karinda,

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the learned Sessions Judge has affirmed the finding of the learned Magistrate that the statement of the prosecution witnesses that a dacoity was committed was not true. But he was of opinion that inasmuch as the injuries received by the zamindar's men were considerable in number, the number of the tenants must have exceeded that of the men on the zamindar's side, and that the learned Magistrate was not justified in discharging the applicants before me on the mere ground that a false case of dacoity had been set up on behalf of the zamindar.

The learned Sessions Judge in the connected case has held that the question whether the *mahua* tree belonged to the zamindar or to the tenants was not free from difficulty, and that, though a free *lathi* fight took place between the zamindar's men and some of the tenants, it was difficult to find out as to which party was the aggressor. These being the findings of the learned Sessions Judge, I cannot uphold his order setting aside the order of discharge passed by the learned Magistrate, and directing a further inquiry into the case.

The learned Magistrate has pointed out in his judgement the exaggerations in the prosecution case. He has emphasized the fact that from time to time the zamindar's karinda was at pains to implicate persons not named in the first report. When the entire evidence for the prosecution is unworthy of belief no useful purpose will be served by trying the applicants again for the very offences for which they have already been tried and discharged.

It has been pointed out in a Full Bench case of this Court, namely, *Queen-Empress* v. *Chotu* (1), that Sessions Judges and Magistrates should, in a case

(1) (1886) I.L.R., 9 All. 52.

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where a man has been discharged, use the powers given to them by section 437 of the Code of Criminal Procedure sparingly and with great caution and circumspection, specially in cases where the questions involved are mere matters of fact. To the same effect is the decision in *Bindesri Dube* v. *Emperor* (1). It has been held in that case that "where an accused person has been discharged, if the circumstances and the evidence are such that two different courts might take two different views of the evidence, and the order of discharge is one which cannot be said to be either perverse or *primâ facie* incorrect and there is no suggestion that any further evidence is forthcoming, no further inquiry should be directed under section 437 of the Code of Criminal Procedure."

In the present case there is no suggestion that any fresh evidence will be forthcoming if a fresh inquiry is held by a Magistrate, nor can it be said that the judgement of the learned Magistrate is perverse or *primâ facie* incorrect.

Applying the test laid down in the cases noticed above, I am unable to hold that the learned Sessions Judge was right in setting aside the order of discharge and ordering further inquiry into the case.

Accordingly I allow this application, set aside the order of the learned Sessions Judge and affirm the order of discharge passed by the learned Magistrate.

Application allowed.

(1) (1920) 18 A.L.J., 1135.