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of Criminal Procedure would operate to afford means whereby the High Court could set aside such an order now impugned if it thought fit. Unfortunately, by reason of the Full Bench decision of this Court it is not sections 435 to 439 of the Code of Criminal Procedure that will govern such an application in revision but section 115 of the Code of Civil Procedure. The language of section 115 is too narrow to meet the case where the Judge by his order decides to prosecute the person on insufficient grounds or on wrong grounds. The consequence is that an application like this has to be rejected and what appears likely to be an abortive criminal suit has to be allowed to take place.

For the reasons stated this application is dismissed but, in the circumstances, I make no orders as to costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Dalal and Mr. Justice Pullan.

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January, 12.

ONKAR MAL (DEFENDANT) v. ASHIQ ALI (PLAINTIFF).*

Act No. IX of 1872 (Indian Contract Act), section 23—
Stifling a criminal prosecution—Compromise—Incidental
withdrawal of a petty charge of theft.

A compromise which is otherwise a fair and reasonable one is not invalidated because in connexion therewith a trifling charge of theft between the servants of the parties has been withdrawn. *Dwijendra Nath Mullick v. Gopi Ram Gobindaram* (1), followed.

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

* Second Appeal No. 869 of 1924, from a decree of Baij Nath Das, Second Additional Judge of Gorakhpur, dated the 13th of February, 1924, reversing a decree of Harihar Prasad, Additional Subordinate Judge of Gorakhpur, dated the 21st of November, 1923.

Mr. A. *Sanyal*, for the appellant.

Maulvi *Mukhtar Ahmad*, for the respondent.

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DALAL and PULLAN, JJ. :—The plaintiff sued to have a certain compromise, which he entered into during partition proceedings in the revenue court on the 22nd of July, 1921, cancelled. His other reliefs were not granted, so it is not necessary in this Court to consider them. The trial court dismissed the suit, but it was decreed by the lower appellate court. The defendant Onkar Mal has come here in second appeal.

The foundation of the plaintiff's claim in the plaint was that he was induced to enter into the compromise by undue influence, because at the time of the compromise a criminal charge brought by a servant of Onkar Mal was pending against the plaintiff's servants and Onkar Mal offered the inducement of withdrawing that complaint. It is a fact that a criminal prosecution on some petty theft was pending in the criminal court and the case was withdrawn on the day that the compromise was entered into. The fact that the case was withdrawn indicates that the charge of theft must be of a trifling nature. The only relevant matter in the judgement of the lower appellate court is the last paragraph printed at page 18 of the printed record. It held that undue influence was not proved. It, however, thought out a new case for the plaintiff and held that the compromise failed because it was void. It held it to be void because it was a stifling of a criminal prosecution.

The compromise, as held by the trial court, was a very fair one. Onkar Mal was in possession of three bighas in excess of his one-anna share. The plaintiff was the owner of the seven-anna share. This seven-anna share had been leased to another person by the plaintiff's vendor prior to the sale in favour of the

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plaintiff. Under the compromise the lessee gave up possession, though it was arranged that for the period of the lease he was to receive the profits of the seven-anna share of the property. As to the three bighas in possession of Onkar Mal in excess of his share, he promised under the compromise to pay rent for it to the plaintiff. One of the motives for that compromise may have been the withdrawal of the criminal case, but it cannot be said to be the only motive. There was no unfairness in the agreement between the parties. When a withdrawal of a criminal case of a trifling nature like the one pending against the plaintiff's servants is one of the motives for a compromise, it would not follow that the compromise would for that reason be void. In *Dwijendra Nath Mullick v. Gopiram Gobindaram* (1) a Bench of the Calcutta High Court held that where the withdrawal of a prosecution was the motive but not the object or the consideration of the agreement, the agreement would not be rendered void under section 23 of the Indian Contract Act. In the present case the withdrawal of the prosecution was not the consideration for the agreement. The agreement was a fair settlement of a dispute between the parties and would possibly have been arrived at even if there had been no criminal prosecution pending at the time against the plaintiff's servants.

We set aside the decree of the lower appellate court and restore the decree of the trial court and dismiss the plaintiff's suit with costs of all the courts.

Appeal allowed.

(1) (1925) 29 C.W.N., 855.