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of that he wrote the order on the back of a police report which gave the full details of the information, and apparently considered this sufficient. Instead of sending a copy of his order with the summons he gave the substance of the information in the summons itself. The applicants were, therefore, informed of what they had to meet. A similar irregularity has been held by the Bombay High Court in *Emperor v. Suleman Adam* (1) to be covered by the provisions of section 537 of the Code of Criminal Procedure.

It is not shown that the accused have been prejudiced, and I am the more unwilling to interfere in this case as the application is a very belated one. The order binding the applicants over was passed in December last. The appeal was rejected on the 8th of February, whereas the application to this Court was not presented till the 10th of May. Persons who come to this Court in revision against an order under section 107 are expected to do so with the utmost promptitude and certainly within thirty days of the order against which they complain.

For the reasons already given I dismiss the application.

Application dismissed.

Before Mr. Justice Pullan.

PIARI LAL v. SAGAR MAL.*

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July 12.

Criminal Procedure Code, sections 435, 436 and 476—Order of discharge by Magistrate—Competence of Sessions Judge to revise order at the instance of a private person.

Held, that a Sessions Judge is empowered under section 435 of the Code of Criminal Procedure to call for the record of an order of discharge passed by a Magistrate in a case instituted under section 476, and, if he is dissatisfied with the correctness, legality or propriety of the finding, to order a further inquiry under section 436, and there is nothing

* Criminal Revision No. 362 of 1926, from an order of G. C. Badhwar, Sessions Judge of Aligarh, dated the 26th of April, 1926.

(1) (1909) 11 Bom., L.R., 740.

to prevent a Sessions Judge from exercising this jurisdiction at the instance of a private person. *Empress v. Chotu* (1) referred to.

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THIS was an application in revision from an order of the Sessions Judge of Aligarh. The facts of the case, so far as they are necessary for the purposes of this report, appear sufficiently from the order of the Court.

Munshi *Girdhari Lal Agarwala*, for the applicant.

Babu *Sailanath Mukerji*, for the opposite party.

PULLAN, J.:—This application for revision is based on two main grounds:—

- (1) It is argued that a Sessions Judge cannot take up at the instance of a private person any revision of a Magistrate's order of discharge in a case instituted under section 476 of the Code of Criminal Procedure.
- (2) That a Sessions Judge cannot interfere with an order of discharge unless the order is manifestly foolish and perverse.

1. Prosecution in this case was ordered by a Munsif as the result of certain proceedings in his court under section 476 of the Code of Criminal Procedure. Undoubtedly it is not the intention of the legislature that a private person should be encouraged to conduct prosecutions in cases of this kind, but no consideration of that nature applies to the present case. This prosecution has been duly started and the Magistrate has passed an order of discharge which appears to the Sessions Judge to be unwarranted by the evidence. The Sessions Judge is, therefore, empowered under section 435 of the Code of Criminal Procedure to call for the record and if he is dissatisfied

(1) Weekly Notes, 1886, p. 281.

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with the correctness, legality or propriety of the finding, to order a further inquiry under section 436. In every case somebody must bring the matter to the notice of the Sessions Judge, as it cannot be supposed that he is aware of all the orders of discharge passed by the Magistrates in his jurisdiction, and there is nothing in the Code to limit the persons who can bring the matter to the notice of the Sessions Judge. Thus it is immaterial how these facts were brought to the notice of the Sessions Judge in the present case and as he had ample powers to deal with the matter, there is nothing in the first ground of revision.

2. As to the second ground, this appears to be based on some decisions of the Lahore High Court which are not in conformity with those of the Allahabad High Court. The law was laid down by a Full Bench of the Allahabad High Court in the case of *Empress v. Chotu* (1). It has not been the practice of this High Court to restrict the powers of Sessions Judges any further than they are restricted by the Code of Criminal Procedure. In the present case it is sufficient to say that the Judge not only disagrees with the finding of the lower court and points out certain considerations which, in his opinion, should have led to a different finding, but he also states that one necessary witness was not examined. I am certainly not prepared to allow this revision on the ground that that witness is now dead. I have only to consider whether the Sessions Judge passed a legal and reasonable order. I am satisfied that he did so and that there is no ground for interference by this Court. I dismiss this application and order that the record be returned.

Application dismissed.

(1) Weekly Notes, 1886, p. 281.