

in respect of the debt without the production of a succession certificate or one or other of the documents mentioned in clauses (i) to (v) of the section. The decree of the Subordinate Judge was, therefore, perfectly correct and the appeal to the court below was rightly dismissed. We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Walsh and Mr. Justice Pullan.

TAWASSUL HUSAIN (APPLICANT) *v.* ABRAR HUSAIN
AND OTHERS (OPPOSITE PARTIES).*

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Act No. IV of 1912 (*Indian Lunacy Act*), section 62—*Insanity—Application for inquisition—Necessity of medical certificate to support application.*

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A person who comes before a court with an application for an inquisition in insanity must support his application with a valid medical certificate of insanity. *Muhammad Yaqub v. Nazir Ahmad* (1), followed.

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

Pandit *Madan Mohan Nath Raina*, for the appellant.

Dr. *M. L. Agarwala* and Mr. *Zafar Mehdi*, for the respondents.

WALSH and PULLAN, JJ. :—We consider that the chief difficulty which has arisen out of these proceedings is accounted for by the reluctance of the courts below to face the facts before them and give a definite decision. *Musāmmat Izzat Fatma* is an old Muhammadan widow, who in the year 1923 executed a

* First Appeal No. 209 of 1925, from an order of M. F. P. Herchenroder, District Judge of Cawnpore, dated the 4th of September, 1925.

(1) (1920) I.L.R., 42 All., 504.

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certain *wagfnama* and also a sale-deed. The applicant, who is her sister's son, then came before the court in Cawnpore with an application for an inquisition in insanity which was not supported by any affidavit or any medical certificate. The proceedings dragged on for a considerable time for one reason or another and finally the learned District Judge has come to the conclusion that the woman is not of unsound mind. It is true that this is not a very definite conclusion, but the reason for that is that the applicant did not produce any definite evidence. We have read a statement which this lady made to a Commissioner appointed by the court when she was admittedly living with the applicant. She stated that she was subject to fits of insanity and she denied all knowledge of any *wagfnama* or transfer of her property. It does not appear to us that these are the statements of an insane person. They were made with a very obvious motive, namely, to do exactly what the applicant wanted. It is not our experience that insane persons ever admit themselves to be insane, and we think that this lady, in view of her other intelligent remarks, was not really ignorant of the nature of a *wagfnama*.

As to her examination in court by the learned Judge, sitting in a *dooly* and wrapped up in a *burqa*, or her examination by the Civil Surgeon which appears to have been conducted under equally unsatisfactory conditions, we are certainly not of opinion that there is any proof that the lady was insane or incapable of managing her affairs.

We consider, moreover, that the applicant must have been aware of the judgement of this Court, *Muhammad Yaqub v. Nazir Ahmad* (1), in a case coming

from this very district, in which it was definitely stated that applicants in cases of this kind should come to court fortified with a valid medical certificate of insanity. In Cawnpore there are always competent lady doctors and we cannot see why the applicant was unable to have this lady put under observation by a lady doctor who could have given a valuable opinion as to her mental state.

We do not, therefore, see our way to interfere with the finding of the lower court, but, having regard to the somewhat peculiar circumstances of this case, we consider that the parties should pay their own costs, and we also, in dismissing this appeal, do so without prejudice to any further application that the applicant may choose to make, supported by a certificate from a lady doctor, based on a sufficient period of observation.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR v. NIHAL AND OTHERS.*

Criminal Procedure Code, sections 55 and 112—Security for good behaviour—Order not setting forth the substance of the information received by the Magistrate—Illegality.

Merely setting out in a notice under section 112 of the Code of Criminal Procedure that a man is an habitual thief or robber and having the prosecution witnesses ready there and then to go on with the case is not the procedure contemplated by the law. In such cases where the Magistrate does not record the substance of the information received, this is more than an irregularity and will vitiate any subsequent order that may be passed. *Emperor v. Rajbansi* (1), followed.

*Criminal Revision No. 196 of 1926, from an order of H. Beatty, Additional Sessions Judge of Moradabad, dated the 22nd of February, 1926.

(1) (1920) I.L.R., 42 All., 646.

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