

Before Mr. Justice Niamat-ullah.

EMPEROR v. HAMID HASAN AND OTHERS.*

1931
October, 7.

Criminal Procedure Code, section 107(2)—Persons informed against not within the local limits of the Magistrate's jurisdiction at the time when the proceedings are initiated—Jurisdiction.

Proceedings under section 107 of the Criminal Procedure Code were initiated in the court of the Joint Magistrate of Ghazipur against persons who were residents of Jaunpur. They had come to Ghazipur, and were expected to come also on future occasions, to look after a case which was pending there against them. The complainant in that case, apprehending molestation at the hands of these persons on any of the occasions when they would come to Ghazipur, initiated the proceedings under section 107. At the time when the proceedings were initiated and the processes were issued these persons were in Jaunpur. *Held* that the Magistrate had no jurisdiction, according to section 107(2) of the Criminal Procedure Code, to take the proceedings.

Section 107(2) makes no reference to the residence of the person proceeded against; and a person may be within the local limits of a Magistrate's jurisdiction and yet may not be resident within such limits. At the same time, to hold that a person "is" within the local limits of a Magistrate's jurisdiction only because he has appeared in obedience to a summons issued by the Magistrate and is present in court when the Magistrate draws up his order under section 112 of the Code of Criminal Procedure, is to make the section nugatory. If the person informed against is not within the local limits of the Magistrate's jurisdiction when the proceedings are initiated and process is issued, the Magistrate has no jurisdiction.

Messrs. *S. M. Husain* and *K. Masud Hasan*, for the applicants.

The Assistant Government Advocate (*Dr. M. Wali-ullah*), for the Crown.

NIAMAT-ULLAH, J. :—This is an application for revision of an order of the District Magistrate of Ghazipur purporting to be one on appeal from an

*Criminal Revision No. 356 of 1931, from an order of E. deV. Moss, District Magistrate of Ghazipur, dated the 30th of April, 1931.

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order of the Joint Magistrate of that District, passed in proceedings under section 107 of the Code of Criminal Procedure pending before him against the present applicants, who are residents of Jaunpur and took objection to the jurisdiction of the Joint Magistrate taking proceedings under the aforesaid section. The objection was overruled. They moved the District Magistrate, who dismissed "the appeal". No appeal lay to the District Magistrate from an interlocutory order of the kind passed by the Joint Magistrate and the proceedings before the District Magistrate should be regarded as those in revision under section 435 of the Criminal Procedure Code and I treat them as such. The revision to this Court is in no way affected by error of procedure, if any, in moving the District Magistrate.

The proceedings under section 107 of the Code of Criminal Procedure were initiated by an application presented before the Joint Magistrate by one Hakim Syed Husain, a Mukhtar practising in the criminal courts at Ghazipur, complaining that the present applicants were likely to commit a breach of the peace. It appears that the parties were interested in a certain waqf as to which a civil suit had been instituted by the present applicants. Certain allegations made by them in the plaint were considered by Hakim Syed Husain to be defamatory. Accordingly the latter instituted criminal proceedings before a Magistrate in the Ghazipur district for prosecution of the present applicants for an offence under section 500 of the Indian Penal Code. The applicants, being accused in the aforesaid case, had to come from Jaunpur to Ghazipur on the dates fixed for hearing. The Hakim's application for action being taken against them under section 107 of the Code of Criminal Procedure, which was made during the pendency of the defamation case, alleged that the present applicants intimidated him when they came to Ghazipur for the defamation case,

threatening to institute some case against the complainant, presumably false, in some court in the Jaunpur district and when he (the complainant) would go to that place for such case he would be molested. The complaint is not clearly worded, and placing a construction most favourable to the complainant it amounts to an allegation that the applicants are likely to commit a breach of the peace in Ghazipur and Jaunpur and that the occasion on which a breach of the peace in Ghazipur was apprehended would be the visit of the applicants to that place for purposes of the defamation case. Assuming this allegation to be true, the question is whether the Joint Magistrate of Ghazipur has jurisdiction to take proceedings under section 107 of the Code of Criminal Procedure against the applicants who are residents of Jaunpur but have to visit Ghazipur for the purposes of the defamation case.

The answer to the question formulated above turns on the right interpretation of section 107(2) of the Code of Criminal Procedure which provides that no proceedings under that section can be taken unless both the persons informed against and the place where the breach of the peace or disturbance is apprehended are within the local limits of the Magistrate's jurisdiction. The contention raised by the applicants is that they are residents of Jaunpur and go to Ghazipur only for the purposes of the defamation case and the Joint Magistrate has no jurisdiction to proceed against them. Section 107(2) makes no reference to the residence of the persons proceeded against; all that it provides is that if such persons "are" not within the jurisdiction of the Magistrate his jurisdiction is ousted. A person may be within the limits of a Magistrate's jurisdiction and yet may not have residence within such limits. At the same time to hold that a person "is" within the local limits of a Magistrate's jurisdiction only because he is present in court when the Magistrate draws up his order under section 112 of the Code of

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Criminal Procedure, having appeared in obedience to a summons issued by the Magistrate, is to make the section nugatory. Section 114 of the same Code empowers the Magistrate to issue a summons to a person against whom he decides to take proceedings under section 107, sub-section (2) of which is imperative that "no proceedings shall be taken" unless the person informed against is within the local limits of the jurisdiction. Issuing a summons under section 114 is part of such proceedings and it is clear that if the person informed against is not within the local limits of the Magistrate's jurisdiction when the proceedings are to be initiated, he has no jurisdiction.

The record shows that the applicants were in Jaunpur when the complaint was filed and process issued. They appeared in obedience to the summons served upon them in Jaunpur, when the order under section 112 of the Code of Criminal Procedure was read out to them. As already stated they took objection to the jurisdiction of the Magistrate to take proceedings under section 107 against them.

In the view I take of the question involved in this revision it must succeed. It is accordingly allowed and the proceedings so far as they were taken by the Joint Magistrate are quashed.

APPELLATE CIVIL.

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

JANKI DAS AND ANOTHER (APPLICANTS) v. SHEO PRASAD
AND ANOTHER (OPPOSITE PARTIES).*

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October, 23.

Civil Procedure Code, section 151 and order XLI—Stay of execution—Appeal pending from preliminary decree for sale on mortgage—Power of appellate court to stay execution of final decree although no appeal filed therefrom—Inherent powers.

Where, during the pendency in the High Court of an appeal from a preliminary decree for sale on a mortgage, a

*Application in First Appeal No. 284 of 1930.