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of limitation would destroy vested rights that it is not to be construed retrospectively, otherwise the ordinary rule is that rules of limitation are rules of procedure and no one has a vested right in any period of limitation.

BY THE COURT:—The suit, as amended by the addition of the prayer for possession, was cognizable by the civil court, and we accordingly dismiss the appeal with costs.

REVISIONAL CRIMINAL.

Before Justice Sir Shah Muhammad Sulaiman.

EMPEROR v. BALKRISHNA SHARMA.*

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Criminal Procedure Code, section 257—Refusal to summon more than a limited number of defence witnesses—Revision—Criminal Procedure Code, section 435—Practice—Revision in High Court without first applying to Sessions Judge—General Rules (Criminal) for subordinate courts, chapter III, rule 8.

At the trial by a District Magistrate of an offence under section 124A of the Indian Penal Code the accused gave a list of 183 witnesses for the defence to be summoned. The District Magistrate ordered the accused to select 11 witnesses, who would be summoned, but not the rest. The Magistrate did not consider that there was any deliberate attempt at obstruction by the defence, but considered that the summoning of such a large number of witnesses would in fact result in very great delay and in defeating the ends of justice. The accused applied to the High Court in revision against the order. He did not first apply to the Sessions Judge. *Held*,—

It is, no doubt, a general practice of the High Court not to entertain a revision when the applicant could have gone to the District Magistrate or the Sessions Judge and has not done so. But even a settled practice does not oust the

*Criminal Revision No. 535 of 1931, from an order of Captain A. W. Ibbotson, District Magistrate of Cawnpore, dated the 7th of August, 1931.

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jurisdiction of the High Court and the High Court is not precluded from entertaining the application on the merits. Further, the present case was distinguishable inasmuch as an appeal from a conviction by the District Magistrate in this case would lie, according to section 408 (*c*) of the Criminal Procedure Code, to the High Court direct and not to the Sessions Judge.

Outside the provisions of section 257 of the Code of Criminal Procedure it is not open to a Magistrate arbitrarily to limit the number of witnesses which the defence should be allowed to produce. A court may be entitled to infer from the mere fact that an unduly large number of witnesses have been summoned that the application for summoning them has been made for the purpose of vexation or delay or for defeating the ends of justice. But where the Magistrate does not come to the conclusion that any witnesses are being summoned for such purpose, he has no jurisdiction to refuse to summon the witnesses, even though the number may be inconvenienty large. Rule 8 in chapter III of the General Rules (Criminal) for subordinate courts provides an ample safeguard against a reckless summoning of witnesses.

Dr. *K. N. Katju* and Mr. *K. D. Malaviya*, for the applicant.

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

SULAIMAN, J. :—This is an application in revision from an order of the District Magistrate of Cawnpore directing that the defence should select three witnesses out of Nos. 1 to 10, and eight other witnesses out of the remaining lists. The case pending before him is one under section 124A of the Indian Penal Code.

A preliminary objection is taken that no revision lies because the applicant has not approached the Sessions Judge in the first instance. No doubt it is the general practice of this Court not to entertain a revision when the applicant could have gone to the superior court of the District Magistrate or the Sessions Judge. But, of course, even a settled practice does not oust the jurisdiction of the High

Court. In *Emperor* v. *Manna* (1) and *Emperor* v. *Mansur Husain* (2) PIGGOTT, J., referred to this practice and yet entertained the revisions. In the case *Sharif Ahmad* v. *Qabul Singh* (3) a Division Bench in clear terms declared that there was this practice. Nevertheless, they entertained that particular revision and set aside the conviction. In the case *Emperor* v. *Bhure Mal* (4), which was after the decision of the Division Bench, another learned Judge again referred to the same practice and yet decided the application on the merits. On the other hand, my attention has been drawn to two other cases, decided by single Judges, where the applications were not entertained: *Nathe Singh* v. *Emperor* (5) and *Jadunandan Misra* v. *Sheophal* (6).

The present case is, however, distinguishable. The offence under section 124A is triable by either the District Magistrate or the Sessions Judge. It is not triable exclusively by the latter. Under section 408 (*c*) of the Code of Criminal Procedure an appeal lies from the order of the District Magistrate direct to the High Court and not to the sessions court. The propriety of the orders passed by the District Magistrate would, therefore, have to be considered by the High Court in appeal and not by the Sessions Judge. No case has been brought to my notice in which a revision from an order passed by the District Magistrate where an appeal would have lain direct to the High Court was not entertained simply because the Sessions Judge had not been approached first. I therefore think that I am not precluded from considering the application on the merits.

The learned District Magistrate has remarked that he did not make any suggestion of a deliberate attempt at obstruction by the defence, but that the

(1) (1920) I.L.R., 42 All., 294.
(2) (1919) I.L.R., 41 All., 587.
(3) (1921) I.L.R., 43 All., 497.
(4) (1923) I.L.R., 45 All., 526.
(5) A.I.R., 1927 All., 829.
(6) [1929] A.L.J., 514.

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remaining witnesses, if summoned, would in fact result in achieving the purpose of very great delay and defeating the ends of justice. The accused had summoned no less than 183 witnesses. I would not say that a court is not entitled to infer from the mere fact that an unduly large number of witnesses have been summoned, that the application has been made for the purpose of vexation or delay or for defeating the ends of justice. But where the Magistrate does not consider that the application has been made for such purpose, he has no option but to issue process under section 257(1) of the Code of Criminal Procedure. The section is imperative and compels the Magistrate to issue such process, except in the case mentioned above. Where he refuses process he is directed to record his grounds in writing.

The number of witnesses which the prosecution or the defence might reasonably produce in a case depends to a large extent on the scope of the inquiry. Outside the provisions of section 257 of the Code of Criminal Procedure it is not open to a Magistrate arbitrarily to limit the number of witnesses which the defence should be allowed to produce, any more than the Magistrate can restrict the number of witnesses which the prosecution should produce.

The High Court has added rule 8 (correction slip No. 37) at the end of chapter III of the General Rules (Criminal). Under this rule "every application for the issue of process for the attendance of witnesses shall, if the party presenting the application is represented in the case by a legal pratitioner, contain a certificate signed by such legal practitioner that he has satisfied himself that the evidence of each of the witnesses is material in the case". This rule provides an ample safeguard against a reckless summoning of witnesses. The Magistrate should insist upon such a signed certificate being filed. That will enable the Magistrate to decide for himself whether any witnesses are being summoned for the purpose of vexation or delay or for defeating the ends of justice. If he

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cannot come to such a conclusion, he has no jurisdiction to refuse to summon the witnesses, even though the number may be inconveniently large.

I accordingly set aside the order limiting the number of witnesses, and send the case back to the court of the District Magistrate with directions to proceed in the light of the above observations. I may add that Dr. *Katju* on behalf of his client assures me that his client will submit a shorter revised list of witnesses to the District Magistrate.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Niamat-ullah.

EMPEROR *v.* BAHADUR SINGH.*

1931 September, 3.

Criminal Procedure Code, sections 109, 121—*Security for good behaviour—Sureties—Forfeiture of bond—Whether subsequent vagrancy or suspicious behaviour of accused is sufficient to forfeit bond—Time within which forfeiture can be enforced against surety.*

Two persons stood sureties for an accused person who was bound over under section 109 of the Criminal Procedure Code for a certain period. Before the expiry of the period the accused was again found concealing himself under suspicious circumstances and without any ostensible means of livelihood; he was sent up again under section 109. It was *held* that in view of the provisions of section 121 there was no forfeiture of the surety bonds inasmuch as the accused had neither committed nor attempted to commit nor abetted the commission of any offence punishable with imprisonment. The mere fact that the accused was again found in suspicious circumstances without any means of livelihood might justify a fresh proceeding against him under section 109, but, at most, it might amount to a preparation for an offence, short of an attempt.

When such surety bonds are forfeited on account of any act of the accused person within the period for which the sureties had bound themselves, they are liable whether the proceedings are started against them before or after the expiry of the period.

*Criminal Reference No. 184 of 1931.