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IN THE MATTER OF BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA, LIMITED

purposes of stamp duty must be the license as defined in the Easements Act. In my view we should not look into either the Transfer of Property Act or the Easements Act. We should confine our attention to the definition given in the Stamp Act and the Stamp Act alone.

For the reasons given above I concur in the opinion expressed by the learned CHIEF JUSTICE.

KING, J. :—I also agree. In my opinion the document in question is clearly an undertaking in writing to occupy immovable property, and is not a counterpart of a lease, and must therefore be treated as a lease for the purposes of the Indian Stamp Act.

BY THE COURT :—The document in question is a lease and is chargeable with duty under article 35(*a*)(*iv*) of schedule I.

REVISIONAL CRIMINAL

Before Mr. Justice Kendall

1933
July, 18

DHONDHA KANDOO *v.* SITARAM AND OTHERS*

Criminal Procedure Code, sections 258(1), 366 *and* 367—*Magistrate acquitting the accused without writing a judgment except a note on the order sheet—Judgment written a month later—Irregularity—No miscarriage of justice—Criminal Procedure Code, section* 537.

In a case under section 325 of the Indian Penal Code the trying Magistrate acquitted the accused, without writing and delivering any judgment, but merely recording an informal order of acquittal on the order sheet. On an application in revision being made to the District Magistrate, he directed the trying Magistrate to write and pronounce a judgment; and thereupon the latter wrote a judgment of acquittal, reviewing the facts of the case and discussing the evidence; this was done about a month after the accused had been acquitted. *Held* that the procedure of the Magistrate in directing the accused to be acquitted without writing a judgment was undoubtedly

*Criminal Revision No. 222 of 1933, from an order of Faiyaz Husain Rizwi, Magistrate, second class, of Azamgarh, dated the 19th of January, 1933.

irregular; but the question was whether the irregularity was such as could be cured under section 537 of the Criminal Procedure Code and the question would depend upon whether or not there had been a failure of justice owing to the irregularity. In the present case, as the Magistrate when he did come to write and pronounce judgment was of the same opinion as he had been when he directed by an informal order the accused to be acquitted, and as he had given his reasons for that opinion based on the evidence in the case, it could not be held that there had been any miscarriage of justice.

Queen-Empress v. *Hargobind Singh* (1), distinguished.

Mr. *Sailanath Mukerji*, for the applicant.

Mr. *K. L. Misra*, for the opposite parties.

KENDALL, J. :—This is an application for the revision of an order of the District Magistrate of Azamgarh, directing a second class Magistrate to write and pronounce judgment in a case which had been tried by him. The circumstances are that a case under section 325 of the Indian Penal Code had been instituted in the court of the Magistrate, who passed an order on the 21st of December, 1932, on the order sheet to the effect that final orders would be passed on December the 23rd. On that date the Magistrate merely wrote an informal order on the order sheet acquitting the accused without delivering a judgment at all. An application for revision was filed in the court of the District Magistrate, who recorded an order that he would look into the matter on inspecting the tahsil, and his order of January the 13th which is the subject of the present application was apparently written during the inspection of the tahsil, but must be regarded as an order passed on the present application to him for revision.

It is argued in support of the present application that the proceedings of the Magistrate were irregular in that he acquitted the accused in the case without writing a judgment. He did, however, subsequently write a judgment dated January the 19th, in accordance with the order of the District Magistrate, in which he reviewed

(1) (1892) I.L.R., 14 All., 242.

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the facts of the case and discussed the evidence. The proceedings are therefore complete. Mr. *S. N. Mukerji* has quoted two decisions on which he bases his argument that the order of the District Magistrate should be set aside and that a re-trial should be ordered. Such a course would entail not only the setting aside of the order of the District Magistrate but also the judgment of the Tahsildar Magistrate recorded and pronounced on January the 19th and the order of acquittal, which may or may not be regarded as an order passed under section 258(1) of the Code of Criminal Procedure, which was recorded on December the 23rd, 1932. In the case of *Queen-Empress* v. *Hargobind Singh* (1) it was held by a Full Bench of this Court that "A sentence which has been passed or a direction that an accused be set at liberty which has been given at a sessions trial before the judgment required by section 367 of the Code of Criminal Procedure of 1882 has been written is illegal." In that case the Sessions Judge without writing a proper judgment had recorded an order directing the four persons accused to be hanged under section 302 of the Indian Penal Code. In setting aside that order and directing a re-trial the Full Bench remarked (at page 272):—

"Inasmuch as the sentence in the case of a conviction, and the direction to set the accused at liberty in the case of an acquittal, can only follow on the decision and cannot precede it and inasmuch as the decision must be contained in the written judgment, and there only, it necessarily follows that when, in cases like the present, to which section 367 applies, there is no written judgment when the sentence is passed, the sentence is illegal.

"The requirements of sections 366 and 367 are no mere matters of form. The provisions of those sections are based upon good and substantial grounds of public

(1) (1892) I.L.R., 14 All., 242.

policy, and whether they are or not, Sessions Judges must obey them and not be a law to themselves.

"Any Judge at the conclusion of the evidence in a case, some of which may be not quite distinct in his mind owing to the length of the trial, might pass sentence on a prisoner and find it impossible honestly afterwards to put on paper good reasons for having convicted him, or, on the other hand, might direct that the accused be set at liberty and find it impossible afterwards honestly to put on paper good reasons for the acquittal."

There is no reason to suppose that these remarks are not to be applied with equal force in the case of proceedings in the court of a Magistrate, at any rate in such cases as require the writing and pronouncement of a regular judgment in accordance with the provisions of sections 366 and 367 of the Code of Criminal Procedure. Warrant cases, for which the procedure is prescribed in chapter XXI of the Code, are such cases. In section 258(1) it is laid down that "If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty he shall record an order of acquittal." But the mode in which the order of acquittal is to be recorded is set forth in chapter XXVI.

Undoubtedly therefore the procedure of the Magistrate in directing the accused to be acquitted without writing a judgment was irregular. Mr. *Mukerji* has pointed out that the Magistrate apparently had no intention of writing a judgment at all until he was directed to do so by the District Magistrate, but this does not affect the merits of the case. The question I have to consider is whether the irregularity is such as can be cured under the provisions of section 537 of the Code of Criminal Procedure. In the case decided by the Full Bench of the Allahabad High Court to which I have referred above, it is obvious that the irregularity could

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not be cured and the same view was taken in the case of *Jhari Lal* v. *Emperor* (1). These were both cases in which the order which was held to be irregular was an order of conviction. There have been other cases, *Tilak Chandra Sarkar* v. *Baisagomoff* (2), also an order of conviction, in which it was held that the irregularity could be cured. A similar view was taken in the case of *Sankaralinga Mudaliar* v. *Narayana Mudalliar* (3), a sessions case, in which the Judge at the end of the trial informed the accused that they were acquitted, in order to save them from having the anxiety of the charge hanging over them for longer than was absolutely necessary, and gave his full reasons for the acquittal at another time. I am not prepared to say that in every case in which there has been an irregular order of acquittal such as the present one the irregularity could be cured under section 537 of the Code. It would depend on whether the Court could hold that there had or had not been a failure of justice owing to the irregularity. In the present case judgment was pronounced about one month after the end of the hearing, and if judgment had been merely reserved for that period there would have been no irregularity at all. The irregularity consisted of what appears to have been an informal order of acquittal before the judgment was written and pronounced, and as the Magistrate when he did come to write and pronounce judgment was of the same opinion as he had been when he directed the accused to be acquitted, and as he has given his reasons for that opinion based on the evidence in the case, I cannot hold that there has been any miscarriage of justice. The present application for revision is therefore dismissed. A copy of this order must however be sent to the Magistrate concerned, through the District Magistrate, for his information and guidance.

(1) A.I.R., 1930 Pat., 148. (2) (1896) I.L.R., 23 Cal., 502.
(3) A.I.R., 1922 Mad., 502.