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possession of his holding. Under that section he is entitled to sue the person who ejected him or kept him out of possession. The delivery of possession by the civil court was to the mortgagor against the mortgagee. But when subsequently the defendant retained possession of the holding and refused to hand it over to the plaintiff, who had been found by the Commissioner to be entitled to the holding, he certainly prevented him from obtaining possession and was keeping him out of possession. The plaintiff is suing as a tenant and therefore as a person claiming through the landholder and is suing against a defendant who also claims to be a tenant and, therefore, a person claiming through the landholder, and so the suit lies under section 99 which directly applies.

We accordingly allow the appeal and setting aside the decree of the District Judge restore the decree of the Assistant Collector with costs in all courts

REVISIONAL CRIMINAL

Before Mr. Justice Bennet

EMPEROR *v.* KUNJI LAL*

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January, 23

Criminal Procedure Code, sections 369, 561A—*Review of judgment in criminal cases—Jurisdiction—Whether the High Court has power to review its judgment in a criminal case, after it has been signed and sealed—Letters Patent, clauses* 18, 19—*Criminal Procedure Code, section* 203—*Dismissal of complaint—Fresh complaint on same facts before same Magistrate—Transfer by him to another Magistrate.*

No application lies under section 561A of the Criminal Procedure Code for review of a judgment of the High Court, which has been signed and sealed, dismissing an application in criminal revision. Section 561A does not override section 369 of the Code.

There is a long series of rulings prior to 1923 holding that there was no power of review in criminal cases. The alteration in section 369, and the addition of section 561A, made by

*Application for review of judgment in Criminal Revision No. 330 of 1933.

the Amending Act of 1923 did not have the effect of allowing any power of review. In section 561A there is no definite provision for a review of judgment; if the legislature had intended by the Amending Act of 1923 to make a provision in the Code for a review, there would have been a definite section dealing with a right of review and laying down the conditions under which that right could be exercised. The sections which are referred to by the words "Save as otherwise provided by this Code" in the amended section 369 are evidently sections 395, 434 and 484 of the Code, and not section 561A; and the reference to the Letters Patent is to paragraphs 18 and 19 thereof. They deal with certain specified cases only.

Where a complaint was dismissed by the Magistrate on the police report without summoning the accused, and a second complaint on the same facts was filed before the same Magistrate, it was *held* that the Magistrate had jurisdiction to try the second complaint, and also to transfer it to another Magistrate for trial.

Mr. S. B. L. Gaur, for the applicant.

The application was decided *ex parte.*

BENNET, J.:—This is an application on behalf of one Kunji Lal asking for review of an order of this Court dismissing an application in criminal revision which had been signed and sealed before the application for review was made. The first question was whether such an application for review lies, as learned counsel contends, under section 561A of the Criminal Procedure Code or whether such an application is barred by the provisions of section 369 of the Criminal Procedure Code. In the Criminal Procedure Code, Act X of 1882, section 369 appeared in the form: "No court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error." This section was reproduced in somewhat similar terms in the Criminal Procedure Code of 1898: "No court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in sections 395 and 484 or to correct a clerical error." In 1923 there was introduced into the Code a new

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section 561A which laid down: "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice." It was contended by learned counsel that this section gave a right of review and that the section being perfectly general would apply to section 369 and override it. At the same time that this section was introduced in 1923 there was an alteration made in section 369, which now reads as follows: "Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error." It is to be noted that in section 369 there is no reference to review being allowed by section 561A. The reference in section 369 as it stands at present to the Letters Patent is, in the case of Allahabad, to sections 18 and 19 which provide that where there is an original criminal trial by the High Court the trial court may reserve any point or points of law for the opinion of the High Court and on such a reservation "the said High Court shall have full power and authority to review the case or such part of it as may be necessary." This is also provided in the Criminal Procedure Code in section 434 and the same words "review the case" are used in sub-section (2) of section 434. There is also provision in section 395 for a review of an order where a sentence of whipping cannot be executed, and in section 484 there is provision for the court accepting an apology for an interruption. These three sections of the Code, 395, 484 and 434, are evidently the sections which are referred to by the words "Save as otherwise provided by this Code" in section 369. Learned counsel, however, argued that section 561A could also come under these words "Save

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as otherwise provided by this Code", but in section 561A there is no definite provision for a review of judgment. I am of opinion that review is a definite method of procedure and that if the legislature intended by the Amending Act, Act XVIII of 1923, to make a provision in the Code for a review, there would have been a definite section dealing with a right of review and laying down the conditions under which that right could be exercised. In the case of the Civil Procedure Code there is a definite provision for review in section 114 and there is an order of the Code, order XLVII, dealing with the circumstances under which a review is permitted. If a review were intended by the Criminal Procedure Code there would have been some definite provision of this nature.

I now come to the rulings on the point. Learned counsel relied on two rulings, *Mathra Das* v. *The Crown* (1) and *Emperor* v. *Shiva Datta* (2). Each of these rulings was by a single Judge. The Oudh ruling referred to the Lahore ruling as authority for the proposition that a right of review exists under section 561A of the Criminal Procedure Code. But the Lahore ruling has been definitely overruled in the case of *Raju* v. *The Crown* (3). This was a ruling by two Judges and they specifically held that the previous ruling by BROADWAY, J., was incorrect, and one of the Judges stated that BROADWAY, J., "has authorised me to say that he is not satisfied with his judgment in that case and he is inclined to the view which I have just expressed." On page 4 it was held in regard to section 561A: "It does not confer any new powers, but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code . . . There never has been an inherent power in the High Court to alter or review its own judgment in a criminal case once it has

(1) A.I.R., 1927 Lah., 139. (2) A.I.R., 1928 Oudh, 402.
(3) (1928) I.L.R., 10 Lah., 1.

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been pronounced and signed, except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on the merits. With this view all the Courts in India are in accord . . . Mr. *Mehtab Singh* contends that the introduction of this section has altered the law and given to the High Court power to do something which it could not do before. As I have already pointed out this is not the case. The instances of inherent powers possessed by the High Court given in section 561A, namely, to make such orders as may be necessary to give effect to its decisions, or to prevent an abuse of the process of any court, have always been assumed by courts of record."

There is a long series of rulings prior to 1923 holding that there is no power of review in criminal courts. In the case of *Queen-Empress* v. *Durga Charan* (1) a Bench laid down that the provisions of section 369 of the Criminal Procedure Code merely referred to section 434 and sections 18 and 19 of the Letters Patent and that the High Court had no power to review an order dismissing an application for criminal revision. In the case of *Queen-Empress* v. *Lalit Tiwari* (2) and *Emperor* v. *Kallu* (3) it was held that when a judgment in a criminal case had been signed by a Judge of the High Court, but not sealed, then he could alter it. In the case of *Emperor* v. *Gobind Sahai* (4) a Bench of this Court held to the same effect, and that when judgment had been signed and sealed it could not be altered and no review lay. A similar dictum was laid down in the case of *Emperor* v. *Kale* (5). In the case of *Queen* v. *Godai Raout* (6) a Full Bench of the Calcutta High Court held that a review of judgment will not lie from a sentence or judgment of the High Court in criminal appeal and "that it was the intention of the legislature that the court should not exercise the power of reviewing its own judgment in criminal cases." In the case

(1) (1885) I.L.R., 7 All., 672.
(2) (1899) I.L.R., 21 All., 177.
(3) (1904) I.L.R., 27 All., 92.
(4) (1915) I.L.R., 38 All., 124.
(5) (1922) I.L.R., 45 All., 143.
(6) (1866) 5 W.R. (Cr. R.) 61(65).

of *Queen-Empress* v. *C. P. Fox* (1) a Full Bench of the Bombay High Court held that the Division Bench of the High Court has not got power under section 439 of the Code of Criminal Procedure of 1882 to review its judgment pronounced in revision in a criminal case. The above authorities make it clear that prior to 1923 all the High Courts were in agreement that no power of review lay in criminal cases. The judgment of the Lahore High Court in the case of *Raju* v. *The Crown* (2) gives good reasons for holding that the alterations in the Code in 1923 did not have the effect of allowing any power of review. Accordingly I hold that no review lies. The remedy of a person aggrieved by an order of this Court is to apply to the Local Government to exercise its powers. In case any such application is made I may point out that the main basis on which this application was made is incorrect.

Learned counsel lays stress on grounds 4 and 5 of his affidavit and he claims that the trial court had no jurisdiction to entertain the present complaint in view of the fact that there had been a previous order by the City Magistrate discharging the accused on the 27th of April, 1933. The facts are incorrectly stated. As pointed out by the learned Sessions Judge in his order, "the previous application was thrown out by the Magistrate on the police report without summoning the accused." It was therefore not an order of discharge. Now the complaint in the present case was made on the 2nd of May, 1933, and the complaint was filed in the court of the same City Magistrate, Mr. Evans. Learned counsel has referred to a judgment of a learned Judge of this Court in *Ramanand* v. *Sheri* (3). That judgment deals with the question of how far a previous complaint bars a subsequent complaint. The learned Judge says: "A subsequent complaint can be filed either (1) before the same court presided over by the same Magistrate who had dismissed the former complaint, or (2) before the

(1) (1885) I.L.R., 10 Bom., 176. (2) (1928) I.L.R., 10 Lah., 1.
(3) (1933) I.L.R., 56 All., 425.

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same court presided over by the successor in office of the Magistrate who had dismissed the former complaint, or (3) before a court other than the court which had dismissed the former complaint. It is well settled that there is no bar to the trial of a second complaint by the same Magistrate who had dismissed the first complaint and passed an order of discharge. To this effect are the decisions of this Court in *Queen-Empress* v. *Puran* (1), *Queen-Empress* v. *Umedan* (2), *Emperor* v. *Mehrban Husain* (3), and *Emperor* v. *W. C. Keymer* (4)." Now the present case comes within the first clause as the subsequent complaint was filed before the City Magistrate who had dismissed the first complaint. The City Magistrate had jurisdiction to try the second complaint. If he had jurisdiction to try the second complaint he had jurisdiction to transfer it to another Magistrate for trial. Accordingly there is no doubt that the trial in the present case was with jurisdiction.

Reference was also made to *Phonsia* v. *King-Emperor* (5) in which I refused to transfer a case on the 3rd of November, 1933. There had been a previous complaint before the same Magistrate and the Magistrate had discharged the accused after recording all the evidence of the prosecution witnesses. For these reasons I held that it was undesirable that the subsequent complaint should be transferred from the same Magistrate. That case differed from the present case because the evidence had been fully heard on the first complaint whereas in the present case the evidence was not heard at all on the first complaint. The attitude of the complainant was that he desired that his evidence should be heard and it was not unreasonable for the City Magistrate to accede to such an application.

For these reasons I dismiss this application in revision.

(1) (1886) I.L.R., 9 All., 85. (2) Weekly Notes 1895, p. 86.
(3) (1906) I.L.R., 29 All., 7. (4) (1913)) I.L.R., 36 All., 53.
(5) (1933) Since reported in A.I.R., 1935 All., 59.