

no application to such a case. If the minor was not in reality properly represented in that suit then he was not a party to that judgment and it cannot stand in his way. The mere fact that he has not yet brought a suit to have it set aside does not debar him from raising the same objection as a defendant in the present suit. I therefore agree that the appeal should be dismissed.

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 DHAPO  
 v.  
 RAM  
 CHANDRA

 Sulaiman,  
 C. J.

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 REVISIONAL CRIMINAL
 

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Before Mr. Justice Bajpai

SUKHDEO v. RAI KISHANJI\*

*Criminal Procedure Code, section 197—Magistrate using insulting language to witness—Complaint against Magistrate under section 504, Indian Penal Code—Sanction of Local Government necessary.*

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A complaint under section 504 of the Indian Penal Code against a Magistrate, on the allegation that he used abusive and insulting language towards the complainant while the latter was giving evidence as a witness in the court of the Magistrate, can not be entertained without the previous sanction of the Local Government, as required by section 197 of the Criminal Procedure Code. All that the court should see in a case like this is whether the officer concerned has been accused of having committed the offence complained of while he was acting or purporting to act in the discharge of his official duty; and if so, the sanction of the Local Government is necessary for the entertainment of the complaint.

Mr. Harnandan Prasad, for the applicant.

The Assistant Government Advocate, (Dr. M. Waliullah), for the Crown.

BAJPAI, J.:—The petitioner was a witness in the court of Rai Kishanji Saheb, Special Magistrate of Benares, and the complaint of the petitioner is that while he was in the witness box the aforesaid Magistrate used insulting language towards the witness. The words alleged to be used are "*haramzada badmash baiman*". The petitioner therefore filed a complaint in the court of the City

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\*Criminal Revision No. 362 of 1934, from an order of S. B. Chandra mani, Sessions Judge of Benares, dated the 6th of April, 1934.

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Magistrate of Benares against Rai Kishanji Saheb under section 504 of the Indian Penal Code. The City Magistrate was of the opinion that the complaint should not be entertained without the sanction of the Government. The learned Sessions Judge was also of the opinion that under section 197 of the Criminal Procedure Code no complaint against the Magistrate could be entertained without the previous sanction of the Local Government. On a question of fact it was admitted by learned counsel for the applicant before the learned Sessions Judge that the act of the Magistrate complained of took place while he was acting as a Magistrate.

It is contended before me that under circumstances like these the absence of a sanction is no bar to the City Magistrate's taking cognizance of the complaint. From what I have stated before there can be no doubt that the allegation in the complaint is that the insulting language was used by Rai Kishanji Saheb while he was holding his court and while the complainant was in the witness box. It is however argued that it is no part of the policy of the legislature to set an official above the common law and that if such an official commits a common offence he should have no peculiar privilege. I have, however, got to interpret section 197 of the Criminal Procedure Code. Cases which were decided before Act XVIII of 1923, Criminal Procedure Code (Amendment) Act, can be of no help because the section has been completely redrafted, but there is by no means unanimity of opinion even after the amendment and no useful purpose will therefore be served by discussing the case law. I am, however, of the opinion that the legislature has now given a greater protection to the officers concerned than it did under the old section. *Ex hypothesi* the officer concerned should be accused of having committed an offence and the offence is obviously a wrongful act which must *prima facie* be beyond his official rights and duties and therefore if the safeguard of a sanction is not avail-

able to the officer then the protection offered by section 197 of the Criminal Procedure Code and the wisdom underlying the protection would vanish. All that the court should see in a case like this is whether the officer concerned has been accused of having committed the offence complained of when he was acting or purporting to act in the discharge of his official duty. In the present case there can be no doubt that Rai Kishanji was acting or at least purporting to act in the discharge of his official duty, when it is said that he used insulting language to the petitioner. The test is whether the officer at that particular moment was actually engaged in or purporting to be engaged in the discharge of his official duty.

For the reasons given above there is no force in this revision. The application is dismissed.

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### APPELLATE CIVIL

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Rachhpal Singh*

DALJIT (DEFENDANT) v. KHACHERU AND OTHERS  
(PLAINTIFFS)\*

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*Agra Tenancy Act (Local Act III of 1926), sections 242(3), 271 explanation 2—Question of proprietary title—Deed of partition or exchange of khudkasht plots between two co-sharers—Suit in revenue court by one to eject the other from certain plots on basis of the deed as a trespasser—Plea of defendant that he was in proprietary possession of khudkasht—Whether appeal to District Judge.*

A deed of partition or exchange of plots was executed by two co-sharers, according to which certain plots would be the *khudkasht* of one alone and certain other plots would be the *khudkasht* of the other. Thereafter a suit was brought in the revenue court under section 44 of the Agra Tenancy Act by one of them to eject the other as a trespasser from plots which, by the deed, had been allotted to the plaintiff. The defendant

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\*Second Appeal No. 56 of 1931, from a decree of H. G. Smith, District Judge of Meerut, dated the 11th of December, 1930, reversing a decree of Bashir Ahmad, Assistant Collector, first class, of Meerut, dated the 26th of June, 1930.