1896

BALARAM BHRAMARATAR RAY v. SHAM SUNDER NARENDRA.

sufficient cause in this case within the meaning of section 5, and we therefore direct that the appeals of the petitioner may be admitted, if filed on or before Monday next. We ought to add here that this last order of ours is made *ex-parte* and subject to all just objections and exceptions by the other side.

S. C. C. *Rule discharged.*

*Petition for admission of appeal granted.*

## CRIMINAL REVISION.

*Before Mr. Justice Banerjee and Mr. Justice Gordon.*

1896
*February* 11.

MAHOMED BHAKKU (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

*Sanction for prosecution—Preliminary enquiry—Offence by definite person or persons—Criminal Procedure Code (Act X of 1882), section 476—Civil Procedure Code (Act XIV of 1882), section 643.*

The provisions of section 476 of the Criminal Procedure Code, as well as of section 643 of the Civil Procedure Code, clearly indicate that the Court taking action under either section must not only have ground for inquiry into an offence of the description referred to in those sections respectively, but must also be *primâ facie* satisfied that the offence has been committed by some definite person or persons against whom proceedings in the Criminal Court are to be taken.

*Khepunath Sikdar* v. *Grish Chunder Mukerji* (1) and *Chowdry Mahomed Izarne Huq* v. *The Queen-Empress* (2), followed.

A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under section 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group.

THE petitioner brought a rent suit against one Mussumut Mitu and others in the Court of the Second Munsif of Kissengunge. Two written statements, together with two *vakalutnamas*, were filed. The defendants denied having filed the first written statement and the first *vakalutnama*. The Munsif who tried the suit came

* Criminal Revision No. 61 of 1896, against the order passed by H. F. Mathews, Esq., Sessions Judge of Purneah, dated the 11th January 1896.

(1) I. L. R., 16 Calc., 730. (2) I. L. R., 20 Calc., 349.

1896

MAHOMED BHAKKU v. QUEEN-EMPRESS.

to the conclusion that these two documents were not genuine, and passed an order for the prosecution of the petitioner in the following terms: "I further direct that the case be sent to the Sub-Divisional Magistrate for investigation and trial of charges under sections 193, 225, 463 and 471 against the plaintiff or some other person or persons who may be implicated in filing the first written statement of this case, together with the *vakalutnama*." The District Judge of Purneah, on revision, declined to interfere with the order.

Mr. *P. L. Roy* and Babu *Bidhu Bhusan Ganguli* appeared for the petitioner.

The judgment of the High Court (BANERJEE and GORDON, JJ.) is as follows :—

This case has been transferred to this Bench by two orders, one made by the Division Bench taking criminal cases and the other by the Chief Justice. It is a rule calling upon the District Magistrate "to show cause why sanction to prosecute in this case should not be withdrawn, upon the ground that such general sanction under section 476 of the Criminal Procedure Code is unauthorized, and also upon the ground that sanction ought not to have been given without making a preliminary enquiry."

The facts of the case are shortly these :—

A suit for rent was instituted by the petitioner before us against one Mussumut Mitu and others in the Court of the Second Munsif of Kissengunge, in the course of which a *vakalutnama* and a written statement, purporting to have been signed by the defendants, was filed in Court. The Munsif found that they had never been signed by the defendant on whose behalf they appeared to have been put in. The written statement in question contained an admission of the existence of the relation of landlord and tenant between the parties, but the admitted written statement filed in the case denied the existence of such relationship. The Munsif dismissed the suit, holding upon the evidence that the existence of the relation of landlord and tenant between the parties had not been established, and then towards the conclusion of his judgment he added: "I further direct that the case be sent to the Sub-Divisional Magistrate for investigation and trial of the charges

1896

MAHOMED BHAKKU v. QUEEN-EMPRESS.

under sections 193, 225, 463 and 471 against the plaintiff, or some other person or persons who may be implicated in filing the first written statement of this case, together with the *vakalutnama* (Ex. X and Y) in favour of Babu Rajoni Kanta Kumar, Pleader. Copy of the judgment and the evidence of this case be sent to him. Mohurur of Babu Rajoni Kanta Kumar, Pleader, and one Khardam Ali, are necessary witnesses who may be examined by the Sub-Divisional Magistrate in respect of the charges above named. The defendants filed an application for adjournment before me, wherein they stated that one Khardam Ali falsely personated the defendants and caused the first written statement to be filed. The petition was rejected by me as out of time. But an enquiry into the truthfulness of the matters contained in this petition seems to me quite necessary."

This is the order which we are now asked to set aside on the ground that it is not warranted by law, and that in making it the Munsif has not exercised a proper judicial discretion.

The order does not, on the face of it, show under what provision of the law it is made; and the first question for consideration is: What is the law under which this order has been or can be taken to have been made? The only provisions of law under which an order like this could have been made are section 476 of the Code of Criminal Procedure and section 643 of the Code of Civil Procedure. The learned Munsif, in the explanation submitted by him, seems to think that it may be treated as made under either the one section or the other. If the order is to be treated as one made under section 476 of the Code of Criminal Procedure, the question might arise whether this Bench, which is only taking the civil business of the Burdwan group, has jurisdiction to deal with it, but that question is set at rest by the transfer of the case to this Bench by an order of the Chief Justice.

If it can be treated as an order under section 643 of the Code of Civil Procedure, then as the order is made by a Civil Court in the District of Purneah, which is included in the Burdwan group, this Bench will have jurisdiction to deal with the matter without any special order by the Chief Justice.

The case being then properly before us upon either view of

the order, the next question is whether the order can be treated as a proper order under the one section or the other.

If it is to be treated as an order under section 476 of the Code of Criminal Procedure, the Court which has made the order is required to be satisfied that there is ground for inquiry into an offence of any of the descriptions referred to under section 195, and committed before it or brought under its notice in the course of a judicial proceeding; and the Court, after making any preliminary inquiry that may be necessary, may then send the case for inquiry or trial to the nearest Magistrate of the first class and send the accused in custody, or take sufficient security for his appearance before such Magistrate. These provisions clearly indicate that the Court taking action under the section must not only have ground for enquiry into an offence of the description referred to in section 195 of the Criminal Procedure Code, but must also be *primâ facie* satisfied that the offence has been committed by some definite individual or individuals against whom proceedings in the Criminal Court are to be taken. In the present case the order, on the face of it, shows that this last condition has not been satisfied. The learned Munsif says that the case is sent to the Magistrate for investigation and trial of charges under sections 193, 225, 463, 471 of the Indian Penal Code against the plaintiff, or some other person or persons, thereby showing that he did not arrive at any definite conclusion as to whether the investigation, which he directs, should go on either against the plaintiff or against some other person or persons. We do not think section 476 was intended to authorize a Court to send any case to the Magistrate for inquiry or trial in that state of uncertainty as to who was the person accused. The learned Munsif might well have held a preliminary inquiry, such as the section authorizes, in order to remove the uncertainty in which he was before making over the case to the Sub-Divisional Magistrate. The view we take is fully supported by the decisions of this Court in the cases of *Khepunath Sikdar* v. *Grish Chunder Mukerji* (1) and *Chowdry Mahomed Izarne Huq* v. *The Queen-Empress* (2); and the case of *Bapiram Surma* v. *Gouri Nath Dutt* (3) is not in conflict with that view.

(1) I. L. R., 16 Calc., 730. (2) I. L. R., 20 Calc., 349.

(3) I. L. R., 20 Calc., 474.

1896

MAHOMED BHAKKU v. QUEEN-EMPRESS.

If the order is treated as one made under section 643 of the Code of Civil Procedure, still we think the same condition has to be fulfilled. For that section enacts that when, in a case pending before any Court, there appears to be sufficient ground for sending for investigation to the Magistrate the charge of any such offence as is described in section 193, and certain other sections of the Indian Penal Code, which may be made in the course of any other suit or proceeding, the Court may cause the person accused to be detained until the rising of the Court, and may then send him in custody to the Magistrate. This also clearly indicates that there must be some definite person accused, before any action can be taken under that section.

We are therefore of opinion that under whichever of the two sections the order is taken to have been made, it is not a proper order, as, on the face of it, there was no definite person charged with or accused of any offence. We may add that it was all the more necessary in this case that the Court should have been satisfied on this point by some preliminary inquiry, when it appears from the order itself that it was not the plaintiff in the suit (that is, the petitioner before us, Mahomed Bhakku) but another person, *viz.*, Khardam Ali who was accused by the defendant, against whom the false documents were evidently put in, as being the person guilty of the offence.

For all these reasons we are of opinion that the rule must be made absolute, and the order complained of set aside.

S. C. B. *Rule made absolute.*

## APPELLATE CIVIL.

*Before Mr. Justice Banerjee and Mr. Justice Gordon.*

1896 *February* 20.

NILMONY SINGH (PLAINTIFF) *v.* JAGABANDHU ROY AND OTHERS (DEFENDANTS.) *

*Valuation of suit—Appeal—Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887), section 21, sub-section (1)—"Value of the original suit"—Limitation Act (XV of 1877), schedule II, Arts. 134 and 144—Alienation of debutter property by a previous sebait—Sebait, Suit by succeeding—Adverse possession.*

* Appeal from Original Decree No. 163 of 1894, against the decree of Babu Aghore Nath Ghose, Subordinate Judge of Bankura, dated the 26th of March 1894.