

As to the costs of the suit, we do not think it proper to interfere with the order passed by the learned Subordinate Judge, when the defendant has been found guilty of misconduct. He was under a statutory obligation to keep clear, full and accurate accounts of all the sums received and spent by him as mortgagee. He has failed to fulfil the obligation imposed on him by law and has attempted to manufacture evidence to support his claim for the amount to which he is not entitled.

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 AISHA
 JEHAN
 BEGAM.
 Stuart, C. J.,
 and
 Raza, J

We do not think that a case has been made out to disturb the judgment of the learned Subordinate Judge. The result is that the appeal fails and must be dismissed. We dismiss the appeal with costs. The decree of the lower court is confirmed in all respects.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice A. G. P. Pullan.

KING-EMPEROR v. DAYA RAM.*

Criminal Procedure Code (Act V of 1898) sections 203 and 436—Indian Penal Code (Act XLV of 1860), section 182—Applicability of proviso to section 436 of the Code of Criminal Procedure to orders under section 203 of that Code—Complaint under section 182 of the Indian Penal Code—Magistrate's order refusing to start case, whether an order of discharge or acquittal.

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Held, that an order of a Magistrate rejecting a complaint by the police under section 182 of the Indian Penal Code on the ground that it was not proper to start the case is not an order of acquittal or discharge but is merely an order

* Criminal Revision No. 43 of 1927, against the order of S. H. Thompson, District Magistrate of Gonda, dated the 4th of October, 1926.

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under section 203 of the Code of Criminal Procedure and the proviso to section 436 of the Code of Criminal Procedure, does not apply to it. [*Emperor v. Gajraj Singh* (1), relied upon.]

When an order has been passed under section 203 of the Code of Criminal Procedure it is not necessary for the District Magistrate to give an opportunity to the accused of showing cause why orders should not be passed against him under section 436.

Mr. *Moti Lal Saksena* (holding brief of Mr. *Rameshwari Dayal*), for the appellant.

Mr. *H. K. Ghosh*, for the opposite party.

PULLAN, J. :—This is an application in revision of an order of the District Magistrate of Gonda passed under section 436 of the Code of Criminal Procedure. It appears that a complaint was made against the applicant by the police under section 182 of the Indian Penal Code. The Magistrate passed the following order :—

“ Under the circumstances I do not think it proper to start this case of section 182 of the Indian Penal Code. I, therefore, reject it.”

I have been asked to consider, *first*, that the decision is an order of acquittal and that, therefore, the District Magistrate had no jurisdiction to pass any order directing a further inquiry, and *secondly*, that even if he had such jurisdiction, he was bound in the first instance to call upon the accused to show cause why further proceedings should not be taken against him.

The first ground of revision is clearly ill-founded because the order of the Magistrate was in no sense of the term an order of acquittal. Nor was it one of discharge. It was merely an order passed under section 203 of the Code of Criminal Procedure. When

(1) (1925) I.L.R., 47 All., 752.

an order has been passed under section 203 of the Code of Criminal Procedure it is not necessary for the District Magistrate to give an opportunity to the accused of showing cause why orders should not be passed against him under section 436. This proviso of section 436 applies only to cases where the accused person has been discharged and not to cases where orders have been passed under section 203 of the Code of Criminal Procedure and the distinction is clearly drawn in the revised section. If authority is necessary I would refer to the decision of the Allahabad High Court in the case of *Emperor v. Gajraj Singh* (1).

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The application is dismissed.

Application dismissed.

APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Wazir Hasan.*

CHAUDHRI TALIB ALI (PLAINTIFF-APPELLANT) v. MU-
SAMMAT KANIZ FATIMA BEGAM AND ANOTHER 1927
March, 25.
(DEFENDANTS-RESPONDENTS).*

*Pre-emption—Muhammadan law—Dower—Hiba-bil-ewaz—
Transfer of property by a Muhammadan husband in con-
sideration of the wife releasing him from his liability for
dower is a gift for consideration or hiba-bil-ewaz—Con-
struction of documents, rule of—Styling a document as
sale or will, whether precludes the court from holding
otherwise—Transfer of Property Act (IV of 1882) sec-
tion 54—“ Sale ”, definition of—“ Price ” meaning of.*

Where the consideration for the transfer of ownership in certain immovable property is the release of the transferor from a part of his liability for the dower debt, the true nature

* First Civil Appeal No. 67 of 1926, against the decree of Syed Ali Hamid, Subordinate Judge of Bara Banki, dated the 15th of March, 1926, dismissing the plaintiff's claim.

(1) (1925) I.L.R., 47 All., 752.