

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

PANDIT LACHHMAN PRASAD JOSHI (APPELLANT) v.
KING-EMPEROR (COMPLAINANT-RESPONDENT).*

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October, 3.

Criminal Procedure Code (Act V of 1898), sections 4(m), 437, 476 and 478—Assistant Collector conducting mutation proceedings, whether has jurisdiction under section 478 of the Code of Criminal Procedure—Mutation proceedings, whether judicial proceedings—Assistant Collector, whether acting as a Revenue Court or a Criminal Court—Revenue Court declining to pass order under section 476 of the Code of Criminal Procedure—District Magistrate's power under section 437 of the Code of Criminal Procedure to revise an order of the Assistant Collector refusing to commit a person to sessions.

It is the duty of an Assistant Collector conducting mutation proceedings to record the names of some persons or others on a disputed succession under the provisions of section 40 Local Act III of 1901 and he is there acting as a Court of Record and is a Revenue Court within the meaning of section 48 of that Act and has jurisdiction under section 478 of the Code of Criminal Procedure if he is conducting proceedings other than judicial proceedings when the alleged offence is committed before him. The words "when any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of judicial proceedings" of section 478 means that a Revenue Court has jurisdiction when the offence is committed before it in any proceedings, but when the offence is brought to its notice the court has only jurisdiction when it is brought under its notice in the course of judicial proceedings.

Ordinarily speaking mutation proceedings are not judicial proceedings but mutation proceedings are judicial proceedings within the meaning of the Code of Criminal Procedure. Judicial proceedings contemplated under section 478 are judicial proceedings within the meaning of the Code of Criminal Procedure, as there the words have a special meaning section 4(m) defines judicial proceedings to "include any proceeding in the course of which evidence is or may be legally taken on oath

*Criminal Revision No. 96 of 1929, against the order of the District Magistrate of Sitapur, dated the 11th of September, 1929.

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and in mutation proceedings evidence may be legally taken on oath and evidence is usually taken on oath. *Nirman Singh and others v. Lal Rudra Partab Narain Singh and others* (1), referred to.

Where the Assistant Collector passed no order under section 476 of the Code of Criminal Procedure and refused to commit a person for trial to the Court of Sessions he passed the order not as a Criminal Court but as a Revenue Court exercising the powers of a Magistrate and so the District Magistrate as a District Magistrate had no jurisdiction to revise his order under section 437 of the Code of Criminal Procedure as the powers of the District Magistrate under section 435 and the following sections are confined to interference with Criminal Courts subordinate to himself.

Mr. R. F. Bahadurji, for the appellant.

Assistant Government Advocate (Mr. H. K. Ghose), for the Crown.

STUART, C. J. :—The facts are as follows :—

A lady called Barkatunnica, Taluqdarin of Ant taluqa died at Lucknow on the 13th of April, 1927. Six persons Mahbub Ali and five others applied jointly for entry of names before the Revenue Court. Certain other persons opposed them. Eventually Mr. Narsingh Narain Rao, Assistant Collector First Class, Sitapur recorded the names of Abadi Begam, Khalil Khan and Fida Ali as entitled to engage for the revenue of the Ant taluqa. In the course of the proceedings before him an alleged will was produced. Mr. Narsingh Narain Rao considering that this will was forged and that a criminal offence had been committed before him, and considering the case triable exclusively by the Court of Session completed an inquiry and committed certain persons to take their trial before the Sessions Court. He proceeded under section 478 of the Code of Criminal Procedure. His attention was drawn to the commission of the offence by a complaint made by the police authorities before him in the course of his inquiry. As a result he committed to Sessions Rani

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Abadi Begam and nine others but refused to commit to Sessions Pandit Lachman Prasad Joshi. After he had refused to commit Pandit Lachman Prasad Joshi to Sessions, the District Magistrate of Sitapur purporting to act under the provisions of section 437 of the Code of Criminal Procedure committed Pandit Lachman Prasad Joshi to Sessions on the same charge.

I have before me two applications—the first is by ^{Stuart, G. J.} Rani Abadi Begam and three other persons who were committed to Sessions by Mr. Narsingh Narain Rao and the second is by Pandit Lachman Prasad Joshi. The first application was argued by Dr. Kichlu and the second by Mr. Bahadurji. Dr. Kichlu took the objection that the offence, if any, had not been committed before a Revenue Court in the course of judicial proceedings, and that thus Mr. Narsingh Narain Rao had no jurisdiction under section 478. Dr. Kichlu suggested that Mr. Narsingh Narain Rao was not at the time presiding over a Revenue Court. I do not accept that contention. Mr. Narsingh Narain Rao was concerned with proceedings in mutation, that is to say, it was his duty to record the names of some persons or others on a disputed succession under the provisions of section 40, Local Act III of 1901. He was thus acting as a Court of Record and was a Revenue Court within the meaning of section 48, Local Act III of 1901. The proceedings in mutation were certainly proceedings within the meaning of section 476 of the Code of Criminal Procedure. I am not disposed to consider that such an officer would have no jurisdiction under the provisions of section 478, if he were conducting proceedings other than judicial proceedings when the alleged offence was committed before him. I base my view upon the wording of section 478 which is as follows:—

“When any such offence is committed before any Civil or Revenue Court, or brought

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under the notice of any Civil or Revenue Court in the course of judicial proceedings,”

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The construction I place upon these words is that a Revenue Court has jurisdiction when the offence is committed before it in any proceedings. When the offence is brought to its notice the court has only jurisdiction when it is brought under its notice in the course of judicial proceedings. The argument of Dr. Kichlu would require the section to have been drafted as follows:—“When any such offence is committed before or brought under the notice of any civil or revenue court in the course of judicial proceedings.” But apart from this, mutation proceedings are judicial proceedings within the meaning of the Code of Criminal Procedure. Ordinarily speaking, mutation proceedings are not judicial proceedings. Their Lordships of the Judicial Committee have laid down in *Nirman Singh and others v. Lal Rudra Partab Narain Singh and others* (1):—

“that proceedings for the mutation of names are not judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid.”

But the judicial proceedings contemplated under section 478 are judicial proceedings within the meaning of the Code of Criminal Procedure, as here the words

(1) (1926) I. L. R., 1 Luck., 389.

have a special meaning. Section 4(m) defines judicial proceedings to "include any proceedings in the course of which evidence is or may be legally taken on oath" and in mutation proceedings evidence may be legally taken on oath and evidence is usually taken on oath. In this particular case evidence was taken on oath. I thus find that there was no bar to Mr. Narsingh Narain Rao proceeding under section 478 and refuse to quash the commitment of Rani Abadi Begam and the other persons who have applied with her. I dismiss their application.

The case of Pandit Lachman Prasad Joshi is however different. Mr. Narsingh Narain Rao refused to commit him to Sessions. Mr. Narsingh Narain Rao passed no order under section 476 either making a complaint or refusing to make a complaint. If he had passed such an order an appeal would have lain under section 476B. He refused to commit Pandit Lachman Prasad Joshi. In what capacity did he pass that order? He passed that order, in my opinion, as a Revenue Court, although for the purpose of his enquiry he was exercising the powers of a Magistrate. Nevertheless he was not a Criminal Court but a Revenue Court exercising the powers of a Magistrate. The Code permits no appeal against an order under section 478. The powers of the District Magistrate under section 435 and the following sections are confined to interference with Criminal Courts subordinate to himself. As I understand the case Mr. Narsingh Narain Rao did not pass this order as a Criminal Court but as a Revenue Court and as Mr. Narsingh Narain Rao was a Revenue Court the District Magistrate as District Magistrate had no jurisdiction to revise his order. In these circumstances I consider that the application of Pandit Lachman Prasad Joshi must succeed. I allow application No. 96 and quash the commitment of Pandit Lachman Prasad Joshi.

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Application allowed.