

period prescribed by the law of limitation.”

1929

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 NARAIN  
v.  
RUDAN.

Now here not only was the amount deposited within the period prescribed by the law of limitation, but it appears to me further that no actual application was made until the 25th of April, 1929—the date on which the amount was deposited—for the court had refused to register the previous application as it was not accompanied by a deposit. I am in agreement with the Madras and Calcutta decisions to which I have referred. Apart from that in this individual case I take it that no actual application can be considered to have come into existence until the 25th of April, 1929. I, therefore, consider that the learned Judge of the Small Cause Court arrived at a correct conclusion on this point. I do not propose to interfere with his order on any of the other points raised before him. I, therefore, dismiss this application with costs. The order of stay is discharged.

Stuart, C. J.

*Appeal dismissed.*

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 REVISIONAL CRIMINAL.
 

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*Before Sir Louis Stuart, Knight, Chief Judge.*

KING-EMPEROR (COMPLAINANT) v. BHAGWATI  
PRASAD (ACCUSED.)\*

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 1929  
September, 5
 

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*Evidence Act (I of 1872), section 124—Public officer under section 124, Evidence Act—Public servant—Station Master of a state railway, whether a public officer—Privileged statements, what are—Statements recorded by the station master of a state railway in the course of an inquiry, whether privileged under section 124 of the Evidence Act—Interlocutory orders in criminal matters—Revision, when lies against interlocutory orders in criminal matters.*

The station master of a state railway is a public servant for the purpose of chapter IX of the Indian Penal Code under

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\*Criminal Reference No. 41 of 1929.

1929

KING-  
EMPEROR  
2.  
BHAGWATI  
PRASAD

the provisions of section 137, Act IX of 1890, the Indian Railways Act. But it would not follow from that that he is a public officer within the meaning of section 124 of Act I 1872.

Where statements of certain persons were recorded by the station master of a state railway in the course of an inquiry on a theft by some railway employees and there were no reasons to indicate that those communications were made in official confidence the statements cannot be regarded as privileged under section 124 (Act I of 1872) but must be produced in evidence.

If communications are made to a public officer in official confidence then if the public officer considered that the public interest would suffer by their disclosure such communications could not be produced in evidence. But if it is not established that they are made in official confidence the opinion of the officer before whom they were made is not relevant.

There is ordinarily no justification for taking up in revision an interlocutory matter in a criminal court but it is not that such an application in revision does not lie

*Kashi Ram Khoshla v. Ram Jiawan Dikshit*, referred to.

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

Mr. Rukn-uddin, for the accused.

Mr. Daya Shankar, for the Divisional Superintendent, E. I. R.

STUART, C. J. :—This reference in revision raises a point of interest. Bhagwati Prasad is a Transshipment clerk stationed at Partabgarh railway station. Sarfaraz, Ram Prasad and Pandohi are station coolies at the same station. Criminal proceedings have commenced against these four persons on a charge of having committed theft of certain pieces of cloth in charge of the East Indian Railway Company from a goods truck at Partabgarh railway station on the 21st of April, 1929. The proceedings appear to have been started as the result of a report made by a certain Parja Singh a

watchman employed on the Watch and Ward staff at the same railway station. Shortly after this report Mr. Mathews, Station Master made an inquiry. I have been unable to discover from the record the date of this inquiry but it apparently took place within one to three days of the occurrence. In the course of this inquiry Mr. Mathews is said to have recorded statements of Manzur Ahmad, Parja Singh, Dal Bahadur and Bal Bahadur persons who have been called as witnesses for the prosecution and he is said to have transmitted these statements to the Divisional Superintendent at Lucknow. In the course of the proceedings before the Magistrate the Counsel for the accused called for these statements in order that he might cross-examine the witnesses, who were said to have made them, in reference to those statements, if he discovered that the statements disclosed any ground for such cross-examination. The Divisional Superintendent at the request of the court sent these statements to the Court in a sealed cover but at the same time took objection to their production on the ground that they were privileged. The Magistrate upheld this contention. The matter was then taken in revision to the Sessions Judge who has forwarded it to this Court for decision. The learned Assistant Government Advocate has taken a preliminary objection that no such revision lies. I do not consider that his contention is correct. It is true that I decided in *Kashi Ram Khoshla v. Ram Jiawan Dikshit* (1) that there is ordinarily no justification for taking up in revision an interlocutory matter in a Criminal Court but I never found that such an application in revision did not lie. I only found that ordinarily they should not be acceded to. In this case however I consider that the matter should be decided on the merits. Ordinarily these statements were capable of proof before the court. The Divi-

1929

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 KING-  
EMPEROR  
v.  
BHAGWATI  
PRASAD.

Stuart, C. J.

(1) (1926) 18 O. L. J., 662.

1929

KING-  
EMPEROR  
v.  
BHAGWATI  
PRASAD.

*Stuart, C. J.*

sional Superintendent has, however, taken the position that they cannot be produced under the provisions of section 124, Act I of 1872. This section says that no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosure. But these statements were not made to the Divisional Superintendent. They were made to the Station Master. Granting for the sake of argument that the Station Master in the State Railway is a "public officer" within the meaning of section 124 the question remains whether these communications were made to him in official confidence. I do not determine whether the Station Master is or is not a public officer within the meaning of section 124 of Act I of 1872. He is certainly a public servant for the purposes of Chapter IX of the Indian Penal Code under the provision of section 137, Act IX of 1890, the Indian Railways Act. But it would not follow from that that he is a public officer within the meaning of section 124 of Act I of 1872. But apart from that circumstance, is there anything to show that these communications were made to him in official confidence? There is nothing on the record to show that they were made to him in official confidence; and the learned Counsel opposing the application has been unable to indicate any reason from which it can be concluded that these communications were made in official confidence. One of the persons who made the communication was Manzur Ahmad another Transhipment clerk and the other three were watchmen employed under the Watch and Ward. In these circumstances I find that these communications are not protected. If they had been communications made to a public officer in official confidence the Court would not have been in a position to decide whether the public interest would suffer by their disclosure. If the public officer

considered that the public interest would suffer by their disclosure such communications could not be produced in evidence. But if it is not established that they are made in official confidence the opinion of the officer before whom they were made is not relevant. I, therefore, direct that the sealed cover be opened by the Magistrate and that both the prosecution and the defence be given an opportunity of utilizing these documents in the manner permitted by the provisions of the Evidence Act. The record will now be returned. I have to note that the record is very defective. It may be that we have not made a complete examination but I notice in the English record that the evidence of Mr. Mathews terminates at the end of the first page in the middle of a sentence and that we find a similar defect in the evidence of the witnesses under cross-examination. I note this point to safeguard our office. The record is exactly as we have received it and is returned in the condition in which we received it.

1929

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KING-  
EMPEROR  
v.  
BHAGWAN  
PRASAD.