Before Mr. Justice Pigot and Mr. Justice Hill.

1892 *Nov.* 2.

BAPERAM SURMA (PETITIONER) *v.* GOURI NATH DUTT (OPPOSITE PARTY).*

Sanction to prosecution—Criminal Procedure Code (Act X of 1882), ss. 195, 476—Preliminary inquiry—Penal Code (Act XL of 1860), s. 182—Criminal Procedure Code (Act X of 1872), s. 471.

Where a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, for reasons stated in his judgment, to be false, *held*, taking the order to have been one made under section 195 of the Code of Criminal Procedure, that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person.

Semble, on the supposition that the order was one under section 476 of the Criminal Procedure Code, that it was not necessary for the validity of an order under that section that there should be any evidence on the record contradicting the case which was thought to be false, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect is neither rendered imperative by the law nor is it desirable.

In the matter of Mutty Lall Ghose (1), *The Queen* v. *Baijoo Lall* (2), and *Khepu Nath Sikdar* v. *Grish Chunder Mukerjee* (3), referred to and distinguished.

IN this case the petitioner had charged the Sub-Inspector of Police of Jorehat and two other persons with the offence (under section 331 of the Penal Code) of torturing him in order to extort confession in respect of certain stolen property.

The Deputy Commissioner of Sibsagar held an inquiry into the matter, and after going through the whole evidence, was of opinion that the charge against the Sub-Inspector of Police could not stand, as the whole story of the petitioner was false. He therefore dismissed the complaint under section 203 of the Criminal Procedure Code. Upon an application on behalf of the Sub-Inspector of Police for sanction to prosecute the petitioner, the Deputy Commissioner, on the 13th July 1892, gave an order for

* Criminal Revision No. 443 of 1892, against the order passed by P. R. Gurdon, Esq., Deputy Commissioner of Sibsagar, dated 13th July 1892.

(1) I. L. R., 6 Calc., 308. (2) I. L. R., 1 Calc., 450.
(3) I. L. R., 16 Calc., 730.

prosecution under section 182 of the Penal Code, and sent the case to the nearest Magistrate for trial.

Thereupon an application was made to the High Court for a rule calling upon the Deputy Commissioner of Sibsagar to show cause why the order granting the sanction on the 13th July 1892 should not be set aside and the sanction revoked, and a rule in these terms was issued.

The rule now came on to be heard.

Baboo *Surendra Nath Roy* in support of the rule:—The order of the Deputy Commissioner is bad in law, inasmuch as he did not hold any preliminary inquiry under section 476, Criminal Procedure Code, before he gave the sanction to prosecute. Section 195 of the Criminal Procedure Code should be read with section 476. There must be direct and distinct evidence of the commission of an offence before sanction could be granted. The offence in this case is one under section 182 of the Penal Code, and there was no evidence on the record that such an offence was committed. See *Kedarnath Das* v. *Mohesh Chunder Chuckerbutty* (1).

The judgment of the Court (PIGOT and HILL, JJ.) was as follows:—

We think this rule must be discharged. The Deputy Commissioner issued the sanction which has been granted for this prosecution on the 13th of July, as appears by the record, and he did so, as also appears by the record, upon the express application on behalf of the Sub-Inspector against whom the charge of torture had been made, which charge he found, for reasons stated in his judgment, to be false and concocted. It was therefore a sanction given to a contemplated prosecution by a definite person; and here with reference to that matter it is proper to say, as was said in this Bench some weeks ago with reference to sanctions for prosecution, that it does appear to us both that a sanction for a prosecution under section 195 is not intended by the Code, as it is sometimes treated as being intended, as a sanction given in the abstract, not to any intended prosecutor, not on any application, but a sanction in the abstract which practically may float about the world like a bit of

(1) I. L. R., 16 Calc., 661.

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thistledown until it comes in contact with some possible prosecutor. That is an opinion which it is desirable to express, as it sometimes happens that a sanction of that sort is given in respect of no contemplated prosecution or upon no application at all, but simply intended, supposing it to have that effect, to authorize any one to prosecute. We should not have treated the order in the present case as a proper sanction under section 195 had this been the character of it, but should have felt bound to treat it as it has been argued that it is, an order under section 476; it does no doubt do what is unnecessary in a sanction under section 195, *viz.* send the case to the nearest Magistrate, Mr. Moor. Upon looking, however, at the record, it now appears that there was a definite prosecution contemplated which was sanctioned in this case. That being so, there is nothing in the case which in our judgment would entitle the applicant to have that sanction recalled. The case of *Kedarnath Das* v. *Mohesh Chunder Chuckerbutty* (1), which has been cited, in no respect whatever applies to this case, for in this case the judgment of the Deputy Commissioner went completely into the matter and stated fully the character of the charge made and the reasons for holding it to be false; and besides that the record before us contains a full statement of the evidence given upon the inquiry at which the charge was dismissed and a full disclosure of the circumstances attending it. There is no reason therefore, taking the order to be a sanction under section 195 as we hold it to be, for interfering with it at all. The Deputy Commissioner appears to be under the impression, and that was also the impression under which the rule was applied for—an impression that we gathered from the statement made to us when the rule was applied for—that the order was made under section 476, and no doubt there is very often some confusion arising in proceedings under these two sections, which lead to misapprehensions of this kind. On the footing that the order was made under section 476, the learned pleader argued that a preliminary inquiry before the case was sent for trial or inquiry to the nearest Magistrate was necessary: he argued that matter upon the ground that a preliminary inquiry in such cases must be had unless there be upon the record of the case, out of which the order under section 476 has been made, sworn

(1) I. L. R., 16 Calc., 661.

testimony establishing, if true, that the offence against the section under which the contemplated prosecution or inquiry is to proceed has been committed; that is to say, sworn testimony, for instance, that the case dismissed was false, or that the evidence given in it was false; or the like. That contention is, we think, inconsistent with the decision in *In the matter of Mutty Lall Ghose* (1) in which Chief Justice Garth refers to the decision of Mr. Justice Macpherson in the case of *The Queen* v. *Baijoo Lall* (2), and points out that that decision had been a little misunderstood. It is to be observed that section 476 differs in terms from the corresponding section, section 471 of the old Code, which was in force at the time the case of *The Queen* v. *Baijoo Lall* (2) was decided, the words of the old section being "after making *such* preliminary inquiry as may be necessary," those of the present section being "after making *any* preliminary inquiry that may be necessary," a change of language which, so far as it goes, confirms the opinion which we should decidedly entertain upon the construction of the section as it stands. In *In the matter of Mutty Lall Ghose* (1) the Court refused to interfere with an order, the discretion of which they thought doubtful, made by the District Judge under section 476 although, as the Court said, the sworn evidence was all one way; that is to say, was all in favour of the statement, the belief in the falsehood of which led the District Judge to make the order under section 476. That case, therefore, is a direct authority for the proposition that an order under section 476 may be made without making any preliminary inquiry, although there is no sworn evidence on the record to contradict the statements in the case which are treated in the order as false, and the learned Judge who pronounced the judgment in the case of *Khepu Nath Sikdar* v. *Girish Chunder Mukerjee* (3), who was consulted by me on this subject just before the vacation, authorised me to say that there was no intention in that judgment to go against the ruling in the decision of Sir Richard Garth in the case of *In the matter of Mutty Lall Ghose* (1), which was not referred to in that judgment or so far as it appears from the report in the argument in the case.

Under these circumstances, if the case were one under section 476, we should not think ourselves bound to hold that the order of

(1) I. L. R., 6 Calc., 308. (2) I. L. R., 1 Calc., 450.
(3) I. L. R., 16 Calc., 730.

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the Deputy Commissioner was bad by reason of there not being any evidence on the record contradicting the case which the Deputy Commissioner thought to be false, and also of there having been no preliminary inquiry held. We do not think that it is necessary for the validity of an order under section 476 that there should be in the original proceedings such contradictory evidence on the record, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect would simply introduce into the criminal procedure in this country a new stage as a matter of imperative necessity, and as we understand the case of *Khepu Nath Sikdar* v. *Grish Chunder Mukerjee* (1) we do not think it was intended to introduce such practice as the words used would seem to convey. We do not think that such a practice is rendered imperative by the law, and it is not desirable that it should be necessarily, and in every case, introduced. We think, were this an order under section 476, we ought to follow the decision of Sir Richard Garth in *In the matter of Mutty Lall Ghose* (2). We thought it necessary to mention this, as section 476 was relied upon. We think that the rule must be discharged in the present case.

Rule discharged.

A. F. M. A. R.

CRIMINAL REFERENCE.

Before Mr. Justice Pigot and Mr. Justice Hill.

1892
Oct. 24.

THE QUEEN-EMPRESS *v.* SITA NATH MITRA.*

Fine, Levy of—Realization of fine after death of person fined—Moveable Property—Immoveable Property—Penal Code (Act XLV of 1860), s. 70—Criminal Procedure Code (Act XXV of 1861), s. 6—Criminal Procedure Code (Act X of 1882), s. 386.

Where a person was fined under the Penal Code and died before the fine was paid, and the Magistrate ordered the fine to be realized by sale of

Criminal Reference No. 275 of 1892, made by J. Knox-Wight, Esq., Sessions Judge of Jessore, dated 24th September 1892, against the order passed by A. Earle, Esq., District Magistrate of Jessore, dated the 18th of June 1892.

(1) I. L. R., 16 Calc., 730 (2) I. L. R., 6 Calc., 308.