

properly exercised. The discretion is given by the words "such Court after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial." It is therefore for the Court acting in the matter in the exercise of its discretion to determine whether or not to make such preliminary inquiry. There may be cases in which at any rate it is plain that such an inquiry ought to precede the proceedings contemplated by the section. We think this is one of them on the face of it. Upon the order of the Deputy Magistrate, which has been read and commented upon before us, the case is surrounded with difficulties. We do not think that the order was rightly made as having been made upon the impression produced by such evidence as was in this case heard by the Deputy Magistrate. We think that in the circumstances of this case he ought to have made an inquiry before exercising his powers under section 476, and as he has not done so, we must set aside his order and make the rule absolute.

As I have stated, with reference to what I have said upon section 195, I simply expressed my own individual opinion. Mr. Justice Rampini is of opinion that a general sanction may be given under section 195; but our judgment that if the sanction issued under section 476, it must be revoked, and if under section 195, it must be set aside, is common to us both.

A. F. M. A. R.

Rule made absolute.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

KALI DASSI (COMPLAINANT) v. DURGA CHARAN NAIK
(DEFENDANT).*

1892
November 23.

Maintenance, order for—Proceedings on application for maintenance—Evidence, record of—Summary trial—Criminal Procedure Code (Act X of 1882), ss. 356 and 488.

Proceedings under Chapter XXXVI of the Code of Criminal Procedure cannot be conducted as in a summary trial under Chapter XXII, but the evidence taken must be recorded as provided by section 355.

* Criminal Reference No. 297 of 1892, made by J. Crawford, Esq., Sessions Judge of Hooghly, dated the 10th November 1892, against the order passed by H. Thompson, Esq., Deputy Magistrate of Serampore, dated the 26th October 1892.

1892

CHAUDHARI
MAHOMED
IZHARUL
HUQ
v.
THE
QUEEN-
EMPRESS.

1892

KALI DASS

v.
DURGA
CHARAN
NAIK.

THIS was a reference by the Sessions Judge of Hooghly under section 488 of the Code of Criminal Procedure.

The accused was summoned before the Deputy Magistrate of Serampore by one Kali Dass, who claimed maintenance from him under the provisions of section 488 of the Code of Criminal Procedure for his illegitimate child. The accused pleaded that he was not the father of the child and therefore not liable. The Magistrate purporting to proceed by way of summary trial, and without recording any evidence, passed an order under the section directing the accused to pay a monthly allowance of Re. 1-8 for the support of the child. It appeared in the record of the case kept by the Magistrate under section 263 that the complainant herself and some witnesses called by her were examined, and also that a witness had been examined for the defence, but their evidence was not recorded. The order of the Magistrate was recorded in the following terms:—

“From the evidence of the woman herself and of her witnesses, and of a witness for the defence, there can be no doubt that Durga Charan Naik is the father of the child in the woman’s arms. I allow the woman Re. 1-8 a month from the date of this order.”

On the matter being represented to the Sessions Judge, he referred the case with the following remarks:—

“Inquiries under Chapter XXXVI of the Code are not enumerated in section 260 as among cases which may be tried summarily, while the last clause of section 488 distinctly requires a record of evidence as in summons cases, that is in accordance with the provisions of section 355. There being no record, it is impossible to say whether the evidence acted on was credible or not.”

No one appeared on the reference.

The judgment of the High Court (PRINSEP and GHOSE, JJ.) was as follows:—

Proceedings under Chapter XXXVI of the Code of Criminal Procedure cannot be conducted as in a summary trial under Chapter XXII. The evidence should be recorded as provided by section 355. It is therefore impossible to form any opinion on the proceedings of the Magistrate or the correctness of his order. We observe that the Magistrate in the explanation called for by the

Sessions Judge states that "in these simple and very common cases I do not record much of the evidence." In this case he has recorded none at all. Consequently a Court of Revision is unable to satisfy itself that the order is a proper order. The case must therefore be properly tried.

1892

KALI DAS
v.
DURGA
CHABAN
NAIK.

Order set aside and new trial directed.

H. T. H.

CRIMINAL MOTION.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

ROHIMUDDI AND ANOTHER (PETITIONERS) v. THE QUEEN-EMPRESS,
ON THE PROSECUTION OF ASIRAM BIBI (OPPOSITE PARTY).*

1892

December 1.

Judgment—Form and contents of judgment—Criminal Procedure Code (Act X of 1882), ss. 367, 537.

A Sessions Judge in disposing of a Criminal Appeal recorded the following judgment :—

"The appellants have been convicted of breaking into Hari's house at night, dragged Hari's wife to the fields and dishonoured her, though they did not have intercourse with her. I have read through the evidence, and heard the appellant's pleader, and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year's imprisonment and Rs. 50 is not heavy. I dismiss the appeal."

It was contended that this was not a judgment within the terms of section 367 of the Code of Criminal Procedure.

Held, that having regard to the provisions of section 537, it does not follow that because the form of a judgment does not exactly comply with all the requirements of section 367, it is not a valid judgment, and that as this judgment showed that the Sessions Judge had appreciated the point that the prosecution had to establish, viz., the credibility of the evidence of the witnesses for the prosecution, and had expressed his opinion on that point, there being nothing to show that any other point was raised before him, it was not a case in which the High Court should exercise its revisional powers.

Kamruddin Dai v. Sonatun Mandal (1) and *In the matter of the petition of Ram Das Maghi* (2) referred to and commented on.

* Criminal Revision No. 497 of 1892, against the order passed by B. G. Geidt, Esq., Sessions Judge of Rungpur, dated the 17th September 1892, affirming the order passed by Babu Dina Nath Dey, Deputy Magistrate of Rungpur, dated the 29th August 1892.

(1) I. L. R., 11 Calc., 449.

(2) I. L. R., 13 Calc., 110.