

dates of mortgages respectively, leviable against all the family property in their hands, down to suit. In computing the sum due, the payments given credit for in the plaint to be taken into account.

Interest on each amount to run at the rate of 4 per cent. per annum from date of suit. Costs of suit to be added to the amount of the Rs. 8,500—mortgage-debt.

1892

 KHALILU
 RAHMAN
 v.
 GOBIND
 PRSHAD.

Appeal decreed.

A. A. C.

CRIMINAL MOTION.

Before Mr. Justice Pigot and Mr. Justice Rampini.

CHAUDHARI MAHOMED IZHARUL HUQ (PETITIONER) v. THE
 QUEEN-EMPRESS (OPPOSITE PARTY).*

1892

 August 10.

Criminal Procedure Code (Act X of 1882), ss. 195, 476—Sanction for Prosecution—Preliminary inquiry—False evidence—Penal Code (Act XLV of 1860), s. 193—Jurisdiction of High Court to quash orders under section 476 of the Criminal Procedure Code.

The High Court has jurisdiction to interpose in the case of an order made by a Court under Section 476 of the Criminal Procedure Code, and has also the power to determine whether the discretion given by that section has or has not been properly exercised.

In the matter of the petition of Khapu Nath Sikdar v. Girish Chunder Mukherjee (1) relied on.

In this case the petitioner was said to have given false evidence in a certain case before the Deputy Magistrate of Beguserai. The Deputy Magistrate ordered the prosecution of the petitioner under section 193 of the Penal Code without making any preliminary inquiry or calling upon him to show cause why he should not be prosecuted under that section.

* Criminal Motion No. 373 of 1892, against the order passed by F. W. Badoock, Esq., Sessions Judge of Bhagalpur, dated the 20th of July 1892, affirming the order passed by W. B. Martin, Esq., Deputy Magistrate of Beguserai, dated the 25th of June 1892.

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The order of the Deputy Magistrate was as follows:—

CHAUDHARI
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“Whereas in this Court during the trial of the case *Lalit Goala v. Sipahi Singh and others*, on the 16th May last, Chaudhari Izharul Huq of Lachminia, Beguserai, district Monghyr, on solemn affirmation made the following statements:—

“‘I have not assisted in any of the three cases mentioned, *i.e.*, this, a fuel case, and the Muchalka petition,’ I hereby sanction the prosecution of the said Izharul Huq under section 193, Penal Code, before the nearest first-class Magistrate, to wit, the Magistrate of Monghyr.”

Against that order the petitioner moved the Sessions Judge of Bhagalpur, who, being of opinion that there were grounds for thinking that the statements made by the petitioner were false, on the authority of the case of *In the matter of Mutty Lall Ghose* (1), upheld the order of the Deputy Magistrate.

The petitioner, being dissatisfied with the order of the Sessions Judge obtained a rule from the High Court, which now came on for hearing.

Mr. S. G. Sale with Moulvi Serajul Islam for the petitioner.

The *Deputy Legal Remembrancer* (Mr. Kilby) for the Crown.

The judgment of the High Court (PIGOT and RAMPINI, JJ.) was delivered by—

PIGOT, J.—This case arises either under section 195 or under section 476 of the Criminal Procedure Code. If under section 195, and for myself I do not think it possible that a general sanction issued forth of his own motion by the Magistrate irrespective of any application for sanction to prosecute can be contemplated by that section, then we think it is a case in which sanction ought not to have been granted. If it is a case under section 476, it is laid down by a decision, *In the matter of the petition of Khepu Nath Sikdar v. Grish Chunder Mukherji*, (2) differing apparently from the case of *Queen-Empress v. Rachappa* (3), that this Court has jurisdiction to interpose in the case of an order made by a Court under that section. If the Court has jurisdiction to interpose, and we are here dealing with a rule which has been granted in this Court, then it appears to us that the Court must have the power to determine whether the discretion given by that section has or has not been

(1) I. L. R., 6 Calc., 308.

(2) I. L. R., 16 Calc., 730.

(3) I. L. R., 13 Bom., 109.

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.

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CHAUDHARI
MAHOMED
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v.
THE
QUEEN-
EMPRESS.