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EMPERORNanavutty,
J.

held under section 350 of the Code of Criminal Procedure, did not imply the cancellation of a charge previously framed against the accused and consequently an order subsequently passed letting off the accused was one of acquittal and not of discharge. This ruling applies with full force to the facts of the present case. Here too after the charge had been framed on the 30th of June, 1933, there was a *de novo* trial and the accused have been discharged. Such an order of discharge amounts to an acquittal and no further enquiry can possibly be held or is legally permissible.

In *Ramanand and others v. King-Emperor* (1), it was held by a learned Judge of this Court that where an accused person had been discharged by the trying Magistrate and where two views were possible regarding the guilt of the accused, but where the decision of the Magistrate was not manifestly perverse or *prima facie* incorrect, a Court of revision should not interfere with the order of discharge.

For the reasons given above I allow this application for revision, set aside the order of the learned District Magistrate directing a further enquiry and direct that all proceedings taken against the applicant Kallu and his co-accused Abdulla and Chhiddu be dropped and no further action be taken against any one of them.

Application allowed.

REVISIONAL CRIMINAL

Before Mr. Justice G. H. Thomas

1934
May, 25

PANDIT MATHURA PRASAD NAITHANI (COMPLAINANT-APPLICANT) v. PANDIT CHAKRA DHAR JAYAL (ACCUSED OPPOSITE-PARTY)*

Criminal Procedure Code (Act V of 1898), section 439—Defamation case—Acquittal—Magistrate finding that imputations were

*Criminal Revision No. 31 of 1934, against the order of H. J. Collister, I.C.S., Sessions Judge of Lucknow, dated the 13th of January, 1934.

(1) (1932) A.I.R., Oudh, 114=9 O.W.N., 134.

made in good faith and without malice—Revision by private persons against order of acquittal—High Court, when would interfere.

High Court has jurisdiction under section 499 of the Code of Criminal Procedure to entertain an application in revision by a private person against an order of acquittal when the Crown has not preferred an appeal; but it would not move in such a case unless there is some glaring defect either in the procedure or in the view of the evidence taken by the court below.

Where in a case of defamation under section 500, I. P. C., the Magistrate after weighing the whole evidence and considering some of the documents on the record comes to the conclusion that the imputations were made in good faith and without malice and it cannot be held that the view taken by the Magistrate is unreasonable or grossly and palpably unjust, the High Court would not interfere in a revision with the finding of acquittal. *Ramanand and others v. King-Emperor* (1) and *Ram Murti v. Jai Indra Bahadur Singh* (2), relied on.

Mr. B. N. Mulla, for the applicant.

Mr. K. P. Misra for Dr. J. N. Misra with Mr. Kunj Behari Shukla, for the opposite party.

THOMAS, J.:—The complainant, Mathura Prasad Naithani, was in the service of the Maharaja of Tehri. The accused is the Diwan of the Tehri State. The complainant filed a complaint against the accused on the 1st of August, 1931, in the court of the City Magistrate, Lucknow, under section 500 of the Indian Penal Code. The charge was that the accused, on the 26th of November, 1928, made certain imputations against the complainant with the intention of harming his reputation, and thereby committed an offence punishable under section 500 of the Indian Penal Code. The case was transferred to the court of Mr. Mason, a first class Magistrate. The learned Magistrate found that the accused had acted without malice and in good faith, and, therefore, acquitted him on the 21st of October, 1933. The accused went up in revision to the court of the learned Sessions Judge of Lucknow. The learned Judge upheld the order of the learned Magistrate and

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(2) (1933) 10 O.W.N., 345.

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dismissed the application for revision. The learned Judge held that "whether the Magistrate's view is correct or not, the fact remains that the respondent has been acquitted after trial and I do not think the Magistrate's findings are such as would justify me in accepting this revision. It is seldom that the Hon'ble Chief Court will interfere with an order of acquittal on the application of a party . . ." The applicant has now

Thomas, J. come up to this court in revision, and his main contention is that the finding of the learned Magistrate is unreasonable, against the weight of evidence and that the accused has wrongly been acquitted. He has also argued that the Magistrate had no jurisdiction to try this case.

It appears from the evidence that the accused on the 26th of November, 1928, met Mr. Sharga, an advocate of this Court at Lucknow, and made certain representations to him about the complainant. Mr. Sharga is the general Secretary of the United Provinces Dharam Rakshani Sabha, of which the complainant is propaganda Secretary. The complainant and Mr. Sharga were members of the Garhwal Sub-Committee of the Hindu Charitable Endowments Committee at the time when the alleged defamatory statements were made. Mr. Sharga made a brief note of the conversation which he had with the accused and promised the accused that he would look into the matter, and, if necessary, the Sabha would take action against the complainant. The alleged defamatory statements briefly are:

(1) that the complainant had received a large sum of money from the Tehri State for which he had given no account, really meaning that the complainant had misappropriated the money;

(2) that the British Government had decided to remove the temples, Badri Nath and Kedar Nath, from the control of the Tehri Darbar, and

(3) that the complainant had sent a threatening letter to the Raja of Tehri.

The learned Magistrate has decided on all points against the complainant. He considered the whole evidence and came to the conclusion that the accused acted without malice and in good faith. It has repeatedly been held by this Court that where the view taken by a trying Magistrate is palpably unreasonable or by any means perverse, the mere fact that the court of revision is inclined to take a different view of the evidence from that of the trying Magistrate does not justify it under section 436 of the Code of Criminal Procedure to interfere with an order of acquittal. (See *Ramanand and others v. King-Emperor* (1).

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It is ordinarily not open to a private person to have an acquittal set aside in revision. The power to appeal against an order of acquittal is given to the Crown under section 417 of the Code of Criminal Procedure, and the High Court should very sparingly interfere in applications filed against orders of acquittal by private persons. In the case of *Rama Murti v. Jai Indra Bahadur Singh* (2), it was laid down that the High Court has jurisdiction under section 439 of the Code of Criminal Procedure to entertain an application in revision of an order of acquittal when the Crown has not preferred an appeal; but the High Court would not move in such a case unless there was some glaring defect, either in the procedure or in the view of the evidence taken by the court below. It was further held that the High Court would not go into the question of evidence, save in exceptional cases, as where the judgment is manifestly wrong and grossly and palpably unjust. In this application for revision I am not prepared to hold that the view taken by the learned Magistrate is unreasonable or grossly and palpably unjust. After weighing the whole evidence and considering some of the documents on the record, the Magistrate came to the conclusion that the imputations were made in good faith and without

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malice. I am not, therefore, prepared to interfere with his finding.

It has been suggested that the Magistrate had no jurisdiction to try this case. This point was not raised in the court of the Magistrate. It was taken in the grounds of appeal before the learned Sessions Judge but was not pressed. The learned Sessions Judge, in his judgment, says that the plea taken in paragraph 22(h), i.e., the question of jurisdiction, of the application has not been argued before him. In the grounds of revision before this Court this point is not raised. There is no material on the record before me to hold that the Magistrate had no jurisdiction to try this case. The complaint, as pointed out above, was instituted in the court of the City Magistrate who transferred it to the court of Mr. Mason. I am of opinion that he must have had the power or orders from the District Magistrate to transfer cases. Anyhow, at this late stage I am not prepared to set aside the order of the learned Magistrate as passed without jurisdiction when there is no material on the record. I, accordingly, reject this application.

Thomas, J.

Application rejected.

REVISIONAL CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith

1934
August, 3

PIRTHWI NATH BHARGAVA (OBJECTOR-APPLICANT) v. IN THE MATTER OF THE ESTATE OF LATE R. B. TRILOK NATH BHARGAVA (OPPOSITE PARTY)*

Court Fees Act (VII of 1870), Schedule I, Art. 12—Succession certificate—Court fee payable on an application for succession certificate.

According to Article 12 of the First Schedule of the Court Fees Act, as it now stands, the amount payable in respect of an application for succession certificate should be calculated according to the amounts of the individual items comprised in the

*Section 115 Application No. 42 of 1933, against the order of Babu Mahabir Prasad Verma, Subordinate Judge of Lucknow, dated the 10th of April, 1933.