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of the evidence against Samiullah was such as left the case against Samiullah at least doubtful and the benefit of the doubt should have been given to the accused.

I therefore accept this reference and set aside Samiullah's conviction and sentence under section 29 of the Police Act.

Reference accepted.

REVISIONAL CRIMINAL

Before Mr. Justice G. H. Thomas, Chief Judge

1938 October, 12

KING-EMPEROR (COMPLAINANT-APPLICANT) *v.* BEHARI (ACCUSED-OPPOSITE-PARTY)*

Criminal Tribes Act (VI of 1924), sections 23 and 24—"Any other such offence" in section 23, meaning of—Conviction for offence not mentioned in Schedule—Section 23, applicability of—Conviction under section 24—Accused previously convicted of only one offence mentioned in Schedule I—Accused if liable to enhanced punishment.

Section 23 of the Criminal Tribes Act refers only to convictions for offences specified in Schedule I and has no application to a conviction for an offence which is not contained in Schedule I. The words "any other such offence" used in the section mean one of those offences mentioned in the Schedule. The section has in mind not only the previous convictions of the accused but also the offence for which he is being tried.

On a conviction under section 24 of the Criminal Tribes Act the accused is not liable to enhanced punishment if he has been previously convicted of only one offence mentioned in Schedule I of the Act.

The Assistant Government Advocate, for the Crown.

No one for opposite party.

THOMAS, C.J.:—This is a reference under section 438 of the Code of Criminal Procedure by the learned Sessions Judge of Sitapur recommending that the order of commitment passed by Mr. D. P Hardy be quashed.

One Behari, a member of a registered criminal tribe, was sent up before the learned Sub-Divisional Magistrate, first class, of Misrikh, on the charge of being

*Criminal Reference No. 50 of 1938, made by N. Storr, Esq., Sessions Judge of Sitapur.

found under suspicious circumstances. The learned Magistrate came to the conclusion that the offence under section 24(*a*) of the Criminal Tribes Act was established against the accused, but as the accused had several previous convictions, he thought he was unable to pass an adequate sentence. The learned Magistrate has given the following explanation:

> "In committing these cases I had regard rather to the previous records of the accused and the limitation of my powers than to the strict interpretation of the words 'such offence' in section 23(1), Act VI of 1924."

What the learned Magistrate really thought was that if he was to convict the accused under section 24 of the Criminal Tribes Act the accused was liable to enhanced punishment on account of his previous convictions. Therefore the Magistrate was not able to inflict an adequate sentence. This is a wrong view of the law. Section 23 of the Criminal Tribes Act refers only to convictions for offences specified in Schedule I and has no application to a conviction for an offence which is not contained in Schedule I. The words "any other such offence" used in the section mean one of those offences mentioned in the Schedule. As far as I have been able to find there is only one conviction against the accused under section 457, I.P.C. which offence is specified in Schedule I. There is therefore no question of a second or third conviction under clause (*a*) or clause (*b*) of section 23 of the Criminal Tribes Act. The learned Sessions Judge is right in remarking that section 23(1) of the Criminal Tribes Act has "in mind not only the previous convictions of the accused but also the offence for which he is being tried."

I accordingly accept the recommendation of the learned Sessions Judge, quash the commitment and send back the case for trial.

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As Mr. Hardy, on the evidence, has formed an opinion adverse to the accused the case will be laid before the learned District Magistrate who will either try it himself or transfer it to the file of some other Magistrate of the first class.

Reference accepted.

APPELLATE CIVIL

Before Mr. Justice R. L. Yorke

1938 October, 15

SHAIKH BARSATI (Defendant-appellant) v. SARJU PRASAD and others (Plaintiffs-respondents)*

Oudh Rent Act (22 *of* 1886), *sections* 108(10) *and* 127—*Specific Relief Act* (*I of* 1877), *section* 31—*Person claiming proprietary rights ejected as tenant by revenue court—Suit for possession in civil court, maintainability of—Jurisdiction of civil and revenue courts—Mutual mistake of fact in sale deed—Purchaser's failure to institute suit for rectification under section* 31, *Specific Relief Act—Purchaser whether deprived of his rights under the sale-deed—Subsequent purchaser with notice of mistake, whether protected by section* 31.

If an under-proprietor can litigate to establish his rights as such in a civil court after he has been ejected by a revenue court, *a fortiori* a proprietor cannot possibly be deprived of that right. A proprietor who has been ejected as a tenant by the revenue court can therefore maintain a suit for possession in the civil court. The civil court cannot set aside the decree of the revenue court but it can, as indicated by the very frame of the proviso to section 108, clause (8) give a decree for possession. *Raja Mohammad Abul Hasan Khan* v. *Prag and others* (1) relied on. *Rustom Singh and others* v. *Mst. Ahmadunnisa* (2) and *Har Nath Singh* v. *Sri Ram* (3) referred to.

Where a sale-deed through the mistake of the parties does not truly express their intention the purchaser is not bound to use for the rectification of the deed under section 31 of the Specific Relief Act. That section being an enabling section the fact that the purchaser did not choose to avail himself of that

*Second Civil Appeal No. 351 of 1936, against the decree of Mr. Hari Kishen Kaul, Additional Civil Judge of Gonda, dated the 30th of July, 1936.

(1) (1917) 20 O.C., p. 8. (2) (1937) O.W.N., 886. (3) (1929) 6 O.W.N. 1214.