

APPELLATE CRIMINAL.

Before Mullick and Bucknill, J.J.

CHAMARI SINGH

v.

PUBLIC PROSECUTOR OF GAYA.*

Code of Criminal Procedure, 1898 (Act V of 1898), section 476—Preliminary enquiry, nature of.

The nature of the preliminary inquiry mentioned in section 476(1) of the Code of Criminal Procedure, 1898, is a matter for the discretion of the court; the law does not compel a detailed inquiry.

On the 25th May, 1923, the appellants 1 to 15 were alleged to have filed a petition before the Subordinate Judge of Gaya asking for certain reliefs under section 83 of the Transfer of Property Act. With that petition the appellants filed two documents: (1) a *mukarrari* deed of 1811, and (2) a usufructuary mortgage of 1833. It was alleged that both these documents were forgeries and that the appellants dishonestly used these documents as genuine knowing them to be forged. Twenty-one other persons also joined in the petition but it was subsequently decided that they were not to be prosecuted and they were not parties to the present application.

It was alleged that in 1923 these appellants who claimed as *mukarraridars* under the deed of 1811 executed a *dar-mukarrari* in favour of the appellant no. 16, Mussammatt Nageshwar, and that she also joined in the application to redeem the usufructuary mortgage of 1833. She was a *pardanashin* lady and had a husband and two sons who assisted her in getting the *dar-mukarrari kabuliyat* registered, before the Registrar. When the application under section 83

* Criminal Appeal no. 222 of 1924, from an order of F. F. Madan, Esq., I.C.S., Sessions Judge of Gaya, dated the 5th November, 1924.

of the Transfer of Property Act came on for hearing, the alleged mortgagee, the proprietress of the 7-anna Tikari Raj, stated that there was no *mukarrari* or *dar-mukarrari* or usufructuary mortgage encumbering the estate, and the Subordinate Judge accordingly declined to order the redemption of the *zarpushgi* mortgage and dismissed the application.

1925.

CHAMARI
SINGH
v.
PUBLIC PRO-
SECUTOR OF
GAYA.

Thereupon one of the servants of the proprietress applied to the Subordinate Judge for the prosecution of the 37 persons who were party to the petition of the 25th May, 1923, and also of Mussamat Nageshwar Koer's husband and her two sons. Thereupon certain proceedings followed which were not relevant to this report; but the result was that the District Judge, upon an application made by the Public Prosecutor of Gaya, ordered the prosecution of the 37 persons who were party to the petition of 1923 as well as of the husband and two sons of Mussamat Nageshwar Koer for offences under sections 471 and 467, Penal Code.

There was then an appeal to the High Court* and a Division Bench, on the 18th June, 1924, set aside the order of the District Judge and directed further inquiry as to the complicity of each accused.

That inquiry was made and the learned Judge revised his former order and discharged all but the present appellants 1 to 19.

It was urged in the present application that the learned Judge had made no inquiry at all and that he had not done what the Court required him to do.

It appeared that the District Judge had discharged all the minor accused. As to seven others, he found that two had died and that five had not signed the *vakalatnama* which was given to the pleader who was instructed to file the two forged documents; and he made a complaint against the 19 appellants only.

* *Chamari Singh v. Public Prosecutor of Gaya, ante, page 24.*

1925.

Manohar Lal, for the applicants.CHAMARI
SINGH

v.

PUBLIC PRO-
SECUTOR OF
GAYA.*H. L. Nandkeolyar*, Assistant Government Advocate, for the Crown.

MULLICK, J.

MULLICK, J. (after stating the facts set out above, proceeded as follows): It is contended that further evidence is required to show that the appellants knew that the documents were forged and that they used them. There is certainly a *prima facie* case that the documents are forgeries; for the former Raja of Tikari, who is alleged to have given the *mukarrari* and also the Raja in favour of whom the usufructuary mortgage is alleged to have been executed, were not alive on the dates on which the documents were executed. As regards the adult *mukarraridars*, *i.e.*, appellants 1 to 14, it is clear that the District Judge was of opinion that they knew that they had not a shadow of a title and that they filed or instigated the filing of the documents knowing that they were forged. In the circumstances he was justified in taking proceedings against them under section 476, Criminal Procedure Code. The law does not compel him to make a detailed inquiry and as he has considered the case of each of these appellants he has, in my opinion, complied with the orders of the Division Bench. The grant of a right of appeal has, in my opinion, not conferred any new right upon the accused and the extent of the preliminary inquiry is still left to the discretion of the court. If a *prima facie* case has been made out the appeal court ought not to interfere. In this case the Court has made an inquiry as regards these 14 accused and has made a complaint to a 1st Class Magistrate in order that the Magistrate may follow the procedure of section 202 or proceed otherwise according to law. The learned Judge evidently intended that the Magistrate, if satisfied that process should issue, should call upon the Public Prosecutor to produce his evidence before him and then either dispose of the case himself or commit it for trial.

We think, however, that some revision of the learned Judge's order is required as regards appellants nos. 15, 16, 17, 18 and 19. Mussammat Nageshwar Koer, appellant no. 16, being a *parda-nashin* lady, cannot be expected to have had any knowledge of the nature of the documents or to have taken any part in filing them in Court and therefore we do not think that there is at this stage a sufficient *prima facie* case against her.

It also appears that appellant no. 15 is a minor and his name also should be excluded.

With regard to the appellant no. 17, who is the husband of Mussammat Nageshwar Kuer, and appellants nos. 18 and 19, who are her two sons, the learned Judge does not state what evidence there is of their complicity. The learned Assistant Government Advocate has informed us that it is proposed to lay a charge of conspiracy against them under section 120B of the Indian Penal Code and also of abetment, but there is nothing on the record to indicate whether there is any *prima facie* evidence against them. An application has been shown to us which was made by the Public Prosecutor in the Court of the District Judge on the 11th of February, 1924, asking the District Judge to examine certain witnesses and documents in order to connect appellants nos. 17, 18 and 19 with the other accused. The learned Judge declined to take that evidence. The decision was unfortunate and as there has been also no further inquiry in regard to these accused since the Division Bench remanded the case, we direct that the inquiry before the Magistrate be confined for the present to petitioners nos. 1 to 14. If the Public Prosecutor considers it necessary to proceed against appellants nos. 17, 18 and 19, he is at liberty to make a fresh application to the District Judge, who, after making such further inquiry as he may consider necessary, will decide whether or not their case also should be referred under section 476 to the Magistrate for trial along with the other petitioners.

BUCKNILL, J.—I agree.

Order modified

1925.

CHAMARI
SINGH

v.
PUBLIC PRO-
SECUTOR OF
GAYA.

MULLICK, J.