

1924.

CHAMARI
SINGH
v.
PUBLIC
PROSECUTOR
OF GAYA.

ADAMI, J.

It is not sufficient that the Magistrate to whom the complaint is made under section 476 is entitled to hold an inquiry under section 202. Generally he will consider that the fact that the Court has made the complaint is sufficient to justify issue of process against the accused at once. But even if under section 202 an inquiry is held the persons complained against have no opportunity to show their innocence till after they have been summoned.

The learned Sessions Judge should have satisfied himself by inquiry that there was a *prima facie* case against each one of the petitioners before laying a complaint against any one of them.

In the present case there were thirty-seven signatories to the petition under section 83; it is extremely likely that some of them knew nothing about the petition or the documents.

On the ground that the cases of the individual petitioners have not been considered, it will be necessary to set aside the order passed by the learned Sessions Judge and to direct that further inquiry be made by him as to the complicity and knowledge of the individual petitioners. After such inquiry it will be open to the learned Sessions Judge to make a complaint under section 476 against such of the petitioners as he believes to have committed an offence.

SEN, J.—I agree.

PRIVY COUNCIL.

LACHMI NARAYAN AGARWALLA

v.

BRAJA MOHAN SINGH

1924.

June, 26.

Stamp—Mining Lease—Royalties—Claim exceeding that covered by Stamp—Admissibility upon payment of Duty and Penalties—Indian Stamp Act, 1899 (II of 1899), sections 26, 35.

* PRESENT: Lord Dunedin, Lord Shaw, Lord Carson, Lord Blanesburgh and Sir John Edge.

By the Indian Stamp Act, 1899, section 26, where the amount of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be ascertained, nothing shall be claimable under it in excess of, the amount for which the stamps used would have been correct. Section 35 provides that no instrument can be admitted in evidence unless it is duly stamped, but provides that an instrument which is unstamped or insufficiently stamped can be admitted upon of the amount covered by the stamps,

In a suit upon a mining lease claiming royalties in excess of the amount covered by the stamps.

Held that the lease was admissible under section 35 upon payment of the balance of duty and penalties, and that the amount claimed could be recovered thereunder.

Decision of the High Court affirmed.

Appeal by the defendants.

Appeal (no. 47 of 1923) from a decree of the High Court [*Kumar Braj Mohan Singh v. Lachmi Narain Agarwala* (1)], affirming a decree of the Subordinate Judge of Purulia.

The respondent granted to the appellants a lease, dated December 14, 1906, for 999 years of land for use as a coal mine in consideration of a sum of Rs. 1,920 as *salami* or premium, and payment of 5 annas per ton of coal raised as royalty with a minimum of Rs. 960 *per annum*. The instrument was stamped with stamps to the value of Rs. 40, of which Rs. 20 was the amount payable under the Indian Stamp Act, 1899, in respect of the premium.

Section 26 of the above Act provides that :

" Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be.....ascertained at the date of its execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would.....have been sufficient."

The balance of Rs. 20 would have been under the Act sufficient for an instrument providing for royalties up to Rs. 2,000.

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Section 35 of the above Act provides that no instrument shall be admitted in evidence :

“ unless such instrument is duly stamped,”

but provides further that instruments (subject to certain exceptions) shall be admitted in evidence on payment of the duty chargeable, or such an amount as makes up the deficiency in the stamp together with a penalty as therein provided.

In 1917 the respondent brought a suit against the appellants claiming under the lease royalties for the years 1911 to 1916; he valued his claim at Rs. 39,900. The appellants pleaded, *inter alia*, that having regard to section 26 of the Indian Stamp Act, no more than Rs. 2,000 could be claimed.

The Subordinate Judge admitted the lease in evidence under the proviso to section 35, and rejected the above plea; he gave the respondent a decree for Rs. 20,622; upon appeal to the High Court the decision was affirmed. The learned Judges (Dawson Miller, C. J. and Mullick, J.) were of opinion that there was nothing in section 35 of the Act which excluded its operation in the case of instruments coming within section 26.

1924, June 26. *Sir George Lowndes, K.C.* and *E. B. Raikes*, for the appellants. Section 35 applies only to instruments not duly stamped. But having regard to the special provisions of section 26 applicable to leases where the annual amount payable is uncertain, the lease was duly stamped. The amount claimable under it was however limited by that section to Rs. 2,000. Reference was made to *Baijnath v. Ahmed Musaji Sallji* (1).

The respondents did not appear.

The judgment of their Lordships was delivered by—

LORD DUNEDIN.—In this case, which has been heard *ex parte*, Sir George Lowndes has said every

thing that could be said on behalf of the appellants, but he has not created any doubt in their Lordships' minds that the judgment of the High Court at Patna was right. It is clear to their Lordships that the proviso (a) of section 35 of the Indian Stamp Act, 1899, is of equal ambit with the body of the section, and that just as an instrument cannot be acted upon, that is to say, nothing can be recovered under it unless it has a proper stamp, so the proviso provides that if there is not a proper stamp it may be put on afterwards on payment of a penalty and the instrument then becomes effective.

Their Lordships will humbly advise His Majesty that the appeal be dismissed.

Solicitors for appellants: *W. W. Box & Co.*

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Foster, J.

MAHARAJA BAHADUR KESHO PRASAD SINGH

v.

NARAYAN DAYAL.*

1924.

June, 26.

Civil Procedure Code, 1908, Act V of 1908, Order XLI, rule 33—Power of the Appellate Court, scope of.

The object of Order XLI, rule 33, is, speaking generally, to enable the appellate court, where its decision interferes with or modifies or extends the decision of the lower Court, to give effect to that decision by interfering, if necessary, even with the rights and liabilities of those who are not in fact appealing from the decision of the trial Court.

The defendants were lessees, at a rent of Rs. 41/5/6, of a holding consisting of 9.64 acres, which, at the date of the lease, were presumed to be within village D₆ the proprietor of

* Second Appeals nos. 1859 and 1860 of 1921, from a decision of B. Phamindra Lal Sen, Subordinate Judge of Shahabad, dated the 19th May, 1921, confirming a decision of B. Naresh Chandra Sur, Munsif of Buxar, dated the 10th June, 1920.

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