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DAS, J.

I would allow the appeal; set aside the judgment and the decree passed by the learned Judicial Commissioner and remand the case to him to be disposed of according to law. The appellant is entitled to the costs of this appeal. Costs incurred in the Court below will be costs of the appeal which will be determined by the learned Judicial Commissioner.

ROSS, J.—I agree.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mullick and Macpherson, J.J.

SIBAN RAI

v.

BHAGWAT DASS.*

1925.

June, 12.

Code of Criminal Procedure, 1898 (Act V of 1898), section 439—Acquittal, power in revision to interfere with—locus standi of private prosecutor.

Per *Mullick, J.*—(*i*) The power of interference in revision with acquittal should be most sparingly exercised and, only in exceptional cases where either there has been a denial of the right of fair trial or it is urgently demanded in the interests of public justice.

Faujdar Thakur v. *Kashi Chaudhuri*(1), *Gulli Bhagat* v. *Narain Singh*(2) and *A. T. Sankaralinga Mudaliar* v. *Narayana Mudaliar*(3), approved.

Shaikh Bagu v. *Raika Singh* (4), *Harai Chandra Nana* v. *Osman Ali*(5) and *Nabin Chandra Chakrabarty* v. *Rajendra Nath Banerjee*(6), referred to.

* Criminal Revision no. 104 of 1925, from an order of F. C. King, Esq., I.C.S., District Magistrate of Darbhanga, dated the 6th January, 1925, setting aside the order of B. Mahadeo Prasad Singh, Sub-Deputy Magistrate of Samastipur, dated the 17th November, 1924.

(1) (1915) I. L. R. 42 Cal. 612. (2) (1923) I. L. R. 2 Pat. 708.
(3) (1922) 68 Ind. Cas. 615, F. B. (4) (1913-14) 18 Cal. W. N. 1244.
(5) (1918) 27 Cal. L. J. 226. (6) (1917) 39 Ind. Cas. 487.

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This rule, however, does not apply where there has been no trial.

Domoo Sahu v. *Jitan Dusadh* (1), followed.

(ii) (Macpherson, J., dissentiente). In cognizable cases the private prosecutor has no position at all and if the crown which is the custodian of the public peace decides to let an offender go, no other aggrieved party can be heard to object that he has not taken his full toll of private vengeance.

Gulli Bhagat v. *Narain Singh* (2), *Queen-Empress* v. *Murarji Gokul Das*(3) and *Ganga Prasad* v. *Bhagat Singh* (4), referred to.

Per *Macpherson, J.*—The power to interfere in revision is not, either in law or under the practice of the Courts in India, definitely restricted to cases where there has been a denial of the right of fair trial. It is, however, neither necessary nor expedient to lay down or even suggest any limitation in this regard beyond the practice of the High Court in appeals under section 417, Code of Criminal Procedure, and the principles which guide the court in receiving and determining under section 439 applications for the exercise of their powers of revision in respect of convictions.

Ganga Singh v. *Rambhajan Singh* (5), followed.

Although the court will only interfere in revision with an acquittal in an exceptional case, the supreme consideration is that it should exercise its discretion untrammelled in each case as it arises.

In this case the second class Magistrate of Samastipur found that Mahanth Ganga Dass had title and possession in an asthal at Waini and that the accused Bhagwat Dass and Narain Dass had forcibly dispossessed him and committed criminal house trespass in a building appertaining to the asthal. He therefore convicted the accused under section 448 of the Indian Penal Code and sentenced them to a fine of Rs. 50 each.

(1) (1916) 1 Pat. L. J. 264. (2) (1923) I. L. R. 2 Pat. 708.
(3) (1889) I. L. R. 13 Bom. 389. (4) (1908) I. L. R. 30 All. 525.
(5) (1924) 82 Ind. Cas. 274.

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In appeal the District Magistrate of Darbhanga found that the story of forcible dispossession was false and that Bhagwat Dass and Narain Dass were in possession and that they had successfully resisted an attempt by Siban Rai, the servant of Ganga Das, forcibly to evict them from the asthal. He found that the accused had no right to stay in the asthal against the will of Ganga Dass; but at the same time the case of Ganga Dass being false in material particulars, he acquitted the accused. Ganga Dass made an application to the Local Government requesting it to lodge an appeal under section 417 of the Criminal Procedure Code, but the Local Government refused on the ground that the case was not one of sufficient public importance. The complainant then moved the High Court to set aside the order of acquittal passed by the lower courts.

Sir Ali Imam (with him *S. A. Sami*), for the petitioner.

Sultan Ahmed, Government Advocate, for the crown.

Ram Prasad, for the accused person.

MULLICK, J. (after stating the facts set out above proceeded as follows): In now asking us to interfere in revision the petitioner relies upon the following cases of the Calcutta High Court; *Shaikh Bagu* v. *Raika Singh*(1), *Harai Chandra Nana* v. *Osman Ali*(2), *Nabin Chandra Chakrabarty* v. *Rajendra Nath Banerjee*(3). In these cases a rehearing was ordered by the High Court on the ground that there had not been a sufficient trial in the court below; the decisions were based on the special facts of each case, but it was not till *Faujdar Thakur* v. *Kasi Chaudhuri*(4), that any attempt was made to define the

(1) (1913-14) 18 Cal. W. N. 1244.

(2) (1918) 27 Cal. L. J. 226.

(3) (1917) 39 Ind. Cas. 487.

(4) (1915) I. L. R. 42 Cal. 612.

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principles upon which the High Court will interfere in revision. That case was noticed with approval by this Court in *Gulli Bhagat* v. *Narain Singh*(1) and by a full bench of the Madras High Court in *A. T. Sankaralinga Mudaliar* v. *Narayana Mudaliar*(2) and I think it is now settled that the power of interference in revision should be most sparingly exercised and only in cases where it is urgently demanded in the interests of public justice.

The rule of course does not apply to cases where there has been no trial. For instance, in *Domoo Sahu* v. *Jitan Dusadh*(3) this Court set aside an acquittal in revision because an acquittal had been entered without trial and under an error of law. In that case the complainant having died the Magistrate refused permission to complainant's son to proceed with the case and acquitted the accused and the District Magistrate moved the High Court in revision. On the other hand, in *Raj Kishore Dubey* v. *Ram Pratap*(4) a Division Bench (Mullick and Macpherson, J. J.) of this Court declined to interfere even though there was a clear error in the lower appellate Court's judgment. We have not been shown any case in which a High Court has interfered in revision on the ground that the inferences drawn from were erroneous.

In my opinion the legislature does not intend that a private party shall secure by an application in revision a right which is reserved for the crown only. The High Court has the right to interfere but will only do so in very exceptional cases, which it may be stated generally are cases in which there has been a denial of the right of fair trial and which attract the operation of section 107 of the Government of India Act. Nor does it intend that the High Court will interfere in revision to correct an error when another remedy exists.

(1) (1923) I. L. R. 2 Pat. 708.
(2) (1922) 68 Ind. Cas. 615.
(3) (1916) 1 Pat. L. J. 264.
(4) Cr. Rev. no. 229, decided on the 19th April, 1923.

In England, where any member of the public may set the criminal law in motion, there is no procedure at all for setting aside an acquittal. In France, where the law permits in most criminal cases a private injured party to intervene as a *partie civile*, the right of appeal against an acquittal is accorded only to the Crown. Neither system permits a private prosecutor to control the proceedings if the Crown objects.

Nor is the private prosecutor's control any greater under the Indian law though he is entitled in certain cases to compound with the offender; see *Kamuna Kant Jha* v. *Rudra Kumar Jha*(1).

I am still therefore of the opinion which I expressed in *Gulli Bhagat* v. *Narain Singh*(2), that in cognizable cases the private prosecutor has no position at all and that if the Crown, which is the custodian of the public peace, decides to let an offender go, no other aggrieved party can be heard to object that he has not taken his full toll of private vengeance. These observations were made with reference to a private party's power to get an acquittal set aside in a cognizable case which had been conducted by a public prosecutor; but if it were necessary here I would be prepared to hold that they apply with equal force to acquittals in all cases. The Crown and not the complainant is always the party. [See *Queen Empress* v. *Muharji Gokul Das*(3) and *Ganga Prasad* v. *Bhagat Singh*(4).]

If that view is correct, then the circumstance that in the present case Mahanth Ganga Dass, in spite of delivery of possession by the Civil Court, is being deprived by the judgment-debtor of the enjoyment of his rights, is no ground for our interference in revision. There has been no denial of the right of fair trial. The District Magistrate has considered the evidence

(1) (1919) 4 Pat. L. J. 656.
(2) (1923) I. L. R. 2 Pat. 708.
(3) (1889) I. L. R. 13 Bom. 389.
(4) (1908) I. L. R. 30 All. 525.

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and if he has come to a wrong conclusion, it certainly cannot be said that there has been no fair trial. He has found that the complainant's story that the accused came with a mob and drove out Ganga Dass's servants was false and that Bhagwat Das was in possession and that it was the complainant who attempted to forcibly eject him. If the true facts had been put by the complainant before the Court, I have no doubt that he would have succeeded and if Bhagwat Dass persists in occupying the land and house which formed the subject matter of the Civil Court decree against him, the criminal courts are still open to him. The present application is misconceived and is dismissed.

MACPHERSON, J.—I agree to the order proposed.

In my opinion the application must fail on the simple ground that it is not even possible to say that the acquittal by the appellate Court (which rightly found that the case which petitioner set out to prove was false) was not in the circumstances warranted. If an appeal had been preferred by the local Government under section 417, it would have failed for the same reason.

The question whether a private person has any locus standi to move the High Court against an acquittal, and if so in what circumstances has, however, been argued at length and claims an expression of opinion.

I agree with the Government Advocate when he concedes that the High Court possesses the power to set aside an acquittal under section 439 on being moved by a private person. But I am unable to accept his contention that that power is either in law or under the practice of the Courts in India, definitely restricted to cases where as in *Damoo Sahu* v. *Itan Sahu*(1), there has been no trial, or where there has been a denial of the right of fair trial. All that can be said to be established is that in that class of cases at least the Courts will in a proper case set aside an acquittal

(1) (1916) 1 Pat. L. J. 264.

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at the instance of a private party. No doubt the High Court will in exercising its power of revision under section 439 observe the limitations which established practice has imposed upon appeals under section 417. But though in practice the broad rule of guidance that the Court will only interfere in revision with an acquittal, at least in a case where there has been a trial, sparingly and only where interference is urgently demanded in the interests of public justice [*Faujdar Thakur* v. *Kasi Chaudhuri*(1)] may be accepted, it appears dangerous to go further. I was a party to the decisions in *Rajkishore Dubey* v. *Rampartap*(2) and *Gulli Bhagat* v. *Narain Singh*(3), decided on successive days, but my considered opinion is to be found in the subsequent decision in *Ganga Singh* v. *Rambhanjan Singh*(4), where after referring to the cases above cited, I said " But it is not possible nor would it be expedient to lay down a general principle. The Court will interfere where the circumstances require it ".

In particular I am not prepared to subscribe to the view that in every case of a prosecution for a cognizable offence the private prosecutor in India has no position at all in the litigation. It might possibly be contended that at least where the prosecution has in fact been a public or as it is designated, a police prosecution, the private prosecutor has no position at any stage. I doubt whether even such a contention is tenable, though of course the Court acting in revision would in such a case enquire earnestly why the Crown has not appealed. But in any event the criterion cannot be whether the police could under the law of arrest without warrant for the offence under trial irrespective of whether they did so and initiated a public prosecution under the Code of Criminal Procedure; it is open to the private prosecutor to initiate criminal proceedings by

(1) (1915) I. L. R. 42 Cal. 612.
(2) Cr. Rev. no. 229, decided on the 19th April, 1923.
(3) (1923) I. L. R. 2 Pat. 708.
(4) (1924) 82 Ind. Cas. 274.

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complaint without the intervention of the police and where that has been done, and the prosecution has not been taken over by the Crown, a private prosecutor cannot in my judgment be said to be without position in the litigation even if the offence is cognizable. The majority of prosecutions for criminal trespass and house trespass which are cognizable offences are private. I cannot hold that either principle or authority supports the view that an application under section 439 against an acquittal is not maintainable in a private prosecution where the offence charged is cognizable.

Again too much stress may easily be laid upon the remedy available under section 417 even in police cases. An appeal against acquittal is a special weapon in its armoury which the Local Government judiciously reserves for exceptional occasions, and which is only used after most anxious consideration and in cases which are themselves of great public importance or in which a principle is involved. It cannot be expected that Government will dull the edge of that salutary provision by utilizing it freely in cases which though of importance to individual subjects, are of no or of little general interest. Actually, therefore, a remedy under section 417 is practically non-existent in the less heinous cases whether they are private or public prosecutions. Yet where justice fails in this country, it undeniably does so at least as much by erroneous acquittal as by erroneous conviction.

In my judgment it is neither necessary nor expedient to lay down or even suggest any limitation in this regard beyond the practice of the High Court in appeals under section 417 and the principles which guide the Court in receiving and determining under section 439 applications for the exercise of their powers of revision in respect of convictions. I would adhere to the view expressed by Jenkins C. J. in *Faujdar Thakur* v. *Kasi Chaudhuri*(1) read in the light of the

(1) (1915) I. L. R. 42 Cal. 612.

observations of the same judge in *Emperor* v. *Bankatram Lachiram*(1) and *In re. Mahomed Ali*(2) as to the spirit which should guide the Courts in the exercise of their discretionary powers in revision. The result may in practice not differ greatly from that which would be obtained by laying down and following detailed rules. Doubtless the Court will only interfere in revision with an acquittal in an exceptional case. But the supreme consideration is that the Court should exercise its discretion untrammelled in each case as it arises.

REVISIONAL CRIMINAL.

Before Mullick and Jwala Prasad, J.J.

DAROGA GOPE

v.

KING-EMPEROR.*

1925.
June, 15.

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 195(b)—*Offence in relation to judicial proceeding, nature of*—*Indian Penal Code*, 1860 (*Act XLV of* 1860), *sections* 211 *and* 182.

If two offences are even remotely connected by the relationship of cause and effect, the first may be said to have been committed "in relation" to the second within the meaning of section 195.

Where, therefore, the petitioner laid a false charge before the police which caused the police to submit a report against the petitioner, which in its turn caused the petitioner to institute a judicial proceeding before the Magistrate by lodging a formal complaint and repeating the allegations made in his information to the police, and the Magistrate, on the

* Criminal Revision no. 143 of 1925, from an order of J. A. Sweeney, Esq., I.C.S., Sessions Judge of Patna, dated the 13th March, 1925, affirming an order of A. Haque, Esq., Subdivisional Magistrate of Patna, dated the 6th February, 1925.

(1) (1904) I. L. R. 28 Bom. 533. (2) (1914) I. L. R. 41 Cal. 466.