

I have stated, with section 27 of the Evidence Act inasmuch as it was not made by a person in the custody of the police officer. The Legislature in its wisdom has seen fit to make these safeguards against the admission of confessions in such cases. I have no doubt in my mind that the confession in this case was made but there being, what I describe these safeguards, this confession is inadmissible. It is for me to administer the law quite apart from what the results may be. I find in this case that there was no evidence against the accused apart from this confession and as the confession is clearly inadmissible, the conviction and sentence will have to be set aside and the accused discharged from custody.

ADAMI, J.—I agree.

*Appeal allowed.*

*Conviction and sentence set aside.*

## REVISIONAL CRIMINAL.

*Before Adami and Wort, J.J.*

TIKAIT KRISHNA PRASAD SINGH

v.

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v.  
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Feb., 22.

*Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908, sections 63 and 215—Levying money in excess of rent—penalty imposed by Subdivisional Officer—appeal—Code of Criminal Procedure, 1898 (Act V of 1898), sections 1(2) and 4(0).*

An appeal from an order imposing a penalty under section 63 of the Chota Nagpur Tenancy Act, 1908, for illegally exacting from a tenant payments in excess of his rent, is governed by the Act itself and not by the Code of Criminal Procedure, 1898, and lies to the officer indicated in section 215 of the Act.

\*Criminal Revisions nos. 785, 798, 799, 800 and 801 of 1927, from the Order of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 27th September, 1927, rejecting the application against the Orders of S. A. Khan, Esq., Subdivisional Officer of Giridih, dated the 15th September, 1927.

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The petitioners nos. 1 and 2 in these five cases were proceeded against under section 63 of the Chota Nagpur Tenancy Act and fined a sum of Rs. 100 each in each of the cases.

The case against them was that at the time of the Shradh ceremony of the grandmother of petitioner no. 1, petitioner no. 1, through his agents, made certain illegal exactions against his tenants on his estate in Chota Nagpur. It was stated in the course of the judgment that in the result these were voluntary payments by his tenants and that there was reciprocity in the cases inasmuch as that in similar ceremonies in the families of his tenants or friends he, the petitioner no. 1, would also pay to them similar sums as those alleged to have been exacted from the tenants in these cases, the subject-matter of this rule.

It appeared that prior to the proceedings under section 63 of the Act, an enquiry was held under section 110 of the Code of Criminal Procedure against eight servants of petitioner no. 1, but these proceedings were discharged on the ground that the Shradh ceremony of the petitioner no. 1's grandmother in connection with which the exaction was levied was already over, and then the proceedings under section 63 of the Act were prosecuted, the petitioners were fined and as a result the petitioners preferred an appeal against the decision of the Subdivisional Officer, who took cognizance of the cases, to the Judicial Commissioner of Chota Nagpur. The Judicial Commissioner declined jurisdiction in the appeal and in consequence this application was made praying for a rule that the Judicial Commissioner be ordered to hear and determine the appeals according to law.

The rule came before Jwala Prasad, J., in the first instance, but as it appeared to him to be a matter of importance, he referred the question to the Division Bench.

*Manohar Lall* and *S. S. Bose*, for the petitioners.

No one for the opposite party.

WORT, J. (after stating the facts set out above, proceeded as follows): The argument advanced by learned Counsel for the petitioners in these cases is based on the assumption that the proceedings under section 63 were criminal proceedings, therefore, they were governed by the Code of Criminal Procedure, and as a result the appeal from the Deputy Commissioner or the Subdivisional Officer, who heard all these cases, was to the Judicial Commissioner of Chota Nagpur. But that argument does not exhaust the considerations in regard to these cases. It may well be that although the proceedings might be held to be criminal proceedings, yet the Chota Nagpur Tenancy Act, of which section 63 is a part, may provide a separate procedure by way of appeal and, therefore, the provisions of the Code of Criminal Procedure with regard to appeals would not apply.

In the first instance we are referred to section 4(0) of the Code of Criminal Procedure, and it is argued that this matter comes within that sub-section. The sub-section reads:

“ ‘ Offence ’ means any act or omission made punishable by any law for the time being in force.”

If the case rested upon that point alone, I should be inclined to hold that this was an offence within the Code of Criminal Procedure; but, as I have already stated, that does not exhaust the matter, that is to say the Code of Criminal Procedure does not necessarily apply and that is made clear by section 1, sub-section (2) of the Code. Section 1 of the Code deals with the application of the Code of Criminal Procedure, sub-section (2) provides that

“ It extends to the whole of British India; but in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply, etc.”

That clearly states that there may be other procedure provided by other Acts of the Legislature

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and that although a matter may be a criminal matter yet it may not be necessarily governed by the Code of Criminal Procedure.

Learned Counsel for the petitioners was engaged in an elaborate argument to show, first of all that it is a criminal matter and that the provisions relating to appeals under the Chota Nagpur Tenancy Act do not apply to cases under section 63. By reason of the decision to which I have arrived, it is unnecessary to state these in detail but to set them out briefly will be sufficient. He refers us to Chapter XIII of the Chota Nagpur Tenancy Act, section 109, which provides for appeals under that Chapter. Section 126 again provides for proceedings under Chapter XIV, section 130, sub-section (3) provides for appeals in proceedings under Chapter XV, and again section 215 provides also for appeals under the Act. But there is this difference between Chapters XIII to XV and Chapter XVI, whereas the sections mentioned in Chapters XIII to XV specifically provide for appeals in those Chapters, section 215 of Chapter XVI is not so prescribed but deals with all matters under the Act. But by reason of the argument which the learned Counsel advances we are asked to hold that although section 215 deals with all matters under the Chota Nagpur Tenancy Act, it does not deal with appeals under section 63. But it is unnecessary to discuss his argument on that point by reason of the fact that section 258 of the Chota Nagpur Tenancy Act seems to me to settle all the matters in dispute in these cases so far as jurisdiction to hear appeals is concerned. Section 258 provides

" Save as expressly provided in this Act, no suit shall be entertained in any court to vary, modify or set aside, either directly or indirectly, any order or decree of any Deputy Commissioner or Revenue Officer in any suit, application or proceeding under section,"

and then there are set out the numbers of the sections including section 63

" except on the ground of fraud or want of jurisdiction,"

and then comes the most important part of the section

" and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and subject to the provisions of this Act relating to appeal, shall be final."

Now the last part of this section seems to me to go to the very root of the argument which has been addressed to us. It says that an order under section 63 shall have the force and effect of a decree of a civil court. Whatever may be said regarding the procedure to be adopted in the hearing of an application under section 63, it is obvious from this section that when once that order has been made it is in effect a civil court decree, and consequently it follows that any procedure to be adopted by a party subsequent to the making of that order cannot be governed by the Code of Criminal Procedure but being, as it states a civil court decree, it must be governed, unless there be special provisions in the Act, by the Code of Civil Procedure. However, in my judgment, this Act does lay down a special procedure relating to all proceedings under the Act, it does provide a method of appeal, and, therefore, the proceedings which are before us must be governed by the sections which make those provisions. Section 215 is the section to which I refer. It provides.

" All orders passed by a Deputy Commissioner under the foregoing provisions of the Act "

then it makes exceptions

" shall be appealable to the Commissioner, or if passed by a Deputy Collector exercising the powers of a Deputy Commissioner, to the Deputy Commissioner."

Whatever else may be said of that section this much must be said that there is no restriction in the class of proceedings to which it refers. The expression used in the section is " all orders passed by," and, in my judgment, it covers the order which is mentioned in section 63. Section 63 uses the expression

" may in a summary proceeding by order impose on the landlord or on his agent."

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1928. As I have stated, it is clear that the order therein referred to comes under section 215 and the appeal is to the officers named therein. No more need be said in regard to the matter excepting perhaps that from what one can see from the judgment of the Subdivisional Officer the evidence which was adduced in the enquiry under section 110 was used in proceedings under section 63. That seems to me to be not altogether, to say the least of it, the proper procedure to adopt, but I say no more in regard to that.

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The result of my finding is that this Rule must be discharged.

ADAMI, J.—I agree.

*Applications dismissed.*

## APPELLATE CIVIL.

*Before Dawson Miller, C.J. and Adami, J.*

SYED ALI ZAMIN

v.

SYED MUHAMMAD AKBAR ALI KHAN.\*

1928.

Nov. 8, 11,  
14, 15, 16,  
17, 18, 21,  
22, 23, 24,  
25, 28, 29,  
30; Dec., 1,  
2; Jan., 16.

*Muhammadian Law—Wakf—Shia school—valid dedication must be followed by divestment of interest—Wakif as first mutawali—subsequent conduct, inference from—mutation of name—valid objects of wakf, what are—one or two invalid items, whether can invalidate the whole wakfnama—childless widow, rights of, in her husband's estate—undue inference, what must be proved in order to substantiate.*

In order to prove undue influence sufficient to invalidate a transaction it must be shewn that there was some coercion, amounting almost to fraud whereby the will of one party was dominated by the other so that the resulting transaction cannot be regarded as expressing the real intention of the party coerced.

\* First Appeal no. 47 of 1923, from a decision of Babu Krishna Sahay, 3rd Subordinate Judge of Patna, dated the 31st July, 1922.