provided that it is not in the nature of a sale. On this point therefore I think that the assessee's case must fail.

The result is that the decision of the Commissioner of Income-tax must be upheld and this application must be dismissed. The Commissioner is entitled to his costs in this case.

FOSTER J.—I agree.

REVISIONAL CRIMINAL.

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

MAINI MISSIR

v.

KING-EMPEROR.*

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July, 14

Code of Criminal Procedure, 1898 (Act V of 1898), sections, 17,144 and 195—Disobedience of temporary injunction issued by subdivisional magistrate—complaint by the magistrate—withdrawal of complaint, whether District Magistrate or Sessions Judge has power as to.

An order under section 144 of the Code of Criminal Procedure, 1898, not having been obeyed by the petitioner, the subdivisional magistrate (with first class powers) who passed the order made a complaint under section 195 (*1*) (*a*) alleging that the petitioner had disobeyed his order and had thereby committed an offence under section 188, Penal Code. The order under section 144 was, however, subsequently complied with and the petitioner then applied to the Sessions Judge to withdraw the complaint made by the subdivisional magistrate. The Sessions Judge decided that he had no jurisdiction to withdraw the complaint and that the application should have been made to the District Magistrate.

Held, that for the purposes of the Code of Criminal Procedure, unless it is shown that there is some provision to

* Criminal Revision no. 383 of 1926, against an order, dated the 20th May, 1926, passed by R. Ghose, Esq., Sessions Judge of Purnea, confirming an order of the District Magistrate of Purnea, dated the 4th March, 1926

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the contrary, the District Magistrate and not the Sessions Judge is the authority to whom a Subdivisional Magistrate is subordinate, and that as there is nothing in the Code to show that a subdivisional magistrate making a complaint under section 195 (1) (*a*) is subordinate to the Sessions Judge, the authority to which such magistrate is subordinate within the meaning of section 195 (5) is the District Magistrate.

Query. Whether a complaint made under the provisions of section 195 (*1*) (*a*) by a magistrate acting as a public servant is a judicial order.

Sub-section (*3*) of section 195 applies only where a complaint has been made under sub-section (*1*) (*b*) or (*c*) by a court and not when a complaint has been made under sub-section (*1*) (*a*) by a public servant.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

S. Sinha (with him *Kailaspati*, *B. P. Varma*, and *P. P. Varma*), for the petitioner.

H. L. Nandkeolyar (Assistant Government Advocate), for the Crown.

DAWSON MILLER, C. J.—This is an application in revision from an order of the Sessions Judge of Purnea refusing to consider the question of withdrawing a complaint preferred by a Subdivisional Magistrate under the provisions of section 195 of the Code of Criminal Procedure. The learned Sessions Judge considered that he had no jurisdiction to grant the relief sought and consequently refused to interfere.

From that decision the present proceedings are brought asking us to interfere in revision after finding that the learned Sessions Judge had jurisdiction to interfere. In order to understand how the point arose, and ultimately it depends upon the construction of sections 17 and 195 of the Code of Criminal Procedure, it is necessary to state shortly the facts out of which the case arises. It appears that in the district of Purnea there are certain melas held at certain

times of the year. They are organised by zamindars in the neighbourhood and where two such melas are held at or about the same time there is a certain amount of rivalry which at times is of such dimensions that it is apt to create a breach of the peace. During the holding of two melas, one at Sankerpur and the other at Simarbani, which are two villages a short distance apart the rivalry between the proprietors of these two melas was so great that something in the nature of a riot occurred last year several people being injured, and I believe three being killed. Babu Maini Missir, who is the petitioner in this case, is the proprietor of the mela held at Sankerpur and Babu Sundar Lal is the proprietor of a similar mela held at Simarbani a few miles distant. It has been usual for the petitioner to hold his mela sometime in February but before it comes to a conclusion it has also been the custom for Babu Sundar Lal to hold his mela a few miles distant with the consequence that they are both going on at the same time and the sort of trouble which I have indicated is apt to arise. In order to obviate any such trouble during the present year proceedings were taken by the Subdivisional Magistrate of Araria, who is a Magistrate of the first class, under section 144 of the Code of Criminal Procedure, and both the parties to whom I have referred were called upon under that section to shew cause why they should not take action upon their property in a certain manner indicated by the Subdivisional Officer. They appeared before him and in the result the Subdivisional Officer passed an order that the first mela, the one held at Sankerpur by the petitioner, should take place between the 14th and the 27th February; and that it should end on the latter date, and that the mela held at Simarbani should subsequently take place beginning a week later on the 6th March and should end on the 19th March.

From this order Babu Sundar Lal moved the District Magistrate under section 144 (4) of the Criminal Procedure Code and when the matter came

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before the District Magistrate he had the parties before him and apparently they were willing to pay for the services of armed police during the time that the mela should be going on concurrently in the two different villages if the Magistrate would modify the order passed by his subordinate and allow the melas to be held in the same manner as they had been on previous occasions. In the result the District Magistrate passed the following order:—

"Each party is prepared to pay for armed police to ensure that there should be no breach of the peace in his mela. That being the case there is no necessity for any order against the petitioner under *section* 144, Criminal Procedure Code. The Superintendent of Police will please report the cost of deputing a sufficient number of armed police to each mela, to-day if possible. On receipt of his report I shall pass final orders."

The report was submitted from which it was found that the cost of providing police for the days when the two melas would be going on concurrently would be Rs. 110. Thereupon the Magistrate ordered that upon Sundar Lal depositing half the amount the order under section 144 against him would be rescinded, and he further ordered that if the opposite party, that is the petitioner in the present proceedings, deposited the other half as payment, which he should do without delay, he had no doubt that the learned Subdivisional Officer would be prepared to consider the order with regard to his mela.

The petitioner whose mela was to take place first did not deposit his share of the cost of providing armed police but on the 4th March, sometime after the first mela had been in progress, the other party Babu Sundar Lal did deposit his share. Meantime, the petitioner's mela continued notwithstanding that the petitioner had deposited nothing. On the 4th March Babu Sundar Lal, as I say, having deposited his share the Magistrate stated that the petitioner Maini Missir had not fulfilled his undertaking to deposit half the cost of the police force and therefore there was no reason to modify the order under section 144 against him. The order against him was that

he should close his mela on the 27th February and therefore on the 4th March he was contravening the order passed by the Subdivisional Officer. On the 6th March police protection was afforded half the cost of providing the police having been paid by the other party and both melas went on simultaneously. On the 7th March still the petitioner had not paid his share of the police protection and so matters continued until the 11th March. In these circumstances it being found difficult to get the money from the petitioner proceedings were taken under section 188 of the Indian Penal Code against him. These proceedings were taken on the complaint of the Subdivisional Officer. The immediate result was that on the following day the petitioner paid his share of the money for the police protection.

Subsequently the application, to which I have referred, was made to the Sessions Judge to withdraw the complaint put forward by the Subdivisional Officer and the Sessions Judge came to the conclusion that he had no jurisdiction to do so and that in fact the proper person to apply to was not himself but the District Magistrate and therefore he refused to interfere with the result that the prosecution under section 188 is still pending against the petitioner.

It is from that order of the Sessions Judge that the present application in revision is brought. Whether or not the Sessions Judge refused to exercise a jurisdiction which he possessed must depend primarily upon the interpretation of section 195 of the Code of Criminal Procedure. That section provides in sub-section (*1*), clause (*a*), that

> "No court shall take cognizance of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate."

It may be mentioned that sections 172 to 188 are offences in the nature of contempt for, or disobedience of, the lawful orders of public servants, and in such cases no Court shall take cognizance of such offences

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unless the complaint is made by the public servant himself or by some other public servant to whom he is subordinate. By clause (*b*) of sub-section (*1*) a different class of offences is provided for, a class of offences such as perjury, forgery, using forged documents and matters of that sort which are offences committed in the course of judicial proceedings and in such cases it is provided that no Court shall take cognizance

> "of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate."

It will be seen by the two clauses of that sub-section that there are two distinct classes of offences referred to and there are two distinct classes of persons by whom the complaint must be made in such cases before the Court trying the offences can take cognizance of them. The first class of persons are the public officers themselves whose orders have been disobeyed or brought into contempt. The second class is the Court in which, or in relation to any proceedings in which, the offence has been committed. Then by sub-section (*5*) of the same section

> "Where a complaint has been made under sub-section (*1*), clause (*a*)" (which applies to the present case) "by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the court and, upon receipt thereof by the court, no further proceedings shall be taken on the complaint."

The petitioner's case is that the District Judge is the authority within that sub-section to which the public servant, namely, the Subdivisional Officer in this case, was subordinate and therefore that in applying to the Sessions Judge he applied to the proper person for withdrawal of the complaint. Whether or not it is the Sessions Judge or the District Magistrate who is the authority to which the Subdivisional Magistrate is subordinate seems to me to

depend entirely upon the provisions of section 17 of the Act. Section 17 provides as follows: —

"All Magistrates appointed under sections 12, 13, and 14," (which includes the Subdivisional Magistrate in this case) "and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business amongst such Magistrates and Benches."

Then sub-sections (*2*), (*3*) and (*4*) deal with matters which are not relevant to the present discussion and sub-section (*5*), if there was any doubt as to who is the officer to whom the Magistrate was subordinate seems to put an end to it. Sub-section (*5*) provides as follows:—

"Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided."

The result of that appears to me to be that for the purposes of the Criminal Procedure Code, unless it is shewn that there is some express provision to the contrary, the District Magistrate and not the Sessions Judge is the authority to whom the Subdivisional Magistrate is subordinate, and therefore when we find in this Act words relating to an officer to whom the Subdivisional Magistrate is subordinate we must construe that as meaning not the Sessions Judge but the District Magistrate. There are exceptions contained in the Act which have the effect of modifying the provisions of section 17, for instance section 435 gives powers to the High Court, the Sessions Judge and the District Magistrate or the Subdivisional Magistrate in certain cases to call for the records of inferior Courts, but appended to that section is an *Explanation* which states

"All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437."

We therefore have in that section an instance of cases in which Magistrates are to be deemed to be inferior to the Sessions Judge; in other words the Sessions Judge is to be regarded as the authority to which they

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are subordinate. There are other sections in the Act making somewhat similar provisions but with regard to section 195 I do not find that there is any provision which takes it out of the general rule laid down in section 17.

It was argued that as the Subdivisional Magistrate being a Magistrate of the first class is subordinate to the Sessions Judge in cases of appeals from his judicial decisions, therefore he must be treated as being subordinate to the Sessions Judge for the purposes of section 195, for it is contended that the order passed by the Subdivisional Magistrate in the present case was a judicial order and was an order therefore which would come, if any appeal lay, to the Sessions Judge and not to the District Magistrate. I am not prepared to find that a complaint made under the provisions of section 195 (*a*) by the Magistrate acting as a public servant, in other words as a complainant in the case, is a judicial order, but even if it were so, it seems to me that under the provisions of that section, there being no exception from the broad rule laid down in section 17 the officer to whom he is subordinate would still remain the District Magistrate. For these reasons I think it is unnecessary to consider the cases which have been quoted to us and in which there appears to be a conflict of opinion as to whether orders passed under section 144 and sanction granted under section 195, before it was amended in 1922, were judicial or administrative orders. I rest my judgment upon the interpretation of section 17 of the Act and the fact that there is no exception from the rule laid down in that section to be found within the provisions of section 195. Therefore it seems to me that the Sessions Judge was right when he said that he was not the proper tribunal to apply to in order to withdraw the prosecution. An argument was based upon sub-section (*3*) of section 195 which provides that for the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court.

This sub-section, however, seems manifestly to refer to the cases mentioned in clauses (*b*) and (*c*) of section 195 (*1*) where the complaint must be made by the Court and not to clause (*a*) where the complaint is to be made by a public servant. The magistrate whilst acting under that clause is acting as a public servant and sub-section (3) has I think no application in this case. The antithesis between "public servant" in clause (*a*) and "Court" in clauses (*b*) and (*c*) is marked, and, in my opinion, the magistrate acting under the former clause is acting, not as a Court, but as a public servant.

We have been asked in this case, even if we should consider that the Sessions Judge was right in refusing to interfere, to take the view that it has not been shewn that any real offence was committed under section 188 of the Indian Penal Code and on that ground to set aside the whole proceedings or to direct a withdrawal of the prosecution. It has been said that in the particular circumstances of the case it cannot be shewn that the disobedience to comply with the order either caused or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed. It has further been argued that the offence, if any was committed, was a purely technical one, because the petitioner had agreed to pay his share of the cost of police protection, and the mere fact that he had not paid it in time could really make no difference in the case and therefore the offence was a purely technical one if any. I do not think it can be said that the fact of holding these two melas at the same time having regard to what had taken place in previous years could not by any possibility be regarded as tending to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed. That there was a breach of the Subdivisional Magistrate's order cannot be denied. His order was that unless the petitioner should pay his share of the costs of the police he should close his mela on the 27th February. Nevertheless he kept it

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open and even after the neighbouring mela had started on the 5th March still the petitioner kept his own mela open and the two were running concurrently notwithstanding the order passed by the Subdivisional Officer. It was therefore a clear breach of the order passed. I do not think therefore that any case is shewn for quashing the proceedings or for interfering in any way. At the same time I cannot help feeling that as the affair has passed off without any breach of the peace, without any inconvenience and without subjecting anybody to annoyance, that the matter has now assumed a very different form. The petitioner did in fact, although not till after proceedings were taken by a complaint being lodged by the Magistrate, pay his share of the cost of the armed police, and I have no doubt that even without those proceedings it would eventually have been recovered. However that may be, I think, if the case is persisted in, and the petitioner should be found to have committed the offence, his punishment would probably be nominal, but that is no reason why we should at this stage interfere. The application is dismissed.

FOSTER, J.—I agree.

Application dismissed.

APPELLATE CIVIL.

Before Das and Adami, JJ.

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April, 27.

MAHARAJA PRATAP UDAINATH SAH DEO

v.

LAL GOBIND NATH SAH DEO.*

Chota Nagpur Tenancy Act, 1908 (*Bengal Act VI of* 1908), *section* 139(2), *significance of—suit by landlord against tenure-holder for rent of agricultural land, whether cognizable by Deputy Commissioner.*

*Appeal from Original Decree no. 62 of 1923, from a decision of Maulavi Chaudhari Muhammad Nazir Alum, Deputy Collector of Ranchi, dated the 31st January, 1923.