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WORT, J.

due on the 1st January, 1927, Rs. 749. From the lease itself it is shown that the Rs. 4,000 per annum is described as rent and is recoverable in any event and it appears is recoverable as a separate item. It is only when the quantity is exceeded that the excess commission becomes payable. In some leases of this description when once the minimum quantity has been exceeded then royalty is payable from the first ton to the last and it becomes in that sense a matter of calculation and, therefore, uncertain. But the amount to be calculated in this case is only that sum in excess of the minimum quantity. The amount that, therefore, remains uncertain is the excess only. The rent or minimum quantity, therefore, clearly comes within the Interest Act. As this is a sum which is reserved by the lease, the plaintiff, in my judgment, is entitled to interest on it. For the reasons which I have already elaborately stated, she is not entitled to interest on the Rs. 749 in Appeal no. 88 of 1929 as not coming within the provisions of the law. The interest or rent recoverable on the minimum quantity of royalty will be at the rate of 12 per cent. per annum.

With this modification the appeals are dismissed. As the defendants have failed in substance, I think they should not get their costs. Costs should be awarded to the respondent.

FAZL ALI, J.—I agree.

Decree modified.

REVISIONAL CRIMINAL.

1932.

Dec., 14, 15.

Before Courtney Terrell, C. J. and Scroope, J.

UMA SINGH

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), section 173—order disposing of police report under section 173,

* Criminal Revision nos. 513 and 514 of 1932, against the order of S. P. Chattarji, Esq., Sessions Judge of Shahabad, dated the 14th September, 1932, affirming the order passed by Mr. Nageshwar Prasad, Magistrate, 1st Class, Arrah, dated the 9th August, 1932.

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whether is a judicial order—magistrate, whether is competent to call for charge sheet after disposing of police report under section 173.

A magistrate's order directing a case, reported to him by the police under section 173, Code of Criminal Procedure, 1898, to be struck off, is a purely administrative or ministerial order and the principle of "autrefois acquit" cannot apply to it.

Therefore, a magistrate, having disposed of a police report under section 173, is competent to revise his order and call for a charge sheet.

Shukadeva Sahay v. *Hamid Mian*(1), distinguished.

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

M. Yunus (with him *P. P. Varma, J. N. Sahay* and *Harnandan Singh*), for the petitioners.

Jaffer Imam, Assistant Government Advocate, for the Crown.

SCROOPE, J.—In these two revisional applications there are four petitioners out of five convicted persons. No. 513/32 is the application of Uma Singh, Ratan Singh and Baijnath Lal and no. 514/32 is of Damodar Singh. The first-named three persons with Ramautar Singh and Damodar Singh were tried and charged under sections 420 and 120B of the Indian Penal Code by the 1st class Magistrate of Arrah. Uma Singh received a sentence of 18 months' rigorous imprisonment and a fine of Rs. 300, in default a further rigorous imprisonment of six months under section 420, Indian Penal Code. Ratan Singh and Baijnath Lal along with Ramautar Singh were sentenced to nine months' rigorous imprisonment each and a fine of Rs. 200 each, in default six months' rigorous imprisonment whilst Damodar was sentenced to six months' rigorous imprisonment and a fine of Rs. 100, in default a further period of rigorous imprisonment for three months under section 420. All

(1) (1927) I. L. R. 7 Pat. 561.

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these accused persons were also convicted under section 120B at the same trial and received sentences of six months each to run concurrently with the above-mentioned sentences, and out of the fines Rs. 200 was directed to be paid to the complainant as compensation. Damodar Singh has filed a separate revisional application no. 514 of 1932 against his conviction. The convictions and sentences under section 420, Indian Penal Code were upheld by the Sessions Judge of Shahabad but he set aside the conviction for conspiracy.

The prosecution case is shortly this: the complainant Sitaram Das is a Sadhu and lives at Morha Mathia in mouza Banwalia; petitioner Damodar Singh is one of his chelas and he came to him one day in Asarh before last and told him that he had four or five friends who knew how to double notes and that he could get the Sadhu's notes doubled if he gave him some. Then a practical demonstration was arranged and the four petitioners and Ramautar doubled currency notes of Rs. 10 each and thus gained the confidence of the complainant who then agreed to give them Rs. 1,500 worth of notes to be doubled. At the same time the complainant also gave them about Rs. 175 for incidental expenses. To make a long story short, eventually one day the petitioners got Rs. 1,300 out of the complainant and pretended to start note doubling. They gave the complainant a packet to carry home and told him that they would complete the operation on the following day, again taking incidental expenses from the complainant. On the following day then Damodar petitioner came to the complainant and told him that he could not trace the note doublers. The packet was opened and was found to contain charred papers. The complainant then threatened Damodar with a criminal prosecution and Damodar similarly threatened the complainant. A few days later the complainant met Uma Singh at Arrah Railway Station and demanded

back his money; the latter promised to pay it back. Then there was a panchayati over the affair and Damodar is alleged to have confessed his guilt and eventually offered complainant a gold necklace alleged to be worth Rs. 150. This when tested by a blacksmith turned out to be gilt. The patience of the complainant being thus at an end, he reported the matter to the police; and eventually these petitioners were put on trial on the charges mentioned above and were convicted.

The material facts for understanding the first contention urged by Mr. Yunus in this revisional application no. 513/32 are as follows: the complainant, as I have said, lodged his first information on the 25th August, 1931, charging the five petitioners with conspiracy and cheating and eventually a final report was submitted by the police under section 173, Code of Criminal Procedure, to the effect that the case was true but the evidence was insufficient. At the same time it was stated in the final report that a separate case would have to be instituted by the Sub-Inspector of Shahpur in respect of, what I may call, the necklace part of the incident, as the delivery of the necklace by Damodar Singh to the complainant constituted quite a separate offence of cheating by him. The informant Sitaram, however, filed a protest petition before the Subdivisional Officer against the police report. The complainant was directed to appear in support of it on the 8th November, 1931, and on the 20th November, 1931, the Magistrate recorded the following order:

"I have heard the Mukhtear for the prosecution and considered the police report. As there is not sufficient (sic) against the accused, the police have not sent them up for trial. I also see no reason to call for charge sheet or to put them on trial. Enter true section 420, I. P. C."

This case, it is to be noted, bore G. R. no. 865 of 1931.

On the 28th November, 1931, the Shahpur police submitted charge sheet in the necklace case no.

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1147/31 against Damodar Singh and Uma Singh and on the 12th January the complainant Sitaram Das moved the Sessions Judge against the order of the Subdivisional Magistrate declining to proceed further with the note doubling case. That is the case no. 865 of 1931. The Sessions Judge allowed this application recording the following order:

"This application will have to be allowed, if only because the learned Magistrate failed to examine the applicant on oath on his protest petition, although surely he should have known by now that he was bound to do so. The learned Magistrate should now examine the applicant accordingly and consider his case on its merits".

Thereupon on the 22nd February the Subdivisional Magistrate recorded the following order on the order-sheet of the necklace case: that is, case G. R. No. 1147/31:

"Call on the police to submit charge sheet against the remaining three accused also for 4th March",

and this resulted in the trial in question.

On the above facts Mr. Yunus contends that the whole trial in this note doubling case was illegal as the Magistrate, having declined to take cognizance on the original police report even after the complainant's protest petition, could not reopen the case and call for a charge sheet. There was some slight confusion in the matter as the learned Magistrate instead of recording his order for a charge sheet on the order-sheet of the note doubling case 845 did so on the order-sheet of the necklace case no. 1147 in which charge sheet had already been submitted against two persons. But it is clear enough that this order referred to the note doubling case, for he also directed that the record of the G. R. case 865/31 is to be amalgamated with this case 1147/31 and that there is to be only one trial, though eventually the two cases had to be tried separately. This is really what has given rise to Mr. Yunus' contention and I see no force in it. It is unreasonable to contend, as Mr. Yunus does in effect, that a Magistrate, having once disposed of a police

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report under section 173 as here, has no power to revise his order and call for a charge sheet. The Magistrate's order directing a case reported to him by the police under section 173 to be struck off, as in this case, is not a judicial order. In *Ganga Ram* v. *Emperor*(1) of this Court it was held that a Magistrate could reopen a case by calling for a charge sheet after disposing of a police report under section 173 with the order "Enter mistake of fact". Such orders are purely administrative or ministerial and the principle "autrefois acquit", which is really at the basis of Mr. Yunus' contention, cannot possibly apply to them. To accept this contention would mean, for instance, that if a Magistrate after disposing of a police report in this fashion, were to suspect or discover that the report was dishonest, his hands would be tied by his previous order. He can, for instance, reopen the case under section 190 (*1*) (*c*). The only authority Mr. Yunus cites is *Shukadeva Sahay* v. *Hamid Mian*(2), where it was held that a District Magistrate has no power to direct the police to submit a charge sheet where a Subdivisional Magistrate has declined to take cognizance of an offence under section 190 (*1*) (*b*), after recommendation to that effect has been submitted by the police to the Subdivisional Magistrate under section 173 of the Code of Criminal Procedure. For one thing that case is not on all fours with the present case; and in the second place the decision does not take into account section 190 (*1*) (*c*) of the Code of Criminal Procedure, and in so far as it can be taken to lay down that administrative order of this kind cannot be re-opened either by the Subdivisional Magistrate or a District Magistrate, I must altogether dissent from it. Laws of procedure, as the Privy Council has laid down, are not meant to hamper the administration of justice. It is true that if a Magistrate takes cognizance under section 190 (*1*) (*c*) he must give the accused the option of being

(1) Cr. Rev. 10 of 1932 (unreported).
(2) (1927) I. L. R. 7 Pat. 561.

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tried by some other Magistrate; but that point does not arise here as the trying Magistrate was not the Magistrate who called for the charge sheet. Moreover, he had fresh material before him in the shape of charge sheet in the necklace case as well as in the Sessions Judge's order directing further enquiry. Mr. Yunus contends that so far as it relates to the Sessions Judge's order directing further enquiry, the Magistrate cannot fortify himself with it in respect of the order complained of because the Sessions Judge directed only that the complainant should be examined. But the Sessions Judge's order did not, in my opinion, debar the Magistrate from summoning the accused; it only directed the Magistrate to examine the complainant and consider the case on the merits. This order was complied with when the Magistrate examined the complainant in the actual trial after the charge sheet which he had called for had been submitted. In my opinion this contention must fail.

The second point was that the Magistrate did not give the petitioners opportunity of having their witnesses examined. When the defence filed their list of witnesses the Magistrate, as he was entitled to do, not being satisfied that they were bona fide witnesses insisted in the case of certain of these witnesses that their expenses should be deposited. That was on the 29th June. On the next day, 30th of June, we find the petitioners protested against this order and then the Magistrate recorded the following order:

> "I *have already passed orders after consultation* with the defence mukhtar. If the accused want to summon those witnesses they must pay the cost by tomorrow the latest."

It will be seen, therefore, that the order was passed after consultation with their legal advisor and the position was accepted by him. The accused took no steps in the matter of getting these witnesses summoned.

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On the 11th July Ratan Singh then said that he was still unable to get the cost for his witnesses. However, he was offered and accepted what was known as *dasti* summons. The witnesses were to be produced by the 15th July and there the matter ended as no defence witnesses were produced and there was no further petition in the matter. This point evidently was not argued before the Sessions Judge at all; for his very exhaustive judgment is silent on the point. Above all before us and in the petition to this Court the petitioners do not refer to any particular witness, much less what he would prove in their favour. There is simply a general allegation that they did not get an adequate chance of summoning their witnesses; and I am satisfied that there is no substance in their objection. These are the points on which these two separate applications in revision were pressed and they must both fail.

As regards the compensation which was directed to be paid to the complainant, I do not consider that he deserves any compensation as he deliberately allowed himself to be fooled in this fashion, and he deserves no sympathy from a Court, and I would set that portion of the order aside.

COURTNEY TERRELL, C. J.—I agree.

Conviction and sentence upheld.

FULL BENCH.

Before Courtney Terrell, C. J., Scroope and Agarwala, JJ.

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Dec., 16, 19, 20, 23.

SANTOKHI BELDAR

v.

KING-EMPEROR.*

Evidence Act, 1872 (*Act I of* 1872), *section* 24—"*person in authority*", *meaning of—statement by a person that he has committed an act which amounts to an offence, whether*

* Criminal Appeal no. 337 of 1932, against the order of K. P. Sinha, Esq., Additional Sessions Judge of Bhagalpur, dated the 19th September, 1932.