irregularity of this order can certainly be assailed in appeal from the final decree, because it affects the decision itself.

The suit must therefore go back for re-hearing of the case after the acceptance of the written statement filed by the original defendants 4 to 7. * *

* * * * *

ADAMI, J.—I agree.

REVISIONAL CRIMINAL.

Before Terrell, C. J. and James, J.

NARAYAN MAHARANA

v.

KING-EMPEROR.*

1929.

April, 22.

Acquittal—interference with in revisional jurisdiction at instance of a private party—Technical offence, conviction to be recorded in case of—Adjournment, when to be granted.

The High Court will not, in its revisional jurisdiction, interfere with a verdict of acquittal merely to vindicate the position of a private prosecutor where a merely technical offence has been committed, however clearly that technical offence may have been proved.

Where the evidence in a case shows that an offence has in fact been committed by the accused the trying court should record a conviction, but if the offence is of a purely technical nature and the prosecution is inspired by motives other than the pursuit of justice it should impose a purely nominal punishment. The court should not in such a case strain the evidence to show that no offence has been committed.

In criminal cases adjournments should be granted only where they are clearly necessary for the purposes of justice.

**Circuit Court, Cuttack.* Criminal Revision no. 10 of 1929, against an order of N. Senapaty, Esq., I.C.S., District Magistrate of Cuttack, dated the 19th January, 1929.

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In a petty criminal case both parties should appear on the first day of hearing ready for the completion of the whole trial at a single hearing.

The granting of adjournments in petty criminal cases deprecated.

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

M. Subba Rao, for the petitioner.

P. K. Sen (with him *S. N. Ray*), for the opposite party.

COURTNEY TERRELL, C.J.—This is an application by the complainant Narayan Maharana for the revision by this Court of a judgment of acquittal passed by the District Magistrate of Cuttack in a charge brought by Narayan Maharana against Mr. S. C. Ghosh, the Principal of the Orissa School of Engineering, under section 342 of the Indian Penal Code, and it serves to illustrate an important principle which should govern the exercise of the power of revision.

The subject-matter of the charge may be briefly stated. Mr. Ghosh succeeded on the 15th March, 1928, as Principal of the School of Engineering a Mr. Parkinson the former principal, who had been suspended on charges of misappropriation of Government property. An auditor had been appointed to investigate Mr. Parkinson's accounts and on the 16th March that audit had begun. The complainant Narayan Maharana and three other men were mistris who had been employed under Mr. Parkinson. Mr. Ghosh had been ordered to take stock of the furniture in Mr. Parkinson's bungalow and to enquire what part of it was Government property. On the 27th April Mr. Parkinson was to have gone to the school to answer some audit objections but he saw the four workmen mentioned outside his bungalow and called them in to question them concerning some of the charges, which it appears were to be made against him, in which some one or more of these workmen were

said to have been implicated. He elicited from the workmen some information which he considered important and sent for the auditor. The auditor reduced the statements of the four workmen into writing and then took them with him to the school to interview Mr. Ghosh. The nature of Mr. Ghosh's conversation with the workmen is of no importance to this case but what they told him set him upon the making of further enquiries. He sent for two other persons and questioned them. Being anxious to prevent the four workmen from being tampered with by Mr. Parkinson or anyone under his influence Mr. Ghosh asked the durwan of the school to keep the four men in the science room in front of his office and to keep them under observation while further enquiries were made. This took place between 4 and 5 o'clock in the afternoon and it is said that on the order of Mr. Ghosh the durwan locked up the science room and confined the four men there until some time considerably later in the afternoon. Mr. Ghosh is charged with having kept these men under unlawful detention for the period during which they are said to have been in the science room.

At 11 P.M. on the same night the first information report was lodged. This was investigated by the police and Mr. Ghosh was questioned. The police on the 2nd May made the report "mistake of law" apparently meaning that the facts did not constitute an offence in law. On the 6th May the matter came before the Subdivisional Officer who dismissed the charge under section 203 of the Code of Criminal Procedure. On the 15th May the four men lodged a complaint, but this was dismissed on the following day as defective by reason of the fact that there were four complainants. There was then a second complaint by Narayan Maharana and this was dismissed on the 22nd May by the Subdivisional Officer. On the 22nd June Narayan Maharana made an application to the Sessions Judge for a further enquiry into the matter and on the 25th July the Sessions Judge made an order for a further enquiry. For some reason the enquiry

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did not begin until the 2nd November, and on the 17th November a report was made by Mr. Smith, Deputy Magistrate, recommending the prosecution of Mr. Ghosh. The District Magistrate on the 10th December 1928 ordered the prosecution. The trial was begun on the 4th January 1929, and after no less than eleven sittings (including four at which the accused was present but the proceedings were adjourned), the judgment of acquittal, the subject of this application, was delivered on the 19th January 1929.

It is not necessary to go further into the facts of the alleged offence, but it is sufficient for the purposes of this judgment to state that the reasoning of the District Magistrate is thoroughly defective. The case was an extremely simple one and I will merely state that upon the evidence it is abundantly clear that Mr. Ghosh should have been convicted of a technical offence and a nominal penalty should have been inflicted, such for example as a fine of Rs. 4 half of which might have been distributed amongst the four men who were unlawfully detained, and this sum would have amply compensated them for any damage which they could possibly have claimed in a Civil Court. The Magistrate, however, acquitted Mr. Ghosh, coming to the conclusion that the extent of the detention proved to his satisfaction did not amount to unlawful confinement, and that Mr. Ghosh had no " criminal intent " in what he did; he seems to have thought that " criminal intent " means in law intention to act criminally. It is very unusual for this Court to interfere with a finding of fact but in a case of greater magnitude interference with such a defective judgment would have been necessary. The Magistrate no doubt properly inclined to the view that the offence was utterly trivial and that the prosecution was inspired by motives other than the pursuit of justice. But he could and should have given effect to this opinion by convicting the accused and imposing a purely nominal penalty. Instead of doing so he strained the evidence to show

that no offence had been committed, and his own finding of the facts and his own reasoning demonstrate that his conclusion that no legal offence was committed is impossible to justify.

Having briefly stated this view I shall now explain the principle upon which the Court should nevertheless decline to interfere. Firstly, although in my view the offence was undoubtedly committed it is of a ridiculously trivial character and had the Magistrate convicted, any penalty greater than that which I have indicated would clearly have been improper. The sum which I have suggested might have been awarded by way of compensation to the four men detained would have been entirely in the discretion of the Court, and it is quite probable in the circumstances that the Magistrate would have refused to allow any part of the fine to pass into their hands. It must be remembered that the object of criminal proceedings is not the compensation of private parties but the vindication of the laws of the State. The Magistrate states his conclusion, for which I think there are very good grounds, that Mr. Ghosh was honestly endeavouring to do his duty and that this prosecution, however justified it may be on technical grounds, is inspired by malice. Now it cannot be doubted that by having to defend this case Mr. Ghosh has been put to an extraordinary amount of expense and trouble which is far more than adequate punishment for the technical offence which in my opinion he has committed, and to ask this Court to send the case back for a retrial is in the circumstances a gross abuse of legal process. The powers of the High Court in criminal revision are not intended for the gratification of private malice, nor are they to be used to vindicate the position of a private prosecutor where a merely technical offence has been committed, however clearly that technical offence may have been proved.

I desire to call attention to the scandalous waste of time and money disclosed by these proceedings.

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The numerous adjournments allowed by Magistrates in petty criminal cases and the great time which elapses between the original offence and the ultimate judgment indicate the need of a very drastic revision of the practice. The trivial offence committed in this case took place nearly a year ago and the legal costs incurred must have been enormous. Magistrates should refrain from granting adjournments save in cases where they are clearly necessitated for the purpose of justice. In a petty criminal case both parties should appear on the first day of hearing ready for the completion of the entire trial at a single hearing. If this case had been investigated on these lines the hearing should not have taken more than an hour and a half at the outside. The application for revision is rejected.

JAMES, J.—I agree.

APPELLATE CIVIL.

Before Terrell, C. J. and James, J.

1929.

April, 25.

KOI SAHU

v.

ATUL KRISHNA GHOSH.*

Res judicata—Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 11, *Explanation IV—puisne mortgagee, mortgage suit by—purchaser of equity of redemption claiming also paramount interest—party to the suit—prior interest not mentioned—suit decreed—subsequent suit based on prior interest, whether barred by res judicata.*

Where, in a mortgage suit by a puisne mortgagee, a purchaser of the equity of redemption, who also claimed to be the holder of a paramount interest, was impleaded as a defendant without his prior interest having been mentioned, and where such person has not submitted his claim as holder of the paramount interest to the court, the existence or validity of the

Circuit Court, Cuttack. Second Appeal no. 61 of 1927, from a decision of Babu Rangalal Chatterji, Additional Subordinate Judge of Cuttack, dated the 27th August, 1927, reversing a decision of Babu Nirmal Chandra Chowdhury, Munsif of Bhadrak, dated the 9th September, 1926.