1936.

MUSAMMAT JAMUNI v. BHOLARAM.

The appeal is, therefore, allowed and the order of the learned Judicial Commissioner is set aside. As both the parties have partially succeeded in their respective contentions each party will bear his own costs in this Court and the Court below.

FAZL ALI, J.

MACPHERSON, J.—I agree.

Appeal allowed.

REVISIONAL CRIMINAL.

1936.

January, 10.

Before Dhavle and Agarwala, JJ.

ACHARAJA SINGH

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 531 *et. cet.—Magistrate, jurisdiction of, to try offence committed in another district—failure of justice, proof of, whether necessary.*

Where the petitioners were charged with having taken two Munda girls from Ranchi to Monghyr and passed them on to two Rajputs as brides for a consideration of Rs. 200 each and were tried under sections 366, 366A and 420 of the Indian Penal Code, but were acquitted on the charges under sections 366, 366A and were convicted under section 420 only. In revision before the High Court it was contended that the offence of cheating was committed in Monghyr and so the Magistrate of Ranchi had no jurisdiction to try them.

Held, a conviction cannot be set aside merely on the ground that the trial has taken place in a wrong district, but the party aggrieved is entitled to have the conviction set aside if he shows that " such error has in fact occasioned a failure of justice ".

Musammat Bhagwatia v. *Emperor*(1), distinguished.

Held, also that the policy of sections 531 to 538 of the Criminal Procedure Code is to uphold in most cases the orders

* Criminal Revision nos. 650 and 651 of 1935, against an order of F. F. Madan, Esq., I.C.S., Judicial Commissioner of Ranchi, dated the 14th of October, 1935, affirming the decision of Rai Sahib Jug Dutt, Subdivisional Magistrate of Ranchi, dated the 22nd June, 1935.

(1) (1924) 83 Ind. Cas. 577.

passed by the Criminal Court which lacked local jurisdiction or which had committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned thereby.

Kali Charan Kundu v. *King-Emperor*(1) and *Ganapathy Chetty* v. *Rex*(2), followed.

The facts of the case material to this report are set out in the judgment of the Court.

R. B. Lal, for the petitioners.

Assistant Government Advocate, for the Crown.

DHAVLE AND AGARWALA, JJ.—The two petitioners have been found guilty in two separate trials of two offences under section 420 of the Indian Penal Code and sentenced by the Subdivisional Magistrate of Ranchi to various terms of imprisonment and fines. In each trial they were charged with offences under sections 366, 366A and 420 of the Indian Penal Code but were acquitted on the charges under the first two of these sections.

The prosecution story was that the petitioners had taken two Munda girls or young women, Giribala and Budhi, from Sonahatu, in the district of Ranchi, to Dumarkela, in the district of Monghyr, and passed them on to two Rajputs, Gouri Singh and Nunu Singh, as brides for a consideration of Rs. 200 each. The charges of cheating referred to these sums of money. The only question raised before us is whether the conviction is not bad because the Magistrate had no jurisdiction to try the offences of cheating which were committed in the district of Monghyr. This question was not raised before the Magistrate except during the arguments at the end of the trial, and we are told that the reason why it was not raised earlier was that charges under sections 366 and 366A were being tried at the same time and the Magistrate clearly had jurisdiction to try them. The objection was repeated on appeal to the Judicial Commissioner

(1) (1921) 34 Cal. L. J. 200.
(2) (1919) I. L. R. 42 Mad. 791.

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of Ranchi who, however, took the view that though, strictly speaking, the trial under section 420 should have taken place in Monghyr, the defect was cured under section 531 of the Code of Criminal Procedure as the charges under sections 366 and 366A were triable in Ranchi, the cheating originated from there, and the appellants could not have been prejudiced by being tried in their own district. This view of the law is assailed by the learned Advocate for the petitioners who has cited *Musammat Bhagwatia* v. *Emperor*(1) and contended that the trials were without jurisdiction in respect of the charges of cheating and that, therefore, the convictions should be set aside. The case cited does not, however, lay down any such proposition. It was a case in which the High Court quashed an order of commitment to the court of session at Arrah in respect of a bigamy which was committed at Nilphamari outside this Province altogether. Section 531 of the Code of Criminal Procedure was referred to, and Bucknill, J. (with whom Adami, J. agreed) observed, "It is, however, not at all clear that the provisions of this section contemplate a case in which there has been an order by a Court which had no territorial jurisdiction at all, such as in a case in which jurisdiction could only properly have been exercised by some Court outside the territorial limits of the jurisdiction of a Provincial High Court." That consideration does not arise in the present case; nor is there anything in the wording of section 531 to support the contention of the learned Advocate that 'the section cannot be so given effect to as to abrogate section 177'. The latter section only provides for the *ordinary* place of inquiry and trial, and there is no difficulty whatsoever in reading it along with section 531, the result being that a conviction cannot be set aside merely on the ground that the trial has taken place in a wrong district but that the party aggrieved is entitled to have the conviction set aside if he shows that "such error has in fact occasioned a failure of

(1) (1924) 83 Ind. Cas. 577.

justice ". It was also contended that the error has in fact occasioned a failure of justice in that the petitioners were unable to defend themselves properly and ascertain facts about the prosecution witnesses from Monghyr and adduce defence witnesses who would properly be from that district. That does not seem to have been so much as suggested before the trying Magistrate who, after pointing out that no objection as to jurisdiction was taken till the arguments, adds that in his opinion the accused were not prejudiced to any extent by the trial held in that court. The learned Judicial Commissioner also came to the conclusion that the petitioners could not have been prejudiced by the trial in the wrong district. Nothing has been said before us to show that the lower Courts were in error in taking that view. The application of section 531 of the Code was considered in *Kali Charan Kundu* v. *King-Emperor*(1) to which Mr. Jafar Imam referred us, and several other cases such as *Ganapathy Chetty* v. *Rex*(2) in which Sadashiva Ayyar, J. pointed out that the policy of the Criminal Procedure Code as shown by sections 531 to 538 is " to uphold in most cases the orders passed by the criminal court which lacked local jurisdiction or which had committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned " thereby. In our opinion, section 531 is thus a complete answer to the contention that the convictions of the petitioners ought to be set aside because the charges under section 420 may possibly have been triable in Monghyr and not in Ranchi. It may be added that while it is clear that the charges under section 420 ought to have been tried in Monghyr if they had stood by themselves, it is by no means certain that the facts of the present case taken with the charges under sections 366 and 366A were not properly tried in Ranchi, and it does not seem to us very material that the latter charges failed in the end.

(1) (1921) 34 Cal. L. J. 200.
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DHAVLE AND AGARWALA, JJ.

The learned Advocate has also urged that the sentences are excessive. But the cheating was of a character which requires severe treatment. The passing off of the Munda girls as Rajput brides must mean trouble in several families and was as despicable as it was difficult at the time to detect. We must, therefore, discharge the rules and dismiss these applications in revision.

As soon as the above was pronounced from the Bench at the end of the arguments, it was brought to our notice that out of the two cases dealt with Criminal Revision no. 650 of 1935 alone was on the board for to-day, and that the learned Advocate for the petitioners in that case also appears for the petitioners in Criminal Revision no. 651 of 1935, which was not on the board only because the papers were not yet complete. We have it, however, from the learned Advocate that he may be taken to have argued both the revisional applications and accordingly the orders above must be taken to have disposed of both the applications.

Rule discharged.

1936.

November, 29.
December, 3.
January, 16.

APPELLATE CIVIL.

Before Macpherson and Dhavle, JJ.

HARIHAR PRASAD SINGH

v.

BHUBNESHWARI PRASAD SINGH.*

Code of Civil Procedure, 1908 (Act V of 1908), section 47 and Order XXI, rule 2—payment of part of decretal money out of court by some of the judgment-debtors—application by others pleading satisfaction under section 47, if maintainable.

* Appeal from Appellate Order no. 257 of 1935, from an order of Babu Nirmal Chandra Ghosh, Subordinate Judge of Monghyr, dated the 19th August, 1935, reversing an order of Mr. Muhammad Shamsuddin, Munsif of Monghyr, dated the 21st January, 1935.