

Magistrate is not entitled under section 342 of the Code to put questions to the accused if the prosecution has not let in evidence implicating him in the offence with which he is charged, and that answers to questions put by a committing Magistrate in contravention of that section are not admissible in evidence against the accused at the trial.

As no evidence has been given to prove that the petitioner made or published the imputation concerning the complainant the conviction cannot be sustained and I accordingly accept the application, set aside the conviction and sentence, and acquit the petitioner. The fine if paid will be refunded.

A. R.

Revision accepted.

REVISIONAL CRIMINAL.

[Before Mr. Justice Scott-Smith.]

KHAN MUHAMMAD—*Petitioner,*

versus

THE CROWN—*Respondent.*

Criminal Revision No. 1687 of 1922.

Criminal Procedure Code, Act V of 1897, section 476—Meaning of the word "Court"—whether it includes the successor of a Judge before whom false evidence has been given—Delay in passing the order for prosecution.

Mr. Malan, Sessions Judge of Jhelum, on the 21st of June 1922, directed, under section 476, Criminal Procedure Code, the prosecution of the petitioner K. M. for an offence under section 193 of the Penal Code. It was contended that the alleged false evidence having been given before his predecessor, Mr. Malan had no jurisdiction to direct the prosecution under section 476 of the Code of Criminal Procedure, also that the order was bad, having been passed 3 months after the conclusion of the trial by the Additional Sessions Judge.

Held, that the word "Court" in section 476, Criminal Procedure Code, includes the successor of a Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceeding.

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Bahadur v. Brodatullah Mailiook (1), *In the matter of the petition of Nawal Singh* (2), *In re Lakshmidas Lalji* (3), and *Runga Aggar v. Emperor* (4), followed.

Crown v. Mst. Dawli (5), *Begu Singh v. Emperor* (6), and *Kartik Ram v. Emperor* (7), dissented from.

Held further, that in the present case there was no delay as *Lala Topan Ram*, Additional Sessions Judge, called upon K. M. to show cause against his prosecution on the 27th March 1922, that is, one day before he decided the case in which K. M. gave his evidence and proceedings were subsequently stayed pending decision of the appeal of the accused persons by the High Court and within a few days after the decision of the appeal Mr. Malan passed the order complained of.

Aiyakannu Pella v. Emperor (8), distinguished.

Application for revision of the order of W. deM. Malan, Esquire, Sessions Judge, Theum, dated the 21st June 1922, directing the prosecution of the Petitioner.

B. D. KURESHI, for Petitioner.

NEMO, for Respondent.

SCOTT-SMITH J.—This has been filed as an appeal but has been treated as an application for revision as no appeal lies from the order complained of. The order in question which was passed by Mr. Malan, Sessions Judge of Jhelum, on the 21st of June last directed under section 476, Criminal Procedure Code, the prosecution of one Khan Muhammad for an offence under section 193, Indian Penal Code. The facts which gave rise to the order of the learned Sessions Judge are fully stated therein and interference is sought on the ground that the alleged false evidence was given before Mr. Malan's predecessor and that, therefore, he had no jurisdiction to direct the prosecution under section 476, Criminal Procedure Code.

In support of this contention counsel for the applicant refers to *Crown v. Mst. Dawli* (5), in which it was held that it is only the individual Magistrate before whom the offence was committed in Court who

(1) (1910) I. L. R. 37 Cal. 642 (F. B.)

(2) (1912) I. L. R. 34 All. 393.

(3) (1907) I. L. R. 32 Bom. 184.

(4) (1905) I. L. R. 29 Mad. 331.

(5) 6 P. R. (Cr.) 1909.

(6) (1907) I. L. R. 34 Cal. 551 (F. B.)

(7) (1907) I. L. R. 35 Cal. 114.

(8) (1908) I. L. R. 32 Mad. 49 (F. B.)

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can take action under section 476, Criminal Procedure Code. The learned Judge who decided that case followed *Begu Singh v. Emperor* (1), and *Kartik Ram v. Emperor* (2), but those authorities were subsequently rendered of no effect by reason of the full Bench judgment of seven Judges of the High Court of Calcutta reported in *Bahadur v. Eradatullah Mallick* (3), wherein it was held that the word "Court" in section 476, Criminal Procedure Code, includes the successor of a Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceeding. The same view was taken in *In the matter of the petition of Nawal Singh* (4). In *re Lakshmi Das Lalji* (5), and *Runga Ayyar v. Emperor* (6). Under these circumstances I consider that I am not bound to follow the decision in *Crown v. Mst. Dauli* (7) with which I disagree. I fully agree with the views expressed by the Calcutta High Court in *Bahadur v. Eradatullah Mallick* (3).

The Court to whose notice the commission of the alleged offence was brought in the course of a judicial proceeding was that of *Lala Topan Ram*, Additional Sessions Judge of Jhelum, and Mr. Malan who passed the order complained of was his successor.

The next objection urged by counsel is that the order was passed three months after the conclusion of the trial by the Additional Sessions Judge and that this should not have been done having regard to the decision of the Madras High Court in *Aiya Kannu Pillai v. Emperor* (8) wherein it was stated that the power conferred by section 476, Criminal Procedure Code, can be exercised by the Court only in the course of a judicial proceeding or at its conclusion or so shortly thereafter as to make it really the continuation of the same proceeding in the course of which the offence was committed. In the present case there was no delay. *Lala Topan Ram* called upon *Khan Muhammad* to show cause against his prosecution on the 27th March 1922,

(1) (1907) I. L. R. 34 Cal. 551 (F. B.) (5) (1907) I. L. R. 32 Bom. 184.

(2) (1907) I. L. R. 35 Cal. 114.

(6) (1905) I. L. R. 29 Mad. 331.

(3) (1910) I. L. R. 37 Cal. 642 (F. B.)

(7) 6 P. R. (Cr.) 1909.

(4) (1912) I. L. R. 34 All. 398.

(8) (1908) I. L. R. 32 Mad. 49 (F. B.)

i.e., one day before he decided the case in which Khan Muhammad gave his evidence. Proceedings were subsequently stayed pending the decision of the appeal of the accused persons by the High Court and within a few days after the decision of the appeal Mr. Malan passed the order complained of. I, therefore, see no force in either of counsel's contentions and I reject the application.

A. R.

Revision dismissed.

Appellate Criminal.

Before Mr. Justice Campbell.

BYRNE—APPELLANT,

versus

THE CROWN—RESPONDENT.

Criminal Appeal No. 827 of 1922.

Criminal Procedure Code, Act V of 1898, sections 254, 256, 342, 537—Examination of accused by Court—whether necessary after cross-examination of prosecution witnesses recalled after charge—omission to examine accused again at that stage—whether an illegality or a mere irregularity.

In the present case the accused was questioned by the Magistrate under section 342 of the Code of Criminal Procedure before the charge was framed and after all the witnesses for the prosecution had been examined and cross-examined at considerable length. After the charge was framed most of the witnesses were recalled for a further lengthy cross-examination, at the termination of which the Magistrate proceeded to record the defence evidence without questioning the accused again.

Held, that although it may often be desirable that the accused should be asked, after the further cross-examination of witnesses for the prosecution recalled after the charge has been framed, whether he wishes the Court to record any additional explanation, section 342 of the Code of Criminal Procedure cannot be interpreted as conveying a peremptory direction to that effect if the Court has already questioned the accused before the charge, when the case for the prosecution has been closed and the witnesses for the prosecution have been cross-examined.

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Nov. 29.