

MISCELLANEOUS CRIMINAL.

Before Coldstream and Bhide JJ.

FAQIR SINGH (ACCUSED) Petitioner

versus

THE CROWN—Respondent.

Criminal Miscellaneous No. 65 of 1934.

Criminal Procedure Code, Act V of 1898, section 337—whether applicable—where pardon to one of the accused is granted under the orders of the Local Government—and not by Magistrate suo motu.

Held, that where the promise of pardon to an accused person is made under the orders of the Local Government and not by a Magistrate acting *suo motu* under the provisions of section 337 of the Code of Criminal Procedure, that section is not applicable, and it is, therefore, not necessary to commit the case for trial to the Court of Session.

Petition under sections 526 and 337, Criminal Procedure Code, praying that the case “ Crown v. Faqir Singh and others ” be committed to the Sessions for trial, etc.

Petitioner, in person.

DIWAN RAM LAL, Government Advocate, for Respondent.

BHIDE J.

BHIDE J.—The material facts giving rise to this petition for revision are as follows:—

On the termination of a suit based on a promissory-note, the Senior Subordinate Judge, Lahore, took action under section 476, Criminal Procedure Code and filed a complaint under sections 467/471, read with 120-B, Indian Penal Code, against three persons, named Sain Das, Vishwa Mitter and G. S. Kochhar. The Public Prosecutor filed a complaint in connection with the same transaction against the petitioner *Bawa* Faqir Singh and two other persons named Shamsher Singh and Ram Lal. Both these

complaints were being inquired into by Mr. R. N. Luthra, Special Magistrate. Before any evidence was recorded the case against Sain Das was withdrawn with the permission of the Magistrate under section 494, Criminal Procedure Code, and he was then produced as a witness against the other accused, including the petitioner. After a certain number of witnesses were examined, the case against Vishwa Mitter was similarly withdrawn and he, too, then appeared as a witness. When charges were framed by the Magistrate the petitioner raised an objection that both Sain Das and Vishwa Mitter had been tendered pardon by the District Magistrate and the provisions of section 337, Criminal Procedure Code, being applicable, the case ought to be committed to the Court of Session. The objection was overruled by the learned Magistrate and a petition to the Sessions Judge for revision of that order having proved unsuccessful, the petitioner *Bawa Faqir Singh* has moved this Court on the revision side, praying that the case against him be ordered to be committed to the Court of Session.

It is not disputed that Sain Das and Vishwa Mitter were produced before the District Magistrate and the Additional District Magistrate (who had all the powers of a District Magistrate), and that they were told that no proceedings would be taken against them provided they made a true statement of facts relating to the case within their knowledge, and that after they had accepted the terms, the cases against them were withdrawn under section 494, Criminal Procedure Code. The petitioner's contention is that, in the circumstances, the case fell within the purview of section 337, Criminal Procedure Code, and he is

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entitled to have it tried by the Court of Session in accordance with the provisions of sub-section 2-A of that section. The learned Government Advocate on the other hand contended that the promise of pardon or "non-prosecution," was made in this instance by the Local Government and it was merely conveyed to Sain Das and Vishwa Mitter through the District Magistrate and the Additional District Magistrate, respectively, and as the Magistrates concerned did not act *suo motu* in the matter the provisions of section 337, Criminal Procedure Code, are not applicable. The order of the Local Government, which authorised the promise in question to be made to Sain Das has been produced and placed on the record (*vide* Exhibit P.W.4/G). The order communicated to Vishwa Mitter has not been produced, but it is not disputed that it was of a similar character. It appears from Exhibit P.W.4/H that the terms of Exhibit P.W.4/G were explained to Sain Das and were accepted by him and then the Public Prosecutor was directed to withdraw the prosecution against him. After fully considering these documents, I am of opinion, that there is force in the contention of the learned Government Advocate. The order Exhibit P.W.4/G merely authorises the "Deputy Commissioner" of Lahore to inform Sain Das that His Excellency the Governor had directed that no proceedings would be taken against him, provided he made a full and true disclosure of the facts within his knowledge and repeated the same when called upon to do so in a Court of Justice. If the intention was to take action under section 337, Criminal Procedure Code, it would have been sufficient to say so, and it would not have been necessary to specify the terms upon which the Local Government had agreed not to prosecute Sain Das.

It may also be noted that section 337, Criminal Procedure Code, requires the person to whom pardon is tendered to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and "to every other person concerned, whether as principal or abettor in the commission thereof." The latter portion, which I have put within inverted commas is not to be found in the order of the Local Government. Lastly, section 337, Criminal Procedure Code, does not say anything about "repeating the facts disclosed in a Court of Justice." It would thus appear, that the terms were not identical with the terms prescribed by section 337, Criminal Procedure Code. If action was to be taken under section 337, Criminal Procedure Code, I think care would have been taken to mention that section and to adhere strictly to its provisions.

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The above facts indicate that the Local Government did not contemplate action being taken under section 337, Criminal Procedure Code. This view is further confirmed by the fact that the Deputy Commissioner, after acceptance of the terms by Sain Das, directed the Public Prosecutor to withdraw the case against him. If action was being taken under section 337, Criminal Procedure Code, there would have been no necessity to withdraw the case. For an accused person to whom a pardon is tendered under section 337, Criminal Procedure Code, ceases to be an accused person from the moment the pardon is accepted and is to be treated as a witness thereafter [*cf. Khairati Ram v. The Crown* (1)].

The petitioner has laid stress on the fact that Mr. F. H. Puckle, the Deputy Commissioner, while

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explaining the terms to Sain Das and directing the withdrawal of the case against him has signed his order as D. M. (=District Magistrate), instead of D. C. (=Deputy Commissioner). This was probably due to inadvertance. For the order of the Local Government was certainly conveyed to him as Deputy Commissioner and not as District Magistrate, and as pointed out above there are indications in the order of the Local Government as well as in Mr. Puckle's order, which go to show that action under section 337, Criminal Procedure Code, was not contemplated. The only persons who might have reasonably complained in the matter were Sain Das and Vishwa Mitter, if they had been misled by the procedure adopted and had been led to think that the pardon was being tendered to them by Mr. Puckle in his capacity as District Magistrate under section 337, Criminal Procedure Code, and that they were, therefore, entitled to all the privileges conferred by that and the following sections. But they made no such complaint in Court. Notices were issued to these persons in these proceedings as the decision of this petition would have affected them; but they have not cared to appear. In the circumstances, it may be presumed that they understood and accepted the position taken up by the Government, *viz.* that no pardon was tendered to them under section 337, Criminal Procedure Code.

Section 133 of the Indian Evidence Act lays down clearly that an accomplice is a competent witness. It was conceded by the petitioner that the Local Government has the option of not taking proceedings against an offender, and that it can, if it so chooses, produce him as a witness, without having recourse to the procedure laid down in section 337,

Criminal Procedure Code. In the present instance, the circumstances mentioned above show that there was no intention to proceed under that section, and the mere fact that Mr. Puckle signed his order as District Magistrate instead of Deputy Commissioner (apparently through inadvertence) cannot, in my opinion, be held to be sufficient to bring the case within the purview of section 337, Criminal Procedure Code. It has been urged that the Local Government has merely tried to circumvent the provisions of section 337, Criminal Procedure Code, in order to avoid the necessity of commitment of the case to the Court of Session. That may be the case. But when it is conceded that the alternative procedure was open to the Local Government, that fact cannot render the procedure "illegal." The procedure adopted possibly places the prosecution in a much weaker position; for it may be that the Court will not be inclined to attach the same importance to the testimony of an ordinary accomplice as it will to the testimony of an approver to whom pardon has been formally tendered by a Magistrate under section 337, Criminal Procedure Code, and who enjoys certain privileges as a consequence of that procedure. But this was a matter for the Local Government to decide, and if it has chosen to adopt the above procedure, it must, of course, accept it with the consequent risks—such as there may be. There is, however, one point to which I would like to refer and that is, that if it is intended not to adopt the procedure under section 337, Criminal Procedure Code, care should be taken to make the fact clear to all concerned. In the present instance the promise of pardon or "non-prosecution" was made through the District Magistrate. This fact was likely to mislead and create an impression that proceedings were being taken under section

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337, Criminal Procedure Code. If Sain Das and Vishwa Mitter had raised any such objection, we might have found it necessary to consider the matter further; but no such objection has been raised. If proceedings are not being taken under section 337, Criminal Procedure Code, the best course would be to produce the persons concerned before some Police or other Executive Officer, and not before a Magistrate empowered to act under section 337, Criminal Procedure Code, and make it clear in the proceedings that action is being taken independently of section 337, Criminal Procedure Code. The advisability or propriety of adopting such a procedure is, of course, a matter for the Local Government to decide, and I am not concerned here with that aspect of the question. But if that procedure is to be adopted, there should be no room left for any doubt as to the nature of the proceedings.

I have already stated above that it was admitted before us that the order of the Local Government in respect of Vishwa Mitter was to the same effect as that in the case of Sain Dass though the order has not been placed on the record. But there are two points of difference. The order of the Local Government was communicated to Vishwa Mitter, not by the District Magistrate but by the Additional District Magistrate and, secondly, this was done while he was under trial. It would appear from the proviso to section 337, Criminal Procedure Code, that when pardon is to be tendered during the course of an inquiry or trial, it must be tendered by "*the District Magistrate.*" There is only one District Magistrate for a district (*vide* section 10, Criminal Procedure Code), and although the Additional District Magistrate may have the powers of a District Magistrate he cannot be called

“ the District Magistrate.” I do not therefore think the Additional District Magistrate was empowered to take action under section 337, Criminal Procedure Code, in the circumstances of this case. It was next argued by the petitioner that section 343, Criminal Procedure Code, is a bar to pardon being tendered to an “ accused ” person during the course of a trial, unless the pardon is tendered under section 337 or 338, Criminal Procedure Code. In support of this contention reliance was placed on *Paban Singh v. The Emperor* (1) and *Banu Singh v. Emperor* (2). The wording of section 343, Criminal Procedure Code, lends some colour to this argument and the point is not free from difficulty. But it is unnecessary to discuss this question for the purposes of this petition. For, assuming that the contention of the petitioner in this respect is correct, that would at the most render the evidence of Vishwa Mitter inadmissible. That would certainly not be a ground for commitment of the case to the Court of Session.

It is open to the petitioner to raise the question of the admissibility of the evidence of Vishwa Mitter in the Court below and it would be for the learned Magistrate to decide the point.

In my opinion, the petition fails and must be dismissed. I note, however, that the trial of this case has already taken an inordinate amount of time and it is desirable that the learned Magistrate should proceed to dispose of the case with the least possible delay.

COLDSTREAM J.—I agree.

A. N. C.

COLDSTREAM J.

Petition dismissed.

(1) (1906) 10 Cal. W. N. 847. (2) (1906) I. L. R. 33 Cal. 1353.

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