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the third on her jaw, and this evidently shows that the attack on her was not only murderous but most brutal.

I, therefore, dismiss this appeal and confirm the sentence.

P. S.

Appeal dismissed.

CRIMINAL MISCELLANEOUS.

Before Din Mohammad J.

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Sept. 29.

K. L. GAUBA—Petitioner.

versus

THE CROWN—Respondent.

Criminal Miscellaneous No. 246 of 1936.

Criminal Procedure Code, Act V of 1898, section 526 — Transfer of case — grounds for — Section 173 : Accused, whether entitled to call upon prosecution to produce in Court all the documents on which they intend to rely.

Held, that the mere passing of an illegal order by the Court, in good faith, would not justify an inference against the honesty or impartiality of the Court.

Held also, that an accused person is not entitled to have his case transferred merely because he chooses to place a sinister interpretation on an innocent act of the Magistrate.

Held further, that neither in section 173 of the Code, nor in the form prescribed by the Local Government is it provided that the prosecution should produce along with the *chalan* all the documents on which reliance is to be placed in the trial, or which would be produced by the witnesses to be tendered for the prosecution. An accused person is consequently not entitled, as of right, to insist upon the production of any such documents before the case starts. He does not run the risk of being hampered in his defence, as the law clearly entitles him to cross-examine, even after the charge.

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Petition for transfer of the case The Crown versus K. L. Gauba and others, *from the Court of Mr. Isar, Additional District Magistrate, Lahore, to some other Court of competent jurisdiction.*

ABDUL HAYE, for Petitioner.

DIWAN RAM LAL, Government Advocate, for Respondent.

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DIN MOHAMMAD J.—Mr. K. L. Gauba along with four other persons is involved in a serious case of embezzlement in respect of several lacs of rupees. His case is pending in the Court of the Additional District Magistrate, Lahore. He has presented an application for the transfer of his case to some other competent Court. The main allegations, on which this application is founded, are :—

(1) That the Additional District Magistrate made an invidious distinction between him and the other accused persons so far as the acceptance of the sureties was concerned, inasmuch as he insisted on his sureties' owning movable property to the extent of the security required, and forwarded their bonds to the various District Magistrates of the districts from which they hailed, in order to make enquiries into their financial status, while in the case of his co-accused, he accepted the sureties himself without laying down any such condition and without making any such enquiry. Both the condition of movable property laid down by the Magistrate in the case of his sureties and the procedure adopted by him were not warranted by law.

(2) That, on the 30th July, 1936, when his case came on for hearing before the Additional District Magistrate, the prosecution moved for an adjournment of the case for a fortnight and he presented an

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application for bail. The prosecution resisted his application for bail and he resisted their application for adjournment. The Magistrate, without pronouncing orders on these applications, left for his retiring room and while the Magistrate was recording orders rejecting his bail application, he sent for the Government Advocate and the Deputy Superintendent of Police (*Rai Bahadur Mehta* Ishar Das) and these two officers remained with the Magistrate for some time.

(3) That, in spite of his repeated applications for the inspection of the documents on which the prosecution relied, he has not been given any facilities for their inspection—in fact no documents have been placed on the record—and that his request to the Magistrate that the prosecution should be called upon to produce in Court all those documents on which they relied was refused.

Both the application and the affidavit contained some other allegations but counsel for Mr. Gauba has confined his arguments to the three points mentioned above, and has urged that the cumulative effect of all these incidents is to create a reasonable apprehension in the mind of Mr. Gauba that he will not get a fair and impartial trial in the Court of the Additional District Magistrate.

The Government Advocate has opposed this application for transfer and has contended that no distinctive treatment was meted out to the co-accused of Mr. Gauba, that the procedure adopted by the Magistrate was quite justified by law, that the allegations made by Mr. Gauba concerning him and the Deputy Superintendent of Police were absolutely false and that Mr. Gauba's request to inspect the documents on

which the prosecution relied was, in the first instance, not disallowed by the Magistrate and, secondly, that Mr. Gauba was not empowered by law to call upon the prosecution to produce all the documents which they intended to produce through their witnesses before the hearing of the case commenced.

In view of the importance of the case, the position of the accused and the serious nature of the allegations made by him, I have allowed full latitude to his counsel to argue the case in all its aspects and lengthy arguments have been addressed to me on both sides.

After hearing counsel and examining the record, I have come to the conclusion:

(1) that the law on the subject of the nature of security to be tendered is not clear and that the contention put forward by the Government Advocate that the Magistrate, while determining the sufficiency of the sureties, is not precluded from taking outside help in coming to his own conclusions, is not without force, and that, even if it be held that the procedure adopted by the Magistrate was in any way open to objection, it does not afford any reasonable basis for the apprehension entertained by the petitioner;

(2) that the allegations made against the Additional District Magistrate, the Government Advocate and the Deputy Superintendent of Police in respect of the incident of the 30th July 1936 have been wantonly made and that a mountain has been made out of a mole-hill;

(3) That, if Mr. Gauba or his co-accused had any right to inspect the documents, this right was not denied to them and that the prosecution had supplied all the information that they were required to

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do under section 173 of the Code of Criminal Procedure and that Mr. Gauba could not call upon the prosecution to produce any other documents on which they relied before the hearing of the case commenced.

I will now take up all these matters in the order in which they have been set forth above, and give my reasons for the conclusions at which I have arrived.

Taking the question of the bail bonds first. I find that four sureties offered themselves on behalf of Mr. Gauba. They were Abdul Aziz of Baghapurana, District Ferozepore, Nazar Mohammad of Kotli Daim, District Gujranwala, Nur-ul-Haq of Lahore and Mohammad Sharif Khan of Chak Hyderabad, District Sheikhupura. In the case of Abdul Aziz, the report that was received was that he owned, along with his other brothers, a house worth Rs.8,000 and in addition owned movable property which was not worth more than Rs.200. In the case of Nazar Mohammad the District Magistrate of Gujranwala reported that his land was valued at Rs.43,000 and that his movable property was not worth more than Rs.2,500. In the case of Nur-ul-Haq, the *Tehsildar* of Lahore reported that his assets did not exceed Rs.30,000 and that his liabilities amounted to Rs.20,000. In the case of Mohammad Sharif Khan, although the report stated that he owned considerable amount of agricultural property and, besides, owned one house in his Chak, the Additional District Magistrate rejected him on the ground that on his own admission his movable property did not exceed Rs.1,300 in value. It may be mentioned here that Mr. Gauba had to tender four sureties of Rs.37,500 each.

The position taken up by the Government Advocate in regard to this matter is that inasmuch as

section 514 of the Code of Criminal Procedure clearly says that in the case of forfeiture during the lifetime of the surety his movable property alone will be attached and sold, the Court is bound to take into consideration the surety's movable property alone, while determining his sufficiency. In support of his contention he further refers to section 513 of the Criminal Procedure Code, which authorizes the Court to permit a person to deposit a sum of money or Government Promissory Notes in lieu of executing a bond. As against this, petitioner's counsel relies on *King-Emperor v. Kaim Khan* (1) and *Nanhe v. Emperor* (2). In *King-Emperor v. Kaim Khan* (1), Reid C. J. while deciding the case of a person proceeded against under section 118, Criminal Procedure Code, remarked that " as to sending the security on to the *Tahsildar* who is to report within ten days whether the person put on security and the surety have movable property equal in value to the amount of the bond, the exclusion of immovable property is obviously illegal and the learned Government Advocate has not attempted to defend it." In *Nanhe v. Emperor* (2), Sir George Knox observed that " while it is true that so long as a surety is alive only movable property can for default under section 514, Criminal Procedure Code, be attached and sold for recovery of penalty, yet I agree with the learned Sessions Judge that if the house offered as security is worth Rs.500 and the surety is reported by the Tahsildar to be a respectable person, the security should be accepted."

I am not called upon in this case to decide whether the rulings, relied on by the petitioner's counsel, lay

(1) 18 P. R. (Cr.) 1906. (2) (1918) 46 I. C. 295.

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down good law or the contention raised by the Government Advocate is legally sound. What I have to determine is whether the action taken by the Magistrate so completely disregarded the legal provisions that the accused could reasonably apprehend that he was not proceeding impartially, and, in the circumstances described above, I have no hesitation in holding that the Magistrate was honestly of the belief that it was his duty to ascertain that the security tendered was sufficient, and that the sufficiency of the security was to be judged only by the amount of the movable property owned by the sureties. Courts may pass orders which may either be legal or illegal, but the mere passing of an illegal order will not justify an inference against their honesty or impartiality. To err is no sin and in this case even the error is not patent. This question may some day be decided finally by this Court but, so long as it remains undecided, I do not consider that any Magistrate will be committing an illegality in insisting that, in the light of the provisions laid down in section 514, Criminal Procedure Code, that security alone can be termed sufficient which is backed by movable property of the value of the amount secured.

The charge of the Magistrate's judging the sureties of the other accused persons by a different standard does not hold good at all, as in the only two instances cited by the counsel, the sureties offered were Advocates and not anonymous or objectionable persons.

As regards the allegations made against the Magistrate, the Government Advocate and the Deputy Superintendent of Police, what appears to have

happened is this. Sometime after the Magistrate went into his retiring room, he sent for the Deputy Superintendent of Police to ascertain from him what further evidence was intended to be produced in the case, for the production of which an adjournment was being asked for. The Deputy Superintendent of Police gave the necessary information and left his room within a couple of minutes. This small incident has been magnified into a serious accusation outlined above. I have no hesitation in saying that any Magistrate, who seeks inspiration from any counsel for the Crown, even if he be of the position of Government Advocate, or from any Police Officer, however highly placed he may be, is unworthy of his office, but I am gratified to remark that in this case the Additional District Magistrate has not been found guilty of any such delinquency. I will not even declare that his act was indiscreet. The Government Advocate has made a declaration at the Bar that he never visited the Magistrate in his retiring room on that day. He even expressed his willingness to make an affidavit in this behalf. In view, however, of the unequivocal statement made by the Government Advocate and the remarks made in *Mashar Khan v. Emperor* (1) that such affidavits should not be taken from those members of the English Bar who are appearing professionally in a case in connection with which an affidavit is required, I have dispensed with his affidavit. The Deputy Superintendent of Police has, however, made a statement on solemn affirmation before me that the facts mentioned in sub-para. (1) of paragraph 7 of the petition were absolutely false and further that, at the time when he was sent for, the

(1) (1928) 107 I. C. 108.

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accused as well as their friends were present in the Court room of the Additional District Magistrate and that the door by which he entered was visible from the Court room. I may remark here that even the counsel for the petitioner did not deny that there were some persons present in the Court room at that time besides the accused. I cannot imagine that any Magistrate of the position and standing of Mr. Isar would commit such an illegality as is attributed to him in such environments. The Additional District Magistrate submitted an explanation to the District Magistrate in this behalf, and that explanation is on the same lines as the statement made before me by the Deputy Superintendent of Police. I may remark in passing that much stress was laid on the observations made by the District Magistrate in his order, dated the 15th September, 1936, but the District Magistrate appears to have misappreciated the explanation submitted by the Additional District Magistrate and wrongly recorded that "these officers" were called to his retiring room for a few minutes. He has further erred in remarking that " it would be possible, while accepting the Magistrate's explanation (as I do completely) to hold that this interview, however harmless in fact, might appear otherwise to the accused and might give him a reasonable, even if mistaken, apprehension that the Magistrate was offering undue facilities to the prosecution." In my view, an accused is not entitled to have his case transferred from the Court of a Magistrate who is seised of it merely because he chooses to place a sinister interpretation on an innocent act of the Magistrate. Otherwise, an accused person endowed with a suspicious nature will make the administration of justice impossible.

Similarly baseless is the allegation made concerning the withholding of documents from the accused. All that section 173, Criminal Procedure Code, requires is that " the officer-in-charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report, in the form prescribed by the Local Government, setting forth the names of the parties the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case." The form prescribed by the Local Government on which such police reports are submitted is divided into seven columns. Column (1) provides for the name and address of the complainant or the informant. Column (2) provides for the name and address of the accused who have not been sent up, whether arrested or not. Columns (3) and (4) provide for the name and address of the accused who are sent up. Column (5) is meant for giving the details of the property, including weapons, etc., recovered from the accused. Column (6) is meant for the name and address of witnesses, and column (7) is meant for a brief statement of the offence committed by the accused and the facts relating thereto. It would thus appear that neither in section 173, Criminal Procedure Code, nor in the form prescribed by the Local Government, is it provided that the prosecution should produce along with the chalan all the documents on which reliance is to be placed in the trial or which have to be produced by the witnesses to be tendered for the prosecution. An accused person is consequently not entitled, as of right, to insist upon the production of any such document before the case starts. He does not run the risk of being hampered in his defence, as the law

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clearly entitles him to cross-examine the witnesses even after the charge.

In this case, however, the Magistrate had allowed the petitioner as well as his co-accused full opportunity to inspect all the documents which were in the custody of the Official Liquidator and had further assured the accused that no documents had been produced in Court which were being withheld from them. Some of the accused persons availed themselves of this opportunity and inspected the documents in the office of the Official Liquidator. The petitioner, however, did not take any steps whatsoever to utilize the opportunity so offered. It cannot, in these circumstances, be held that the Magistrate was in any way prejudiced against the petitioner or that he was denying the petitioner any right that he legitimately could exercise under the provisions of the Code of Criminal Procedure.

As I have already held that the petitioner has made a reckless accusation against the Magistrate as well as the Government Advocate and the Deputy Superintendent of Police, I consider that it is expedient in the interest of justice that he should be called upon to show cause why he should not be prosecuted under section 193, read with section 199, of the Indian Penal Code, for affirming a false affidavit. I enquired from the counsel whether his client was prepared to withdraw this accusation, but his reply was in the negative. Now if such accusations are allowed to pass unheeded, that confidence which must be reposed in the Courts by the litigants who deal with them is bound to be impaired. In these days when wide publicity is given to everything done in, or said in connection with, the Courts, such accusations cannot be left unnoticed, otherwise there is a danger of a

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wrong impression being created in the world outside that the Magistracy in this Province can do all sorts of illegal acts with impunity and that the superior Courts connive at them and thus encourage them in their illegal behaviour.

Before I close, I direct the Additional District Magistrate to proceed with the trial of the case expeditiously and not grant any unnecessary adjournments either to the prosecution or to the defence.

P. S.

Petition dismissed.

FULL BENCH.

Before Addison, Coldstream and Abdul Rashid JJ.

RANJIT SINGH (JUDGMENT-DEBTOR) Objector-Appellant

versus

MAGHI MAL (PLAINTIFF) DECREE-HOLDER AND ANOTHER, Respondents.

1936

Nov. 20.

Civil Appeal No. 124 of 1936.

Custom — Ancestral property — in hands of minor son — whether liable to attachment under a money decree against the father — Jats of Ferozepore district — Riwaj-i-am — *Answer to question 32 — meaning of.*

Held, that the answer to question 32 of the Ferozepore *Riwaj-i-am* to the effect that a minor who has inherited his father's estate is liable for his father's debts does not mean that he succeeded his father as his legal representative. It means that, in order to pay the debts of a minor's deceased father, the minor's guardian can do what the minor himself could have done under Customary law, had he reached majority. Ancestral property in the hands of a minor son cannot, therefore, for the reasons laid down in *Jagdip Singh v. Bawa Narain Singh* (1), be attached in execution of a money decree against his deceased father.

(1) 4 P. R. 1913 (F. B.).