

CRIMINAL REVISION.

Before Mr. Justice Crowe and Mr. Justice Batty.

IN RE BAL GANGADHAR TILAK.*

1902.

August 19.

Practice—Procedure—Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Revision—Criminal Procedure Code (Act V of 1898), sections 439, 195, 476.

The High Court is competent, in the exercise of its revisional power under section 439 of the Criminal Procedure Code (Act V of 1898), to interfere with an order made by a subordinate Court under section 476 of the Criminal Procedure Code (Act V of 1898) directing the prosecution of any person for the offences referred to in that section.

The High Court in this case refused to stay criminal proceedings directed by a subordinate Court under section 476 of the Criminal Procedure Code (Act V of 1898) until an appeal in the civil suit in connection with which the criminal charges were made had been decided.

APPLICATION to stay criminal proceedings against the applicant pending an appeal in a civil suit.

The applicant, Bal Gangadhar Tilak, and others, obtained probate of a certain will. Subsequently a suit was brought against them in the District Court at Poona to have the probate revoked, and after a trial, the Judge passed a decree revoking the probate. He also, under section 476 of the Criminal Procedure Code (Act V of 1898), made an order sanctioning the prosecution of the applicant for offences under sections 196 and 211 of the Indian Penal Code (Act XLV of 1860) committed by the applicant in the course of the suit for revocation of probate.

The applicant appealed to the High Court against the decree of the District Court revoking the probate and then applied for a stay of the criminal proceedings sanctioned against him pending the disposal by the High Court of the appeal in the probate suit.

The High Court granted a rule *nisi*.

Branson (with him *D. A. Khare*) for the applicant, in support of the rule.

* Criminal Application for Revision No. 64 of 1902.

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Scott (Advocate General) (with him the Government Pleader) for the Crown to show cause.

CROWE, J. :—The Advocate General, instructed by the Government Pleader, appeared to show cause against the rule granted by Candy and Fulton, JJ., for stay of criminal proceedings and *ad interim* stay until the hearing of the civil appeal (No. 38 of 1902) against the order in the miscellaneous application No. 112 of 1901, under Act V of 1881. Mr. Branson and Mr. D. A. Khare appeared to support the rule.

The first question which arises is whether the High Court has jurisdiction to interfere and direct a stay of proceedings. It was contended by the Advocate General on the authority of *Ram Persad Hazaree v. Soomuthra Dabee*,⁽¹⁾ which was decided by a Full Bench, that the High Court could not entertain an appeal against an order of a Court under section 170 of Act XXV of 1861, and that as a Court of Revision it could not reverse such order on the ground that it was not warranted by the facts, for as a Court of Revision it could not reverse an order except for error in law. Sir Barnes Peacock, who delivered the judgment of the Court, went on to say: "If the Court as a Court of Appeal, or as a Court of Revision, cannot reverse or alter such an order, I cannot see any inherent authority which it has to stay proceedings." A similar view, as far as the power to reverse or alter such an order is concerned, was held on a Full Bench decision of the Allahabad High Court in *Barkat-ul-lah Khan v. Rennie*.⁽²⁾ These cases have reference to the law as it existed prior to the passing of the Criminal Procedure Code of 1882. The learned counsel further relied on *Queen-Empress v. Rachappa*,⁽³⁾ where it was held that in the case where a complaint is made by the Court itself under section 476 of the Criminal Procedure Code a superior Court has no power to set it aside.

The recent decisions of all the High Courts, however, are unanimous in holding that the High Court is competent in the exercise of its revisional powers to interfere with an order of a subordinate Court made under section 476 directing the prosecu-

(1) (1866) 5 Cal. W. R. 24 (Mis. R.)

(2) (1875) 1 All. 17.

(3) (1888) 13 Bom. 100.

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tion of any person for offences referred to in that section. It was held in *Khepu Nath v. Grish Chunder*⁽¹⁾ that, under the powers conferred by section 439, the High Court has jurisdiction to alter or reverse any such order. In exercising its powers of revision the High Court has the powers conferred on a Court of Appeal by section 423. This ruling was followed in *Chandhari Mahomed Izharul Huq v. Queen-Empress*,⁽²⁾ where it was held that "the High Court has jurisdiction to interpose in the case of an order made by a Court under section 476 of the Criminal Procedure Code, and has also the power to determine whether the discretion given by that section has or has not been properly exercised." To that judgment Rampini, J., was a party. In a later case, *Raj Kumari Debi v. Bama Sundari Debi*,⁽³⁾ the High Court granted a rule to show cause why the criminal proceedings, initiated under the provisions of section 476, should not be stayed until the decision of a civil suit. The rule was argued before Ghose and Rampini, JJ. The Court held that the rule should be discharged. Rampini, J., was of opinion that it would not be right to postpone the criminal proceedings till after the termination of the civil suit, and following the Full Bench decision in *In the matter of Ram Prosad Hazra*⁽⁴⁾ held that the Court had no power to direct that criminal proceedings should be stayed until the disposal of a civil appeal in which the question at issue in the criminal proceedings should be decided. Ghose, J., though agreeing in the view that the rule should be discharged, differed from his learned colleague as to the powers of the High Court to interfere with an order for prosecution made under section 476, having regard to the change of the law effected by section 439 of the Code of 1882 in respect of the revisional powers of the Court.

In the matter of the petition of *Mathura Das*⁽⁵⁾ it was held by Aikman, J., dissenting from *Queen v. Rachappa*,⁽⁶⁾ that the High Court has power under section 439 of the Code to consider the propriety of an order which purports to be passed under section 476 of the Criminal Procedure Code.

(1) (1899) 16 Cal. 730.

(2) (1892) 20 Cal. 349.

(3) (1896) 23 Cal. 610.

(4) (1866) Beng. L. R. Sup. Vol. 426.

(5) (1893) 16 All. 80.

(6) (1888) 13 Bom. 109.

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In *Queen-Empress v. Srinivasalu Naidu*⁽¹⁾ a Full Bench of the Madras High Court held that a High Court, as Court of Revision, has power under section 439 to revoke an order made by a subordinate Court under section 476 of the Code of Criminal Procedure.

To come now to the Bombay cases. The view taken by the Judges in *Queen-Empress v. Rachappa*,⁽²⁾ referred to above, was that the High Court had no power to revise an order under section 476. In *In re Shri Nana Maharaj*⁽³⁾ the Bombay High Court disposed of an application to stay criminal proceedings pending civil litigation. The High Court declined to make any order interfering with the discretion of the Subordinate Judge; but Jardine, J., remarked that the Court had often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation, following *Queen v. Ingham*⁽⁴⁾ and *Rex v. Simmons*,⁽⁵⁾ and added that the principles there enunciated ought, in their opinion, to guide the future action of the Subordinate Judge under section 476 and of any Magistrate to whom he may send the accused.

The latest ruling of the Bombay High Court is that in *Queen-Empress v. Nusserwanji*, an unreported case, but printed at page 895 of Mr. Ratanlal Ranchhoddas' volume of "Unreported Criminal Cases of the High Court of Bombay." The learned Judges, Ranade and Fulton, JJ., there held that the High Court had jurisdiction to deal in revision with an order passed by a subordinate Court under section 476, Criminal Procedure Code, directing an enquiry into an alleged offence punishable under section 193 of the Penal Code. The Court there pointed out that there had been conflicting decisions on the point of jurisdiction which it was not easy to reconcile, and after reviewing the cases followed the Calcutta and Allahabad High Courts in holding that they had jurisdiction, under section 439, to revise orders passed under section 476 to the same extent that they have in respect of orders passed under section 195 sanctioning prosecution for certain offences; which power of interference was to be exercised with a view to see if the discretion of the subordinate Courts has been properly exercised.

(1) (1897) 21 Mad. 121.

(3) (1892) 13 Bom. 720.

(2) (1888) 13 Bom. 100.

(4) (1849) 14 Q. B. 396.

(5) (1837) 5 C. and P. 50.

A review of all the rulings cited above shows that all of the High Courts concur in the view that the power of revision, conferred by section 439 of the Criminal Procedure Code, extends to orders passed under section 476 of the Criminal Procedure Code. On this point now it is clear that no conflict exists.

The next question for consideration is whether the High Court has power to order a stay of the criminal proceedings in a complaint respecting the offences of perjury, making and using false documents, and making a false complaint to a Magistrate, pending the disposal of the appeal preferred to this Court against the order in application No. 112 of 1901 under Act V of 1881. The petition also includes a prayer for stay of criminal proceedings pending the decision in the Court of the First Class Subordinate Judge, Poona, in suit No. 358 of 1901, but the last prayer was not pressed at all by Mr. Branson. Apart from the remarks of Jardine, J., in *In re Shri Nana Maharaj*⁽¹⁾ we have been unable to find any authority in the decisions of this Court bearing on the point. In the Full Bench Calcutta case, *In re Ram Prosad Hazra*,⁽²⁾ Macpherson, J., while expressing his entire concurrence with the opinion of the Chief Justice, observed: "I may add that considering the Legislature has thought fit to empower Courts in their discretion to direct criminal prosecution of persons who commit certain offences in the course of proceedings before those Courts, it would, as it seems to me, almost amount to an absurdity if a prosecution, so ordered to be had, were to be suspended merely because an appeal is pending from the decree made in the suit in the course of which the act or omission which is the subject of the prosecution was committed." In the recent case of *Raj Kumari Debi v. Bama Sundari Debi*,⁽³⁾ Rampini, J., remarked: "The petitioner being the plaintiff has the command of the civil suit. She can prolong the proceedings in it at her pleasure, and if the prosecution of the criminal proceedings against her are made dependent on the prosecution by her of the civil suit, it is scarcely to be expected, I think, that she will be expeditious in bringing this civil suit to an end. In these circumstances I do not think it would be right to postpone the

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(1) (1892) 16 Bom. 729.

(2) ('866) Beng. L. R. (Sup. Vol.) 426.

(3) (1896) 23 Cal. 610.

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criminal proceedings till after the termination of the civil suit." And Ghose, J., whose opinion stands alone that the Court has power to stay criminal proceedings having regard to the large powers it possesses under section 439 of the Criminal Procedure Code, under section 15 of the Charter Act and sections 28 and 29 of the Letters Patent, if a sufficient cause in that behalf is made out, goes on to observe: "At the same time I feel bound to say that when the Legislature has given to a Magistrate the power to regulate the proceedings in his own Court, the discretion should ordinarily be left to the Magistrate either to stay proceedings or not, as he, in the circumstances of the case, may think it right and proper." Commenting on the decision of the Bombay High Court in *In re Derji valad Bhavani*⁽¹⁾ the same learned Judge remarks: "I am not myself prepared to say that, as a general rule, a proceeding in a Criminal Court should be stayed pending the decision of a civil suit in regard to the same subject-matter; but what I think I might properly say is that *ordinarily* it is not desirable, if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time." In the case reported in *In re Derji valad Bhavani*⁽¹⁾ their Lordships said: "No doubt this Court has often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation regarding the same subject-matter. But we do not think that this is an invariable rule"; and in that case this Court refused to interfere. Looking to the words of section 476 it is quite clear that a Magistrate is bound to proceed with the investigation of a case sent to him by a Civil Court. The words are peremptory "Such Magistrate shall thereupon proceed according to law and as if upon complaint made and recorded under section 200."

To come now to the merits of this particular case, the question is whether any grounds have been shown why proceedings should be stayed. Section 435 of the Criminal Procedure Code is, no doubt, of the widest operation and enables the Court to

(1) (1893) 18 Bom. 581.

examine the record of any proceeding before any inferior Criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any order of such inferior Court. It is not contended that the order is incorrect or illegal, and the only ground on which its propriety is impugned is that it directs an inquiry into certain alleged offences, while, as a matter of fact, a civil appeal is pending. The Court, if such an offence as is described has been committed before it or is brought to its notice in the course of a judicial proceeding, is justified in taking immediate action; and it seems to us in the highest degree desirable that the inquiry should be conducted both in the interests of justice as well as of the accused and of all parties concerned as speedily as possible. It is open to the Magistrate in the exercise of his discretion to stay proceedings until the civil appeal is decided if he thinks that any advantage will be gained by doing so. In any case it is his duty to decide on the evidence before him whether any offence has been committed or not, and whatever conclusion he may arrive at cannot possibly affect the decision of the civil proceeding, nor, on the other hand, would the decision in the civil appeal be binding on him. We concur in the observations of Aikman, J., in *In re Mathura Das*⁽¹⁾ that when offences against public justice are committed, it would be well if Courts availed themselves more fully of the provisions of section 476 instead of leaving the prosecution to private parties, who often use the sanction granted to them for gratification of private malice. The effect of such a course, however, would be entirely frustrated if the proceedings were invariably allowed to be delayed pending the disposal of the civil litigation, which might be indefinitely protracted even up to a final decision on appeal to the Privy Council.

For these reasons we think that the rule should be discharged. The conclusion at which we have arrived, that no impropriety justifying any interference by way of revision has been made out, renders it unnecessary for us to discuss the question whether under section 435 empowering the High Court to "call for and examine the record of any proceeding before any inferior Criminal Court.....for the purpose of satisfying itself.....as to the

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(1) (1893) 16 All. 80.

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correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court," or section 439, sub-sections 1, 3 and 4 of which contemplate a case in which sentence has been passed and final decision has been arrived at, the High Court at this stage can interfere with the action taken by a Civil Court in sending a case for inquiry and trial under section 476.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Batty.

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August 19,

BAL GANGADHAR TILAK (ORIGINAL OPPONENT), APPELLANT, v. SAKWARBAI *alias* TAI MAHARAJ AND OTHERS (ORIGINAL APPLICANT AND OPPONENTS), RESPONDENTS.*

GANESH SHRIKRISHNA KHAPARDE AND ANOTHER (ORIGINAL OPPONENTS 2 AND 3), APPELLANTS, v. SAKWARBAI *alias* TAI MAHARAJ AND OTHERS (ORIGINAL APPLICANT AND OPPONENTS 1 AND 4), RESPONDENTS.*

Probate—Effect of probate—Revocation of probate—Grounds of refusal or revocation of probate—Filing of inventory and account—Probate and Administration Act (V of 1861), sections 50 and 98.

On the 7th August, 1897, one Baba Maharaj died at Poona, leaving his widow pregnant. By his will he appointed Bal Gangadhar Tilak (the appellant) and three others to be his executors. The will, after reciting the fact of his wife's pregnancy, provided that if no son was born, or if one was born and should die prematurely, his wife should, with the advice of the executors, adopt a son to him, and the executors should continue to manage the property on behalf of that son until he attained his majority. A posthumous son was born on 18th January, 1898. The executors obtained probate of the will on 16th February, 1898, and assumed the management of the estate. The son died on 9th March, 1898. Three years subsequently, viz., on 26th July, 1901, the widow applied to the District Court for revocation of the probate granted to the executors on the grounds (1) that the will had become inoperative by the birth of her son who had succeeded to the property, which on his death had devolved on her as his heir, and (2) that the executors had wilfully and without reasonable cause omitted to file an inventory and account as required by section 98 of the Probate Act (V of 1861).

* First Appeals Nos. 38 and 50 of 1902.