1912.

NANCHAND SHIVCHAND *In re.*

Evidence Act is wide enough to include a District Judge acting as described. In that capacity the District Judge is by the Statute empowered to receive evidence on oath, to hold inquiry into the matters in controversy, to summon and enforce the attendance of witnesses, and finally to decide the matters in dispute, making such award of costs as to him may seem right. It is true that in sub-section 2 of section 22 the District Judge is described as empowered to act as if he were a Civil Court and it may be suggested that these words negative the theory that he is in law a Civil Court. That, however, does not negative the view that he may be a Court, and that he should be a Court, whether Civil or other, is all that is required under section 195 of the Criminal Procedure Code. Following the Calcutta decision which we have cited we think that he should be so regarded.

Upon these grounds we are of opinion that this prosecution is unsustainable, inasmuch as it has not received that sanction which the law imperatively requires. The rule, therefore, must be made absolute and the proceedings hitherto held before the Sub-Divisional Magistrate must be set aside.

Rule made absolute.

R. R.

APPELLATE CRIMINAL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

EMPEROR *v.* RANCHHOD BAWLA.[*]

1912

November 14.

Criminal Procedure Code (Act V of 1898), sections 248, 258, 345—Warrant case—Non-compoundable offence—Complainant withdrawing from prosecution—Order of acquittal—Practice and procedure.

In a warrant case in respect of a non-compoundable offence, it is not competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal.

[*] Criminal Appeal No. 374 of 1912.

1912.

EMPEROR v. RANCHHOD BAWLA.

APPEAL by the Government of Bombay from an order of acquittal passed by Dalpatram Bapuram, Second Class Magistrate at Bardoli.

One Parashram Ramchandra filed a complaint against the accused Ranchhod and another charging them with the offence of criminal breach of trust, with respect to certain implements that were given to them as labourers. The Police investigated into the case and sent it up for trial by a Magistrate. The first hearing of the case was fixed for the 1st June 1912, when the Magistrate examined the complainant in support of his complaint. The case then was adjourned for the 7th idem. On the adjourned hearing, the complainant applied to the Magistrate asking him to withdraw the case. The Magistrate granted the application, and acquitted the accused, relying on *Queen-Empress* v. *Vithoba*[1].

The Government of Bombay appealed against the order of acquittal.

L. A. Shah, acting Government Pleader, for the Crown :—The order of acquittal recorded in this case is contrary to law. The offence complained of is a warrant case and is non-compoundable. In such a case it is not permissible to a private party to offer to withdraw the prosecution. The only sections in the Criminal Procedure Code which refer to compounding and withdrawal are sections 248, 345 and 494. None of these sections apply here. In a warrant case, Chapter XXI of the Code applies, under which an order of acquittal can be recorded only after framing a charge (section 258). The ruling in *Queen-Empress* v. *Vithoba*[1], relied on by the Magistrate does not apply : it advances no new reasons but simply relies on *Reg.* v. *Devama*[2], which only relates to section 403 of the Criminal Procedure Code.

(1) (1887) Ratanlal's Cri. Cas. 330. (2) (1875) 1 Bom. 64.

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EMPEROR v. RANCHHOD BAWLA.

P. D. Bhide, for the accused :—The case of *Queen-Empress* v. *Vithoba*[1] is on all fours with the present case and should govern it. The present case was one of private prosecution. No pleader or prosecutor appeared for any party. The complainant was not willing to proceed further with the case ; and the order passed by the Magistrate is not only just but meets the requirements of the case. The fact that no charge has been framed is not material, for at its best it is only an irregularity cured by sections 535 and 537 of the Code.

BATCHELOR, J. :—The question which arises for decision here is whether in a warrant case in respect of a non-compoundable offence it is competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal. We think that it is not so competent.

The facts in this particular case are these : A complaint was made to the police accusing certain persons of the offence of criminal breach of trust punishable under section 406 of the Indian Penal Code. That is a non-compoundable offence. The police after inquiry committed the accused persons for trial to the Magistrate's Court. The complainant was examined and the trial was postponed till the 7th June. On that day complainant applied to the Magistrate to be allowed to withdraw from the case, urging that the accused persons were his labourers ; that they had agreed to restore the property which he had accused them of misappropriating ; and that as the rainy season was approaching he was unwilling to proceed. Thereupon the learned Magistrate made an order to the effect that "the complainant is allowed to withdraw the case, and the accused are therefore acquitted under section 258 of the Criminal Procedure Code." In support of this order the Magistrate relied upon *Queen-Empress* v. *Vithoba*[1].

[1] (1887) Ratanlal's Cri. Cas. 330.

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We will revert to *Vithoba's case* in a moment. But it is desirable at the outset to consider the general provisions of the Criminal Procedure Code in connection with the point before us. The only sections of the Code which contemplate the termination of a criminal prosecution by private arrangement are sections 248 and 345. Section 248 occurs in Chapter XX of the Code, and that Chapter deals only with the trial of summons cases by Magistrates. As the case before us was a warrant case, it is clear that section 248 cannot be invoked to sustain the Magistrate's order. Section 345 is equally unavailing because it refers only to the compounding of offences which by law are allowed to be compounded, and the offence here does not belong to that class. The trial in this case was a trial falling under the provisions of Chapter XXI of the Code, and the only means by which an order of acquittal could legally be arrived at, are the means described in section 258 and the preceding sections; that is to say, an order of acquittal could be pronounced only where after the framing of a charge the Magistrate is of opinion that the evidence is insufficient to justify a conviction. In this case no charge was framed, and the Magistrate, instead of exercising his own mind upon the evidence in the case, has allowed the decision to be taken out of his hands by a private arrangement between the persons interested. It seems to us clear, therefore, upon the provisions of the Code that the order under reference is unwarranted.

As to *Queen-Empress* v. *Vithoba*, that ruling on the face of it carries matters no further than they are left by the decision in *Reg.* v. *Devama*[1], upon which the ruling is professedly grounded. It is only necessary, therefore, for us to turn to *Devama's case* and ascertain whether there is anything in that decision which conflicts with the views we have expressed above. We

[1] (1875) 1 Bom. 64.

find that there is nothing. The facts in *Devama's case* were that a prosecution had been instituted on an accusation of house-breaking in order to commit theft, an offence which was not legally compoundable; but after the inquiry had proceeded a certain length before the Magistrate, Mr. Middleton, he recorded an order saying that, since the parties had come to an agreement and the complainant had withdrawn her complaint, he dismissed the case. Subsequently, however, disagreements arose between the parties, and it was thought expedient to revive the prosecution. The question, therefore, which occurred was whether Mr. Middleton's order dismissing the case did or did not bar the revival of the prosecution. It was decided that there was no bar. But the propriety or impropriety of Mr. Middleton's order dismissing the case was not a matter which fell under the Bench's consideration. It was assumed and not decided that this order of dismissal was good, and the only question was whether upon this assumption, it operated to bar the fresh proceedings. Since the question before us is whether a similar order is good in law, it follows that there is nothing in *Devama's case* which can now embarrass us in giving effect to the opinion we have formed on a consideration of the sections of the Code. Those sections satisfy us that in a case of this nature the Magistrate is not empowered to make an order of acquittal on the strength of the complainant's desire to withdraw his complaint.

We must, therefore, reverse the order under appeal and remand the case to the learned Magistrate in order that he may rehear it and dispose of it by a legal decision.

Order reversed.

R. R.