

while s. 10, Regulation XX of 1817, was in force between the zemindar and the putni lessees having imposed upon the latter the charge of the maintenance of the zemindari dak, this liability was not affected by the subsequent repeal of the Regulation by Act VIII of 1862, B. C.

The result of that case was that the plaintiff, as zemindar, was held entitled to recover dak, although the system of the zemindari dak had changed and the clause in question was no longer directly applicable.

Then, in the case of *Bissonath Sircar v. Shurno Moyee* (1) it was held that Act VIII of 1862 (B. C.) did not relieve putnidars from their liability under an old lease of paying the zemindari dak charges.

Learned counsel for the appellant contends that this last mentioned case has been practically overruled by the ruling in the case of *Rakhal Dass Mookerjee v. Shurno Moyee* (2), where it was laid down that where the terms of a putni lease did make the putnidar liable for the maintenance of the zemindari dak, the putnidar was not liable for a tax which was imposed on the zemindar by Act VIII of 1862 (B. C.)

[297] We are not prepared to agree that this ruling has overruled the previous one in the case of *Bissonath Sircar v. Shurno Moyee* (1). But in the present case it would seem to have no application, for the provisions of the defendant's putni lease do make the putnidar liable. In any case there remains the case of *Saroda Soondury Debea v. Wooma Churn Sircar* (3), from which we see no reason to dissent, but with which we fully agree, and for these reasons we must follow it in this case.

The appeal is dismissed with costs.

Appeal dismissed.

28 C. 297.

CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Stevens.

BAKTU SINGH (*Petitioner*) v. KALI PRASAD (*Opposite Party*).*

[30th November and 7th December 1900.]

Transfer of criminal case—Grounds for transfer—Reasonable apprehension in the mind of the accused of Magistrate being biased—Suit by servant of estate under Court of Wards, the District Magistrate as Collector being Manager—Code of Criminal Procedure (Act V of 1893), s. 526.

Where the apprehension in the mind of the accused that he may not have a fair and impartial trial is of a reasonable character, then notwithstanding that there may be no real bias in the matter, the fact of incidents having taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer.

In the matter of the petition of J. Wilson (4) and *Dupeyron v. Driver* (5) referred to.

The mere fact that the Magistrate of the district is in his capacity as Collector concerned in the management of an estate held by the Court of Wards is no ground for asking for a transfer from the district of a case brought by a servant of the estate and pending before a Subordinate Magistrate in the district.

[298] IN this case certain disputes were going on between the Bettiah Raj Estate and the tenants of one of the mehals subordinate there—

* Criminal Revision Nos. 106 and 823 of 1900 made against the order passed by Mahomed Habibullah, Deputy Magistrate of Champaran, dated 26th September 1900.

(1) (1865) 4 W. R. 6.

(2) (1866) 6 W. R. 100.

(3) (1865) 8 W. R. S. G. C. Ref. 17.

(4) (1891) I. L. R. 18 Cal. 247.

(5) (1896) I. L. R. 23 Cal. 495.

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to regarding the question of measurement of the land. The disputes were pending before the settlement officer. One Mathura Prosad, a servant of the Raj, came and suggested to the tenants that, in consideration of some bonus to be paid to him, he would bring about a settlement. No settlement, however, was come to, but the bonus paid to Mathura Prosad was not returned. Subsequently Mathura Prosad instigated one Kali Prosad, a *Patwari* of the Raj Estate, to lay a charge before one of the Deputy Magistrates against some of the tenants including the petitioner under ss. 141, 379, 352 and 323 of the Penal Code. The Deputy Magistrate of Motihari, before whom the complaint was made, transferred the case to an Honorary Magistrate. The petitioner applied to the High Court to have the case transferred to some other district on the ground that inasmuch as the Magistrate of the district was in his capacity as Collector in charge of the Bettiah Raj Estate, which was held by the Court of Wards, it was therefore not likely that the petitioner would meet with justice in the district.

Mr. Hill (with him Babu *Prosonna Gopal Roy*) for the petitioner.

The *Advocate-General* (Mr. J. T. Woodroffe) for the Crown.

1900, DECEMBER 7. The judgment of the Court (AMEER ALI and STEVENS, JJ.) was delivered by

AMEER ALI, J.—This is a rule calling upon the Magistrate of the district to show cause why the case against the petitioner Baktu Singh, pending in the Court of the Honorary Magistrate of Motihari, should not be transferred for trial to Muzaffarpore or some other district. The circumstances which gave rise to the application upon which the rule was issued are shortly these: It appears that there were disputes going on between the Bettiah Raj Estate and the tenants of one of the mehals subordinate thereto regarding the question of measurement of the land held by the tenants; the latter claiming that the measurement should be made with a rod of 19 inches to a cubit, while the Raj endeavours to measure [299] the lands with a pole of 18 inches. The disputes are or were at the time pending before the settlement officer, and it is stated that one Mathura Prosad, a servant of the Bettiah Raj, came to the tenants and suggested that, in consideration of some bonus to be paid to him, he should bring about a settlement, which is mentioned in the petition. The manager not having accepted the terms the matter fell through, but it is said that the bonus which was paid to Mathura Prosad was not returned. Subsequently Mathura Prosad instigated one Kali Prosad, a *Patwari* of the Raj Estate, to lay a charge before one of the Deputy Magistrates against some of the tenants, including the petitioner before us, under ss. 141, 379, 352 and 323 of the Penal Code. The Deputy Magistrate, before whom this complaint was made, transferred the case to the Honorary Magistrate before whom it is now pending, and the petitioner applies to have that case transferred to Muzaffarpore or some other district. The grounds upon which his application is based will be referred to in a moment. The first four paragraphs of the petition have, in our opinion, absolutely no bearing upon the case which the petitioner endeavours to make in this Court. Paras. 5 to 10 (inclusive) deal with the facts to which we have already referred. Paras. 11, 12, 13, 14, 15 and 16 contain the allegations upon which it is contended this case ought to be transferred from the district. It is unnecessary to give them in detail. It is enough to say that the petitioner's allegation is that inasmuch as the Magistrate of the district is, in his capacity as Collector, in charge of

the Bettiah Raj Estate, which is now held by the Court of Wards, it is therefore not likely that the petitioner would meet with justice in the district. As regards the Honorary Magistrate, before whom the case is pending, it is alleged that when the case came before him first he gave indications of his bias by certain observations he made that he would send the accused to *hajat* and cancel their bail, although there was then no evidence on the record to justify his doing so, and further that when, on one occasion, some of the tenants were sent for by the Sub-Inspector of Police, on arrival at the Sub-Inspector's place they found not only the Sub-Inspector but also the Honorary Magistrate concerned, and that, in his presence, [300] the Sub-Inspector strongly advised them to settle their dispute with the Raj, and the petitioner states that the same thing happened on a subsequent occasion. He further states that the Honorary Magistrate "is in private life," whatever that may mean, "the manager of Raj Kumar Babu Bissen Prokash Narain Singh of Motihari in the district of Champaran, and that the latter is or claims to be the reversionary heir to the late Maharajah Sir Harandra Kissore Singh of Bettiah, and that as such he has an interest in the Bettiah Estate which would lead him and therefore his aforesaid manager to wish that the complainant Kali Prasad may win the present case against the petitioner." That is the sum and substance of the allegations upon which this transfer is asked for.

Mr. Hill for the petitioner has referred us to two cases, one *In the matter of the petition of J. Wilson* (1) and the other *Dupeyron v. Driver* (2). Learned Counsel laid considerable stress on a passage in the judgment in the latter case which appears in page 495. The learned Judge there says as follows:—It was contended, however, that though the statements may be correct, they do not necessarily show any bias on the part of the Magistrate against the accused. That may be true, but in dealing with applications for transfer like this, what this Court has to consider is, not merely the question whether there has been any real bias in the mind of the Presidency Magistrate against the accused, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. Of course, it is not every apprehension of this sort that should be taken into consideration, but where the apprehension is of a reasonable character, then notwithstanding that there may be no real bias in the matter, the fact of incidents having taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer, such [301] as the one that has been asked for." We entirely endorse the observation of the learned Judges in that case, but it will be noticed that they refer in explicit terms to the occurrence of incidents giving rise to a reasonable apprehension in the mind of the person accused that he would not receive a fair or unprejudiced trial. The learned Judges point out that it is not every apprehension that would be taken into consideration, but that the apprehension must be of a reasonable character and must be founded upon distinct incidents (to paraphrase their language) which would really give rise to a reasonable apprehension that there would not be a fair trial. We have given the present application our best considerations, and we find absolutely no circumstance upon which it can be

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(1) (1891) I. L. R. 18 Cal. 247.

(2) (1896) I. L. R. 23 Cal. 495.

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said that the accused had any reasonable ground of apprehension. It is not suggested that the Magistrate of the district had any hand in the initiation of the proceedings, or that he had in any way given directions or instructions either to the police officers or to their subordinates. The Magistrate in his explanation says that he had no knowledge of the matter, until he heard some time afterwards that the case had been instituted. The mere fact that the Magistrate of the district is, in his capacity as Collector, concerned in the management of the Raj Estate is no ground in our opinion for asking for a transfer of the case from the district. As regards the Honorary Magistrate there is no mention of the specific observations made by him in Court which led the accused to form the impression that he would send him to *hajat* and cancel his bail bond, although there was no evidence of any offence against him on the record. It is suggested that he was present at some conversations which the tenants had with the Sub-Inspector. It is worthy of note that the people who went to the Sub-Inspector have not made an affidavit, certainly it does not appear that the petitioner was one of them. The Honorary Magistrate denies any conversation of the character mentioned in the affidavit occurring in his presence between the tenants and the Sub-Inspector. The Honorary Magistrate no doubt, admits that the Sub-Inspector is a connection of his and he often goes to his house, but that by itself does not seem to us to be a sufficient reason for supposing that the accused will not [302] receive a fair trial from him. As regards the suggestion that inasmuch as the Honorary Magistrate in private life happens to be the manager of somebody else who has some claim to the Bettiah Raj, he is likely to support the complainant and go against the accused, we need only say that the statement is absurd upon its face. The Magistrate of the district says that if a proper application is made to him, he would transfer the case from the file of the Honorary Magistrate to that of some other Magistrate with first class powers so that an appeal might not lie to him but to the Sessions Judge. With this, however, we are not at present concerned. On the whole, therefore, we think no ground has been made out for the application for transfer in this matter and we accordingly discharge the Rule.

Rule discharged.

28 C. 302.

Before Mr. Justice Prinsep and Mr. Justice Handley.

PROKASH CHUNDER SARKAR (*Petitioner*) v. RAM PRASAD
 PATTAK (*Opposite Party*).* [29th August, 1900].

Jurisdiction—Costs, Order for assessment of, without notice to party affected thereby—Revision by High Court—Code of Criminal Procedure (Act V of 1898), s. 148.

A Magistrate has no jurisdiction to pass an order under s. 148 of the Code of Criminal Procedure making a party liable for a certain sum as costs without notice to him, so that he may have an opportunity of contesting the same.

IN this case a proceeding was drawn up under s. 145 of the Code of Criminal Procedure between Ram Prasad Pattak as the first party and the petitioner Prokash Chunder Sarkar as the second party in the Court of Mr. Cook, the Joint Magistrate of Gya. On the 30th December 1899, the proceedings terminated in favour of Ram Prasad Pattak, who was

* Criminal Revision, No. 519 of 1900, made against the order passed by L. S. S. O'Malley, Esq., District Magistrate of Gya, dated the 18th day of May 1900.