

30 C. 693.

[693] CRIMINAL REVISION.

1903
FEB. 19.GOPINATH PATNAIK v. NARAIN DAS BANERJEE.*
[19th February, 1903.]CRIMINAL
REVISION.*Transfer—Withdrawal of case by District Magistrate—Inquiry or trial—Code of Criminal Procedure (Act V of 1898) ss 253, 528.* 30 C. 693.

Where a case which was being tried by a Deputy Magistrate, who was about to frame charges against the accused persons, was withdrawn by the District Magistrate to his own file and dismissed under s. 253 of the Criminal Procedure Code, on the ground that the accused, who were policemen, were protected by their warrants :

Held, that the case ought to have been left with the Deputy Magistrate to be disposed of, and that it was for him to determine whether the offence charged was made out, or whether the police were protected by their warrants.

[Foll. 43 I. C. 407=1918 Pat. 73=19 Cr. L. J. 119.]

RULE granted to the petitioner, Gopinath Patnaik.

This was a Rule calling upon the District Magistrate of Cuttack to show cause why the order transferring the case to his file should not be set aside or such other order made on the ground that at that stage of the proceedings there was no sufficient reason for taking the case away from the Deputy Magistrate who was engaged in trying it, and on the ground that the law did not warrant the transfer of a case except for the purpose of inquiry or trial, and that that inquiry or trial had not been held by the District Magistrate.

In this case the petitioner lodged a complaint against the accused who were policemen for having trespassed into the house of the Raja of Puri. On the 24th October 1902, the District Magistrate made over the case for disposal to a Deputy Magistrate, who, having heard the petitioner, issued process upon the accused under several sections of the Penal Code. On the appearance of the accused in Court, the Deputy Magistrate commenced the trial, and after having examined the witnesses for the prosecution adjourned the case till the 14th November for the purpose [694] of drawing up charges against the accused and for the cross-examination of the witnesses. The accused applied to the District Magistrate for transfer of the case from the file of the Deputy Magistrate, alleging *inter alia* that no offence had been made out against them. The District Magistrate thereupon issued a Rule upon the petitioner to oppose the application, and after hearing both parties, on the 21st November, discharged the accused under s. 253 of the Criminal Procedure Code. Against that order the petitioner moved the High Court and obtained this Rule.

Mr. Jackson (Babu Hemendra Nath Sen with him) for the petitioner. The case was being tried by the Deputy Magistrate and was postponed by him for the purpose of framing charges against the accused. No reason has been shown for its transfer by the District Magistrate at that stage. The only section under which the District Magistrate could act, was section 528 of the Criminal Procedure Code, and under that section he could only transfer the case to his own file for the purpose of inquiry or trial. Here, however, he has transferred the case to his own file, and without holding any inquiry or trial he discharged the accused, who are policemen, because he thought they were protected by

* Criminal Revision No. 24 of 1903, against the order of F. N. Fischer, District Magistrate of Cuttack, dated November 21, 1902.

1903
FEB. 19.

CRIMINAL
REVISION.

30 C. 693.

their warrants. This, I submit, is illegal. The question whether or not the accused were protected by their warrants could only be decided by the Deputy Magistrate after a proper trial.

No one appeared to shew cause.

HARINGTON AND BRETT, JJ.—In this case a Rule was granted calling upon the District Magistrate to show cause why the order transferring the case to his file should not be set aside or such other order made as to this Court might seem fit on the ground that at that stage of the proceedings there was no sufficient reason for taking the case away from the Deputy Magistrate who was engaged in trying it, and on the ground that the law does not warrant the transfer of a case except for the purpose of inquiry or trial, and that that inquiry has not been held by the District Magistrate.

No cause has been shewn against this Rule, and we have perused the explanation that has been submitted by the District [695] Magistrate; but in our opinion the statements therein contained do not furnish any explanation which would justify the discharging of this Rule.

It appears that the case in question, which was a case against some policemen for entering the house of a Raja, was being tried before a Deputy Magistrate, and that when the Deputy Magistrate was about to frame charges against the accused persons, the District Magistrate withdrew the case to his file and dismissed it, because he thought the police were protected by their warrants.

In our opinion the case ought to have been left with the Deputy Magistrate to be disposed of, and it would have been for the Deputy Magistrate, who was trying the case, to determine whether the offence charged was made out, or whether, assuming the facts to be proved, the police were or were not protected by the warrants under which they purported to act. No grounds existed that we can see for taking the case away from the Deputy Magistrate.

The Rule is accordingly made absolute, and the order of the District Magistrate is set aside, and we direct that the case be restored to the file of the Deputy Magistrate to be disposed of according to law.

Let the record be returned to the Lower Court with as much despatch as possible.

Rule absolute.

30 C. 696.

[696] CIVIL RULE.

PROKASH CHANDRA SARKAR v. E. E. ADLAM.* [1st June, 1903.]

Receiver—Agreement to pay salary of Receiver—Position of Receiver—Civil Procedure Code Act (XIV of 1882) s. 503.

A promise to pay the salary of a Receiver without leave from the Court, even if unconditional, being in contravention of the law, is not binding on the promisor.

A Receiver being an officer of the Court, the Court only is to determine his fees or remuneration; and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority.

Manick Lall Seal v. Surrut Coomaree Dasse (1) referred to.

RULE granted to the defendants, Prokash Chandra Sarkar and another.

* Civil Rule No. 293 of 1903, against the order of R. C. Roy, Small Cause Court Judge of Gaya, dated Sept. 12, 1902.

(1) (1895) I. L. R. 22 Cal. 648.