

1904
JUNE 10, 14.

CRIMINAL
REVISION.

32 C. 80=8
C. W. N. 779
=1 Cr. L. J. 778.

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[80] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

RAGHUNANDAN PERSHAD AND OTHERS v. EMPEROR.*

[10th and 14th June, 1904.]

Custody, detention in—Security for keeping the peace—Arrest—Bail, right to—Power to re-arrest—Criminal Procedure Code (Act V of 1898) ss. 107, 114, 115, 496, 498.

Where proceedings have been instituted against a person under s. 107 of the Criminal Procedure Code, it is only in the special circumstances referred to in clauses (8) and (4) of that section that the law empowers a Magistrate to detain the person in custody until the completion of the inquiry. S. 496 of the Code is imperative, and under its provisions the Magistrate is bound to release such person on bail or recognizances.

Quare: whether the proviso to s. 114 of the Code empowers a Magistrate to re-arrest a person who has already appeared and been admitted to bail.

[Ref. 36 Mad. 474=22 M. L. J. 357=11 M. L. T. 253=1912 M. W. N. 169=15 I. C. 79=13 Cr. L. J. 447.]

APPLICATION for bail and transfer, by Raghunandan Pershad and two others.

The facts of the case are sufficiently stated in the judgment.

Babu Jogenra Chandra Ghose (Babu Charu Chandra Ghose with him), for the petitioners. The accused was released on bail by another Magistrate, and the Deputy Commissioner was not justified in cancelling the order. The accused were also present in Court, and under s. 114 of the Criminal Procedure Code they could not be sent to *hajat*. S. 114 contemplates cases in which the accused are not present in Court. This was not a case under s. 107, cl. 3 or 4, and the petitioners were entitled to bail as a matter of course under s. 496 of the Criminal Procedure Code.

Cur. adv. vult.

[81] PRATT and HANDLEY, JJ. The petitioners, two of whom are landed proprietors and the third is their manager, having been called upon by Mr. Foster, the Officiating Deputy Commissioner of Hazaribagh, to show cause why they should not furnish security to keep the peace were ordered to *hajat* without the option of giving bail pending the inquiry.

This Court upon motion by the petitioners, apprehending that the order of the Deputy Commissioner was *ultra vires*, directed under section 498 of the Criminal Procedure Code that the petitioners should be admitted to bail, and called on the Deputy Commissioner for an explanation of his action.

The admitted facts are briefly as follow:—

Mr. Christian holds Godi Masnodi under a lease from the Heswa Babus, including two of the petitioners. Some of the shareholders have disputed the validity of the lease, and in 1902 the Subordinate Judge of Gaya declared the zemindary portion of the leases void so far as 93½ annas is concerned. This decree has not been put into execution and an appeal is now pending in the High Court. On the 27th March 1904 the Sub-Inspector of Police sent up a formal report against the petitioners

* Application in Criminal Revision No. 580 of 1904, against an order of H. F. E. B. Foster, the Deputy Commissioner of Hazaribagh.

and others, saying that with no legal justification they were making preparations to forcibly eject Mr. Christian from their leasehold property. The Deputy Commissioner then called on both Mr. Christian and the opposite party to show cause why they should not give security to keep the peace under section 107 of the Code of Criminal Procedure. The 23rd April was fixed for hearing. There was some delay in the service of notices, and then warrants were issued on the opposite party. The three petitioners appeared before the Deputy Commissioner and were by him enlarged on their own recognizances. At the same time the Deputy Commissioner directed the police to enquire regarding the present state of affairs on the property, and what signs there were that the petitioners were taking forcible possession thereof. On the 13th May the District Superintendent of Police arrested the petitioners under section 55 of the Code of Criminal Procedure and sent them up for prosecution under section 110 (e) of the Code of Criminal [82] Procedure. They arrived at head-quarters on the evening of the 15th May and were next day enlarged on bail.

On the 17th May they were re-arrested and sent to *hajat* by a telegraphic order of the Deputy Commissioner (who was then in camp) communicated to the Deputy Magistrate in charge at head-quarters.

Mr. Foster states that he had decided to keep to the proceedings under section 107, of the Criminal Procedure Code rather than resort to section 110. He adds: "But as the District Superintendent of Police had impounded *hukumnamas* from the Heswa zemindars, empowering Raghunandan Pershad and Domi Singh to collect ground-rents in Mr. Christian's property, and as they were caught at the time of making collections, I decided that it would not be safe, with a view to the public peace, to release them; so I acted under section 114 of the Code of Criminal Procedure and sent them to *hajat* without bail. I telegraphed this order from camp on receipt of District Superintendent of Police's report. The District Superintendent of Police's very careful report (after local investigation) ends as follows:—"I must put on record that in my opinion if these three men are released on bail, prior to the trial of the case, and if they visit the Masnodi Godi and attempt to collect rents or do any other acts, there will be serious riot."

The Deputy Commissioner in his explanation confidently asserts that "the petitioners have been treated quite legally and in a judicial spirit," and justifies his action by reference to section 114 of the Criminal Procedure Code, which is in these terms:—"If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court, provided that whenever it appears to such Magistrate upon the report of a Police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate) that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest."

[83] The Deputy Commissioner says:—"The section in its latter part empowers a Magistrate to effect an arrest on emergency: in its former part it empowers a Magistrate to remand to *hajat*. I acted under these powers which were evidently intended for the prevention of disturbances of the public peace."

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Having regard to the terms of section 115 and to the fact that the petitioners had already appeared and been admitted to bail, it may be doubted whether the proviso to section 114 applies to such a case as this. But conceding that the Deputy Commissioner had power to re-arrest, it is very clear that he was not authorized to send the petitioners to *hajat*. He speaks of remanding them to *hajat* as if they had come out of jail, which was not the case. Manifestly the Deputy Commissioner has misapplied the section which cannot possibly have the meaning he now seeks to give it. Only in the special circumstances referred to in clauses (3) and (4) of section 107 and which are admittedly not applicable here, does the law empower a Magistrate to detain the person in custody until the completion of the inquiry. Section 496 of the Code is imperative, and under its provisions the Deputy Commissioner was bound to release the petitioners on bail or recognizances.

We make no order upon the application for transfer, as presumably the Deputy Commissioner does not intend to try the case himself.

32 C. 84 (=31 I. A. 160=9 C. W. N. 161=8 Sar. 708).

[84] PRIVY COUNCIL.

DEBI PERSHAD CHOWDHRY v. RADHA CHOWDHRAIN.*
 [On appeal from the High Court at Fort William in Bengal.]
 [1st, 5th and 26th July, 1904.]

Evidence—Pedigree, proof of—Evidence of witnesses who have heard names of ancestors recited—Evidence of relatives—Grounds for discrediting evidence—Mode of dealing with evidence—Witnesses credibility of.

Evidence of competent witnesses as to their having heard the names of the ancestors recited by members of the plaintiff's family on ceremonial and other occasions was held to be admissible evidence in support of the pedigree on which the plaintiff based his claim. Such evidence is not open to criticism merely on the ground that the witnesses are relatives.

The relationship of a class of witnesses should be considered only with the ordinary caution with which testimony is sifted where sympathy with one side is to be taken for granted, and should not be treated as making them interested or unreliable witnesses.

The fact that one of such persons besides being a relative was assisting the plaintiff in the case, and that the other witnesses were connected with this person by blood or service, is not necessarily a sufficient ground for discrediting their evidence.

The rejection of certain specific statements of a witness is not necessarily a ground for disbelieving the whole of his evidence; nor is the fact that a Judge has not acted on certain portions of his evidence which may be due to caution on the part of the Judge or inaccuracy on the part of the witness.

[Ref. 8 U. L. J. 447 (P. C.); 30 All. 510; 2 C. L. J. 524.]

APPEAL from the judgment and decree (February 18th, 1900) of the High Court at Calcutta which reversed a judgment and decree (July 12th, 1897) of the First Subordinate Judge of Bhagalpur.

The plaintiff appealed to His Majesty in Council.

The suit which gave rise to this appeal was brought by Debi Pershad Chowdhry as next reversioner to the Hira Bharokher estate on the death of Radha Chowdhrain for a declaration that certain alienations of the estate made by her, and particularly a deed of gift executed by her in

* Present: LORD DAVEY, LORD ROBERTSON and SIR ARTHUR WILSON.