

have been accidental. This system of trying cases by Magistrates, while moving about from to day, must be very harassing to all parties. It is not necessary to pass further orders in the case as the sentences have expired.

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THE QUEEN
v.
HARGABIND
DATTA
SIRKAR.

Before Mr. Justice Kemp and Mr. Justice Ainslie,

IN THE MATTER OF THE PETITION OF BHABADA DAS.*

Act XXVII of 1860—Certificate of Administration—Power of Judge to recall a Certificate of Administration.

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August 24.

A certificate of administration granted under Act XXVII of 1860 may be recalled, if it has been obtained by false and fraudulent statements.

Baboo *Mahini Mohan Roy* and *Abhai Charan Bose* for the appellants.

Baboo *Kali Mohan Das* for the respondents.

THE facts of the case sufficiently appear in the judgment of the Court, which was delivered by

KEMP, J.—This is an appeal against the order of the Judge of Hooghly, cancelling a certificate granted by him to the appellants, Durga Das Ghose and Prem Chand Ghose, under Act XXVII of 1860. It appears that these parties applied for a certificate to administer the estate of their brother Nabin Chandra, deceased. In that application they stated that Nabin Chandra had died without a wife and without issue—“*Srihim*,” is the word used. They succeeded in obtaining a certificate. Subsequently the widow of Nabin Chandra petitioned the Court, stating that a gross fraud had been committed by her brother-in-law; that she was the widow of Nabin Chandra, and as such, under the Hindu Law, entitled to a certificate in preference to Durga Das and Prem Chand Ghose. Upon this the Judge instituted an enquiry, and, after taking evidence on both sides, he has come to the deliberate conclusion that the certificate was obtained by the applicants fraudulently, and that their story now set up that the widow of Nabin Chandra was unchaste, and therefore not entitled to inherit or to obtain a certificate, was false. This being a regular appeal, the whole of the evidence has been read to us and commented upon. We concur with the Judge in holding that this evidence is not reliable. It is very clear even from this evidence that the offence, if any offence was committed was condoned by the husband; that he continued to live with his wife, and that after his death, his wife was acknowledged by her father and lived with her father. There is also evidence that she performed the *shradh* of her husband, and there is the evidence of the Doctor, an

*Miscellaneous Regular Appeal, No. 146 of 1871, from an order of the Judge of Hooghly dated the 21st February 1871.

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 IN THE
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 THE PETITION
 OF BHABADA
 DAS.

independent man, which falsifies the evidence for the other side, who depose that Nabin was not attended by any medical man. His evidence also shows that he attended the widow of Nabin Chandra in his medical capacity in her father's house. We are therefore clearly of opinion that, when the application was made, the appellants Durga Das and Prem Chand wilfully and fraudulently suppressed the fact of the existence of Nabin Chandra's widow. If they had intended to base their claim to a certificate in preference to the widow on the ground of unchastity, it was their duty to state that in their application. The way in which the application is worded appears to us clearly to show a fraudulent intention on their part. It was argued by their pleader that the Judge was not competent to withdraw his certificate or to recall it in any way. There are two cases, *Hameeda Bibee v. Noor Bibee* (1) and *Mussamat Bhikun v. Mussamat Elahi Khanum* (2), in which it has been held

(1) 9 W. R., 394.

(2) *Before Mr. Justice E. Jackson and Mr. Justice Glover.*

The 22nd February 1871.

MUSSAMAT BHIKUN *v.* MUSSAMAT ELAHI KHANUM.

Mr. R. E. Twidale for the appellant.

Mr. C. Gregory and Baboos Ashutosh Chatterjee and Debendra Narayan Bose for the respondent.

THE facts of the case are fully stated in the judgment of the Court, which was delivered by

JACKSON, J.—The Judge of Patna, on the 1st April 1865, ordered a certificate under Act XXVII of 1860, to be granted to Elahi Khanum, to collect the debts due to her father, Haidar Buksh, who, it is stated died in the year 1844. The debts were at that time declared not to be above Rs. 2,000 in value, and a certificate on a stamp sufficient to cover that sum under Act X of 1862 was taken out by Elahi Khanum. It subsequently turned out that a sum of Rs. 25,000 was due to Haidar Buksh's estate; and payment of that sum having been refused on the certificate already taken out, Elahi Khanum applied under the Act to the Judge to cancel the first certificate and to grant her a fresh certificate on a higher stamp. Previous to this application, one Mussamat Bhikun had applied for payment to her of the

money due to Haidar Buksh's estate. On being refused, she represented to the Judge, first, that she was the widow and sole her of Haidar Buksh and in possession of his property, and that Elahi Khanum was not a daughter of Haidar Buksh, but some person in no way connected with him who had fraudulently obtained a certificate to collect his debts on false representations. She, accordingly, asked that enquiry might be made into the facts, the certificate granted to Elahi Khanum might be re-called, and a certificate might be granted to her as the real heir of Haidar Buksh. This application was rejected by the Judge, and Mussamat Bhikun was referred to a civil suit. An appeal was preferred to this Court, but that appeal was dismissed. No grounds are stated in the order of dismissal. Before the decision of the appeal in that case by the High Court, Elahi Khanum had put in her second application to the Zilla Judge for a further certificate on a higher stamp so as to allow her to collect the sum of Rs. 25,000 due to Haidar Buksh's estate. Mussamat Bhikun intervened on that application, and asked by petition that orders on Elahi Khanum's application might be stayed until the decision of Mussamat Bhikun's appeal to the High Court. The Judge, it is stated, and apparently admitted by both parties, refused to entertain the petition of Mussamat Bhikun, and returned it to her Vakeel. An

*Miscellaneous Regular Appeal, No. 505 of 1868, from an order of the Judge of Patna, dated the 31st August 1868.