

1808
 THE QUEEN
 v.
 SHIFAAT ALI.

this petition gave information to the Magistrate of the commission of a murder, and may therefore be said to be an "instruction" on which the Magistrate would most probably have taken action.

On all the other points raised, I concur entirely in the opinion expressed by Mr. Justice Loch. The Sessions Judge's reasons for discharging the accused are manifestly insufficient.

I think, therefore, that the Judge below should be directed to try the case with reference to the words of the section above quoted.

Before Mr. Justice Loch and Mr. Justice Glover.

QUEEN v. TULSI SING AND OTHERS.*

Right of Private Defence.

1868

Dec. 21.

A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force.

In this case, the Deputy Magistrate of Patna convicted Tulsî Sing, Thakur Sing, and two others of rioting, under section 147 of the Penal Code, and fined them Rupees 50 each. It appeared that Tulsî Sing and Thakur Sing had each laid claim to the same piece of land, and when the Police arrived on the spot, they found Thakur Sing's men ploughing the land, and Tulsî Sing's party preparing to expel them. Thakur Sing's party were also ready to resist by force. The Deputy Magistrate punished both parties equally. At the same time, however, in a separate proceeding, under Chapter 22 of the Criminal Procedure Code, he found that Thakur Sing was in possession of the disputed land, Thakur Sing, upon this, applied to have the conviction passed upon him in the riot case quashed, contending that he was legally justified in defending his property. The Judge referred the case to the High Court, with the statement of the above facts, observing :

"It appears to me, that under section 104 of the Penal Code, they were fully justified in all that was actually done. I would, therefore, quash the convictions, but as the order is one from which no appeal lies to this Court, I am obliged to refer it to the High Court."

* Reference by the Sessions Judge of Patna.

LOCH, J.—We concur in the opinion expressed by the Judge, and direct that the fine imposed upon Thakur Sing and his party be remitted.

1868

QUEEN

v.

TULSI SING.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

IN THE MATTER OF BANKA BIHARI GHOSE.*

Tolls—Arrears of Rent—Illegal Arrest.

1869

Jan'y. 9.

A, the lessee of a toll, was in arrear to Government in respect of the rent. The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (A) for the offence of not paying the sum of rupees 262 for arrears of rent, and A was summoned to appear before the Magistrate to answer the charge. A did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day, the Magistrate passed the following order: "Whereas the debtor, defendant, has not appeared in person, the summons has been disobeyed: therefore, it is ordered that a warrant be issued for the arrest of the defendant." Proceedings were afterwards taken upon the warrant. *Held*, that all the proceedings taken by the Magistrate were irregular, and must be set aside.

On the 5th December 1868, Banka Bihari Ghose petitioned the High Court, alleging as follows:—

"That on the 30th March 1868, your petitioner got an ijara of the Bakrahat toll bar from the Magistrate of Zilla 24-Pergunnas.

"That, during the last heavy showers of rain, a greater portion of the road being broken, your petitioner applied to the Magistrate of 24-Pergunnas, on the 25th June 1868, for repairing the road and giving a remission of the rent payable by your petitioner.

"That, subsequently, a charge for not paying 262 rupees on account of arrears of rent having been instituted against your petitioner, on the 8th July 1868, a notice was issued, directing your petitioner to appear before the Magistrate of 24-Pergunnas, on the 15th idem.

"That, on the said 15th July, your petitioner presented an application to the Magistrate, requesting him, on the grounds stated therein, to postpone for a while the demand for arrears of rent

* Criminal revisional jurisdiction.