

They are by no means prepared to say that *Hurruck's* case (1) was wrongly decided ; though the position of the *gomashta* there is not stated so fully as they would think desirable if the case were before them for decision. On the other hand they have no hesitation in agreeing with the High Court that Punna did not occupy such a position as to make the respondent liable to be declared insolvent on the ground of his personal conduct. The respondent appears to have been an active and responsible owner. His residence and head *koti* at Azingunge were well known. He occasionally came to Calcutta, and to the *koti*. When difficulties arose, Punna applied to him to meet them ; and when payment was suspended, Punna openly, by himself or by his servants, told the creditors that his principal was coming, and that they must wait for his action. Under such circumstances, even if Punna himself had committed the acts alleged by the appellant, it would, in their Lordships' opinion, be wrong to hold that his acts were those of the respondent.

The result is that the appeal ought to be dismissed. And their Lordships will humbly advise Her Majesty accordingly. The appellant must pay the costs of this appeal.

Appeal dismissed.

Solicitors for the appellant : Messrs. *Vallance & Vallance*.

Solicitors for the respondent : Messrs. *T. L. Wilson & Co.*

C. B.

CRIMINAL REVISION.

Before Mr. Justice Macpherson and Mr. Justice Bannerjee.

MAHOMED ERSHAD ALI KHAN CHOUDHRY (PETITIONER) v. SARODA
PROSAD SHAHA AND ANOTHER (OPPOSITE PARTY).*

1895
July 16.

Criminal Procedure Code (Act X of 1892), section 148, clause 3—Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs.

When an order to pay costs under section 148 of the Criminal Procedure Code, Criminal Revision No. 414 of 1895, against the order of A. E. Staley, Esq., Sessions Judge of Rajshahye, dated the 15th of June 1895.

(1) I. L. R., 5 Calc., 605.

1895
KASTUR
CHAND
RAJ
BAHADUR
v.
DHANPAT
SINGH
BAHADUR.

1895

MAHOMED
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SARODA
PROSAD
SHAH.

Code (Act X of 1882) has been made by the Magistrate who decided the case, another Magistrate has jurisdiction to assess the amount of costs.

Giridhar Chatterjee v. Ebadullah Naskar (1) followed. *Bhojal Sonar v. Nirban Singh* (2) referred to.

THE petitioner was the first party in a case under Chapter XII of the Criminal Procedure Code, and was directed by the Joint Magistrate of Rajshahye to pay the costs of the second party under section 148, clause 3. The proceedings were brought up on revision to the High Court, and in the meantime the Joint Magistrate of Rajshahye vacated his office. The record having been returned by the High Court, the District Magistrate, Mr. Price, had the costs assessed at Rs. 965, but, on the application of the petitioner, the amount was reduced to Rs. 864 by Mr. Walsh, successor to Mr. Price. The petitioner applied to the Sessions Judge to have the order of assessment by Mr. Price set aside, on the ground that it was made without jurisdiction, but the application was rejected. The petitioner then moved the High Court and obtained a rule to show cause why the order of assessment should not be set aside.

Mr. *Khundkar* and Moulvie *Mahomed Isfak* appeared on behalf of the petitioners.

The judgment of the High Court (MACPHERSON and BANNERJEE, JJ.) was as follows :—

We reject this application. The principal ground urged is that the Magistrate, who made the order for the payment of costs under section 148 of the Code of Criminal Procedure, did not at the time assess the amount of costs, and that the District Magistrate, on the transfer of the first mentioned officer, had no jurisdiction to make the assessment. In support of this, the case of *Bhojal Sonar v. Nirban Singh* (2) has been cited. That case no doubt is an authority for the contention, but it has been reconsidered in the case of *Giridhar Chatterjee v. Ebadullah Naskar* (1), and one of the learned Judges who disposed of the former case was one of the learned Judges who decided the latter case. Although he distinguished the first mentioned case, the effect of the decision was

(1) I. L. R., 22 Calc., 384.

(2) I. L. R., 21 Calc., 609.

that, when there was an order to pay costs under section 148 by the Magistrate deciding the case, another Magistrate had jurisdiction to assess the amount of the costs. We are not, therefore, prepared to follow the case of *Bhojal Sonar v. Nirban Singh* (1), and we reject the application.

S. C. B.

Rule discharged.

1895
 MAHOMED
 ERSHAD ALI
 KHAN
 CHOUDHRY
 v.
 SARODA
 PROSAD
 SHAHA.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

CHHOTAY LAL AND ANOTHER (JUDGMENT-DEBTORS) v. PURAN MULL
 AND ANOTHER (DEGREE-HOLDERS.) *

1895
 July 26.

Limitation—Jurisdiction of the Court to which a decree is sent for execution—Code of Civil Procedure, 1882, sections 323, 328, 339.

The Court to which a decree is sent for execution under section 223 of the Civil Procedure Code has jurisdiction to decide whether or not the execution was barred by limitation.

Leake v. Daniel (2), *Nursing Doyal v. Hurryhur Saha* (3), *Jassoda Kooser v. Land Mortgage Bank of India* (4), *Srihary Mundul v. Murari Chowdhry* (5) referred to.

Soomut Dass v. Bhoobun Lall (6); *Lootfoollah v. Keerut Chand* (7) and *Ramu Rai v. Dayal Singh* (8) dissented from.

THIS case relates to a decree which was transferred for execution by the Court of the Munsif of Patna, to the Court of the Munsif of Behar. The facts, so far as they are necessary for this report, fully appear in the judgment of the High Court. The Munsif of Behar (the Court of first instance) in his judgment said: "The decree is dated 21st July 1886 and was passed by the first Court of the Munsif, Patna, and the first petition for execution

* Appeal from Order No. 437 of 1894, against the order of J. Tweedie, Esq., District Judge of Patna, dated the 14th of September 1894, reversing the order of Babu Jogendra Nath Mukerjee, Munsif of Behar, dated the 31st of March 1894.

(1) I. L. R., 21 Calc., 609.

(2) B. L. R., Sup. Vol., 970; 10 W. R., F. B. 10.

(3) I. L. R., 5 Calc., 897.

(4) I. L. R., 8 Calc., 916.

(5) I. L. R., 13 Calc., 257.

(6) 21 W. R., 292.

(7) 21 W. R., 330; 13 B. L. R., Ap., 30.

(8) I. L. R., 16. All., 390.