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was, on the evidence, uttered after the petitioner had left the room, and was addressed to the crowd outside.

We are perfectly well aware that it is extremely annoying to be compelled, or even persistently entreated, to reconsider a matter which has been already disposed of, to the best of the ability of the person who has disposed of it, but we must say that this is the first time we ever heard it suggested, that it is a crime or an insult to present a petition of review, even if it is pressed in such a way as to worry and distress the person to whom it is presented, and if the useless consideration of it prevents him from attending to his other business.

We are of opinion that the rule must be made absolute. The conviction will be set aside and the fine, if paid, must be refunded.

Conviction set aside.

H. T. H.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

CHANDI PERSHAD (PETITIONER) *v.* ABDUR RAHMAN, SUB-OVERSEER, MONGHYR MUNICIPALITY (OPPOSITE PARTY.)*

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August 13.

Bengal Municipal Act (Bengal Act III of 1884), section 133—False statement contained in application for license—Municipal Commissioners, Power of, to institute prosecution under Penal Code—Penal Code, sections 182, 199, 417 and 511—Revisional Power of High Court—Power of High Court to interfere in pending proceedings.

On the 5th May 1894 *C.* applied in writing under the provisions of section 133 of Bengal Act III of 1884, to a municipality for a license to be granted to him in respect of two carriages and six ponies, and filled up and signed the usual statement required by the section. The sum payable in respect of the license was received, and the license asked for by *C.* was granted to him, and at the same time the statement was sent to an overseer of the municipality for verification. On the 7th May the overseer reported that *C.* had in his possession eight ponies and one horse. On the 8th May the chairman of the municipality passed an order directing *C.* to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May *C.* presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license

*Criminal Revision No. 398 of 1894 against the order passed by H. A. D. Phillips, Esq., District Magistrate of Monghyr, dated 18th May 1894.

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for them, as they were old and diseased and unfit for work. On the 13th May the chairman passed an order on this application that he had no power to interfere, as the prosecution of *C.* had already been ordered. Meanwhile on the 9th May a paper was sent to the Magistrate headed "List of municipal cases under Act III of 1884" in which *C.* appeared as charged with an offence under section 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to *C.* returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of section 182 and 417, read with 511, of the Penal Code, as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under sections 199, 182, and 417-511 of the Penal Code were framed. Thereafter the hearing proceeded till the 16th July, when on an application to the High Court the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of the rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction.

Held, that the High Court has power to interfere at any stage of a case, and that when it is brought to its notice that a person has been subjected, as in this case, for over two months to the harassment of an illegal prosecution, it is its bounden duty to interfere.

Held, further, that it was quite clear that the municipality had no power to institute the proceedings, and that having regard to the provisions of section 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power of his own motion to institute them; but that whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which *C.* was charged, and that the whole proceedings must be quashed.

The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under section 133, and no words in the Act constituting the making a false return a penal offence; and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself.

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THIS was a rule calling on the opposite party to show cause why certain proceedings pending before the Deputy Magistrate of Monghyr, in which Chandi Pershad, the petitioner, was being prosecuted on charges under sections 199, 182 and 417 read with 511 of the Penal Code, should not be set aside on the ground that they had been improperly initiated, and that upon the admitted facts the charges framed under these sections against the petitioner were unsustainable in law. The rule called on the opposite party also to show cause why the case should not be transferred to some other district.

The facts of the case are fully stated in the judgment of the High Court.

Mr. *Jackson*, Babu *Dwarka Nath Chuckerbutty* and Babu *Dasarath Sanyal* appeared in support of the rule.

Mr. *Pugh* showed cause, and contended that the Court should not interfere under its revisional powers to quash the proceedings pending before the Deputy Magistrate at the stage at which they were and before the Deputy Magistrate had concluded them and come to a finding.

The judgment of the High Court (PETHERAM, C.J., and BEVERLEY, J.), was as follows:—

This is a rule obtained on behalf of one Chandi Pershad to show cause why certain proceedings taken against him by the Deputy Magistrate of Monghyr should not be quashed, or why the case should not be transferred to some other district. The facts are these: On 5th May last Chandi Pershad applied to the Municipal Commissioners of Monghyr for a license for two carriages and six ponies, making the usual statement as required by section 133 of the Bengal Municipal Act III of 1884 of the Bengal Legislative Council. A license for two carriages and six ponies was granted, but at the same time the statement was sent for verification to the overseer, who, on the 7th May, reported that Chandi Pershad had eight ponies and one horse. Thereupon the Chairman of the Municipal Commissioners on the 8th May made an order to "prosecute Chandi Pershad for making false statement in the schedule regarding the number of animals." On the following day Chandi Pershad presented a petition offering to pay the tax on the other three animals, and pleading that he did not think he was liable to

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take out a license for them, as they were old and diseased and unfit for work. This petition was laid before the Chairman on the 12th, and on the 13th the Chairman wrote: "Prosecution has already been sent by the Vice-Chairman. Nothing remains in my power to do. I can only write to the Magistrate that if this plea be correct, to deal leniently with him." Meanwhile on the 9th May a paper had been sent to the Magistrate on a printed form and headed 'List of Municipal cases under Act III of 1884 and Bye-laws,' in which Chandi Pershad appeared as charged with an offence under section 199 of the Penal Code, for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." This paper bears the signature of Abdur Rahman, sub-overseer, Abdul Huq, overseer, and an endorsement "forwarded to the Magistrate for prosecution," which purports to be signed by the Vice-Chairman.

On May 12th an order was made by the Deputy Magistrate, Abdus Salam: "Summon accused under section 199, Penal Code, and witnesses. Fixed for 23rd instant."

On the 18th May the District Magistrate, Mr. H. A. D. Phillips, recorded the following order on the order sheet:—

"I see Moulvi Abdus Salam was in charge and took petitions on the day this was presented. However, under my general order, he should have brought to my notice an important case like this. The municipality cannot institute prosecution, as offence is under Penal Code and not under Municipal Act or bye-laws. However, Deputy Magistrate had power to institute. The case may remain on his file. Section 182 and sections 417-511, Penal Code, should also be considered. Section 182 has recently been amended by the Legislature. As the prosecution is of some public importance, I think prosecution should be represented by a pleader. Babu Gunga Churn Mukherji is instructed to appear. I would have authorised the Government pleader, but that he is also Chairman of the Municipality."

Accordingly, on the 19th, a summons was issued for the appearance of Chandi Pershad on the 23rd, when the witnesses for the prosecution were examined. On the 24th the Deputy Magistrate inspected the ponies and horses and found three of them

"diseased and rather unfit for use." On that date he directed that the accused should offer defence under sections 199, 182, and 417-511, Penal Code, and on the 19th June formal charges were drawn up under those sections, and the proceedings dragged on, there being no less than nine postponements, until on the 16th July last they were stayed by the order of this Court.

The rule was obtained on two grounds—(1) that the proceedings were improperly initiated, and (2) that upon the admitted facts the charges framed against the accused are unsustainable in law.

The District Magistrate and the Deputy Magistrate have both submitted explanations to this Court, and we have had the advantage of hearing Mr. Pugh on behalf of the Municipal Commissioners.

On the first point it seems quite clear, as admitted by the District Magistrate, that the Municipal Commissioners had no power to institute the present prosecution. Their powers in this respect are defined by section 352 of the Municipal Act, and are restricted to the prosecution for offences created by that Act.

Nor does it seem to us that the Deputy Magistrate had any authority to initiate the proceedings. There was no private complaint before him, and it does not appear that he is empowered to take cognisance of offences of his own motion in the manner prescribed by clause (*c*) of section 191 of the Code. The District Magistrate appears to admit this, but argues that his taking cognizance of the matter himself under section 191, clause (*c*), on the 18th May, was sufficient authority for the continuation of the proceedings.

However that may be, we are clearly of opinion that the facts, as alleged—and we may say at once that there is no dispute about them—cannot in law constitute the offences with which the petitioner before us has been charged.

The broad question which we have to consider is whether a person who, under the provisions of the Municipal Act, is liable to pay the tax for nine horses, but has taken out a license for six only, has committed the offence (*a*) of giving false information as defined in section 182 of the Penal Code, or (*b*) of making a false statement in some declaration which is by law receivable as evidence,

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as that offence is defined in section 199, or (*c*) of attempting to commit the offence of cheating, as defined in section 415. The answer to this question must depend on the obligation which a person who applies for a license to keep horses or other taxable things is under, to state accurately the number of horses, &c., in his possession, the object to attain which he makes the statement, and the legal character and value of the statement when it has been made. This involves the consideration of the provisions of the Bengal Municipal Act, 1884, under which the statement was made. By section 86 the power is given to the Commissioners to order that this particular tax be levied within the limits of the Municipality, and sections 133 and 135 prescribe the mode in which the tax shall be collected, while section 137 imposes the penalty to which a person shall be subject, who keeps a horse or other taxable thing without obtaining a license. By section 133 the owner of the taxable thing must, within the first month of each half year, forward to the Commissioners a statement in writing, signed by him, of the horses, *etc.*, liable to the tax for which he is bound to take out a license, together with the amount which is payable by him, for the current half year, for the horses, *etc.*, specified in the statement. On receiving this statement and the money the Commissioners must under section 135 give the applicant the license which he has asked and paid for ; they have no power to refuse it in any case, and if at the time it was applied for the person to whom the application was made knew that the person who was applying for a license for one horse had twenty in his stables, he could not under any provision in this Act refuse the license for the one horse for which the tax was paid.

We are now in a position to decide whether there is any ground for charging Chandi Pershad with an offence under any of the sections of the Penal Code, which have been mentioned in the charge which has been framed against him. Mr. Phillips is in error in supposing that section 182 has been recently amended. That section is in the same form at this moment as it was when it was originally enacted, but for the purposes of this case we will assume that it has been amended in the way Mr. Phillips imagines, and that as it now stands in the Code, the latter part must be read

independently of the earlier portion, so that a person who gives false information to a public servant intending to cause him to do, or omit, something which he ought not to do, or omit, if the truth were known to him, is guilty of an offence under the section. On this assumption it is impossible to bring the present case within the section, because the action of the public servant must of necessity be the same, whether he believed the statement to be true or knew it to be false. In either case the only thing which he is authorised by the law to do is to take the money and give the license which is applied for in exchange for it, and this is in fact what was done here. We suppose the suggestion is that the public servant to whom the application is made may be induced, by the statement contained in it, to omit to make an inspection of the applicant's premises under the powers of section 140. But the Commissioners cannot make an inspection under that section, unless they have reason to believe that something will be found for which the owner is liable to the tax, and for which a license has not been taken out, and it is obvious that the form of this application could not have the effect of inducing them to make or refrain from making an inspection which they could only make when they were induced to do so by some cause entirely independent of such an application, as that alone could not reasonably raise such a suspicion or dispel it if it were raised by some other cause.

We now come to section 199 of the Penal Code. That section subjects any person who makes a false declaration, which declaration may be used as evidence of the matters stated in it, to the penalties for perjury, that is to say, renders him liable to rigorous imprisonment for three years. It needs a very slight acquaintance with the Indian Evidence Act, and with the principles of law which are embodied in it, to satisfy any one that the statement made by the accused for the purpose of taking out these licenses is no evidence at all against anyone but himself, and could only be evidence against himself as proving an admission by him, that at the time he made it he had in his possession six horses, and no more, for which he was liable to pay the tax. It is obvious that it is impossible to strain the words of the section so as to bring such a case within them, and we are clearly of opinion that on the

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facts alleged here no charge can be framed against Chandi Pershad under section 199.

The only other section which is mentioned in the charge is section 417 read with section 511, and the argument by which it is sought to bring the case under that section is, we think, even more impossible than that which relates to the other sections. It is well recognised law that a person cannot be convicted of attempting to commit an offence unless the offence would have been committed had the attempt proved successful [*The Empress* v. *Riasat Ali* (1)], and it is extremely difficult to understand what it is suggested that Chandi Pershad had tried to do which he had not succeeded in doing. He applied for a license for six horses and obtained it, but of course it cannot be said that he cheated any one by doing that. If the suggestion is the same as that which we suppose is made with reference to section 182, it must fail for the same reason, as the applicant cannot have tried to dishonestly induce the Commissioners to omit to inspect his premises, merely by presenting his application in this form, when the fact is that they had no power to inspect them at all, unless there was some other reason which justified them in doing so.

We feel bound to say that Mr. Pugh did not attempt to contend that the charges framed against Chandi Pershad could be sustained. He rather confined himself to urging the impropriety of our interference at a time when the case is still pending before the Magistrate. There can be no doubt, however, that we have the power to interfere at any stage of the case, and when it is brought to our notice that a person has been subjected for over two months to the harassment of an illegal prosecution, we think it is our bounden duty to interfere.

The fact is that the Municipal Act itself provides the penalty for the omission to take out a license and empowers the Municipal Commissioners to take the necessary steps for enforcing that penalty. In the present case the Municipal Commissioners did not think fit to avail themselves of the remedy given them by the Legislature, but instituted a prosecution which they have no power to institute on charges that cannot be sustained, and

(1) I. L. R., 7 Calc., 352.

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the Magistrate of the District has lent the sanction of his authority to support this illegal action. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners; and we can find no indication in the Act of any intention to make a delinquent also liable to punishment under the Penal Code. No penalty is attached to the omission to make a return under section 133, and there are no words in the Act constituting the making a false return a penal offence. Whenever there is an intention to apply the provisions of the criminal law to acts authorized or required by particular statutes, that intention is always made clear by express words to that effect. Instances of this may be found in the Cess Act (Bengal Act IX of 1880), section 94; in the Estates Partition Act (Bengal Act VIII of 1876), section 148; in the Income Tax Act II of 1887, sections 35 and 37; in the Land Acquisition Act I of 1894, section 10, and in many other Acts. In the Bengal Municipal Act there are no such words as are necessary to make the provisions of the Penal Code applicable, and we have no power to import them. The Municipal Commissioners have their remedy in a case like this under the Act itself. The remedy may not in their opinion be sufficient, but they are not entitled to go beyond it.

For these reasons we make the rule absolute and set aside the entire proceedings taken against the petitioner in this case.

Rule made absolute and proceedings quashed.

H. T. H.

CRIMINAL REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

PARYAG RAI (COMPLAINANT) *v.* ARJU MIAN AND OTHERS (ACCUSED.)* 1894 *August* 18.

Cattle Trespass Act (I of 1871), section 22—Illegal Seizure of Cattle—Theft—Compensation—Fine—Imprisonment in default of payment of Compensation—Criminal Procedure Code (Act X of 1882), section 380—Penal Code, section 378.

* Criminal Reference No. 231 of 1894, made by H. A. D. Phillips, Esq., District Magistrate of Monghyr, dated the 10th of August 1894, against the order passed by H. Wheeler, Esq., Sub-Divisional Magistrate of Begusarai, dated 21st July 1894.