CRIMINAL REVISION.

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

CHANDI PERSHAD (PETITIONER) *v.* EVANS (OPPOSITE PARTY.)*

1894 *August* 13.

Criminal trespass—House trespass—Possession of property the subject of Criminal Trespass—Penal Code, sections 441, 442 and 448.

C., a ratepayer in a municipality, who had filed a petition against an assessment which in his absence had been dismissed, entered a room where a Committee of the Municipal Commissioners were seated hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman of the Committee ordered him to leave the room, and on his refusal to do so he was turned out. Outside the room in the verandah he addressed the crowd complaining that no justice was to be obtained from the Committee. *C.* was prosecuted on these facts at the instance of the Chairman of the Committee and convicted of house trespass under section 448 of the Penal Code:

Held, that the conviction was wrong, and that no offence had been committed. The prosecution was bound to prove, in order to support a conviction of a charge under section 441 or 442, that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under section 345 of the Code of Criminal Procedure, and the complainant had failed to prove that the room was in his possession, and had in fact shown that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession.

Held, further, that even if the complainant could be held to be in possession of the room, there was no evidence of any intent to commit an offence or to intimidate, insult or annoy any person, it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision, the verbal insult on which the conviction was based having been uttered after *C.* had left the room.

THE petitioner in this case was charged, at the instance of the Rev. Mr. Evans, one of the Municipal Commissioners of Monghyr, with criminal trespass by entering a room in which he and an-

* Criminal Revision No. 405 of 1894, against the order passed by F. W. Badcock, Esq., Sessions Judge of Bhagulpore, dated the 14th of June 1894, confirming the order passed by J. Jarbo, Esq., Deputy Magistrate of Monghyr, dated the 4th of May 1894.

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other Commissioner were engaged, sitting as a Committee dealing with appeals in assessment cases. The reason assigned by the petitioner for entering the room in question was that, having been assessed by the Commissioners at a rate which he considered excessive, he filed a petition for revision of the assessment; that his petition had been summarily rejected during his absence; and that he had put in another petition for reconsideration of that order, and had gone to the office for the purpose of ascertaining what order had been passed thereon.

The case was heard before a Deputy Magistrate of Monghyr, who convicted the petitioner of an offence under section 488 of the Penal Code. The facts of the case, and the grounds upon which the conviction was based, are fully set out in the judgment of the Deputy Magistrate which was as follows :—

"The story told by the complainant, the Rev. Mr. Evans, is that he is a Municipal Commissioner. That on the 18th March 1894 he was sitting in Committee with Dr. Vaughan, Mr. W. Thomas and others. 'The present accused, Babu Chandi Pershad, entered the Committee room, which he had no right to do, in order to present a petition of revision of assessment. We told him that we had considered his petition, and we would uphold the assessment, and we refused to reconsider our order. Chandi at first refused to go and had to be turned out. Since then Chandi has attended the Municipal Office, not taking "no" for an answer, but still persistent in asking us to reconsider the assessments.' On the 6th April matters culminated. Mr. Evans and Mr. Thomas were in Committee in a room in the Municipal Office—a room where none of the outside public are allowed to enter while such Committee is sitting unless specially called by name. Chandi forced his way into this room, uncalled for. Mr. Evans ordered him to leave it, but not listening Chandi walks up to a bundle of petitions and began to pull them about and inspect them. These papers were official records which Chandi had no right to see; he was again asked to desist, and to leave the room, by Mr. Evans, then by Mr. Thomas, and as he set at naught mere verbal orders, Mr. Evans had to leave his chair to have accused turned out. Seeing this Chandi then left the room, but he stood in the doorway and made insulting remarks, gesticulating and addressing the crowd of the public in the verandah, and completely stopping work. Even his own witness admits that he said the Municipal Commissioners were '*Be insaf.*' That they would not call and hear the petitioners who were present, and struck off the petition of those who are not present. This, to say the least of it, is insulting. The defence admit that it was forbidden to enter that room (see defence evidence), unless specially called. It is proved that Chandi was not so called. So that the whole case

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for the prosecution is proved. I would not take it upon me to doubt the evidence of a man like Mr. Evans who for years has been known in this district for his simple straightforward dealing. Indeed, the same may be said of Mr. Thomas too, and the insult must have been of a very decided nature before it could rouse such a mild man as the latter. The accused pleads that he went into the room to learn what had become of his petition. The accused himself contradicts this, for he says that in the presence of Dr. Vaughan he had been told that his petition had been rejected. That was on the 18th March, and yet we find accused worrying the Committee as late as the 6th April, when he knew very well what orders had been passed. Mr. Evans tells me in Court that there are sometimes as many as 600 revision petitions to hear in a day. If every one of these were to do what Chandi did, *i.e.*, to put in a petition first for revision, then when orders were passed on that to put in a second for reconsideration of orders passed on revision, there would be no end to the work. Babu Chandi Pershad is a man with some influence. The natives are like sheep and are only too willing to follow the lead of any noisy malcontent and so obstruct work, and it is quite certain that when private gentlemen give up their time and trouble for the public weal for nothing, the least that constituted authority can do is to see that they are protected from insult and obstruction. It has been urged in defence that no criminal trespass can lie against accused in the case as complainants are not possessors of the room in question. It is but common sense to assert that a room in the rightful occupancy of any person is in their possession for the time being. Chandi Babu quite clearly meant to cause annoyance and to be a nuisance until he gained his point, and finding that he could not gain it he became insulting. It has been a moot point as to what section his offence comes under. The Government pleader does not think the Municipal Committee can be called a Court in this case, and therefore only two sections remain, sections 504 and 448, Penal Code, and I think the latter more applicable. This is a case that is causing a great deal of attention, and much depends upon it as to whether the Commissioners will be enabled to carry on the work in peace in future, or not, and, this being so, and as Chandi accused is a man who ought to have known so much better, I must pass a severe sentence on him, therefore, under section 448, Penal Code, I order that he pay a fine of Rs. 200, in default a fortnight's rigorous imprisonment. The accused is a rich man, and it would be useless to give him less, as he would not feel it at all."

The petitioner appealed against this conviction to the Sessions Judge, but his appeal was dismissed. The following was the judgment of the appeal Court:—

"The appellant has been convicted of criminal trespass by going into the room occupied by Municipal Commissioners of Jamalpur while hearing appeals against assessment.

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"The appellant's pleader has argued that the appellant being a rate-payer has a right to enter any room in the Municipal Office at any time. This is a preposterous claim. The Municipal Commissioners have a perfect right to make any arrangements they think proper with regard to the room in the office for the purpose of carrying on the work of the Municipality, and it is obvious that if any rate-payer could go into any room just when he liked no office work could go on.

"The next point is that no one was in possession of the room, but the Municipal Commissioners clearly had possession.

"The next point is that the accused only went to find out what order had been passed on a petition of his, and that he had no intention to annoy any one. The evidence proves clearly that he went into the room, interrupted the business that was going on, and refused to leave when ordered to, and on being ejected addressed the crowd from the verandah, saying he had not had justice.

"As regards the sentence I see that the appellant behaved in a somewhat similar way on a previous occasion, March 18th, and I therefore decline to reduce the fine."

The petitioner then applied to the High Court, under the revisional section, to have the record sent for and the conviction set aside, and a rule was granted on the 17th July by a Bench consisting of Beverley and Banerjee, JJ.

The grounds upon which the rule was applied for, and which are dealt with by the District Magistrate as appearing in the judgment of the High Court, were as follows :—

(1) That the facts found by the learned Deputy Magistrate did not constitute an offence under section 448, Penal Code.

(2) That the Municipal Boards Assessment Revision Office being a public office the entry of the petitioner into it was not unlawful, and did not in law amount to a criminal trespass.

(3) That the petitioner being a rate-payer of the Municipality, having had an order before the assessment revision Committee, his entry into the said office under the circumstances stated above did not constitute an offence under section 448.

(4) That there was no rule in law by which a rate-payer was prohibited from entering into the Municipal Committee room, nor was there any evidence in the case that the rate-payers were excluded from the Committee room of the Monghyr Municipality, and the finding of the Deputy Magistrate that a rate-payer had no right to enter into the said room for lawful purposes was bad in law.

(5) That there was no finding, nor was there evidence to support any, that the petitioner was aware that as a rate-payer he was not entitled to enter into the said room for a lawful purpose.

(6) That the said office could not be considered as in possession of any person within the meaning of section 441, Penal Code.

(7) That in any event, upon the facts and under the circumstances of the case, the sentence was excessive and too severe.

Babu *Dwarka Nath Chuckerbutty* and Babu *Dasarath Sanyal* for the petitioner in support of the rule.

Mr. *Pugh*, for the opposite party, showed cause.

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

On the 7th of April 1894, the Chairman of the Monghyr Municipality forwarded to the Magistrate of the District a report by Mr. Evans, a Municipal Commissioner, complaining of the conduct of Chandi Pershad, with a request that he might be prosecuted, if in the opinion of the Magistrate any criminal offence had been committed by him. On the 12th the Magistrate made this order : "The applicability of section 228, Penal Code, is doubtful. But an offence appears to have been committed under section 448, Penal Code. I direct prosecution under that section. To the Joint-Magistrate." The trial was commenced on the 28th, before Mr. Jarbo, a Deputy Magistrate. On that day Mr. Evans himself was examined as complainant, and as for the purpose of what we have to say we accept his statement as absolutely accurate, and as his case cannot, of course, be put higher than he puts it himself, we think it best that he should tell his own story, which is as follows :—

"On the 6th April, I think it was, I and Mr. Thomas and a Native gentleman, whose name has slipped my memory, were sitting as a Revision Committee of the Municipal Board hearing, and deciding petitions. This was in a room adjoining the public office room. The present accused, Babu Chandi Pershad, came into the room uncalled. No one was allowed into the room unless sent for. I had warned this man on the very first day of our sitting. I believe it was the 18th March, Dr. Vaughan being present. Chandi had entered this room of ours and interrupted us.

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He did so ostensibly to present a petition of revision of assessment. We told him then that having reconsidered the matter we had passed orders upholding the assessment, and we would not alter them. He refused to go and we had to turn him out. Ever since then he has been coming worrying us to reconsider our order and prevented our work going on. On the 6th April he entered our room. He walked round to where the petitions were being sorted on the floor and began pulling them about. As Chairman of the Committee, I ordered him to leave the room. He took no notice of my order and then Mr. Thomas spoke to him. He took no notice of that order either, and I rose and had to turn him out. He then said: '*Yihan kooch insaf nahin hai, sub be-insaf.*' I went back to my chair and resumed work. In the course of ten minutes there was a hubbub in the east verandah. I went out and saw the present accused gesticulating to the crowd and stating that no justice could be obtained. This was in the verandah, and I told him to leave it. He said he had a right to stay there. I called for a constable, then every one left. I called for a constable as accused's manner was insulting to us and exciting to the crowd and I feared a breach of the peace."

Some witnesses were examined on the same day, and a charge was framed, after which the trial was adjourned to the 4th of May for the accused to summon his witnesses. On that day two witnesses were examined for the defence, and the Deputy Magistrate gave his judgment, by which he convicted the accused of an offence under section 448, and sentenced him to pay a fine of Rs. 200, or in default to 14 days' rigorous imprisonment. This judgment was afterwards upheld by the Sessions Judge on appeal, and this rule was obtained from a Division Bench of this Court on the 17th of July to revise the whole proceeding.

In answer to the rule the District Magistrate, Mr. Phillips, has written a letter to the Registrar of this Court which, as we understand it to be his wish that his arguments should be made public, we have had copied here. It is as follows:

"Sir,—In reply to letter No. 2141, dated 19th July 1894, I have the honour to forward the record of the case called for, and to show cause as follows. "A letter from the Deputy Magistrate, Mr. Jarbo, is herewith submitted.

"Grounds : I. Even if it be admitted for the sake of argument that the first and original entry of the petitioner was not with intent to intimidate, insult or annoy, it is clear that, after he had been ordered to leave, he remained with one of such intents. The petitioner's conduct appears to have been outrageous and most insulting to the Municipal Commissioners sitting, Mr. Thomas and the Rev. Mr. Evans. He interrupted and obstructed their work, and as Municipal Commissioners are public servants, the petitioner might have been convicted under section 186, Penal Code also.

"II—VII. All these grounds have been dealt with by the Deputy Magistrate and the Sessions Judge on appeal. If the petitioner had behaved decently, quietly, and with ordinary respect, probably nothing would have happened. I know of no absolute right to enter a Municipal Office. Accounts are open to the inspection of any tax-payer on a day or days to be fixed in each month (section 71, Bengal Act III, 1884). The budget is open to inspection for fourteen days at all reasonable times. (Section 73). Then by section 117, the Commissioners declare at what hours of each day the office shall be open for the receipt of money and the transaction of business. The petitioner, as a matter of fact, did not want to see accounts or to pay in money. The Revision Committee were sitting as a Court in a room, which is set apart for their so sitting. Till quite recently it was used as the Court of the Bench of Honorary Magistrates. I was of opinion that probably section 228, Penal Code, did not apply, as the Commissioners were not a Court. If they were not a Court, then the provisions in the Procedure Code as to open Courts would not be applicable, and even supposing they were applicable, that would not prevent the Commissioners from making due arrangements for the proper transaction of the business before them. They were absolutely within their rights in directing that only those who were called should come in. The room is a small one and not spacious like a Court. The petitioner begs the issue when he speaks of his right to enter for a lawful purpose. As regards the fine, I have ascertained from the Income Tax Office, that the petitioner pays an income tax of Rs. 143-3-8. He is reputed to be a wealthy man.—I have the honour to be, &c., [Sd.] H. A. D. PHILLIPS, Magistrate."

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The broad question we have to consider is whether, upon the facts as stated, the offence of house trespass, as defined in section 442, Penal Code, has been committed by Chandi Pershad against Mr. Evans. We say against Mr. Evans, because the offence, if any was committed, was not one for which the Commissioners could prosecute and could throw the expenses on the rates under section 352 of the Municipal Act, but was an offence against the complainant, Mr. Evans alone, which he could himself compound for any satisfaction, pecuniary or otherwise, made to himself, under section 345 of the Procedure Code. Whether the charge is made under section 441 or section 442, the prosecution must prove that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under section 345 of the Code, and, as this is the case, we think the charge must fail, even if there were no other reason, on the ground that the complainant's own statement, so far from showing that the room was in his possession, shows that it was not, but that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he may be, as to which we know nothing, who is in possession of the room in the well understood sense that he is the person to whom the right to immediate possession belongs. But even if it were shown that the room was in the possession of Mr. Evans at the time, or that it was a building used as a human dwelling, a place for worship, or a place for the custody of property, still it would be necessary, under either section, for the prosecution to prove that the accused trespassed in it, with intent to commit an offence, or to intimidate, insult, or annoy some person who was in possession of the room, and upon Mr. Evans' own statement, it is, we think, apparent that the accused did not enter the room, or remain in it, for any or either of such purposes, but his only object in going and remaining there was to endeavour to induce Mr. Evans and his colleagues to reconsider their decision.

The appellant's grievance was that his appeal against the assessment had been disposed of in his absence, and as we observe from the judgment that there are sometimes as many as 600 petitions to hear in a day, it may be possible that some of them may not be as fully heard as the appellants would wish. Moreover, the verbal insult which the Magistrate finds constituted a part of the offence

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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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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.