

1890  
 JAI NARAYAN  
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 QUEEN-  
 EMPRESS.

prove a confession to the Deputy Magistrate, and, as apart from the confession, there is no proof against the prisoner, we must set aside the conviction and direct that the prisoner be acquitted.

H. T. H. *Appeal allowed and conviction quashed.*

### CRIMINAL MOTION.

*Before Mr. Justice Norris and Mr. Justice Macpherson.*

1890  
 June 2.

RAGHOOBUNS SAHOY (PETITIONER) v. KOKIL SINGH *alias*  
 GOPAL SINGH AND ANOTHER (OPPOSITE PARTY).\*

*Sanction to prosecution—"Court"—Collector—Appraisement proceedings—Criminal Procedure Code (Act X of 1882), s. 195—Bengal Tenancy Act (Act VIII of 1885), ss. 69 and 70.*

The word "Court," used in section 195 of the Criminal Procedure Code, without the previous sanction of which, offences therein referred to, committed before it, cannot be taken cognizance of, has a wider meaning than the words "Court of Justice" as defined in section 20 of the Penal Code. It includes a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter, in order to enable it to arrive at a determination.

A Collector, acting in appraisement proceedings under sections 69 and 70 of the Bengal Tenancy Act, is a Court within the meaning of the term as there used.

Where therefore, in certain appraisement proceedings, some rent receipts, which were alleged to be forgeries, were filed by tenants before the Collector, and proceedings were subsequently taken against them before the Joint-Magistrate charging them with offences under sections 465 and 471 of the Penal Code,—

*Held*, that the Joint-Magistrate could not take cognizance of the offences charged without the previous sanction of the Collector having been granted.

THE facts which gave rise to this application were as follows:—

The petitioner, who was in the employment of the proprietor of mouzah Bhadones, in the district of Monghyr, applied to the Collector, under section 69 of the Bengal Tenancy Act, to appraise the crops on the lands of certain tenants, alleging that the rent was taken by appraisement. The tenants resisted the application on the ground that they paid a fixed money rent, and in support of their objection filed some rent receipts. The petitioner alleged

\* Criminal motion No. 84 of 1890 against the order passed by G. E. Manisty, Esq., Joint-Magistrate of Monghyr, dated the 6th of February 1890.

that these receipts were forgeries. The Collector, under the order of the Commissioner, proceeded to enquire whether the rent was or was not taken by appraisement; but the Board of Revenue, on the appeal of the tenants, held that he could not do so, and the appraisement proceedings were abandoned.

Meanwhile, however, the petitioner had asked for an enquiry under section 476 of the Code of Criminal Procedure as to whether or not the receipts filed by the tenants were forged. The Collector directed a Deputy Collector to make this enquiry, but his order was eventually set aside by the Board on the appeal of the tenants.

In December 1889 the petitioner applied to the Collector, under section 195 of the Code of Criminal Procedure, for sanction to prosecute the tenants in respect of the receipts alleged to be forged. The Collector refused this sanction, remarking, with regard to what had happened, that he was, as Collector, precluded from giving it, and that the petitioner should apply to the Board of Revenue.

In February 1890 the petitioner lodged a complaint in the Magistrate's Court charging the tenants with offences under sections 465 and 471 of the Penal Code in connection with the rent receipts. The petition of complaint set out the facts above mentioned, and represented that under the circumstances sanction was not necessary. The Joint-Magistrate, before whom the complaint was preferred, refused to entertain it, holding that he could not take cognizance of it until proper sanction had been obtained for the prosecution of the persons charged. The petitioner then applied to the High Court, and obtained a rule, which was served on the Joint-Magistrate and the tenants concerned, calling on them to show cause why the Joint-Magistrate should not be directed to entertain the complaint. This rule now came on to be heard.

Mr. J. T. Woodroffe, Baboo *Rajendro Nath Bose*, and Baboo *Srinath Banerjee* for the petitioner.

Baboo *Umbica Churn Bose* and Baboo *Mahabir Sahai* for the opposite party.

Baboo *Umbica Churn Bose* in showing cause contended that the order of the Joint-Magistrate was correct, and that a Collector, while acting under sections 69 and 70 of the Bengal Tenancy Act,

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is a "Court" within the meaning of that term as used in section 195 of the Code of Criminal Procedure, and that consequently the prosecution could not be proceeded with until the necessary sanction as required by that section had been obtained.

Mr. *Woodroffe* for the petitioner, in support of the rule, argued that the Collector acting under these sections could not be held to be a Court, and that his duties were of a ministerial nature; section 70 in fact directing that the appraisement papers shall be filed in his "office." He also referred to the definition of "Court of Justice" in section 20 of the Penal Code and to the provisions of section 4 of the Criminal Procedure Code, to the effect that all words and expressions not defined in that Code are to be deemed to have the meanings attributed to them by the Penal Code when they are therein defined. He further referred to section 6 of the Criminal Procedure Code, and the classes of Courts there mentioned, and argued that the Court referred to in section 195 could not include a Collector acting under sections 69 and 70 of the Tenancy Act. Whenever the Criminal Procedure Code dealt with proceedings in Courts other than those clearly covered by the definition given in the Penal Code, it specifically mentioned such Courts, as for example in sections 476, 478, 480, where proceedings before Revenue Courts are expressly referred to. He contended therefore that the Collector was not a "Court;" and that this was also manifest from the proceedings, where it appeared that his order directing the enquiry under section 476 of the Criminal Procedure Code had been set aside by the Board of which was certainly not a "Court." He contended, that he was entitled to the order asked for directing magistrate to entertain the complaint.

sent of the High Court (NORRIS and MACPHERSON, JJ.)

1:—

1 for determination is whether a Collector, acting under sections 69 and 70 of the Bengal Tenancy Act, is a Court within the meaning of section 195 of the Criminal Procedure

way. (Their Lordships set out the facts above mentioned—)

It is contended in showing cause that the order is right, that the Collector acting under the sections referred to is a "Court" within the meaning of section 195 of the Procedure Code, and that sanction for the prosecution is necessary.

The word "Court" is not defined in the Criminal Procedure Code, and it certainly has a wider meaning than a Court of Justice as defined in the Penal Code. Having regard to the obvious purpose for which section 195 was enacted, we think that the widest possible meaning should be given to the word "Court" as therein mentioned, and that it would include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination.

In the sections of the Tenancy Act referred to, the Collector is empowered to do certain things, some of which may involve the determination of the proportion in which the crop is to be divided, and his order is enforceable by a Civil Court as a decree. He is directed to give the parties an opportunity of being heard, and to make such enquiry (if any) as he thinks necessary. One mode of making an enquiry is certainly to take evidence. We think therefore that he is authorised to take evidence and come to a decision on the matters with which he is empowered to deal; that this brings him within the broad definition of a Court; and that sanction for the prosecution was necessary.

The rule is therefore discharged.

H. T. H.

*Rule discharged.*

### PRIVY COUNCIL.

HEMANTA KUMARI DEBI (PLAINTIFF) v. BROJENDRO  
KISHORE ROY CHOWDHRY (DEPENDANT.)

[On appeal from the High Court at Calcutta].

P. C.\*  
1890.  
*February 25.*

*Second appeal*—Ground of second appeal—Civil Procedure Code, s. 584—  
Substantial error in a First Appellate Court's finding without any evi-  
dence to support it.

The Court of first instance dismissed the suit upon the ground that the right, which it was brought to establish, had been taken away by a

\* Present: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

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