

1896
 JOGEMAYA
 DASSI
 v.
 THAKKOMONI
 DASSI.

“questions arising between the parties to the suit in which the decree was passed or their representatives,” and they relate to the execution of the decree. The object of this suit is apparently to obtain execution of the decree against some property other than that which was actually mortgaged. I cannot see why this question cannot, as between the parties, be determined by the Court executing the decree, and in the execution proceeding. The case of *Prosunno Coomar Sanyal v. Kali Das Sanyal* (1) shows that a narrow construction ought not to be placed upon section 244, but that all questions which can possibly be determined in the execution proceedings should be so determined.

I would dismiss this appeal with costs.

Appeal dismissed.

Attorney for the appellant: Babu *Kally Nath Mitter*.

Attorney for the respondent: Babu *Ganendra Narain Dutt*.

H. W.

CRIMINAL REFERENCE.

Before Mr. Justice Ghose and Mr. Justice Gordon.

QUEEN-EMPRESS v. MANICK CHANDRA SARKAR.*

1897
 March 3.

Practice—Sanction to prosecute—Application for sanction—Criminal Procedure Code (Act X of 1882), sections 337, 339—Penal Code (Act XLV of 1860), section 302—Withdrawal of conditional pardon.

An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court.

The withdrawal of the conditional pardon should be made, under section 339 of the Criminal Procedure Code, by the authority that granted it and not by the High Court.

THIS case was referred by the Sessions Judge of Nadia, asking the High Court to withdraw the conditional pardon offered by the Joint Magistrate of Meherpur to an approver, and to sanction his

* Criminal Reference No. 1 of 1897 made by Kumar G. K. Deb, Sessions Judge of Nadia, dated the 20th February 1897.

(1) I. L. R., 19 Calo., 683; L. R., 19 I. A., 166.

prosecution under section 339 of the Criminal Procedure Code. The reference was as follows :—

“ Under section 339 of the Code of Criminal Procedure, I have the honour to request the High Court to withdraw the conditional pardon offered under section 337 of the Code of Criminal Procedure by the Joint Magistrate of Meherpur to the approver Ram Prosad Bahelia in the case *Queen-Empress v. Manick Chandra Sarkar* under section 302 of the Penal Code, as he has wilfully concealed in his evidence in the Court of Sessions everything connected with the murder and retracted his previous statement before the Joint Magistrate of Meherpur, a copy of which is hereto annexed. In this Court he stated that the statement was made, because of the beating he received at the hands of the Sub-Inspector. The evidence of the *Punchayat Chandra Kundu* showed that the statement was not extorted from the prisoner by either subjecting him to beating or holding out threats to him. There is no chance of his successful prosecution under section 302 of the Penal Code, as he did not equally criminate himself with the prisoner Manick Chandra Sarkar ; but it is clear that either his evidence given before the Joint Magistrate of Meherpur was false or that given at the Sessions Court on the 16th instant. I therefore request that this Court may be pleased to sanction his prosecution under section 193 of the Penal Code and under clause 3 of section 339 of the Criminal Procedure Code. The prisoner Manick Chandra Sarkar was unanimously acquitted by the Jury, mainly because the principal witnesses retracted their statements before the Joint Magistrate, thus causing a grave failure of justice in this case.”

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

We are of opinion that an application for sanction to prosecute an approver for giving false evidence should be made by motion on behalf of the Crown in open Court, and not by a letter of reference, such as has been submitted by the Sessions Judge in the present case.

As to the other recommendation made by the Sessions Judge, we think that it is for the authority, which granted the conditional pardon, to withdraw it, and not for this Court to do so in the first instance under section 339 of the Criminal Procedure Code.

C. E. G.

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