

finally, on the 14th August, in spite of the objection of the petitioner, he transferred the case for disposal by a Subordinate Magistrate holding his Court at Dacca. We think that sufficient notice was thus given to the petitioner.

On the last point we are not satisfied that there is any valid ground for holding that these proceedings should be held elsewhere than at the Court of the Subordinate Magistrate of Dacca.

The Rule is therefore discharged.

D. S.

1902

ISHAN
CHUNDER
DASS
v.
GARTH AND
ANOTHER.

CIVIL RULE.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

GURU CHARAN SHAHA

v.

GIRIJA SUNDARI DASSI.*

1902

Nov. 13.

Sanction to prosecute—Criminal Procedure Code (Act V of 1898) s. 195, subsection (3)—Evidence—Tendering in evidence document alleged to be forged, but not judicially considered, sanction to prosecute for.

An application under s. 195 of the Criminal Procedure Code for sanction to prosecute for tendering in evidence a document alleged to be forged should not be refused on the ground that the document was only tendered in evidence and not judicially considered.

But, where there are no *prima facie* good grounds for instituting criminal proceedings, such sanction should not be granted.

THE petitioner, Guru Charan Shaha, brought a suit in the Court of the Munsiff of Brahmanbaria, in Tipperah, against Girija Sundari Dassi and others for the recovery of Rs. 50 alleged to have been taken as a loan from the petitioner.

The defendants contested the suit and denied the debt altogether, and further alleged that it was the plaintiff, the present petitioner, who was indebted to the defendants, and in support of this allegation filed certain bonds purporting to have been executed by the petitioner.

* Application for a Rule. Order No. 3117 of 1902.

1902

GURU
CHARAN
SHARA
v.
GIRIJA
SUNDARI
DASSI.

The Munsiff dismissed the suit, holding that the plaintiff, Guru Charan, had failed to prove his case, and did not therefore think it necessary to consider judicially the bonds tendered in evidence by the defendants.

The petitioner then applied to the Munsiff, who tried the suit, for sanction to prosecute the defendants for uttering forged documents and filing them in Court, knowing or having reason to believe them to be forged for the purpose of using them in evidence, on the allegation that the petitioner had never executed the said bonds, and that they were forgeries.

The Munsiff refused this application for sanction, in these terms :—

“The applicant applies for sanction to prosecute Girija Sundari and Ramesh Chandra for forgery, to wit, two bonds—one dated 4th Pous 1305 and another 28th Magh 1305. These bonds were filed in a Small Cause Court case, but were not used in evidence. The petitioner wants me to take evidence, which, he says, would prove their spurious character. I can, however, do nothing of the kind. If the bonds be really forgeries, the petitioner may prosecute the opposite party in the Criminal Court: no sanction of this Court is necessary for such a purpose. My sanction would have been of course necessary, if they were used in evidence before me. But as that was not done, I must disallow the present application with costs.”

Thereupon the petitioner appealed to the District Judge, who upheld the order passed by the Munsiff and dismissed the appeal.

The petitioner now applied to the High Court for a Rule upon the defendants to show cause why the orders of the Courts below should not be set aside, and the sanction asked for should not be granted.

Dr. Ashutosh Mookerjee and Babu Jnanendra Nath Bose for the petitioner.

PRINSEP AND STEPHEN JJ. We think that the reasons given by the Lower Courts for refusing sanction to the petitioner to prosecute the defendants in a suit brought by him for forgery are not sound. They have refused sanction on the ground that the bonds, which are denounced as forgeries, were only tendered in evidence and were not judicially considered by the Court. S. 195, Code of Criminal Procedure, has, however, been

amended by the law of 1898 so as to meet this very point, and, therefore, if this were the only objection taken, we should have felt inclined to give the petitioner a Rule. But it seems to us that this is not a proper case in which sanction should be given. The petitioner sued certain persons for money borrowed from him. The defendants denied the debt, and pleaded that not only did they never borrow any money from the plaintiff, but that the plaintiff was indebted to them, as was shown by the bonds which they produced. At the trial the second point was not tried because it was thought unnecessary, inasmuch as the Court found against the plaintiff on the first point, holding that the plaintiff had failed to prove that the defendants ever borrowed money from him. Now, if sanction were given to prosecute the defendants in this case for bonds said to be a forgeries, it would be necessary, before sanction could be given, for the Court to see whether there were *prima facie* good grounds for holding criminal proceedings. But any such inquiry would have the effect of prejudicing the defendants in any suit that they might wish to bring to recover money due on the bonds which they tendered in the suit brought against them, and there is at present no reason to suppose that the bonds are not true and genuine instruments. That is a matter which should be left to be determined hereafter, possibly in a civil suit between the two parties, and it would be premature to refer such a matter to the Criminal Court for decision.

The application is accordingly refused.

B. D. B.

1902

GREG
CHAMAN
SHAH
c.
GIRIJA
SUNDARI
DASSI.