

1900  
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v.  
DAMRI  
SINGH.

charge of resting on a misconstruction of the judgment of Mr. Brett. In those circumstances the *kabuliat* is not a mere agreement to enhance the rent, but is an agreement to settle *bonâ fide* disputes and differences, and therefore I agree with my learned brother in thinking that it is similar to the agreement which was considered by this Court in the case I have quoted, and therefore is not void under s. 29 of the Bengal Tenancy Act.

For these reasons I agree in the judgment which has been delivered by my learned brother.

B. D. B.

*Appeal allowed.*

## CRIMINAL REFERENCE.

*Before Mr. Justice Prinsap and Mr. Justice Handley*

BIDHU CHANDALINI (COMPLAINANT) v. MATI SHEIKH MONDAL.  
(ACCUSED.)<sup>\*</sup>

1900  
June 21.

*Complaint—Dismissal of complaint by District Magistrate—Absence of complainant—Revival of and further inquiry into case by same Magistrate—Review—Code of Criminal Procedure (Act V of 1898) ss. 359, 369, 437 and 438.*

Complainant filed a complaint under ss. 341, 323, 447 and 426 of the Penal Code. The District Magistrate, after recording the statements of the complainant, ordered the issue of a summons to the accused returnable on the 19th April. On that day the complainant was absent when the case was called on. The District Magistrate dismissed the case under s. 259 of the Code of Criminal Procedure. Subsequently on the application of the complainant the District Magistrate revived the case and made it over to an Honorary Magistrate for trial. *Held*, that the terms of s. 369 of the Code of Criminal Procedure must be read as controlled by s. 437 of that Code. S. 437 does not limit the power of a District Magistrate to make, or order a Subordinate Magistrate to make, further inquiry into a case in which an order of dismissal or discharge may have been passed by a Subordinate Magistrate. There is no bar to a District Magistrate making further inquiry into a case in which such order may have been passed by himself.

In this case the complainant filed a petition of complaint under ss. 341, 323, 447 and 426 of the Penal Code before the District

\* Criminal Reference No. 115 of 1900, made by S. K. Deb, Esq., Sessions Judge of Nuddea, dated the 8th of June 1900.

Magistrate of Nuddea. The District Magistrate recorded the statements of the complainant and ordered the issue of a summons to the accused returnable on the 19th of April. On that day the complainant was absent when the case was called on. The District Magistrate accordingly dismissed it under s. 259 of the Criminal Procedure Code. Immediately after the order of dismissal had been passed the complainant applied to the District Magistrate praying for the revival of the case. Her prayer was granted, and the case made over to an Honorary Magistrate for trial, who, after taking the evidence produced by the prosecution, framed a charge against the accused under ss. 323 and 448 of the Penal Code.

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The accused thereupon applied to the Sessions Judge of Nuddea, who, on the 8th of June 1900, referred the matter to the High Court under s. 438 of the Code of Criminal Procedure. The material portions of the letter of reference were as follows:—

"In this case the complainant Bidhu Chandalini filed a petition of complaint under ss. 341, 323, 447 and 426 of the Penal Code before the District Magistrate on the 6th April last. The District Magistrate, after recording the statements of the complainant, ordered the issue of a summons to the accused returnable on the 19th. On that day the complainant was absent when the case was called on. The District Magistrate accordingly dismissed it under s. 259 of the Criminal Procedure Code. Immediately after the dismissal order had been passed the complainant filed a petition before the District Magistrate praying for the revival of the case. The District Magistrate granted her prayer, and made over the case to the Honorary Magistrate, Moulvi Khodadad, for trial. That officer, after taking the evidence of the prosecution witnesses, has framed a charge against the accused under ss. 323 and 448 of the Penal Code. After this a motion was filed in my Court by the accused Mati Sheikh complaining of the order of revival on the ground that s. 437 of the Criminal Procedure Code authorized the District Magistrate to order a further inquiry into a case which had been dismissed by an inferior Court. I think the revival order passed by the District Magistrate was *ultra vires*, as no Criminal Court can review its own order; see s. 369 of the Criminal Procedure Code. I could have passed an order under s. 437 of the Criminal Procedure Code reviving the case if the trial of the case had not already begun. I have no power to set aside the present proceedings without making a reference to the High Court. I beg that the order of revival passed by the District Magistrate may be set aside, as also the proceedings up to the framing of the charge, and that the case may be revived under the orders of the High Court."

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1900, JUNE 21. The judgment of the Court (PRINSEP and HANDLEY, JJ.) was delivered by

PRINSEP, J.—The terms of s. 369 of the Code of Criminal Procedure, on which the Sessions Judge relies in making this reference, must be read as controlled by s. 437. S. 437 does not limit the power of a District Magistrate to make, or order a Subordinate Magistrate to make, further inquiry into a case in which an order of dismissal or discharge may have been passed by a Subordinate Magistrate. There is no bar to a District Magistrate making further inquiry himself into a case in which such order may have been passed by himself.

We, therefore, see no sufficient reason to interfere as a Court of Revision.

D. S.

## CRIMINAL REVISION.

*Before Mr. Justice Prinsep and Mr. Justice Handley.*

1900  
 June 28.

KUMUDINI KANTA GUHA AND ANOTHER (PETITIONERS) v. THE  
 QUEEN-EMPRESS (OPPOSITE PARTY).<sup>9</sup>

*Criminal Proceedings—Joint trial—Misjoinder of parties—Discharge of accused on ground of misjoinder by Sessions Judge—Direction that accused be re-tried—Jurisdiction—Code of Criminal Procedure (Act V of 1898) ss. 233, 239, 423 and 537—Penal Code (Act XLV of 1860) ss. 411, 414 and  $\frac{414}{109}$ .*

M and K were convicted at the same trial of receiving stolen property, namely, currency notes, as well as of assisting in concealing or disposing of such notes which they knew or had reason to believe were stolen property. Each of them were charged with the same offences only in respect of a currency note of Rs. 500, but in respect of the charges on two other notes of Rs. 100 each the charges against each of them related only to one of those notes. *Held* that there had been a misjoinder of parties, the transactions being altogether separate and distinct against each of them.

*Held* further that the Sessions Judge in discharging one of the accused on the ground of misjoinder of parties had power to add to that order a direction that the accused should be re-tried. It was not obligatory on him to leave to the discretion of the Magistrate the course which should be taken in such a matter, and it was not intended by the order of

<sup>9</sup> Criminal Revision Nos. 300 and 329 of 1900, made against the orders passed by A. Pennell, Esquire, Sessions Judge of Nonkhally, dated the 10th of February 1900.