

CRIMINAL REVISION.

Before Mr. Justice Brett and Mr. Justice Ryves.

FANINDRA NATH CHATTERJEE

v.

EMPEROR.*

1908
July 31.

Summary trial—Jurisdiction—Facts determining jurisdiction to try summarily—Criminal Procedure Code (Act V of 1898) s. 260—Distrain, legality of—Form of the distress warrant—Bengal Municipal Act (Bengal Act III of 1884), s. 122.

It is not the complaint alone, which determines the jurisdiction of the Magistrate to try a case summarily, but the complaint and the subsequent examination of the complainant taken together.

Where it appeared from the complaint and the sworn examination of the complainant that the facts amounted to an offence under s. 186 of the Penal Code :—

Held, that the Magistrate had jurisdiction to try the case summarily.

Bishu Shaik v. Saber Mollah (1) referred to.

Where the distress warrant authorized the distrain of the moveables of the defaulters, wherever found within the Municipality, or any other moveables found within the holding specified, it was *held* that the tax daroga was justified in attaching goods proved to belong to the defaulters, which were found within the municipal limits.

CRIMINAL REFERENCE.

On the 25th March 1905 a complaint was lodged by one Binda Charan, tax-daroga of the Durbhunga Municipality, before the Deputy Magistrate in charge at Durbhunga, "that on the day previous he had gone to realize municipal taxes due from one Haridasi and Baroda Kanta Chatterjee, who had a shop under the fictitious name of *Minto Brothers* within the jurisdiction of the Durbhunga Municipality; that he ordered a peon to attach ten tins of red powder from the shop in the presence of one Fanindra Nath Chatterjee, but the latter ordered his servant to obstruct the attachment and not to allow the properties to be removed from the shop, and further

* Criminal Reference No. 145 of 1908, by H. E. Ransom, Sessions Judge of Durbhunga, dated the 9th July 1908.

(1) (1902) I. L. R. 29 Calc. 409.

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criminally intimidated him and his men, and that Fanindra and his servant having showed force, he sent for the head-constable to help him in making the distraint, but that both the accused resisted his legal action."

The complainant applied for summonses under s. 186 and s. 504 of the Penal Code.

He was examined on oath and stated as follows :—

"I went with a warrant yesterday to realize the municipal tax from Haridasi and Baroda, who have recently opened a shop under the name of *Minto Brothers*. I went to the shop. My peon attached ten tins of red powder. A boy, named Fanindra, ordered his peon to take away the attached tins, and the latter then seized them from my peon. I sent for the head-constable to help me as provided by law. In his presence also the boy intimidated me, and said he would not allow the attached property to be taken away."

The Magistrate issued warrants under ss. 186 and 504 of the Penal Code, but tried the case summarily, and convicted the accused under section 186, and sentenced them to fines.

In his subsequent examination during the trial the complainant omitted all reference to the criminal intimidation, and only alleged that the property attached had been re-taken from his peon at the order of the petitioner, Fanindra, who angrily refused to allow it to be distrained.

The distress warrant purported to be against the firm of *Haridasi Baroda Kant Chatterjee* and was in the terms set forth in the judgment of the High Court.

Upon motion to the Sessions Judge of Durbhunga by the accused, he referred the case, under s. 438 of the Criminal Procedure Code, to the High Court, recommending the reversal of the convictions and sentences.

The material portions of the Letter of Reference were as follows :—

I do not think the Deputy Magistrate's order can be sustained. In addition to his (complainant's) statement in the petition of complaint that he had been criminally intimidated, the tax-daroga in his examination by the Deputy Magistrate also said he had been intimidated, which must, I think, be taken to mean criminally intimidated by the petitioners. At the subsequent trial no doubt he omitted all reference to any such offence and merely spoke of the distraint having been angrily resisted. The jurisdiction of the Court would appear however to be determined, as a matter of principle, by the petition of complaint, unless possibly there may be anything in the examination of a complainant to show that the offence stated in the petition was not committed.

The ruling in *Bishu Shaik v. Saber Mollah* (1) is an authority in support of this view. I lay stress upon this, as in a very recent reference, *Emperor v. Ram Narain Jha*, where the examination of the complainant had not been properly recorded and where I did not quote this ruling, a Divisional Bench of the Hon'ble Court followed the complainant's sworn statement as determining the jurisdiction, in preference to the petition of complaint itself, which recited an offence, which was not triable summarily. A municipal tax-daroga is a public servant, and the offence complained of fell properly under section 189 of the Indian Penal Code, which is not triable summarily. It appears to me that the Deputy Magistrate acted without jurisdiction in holding a summary trial. There is also in my opinion another serious defect in the proceedings. The tax-daroga professed to act under a warrant issued under section 122 of the Bengal Municipal Act (III of 1884). This warrant authorised him to distrain the moveable property of *Haridas Baroda Kant Chatterjee*. In his evidence at the trial, he states that this was the name of a shop, which he was informed was owned by the petitioners and others, that the shop was closed, and that he proceeded to another shop opened in the name of *Minto Brothers*, which he was informed was owned by the owners of the shop of *Haridas Baroda Kant Chatterjee*, and that there he attached ten tins of red powder which the first petitioner caused to be forcibly taken away by the second petitioner. It appears to me that in levying the distraint in the shop of *Minto Brothers*, the daroga exceeded his authority under the warrant. It appears to me immaterial whether, as the Magistrate finds (though this finding is based on no evidence but the mere hearsay statement of the daroga) the owners of the two shops are the same person. The warrant authorised the attachment of the property of *Haridas Baroda Kant Chatterjee* relating to a particular holding, 11771, and could not, therefore, be executed upon goods forming the ostensible property of other owners. If, therefore, the offence fell merely under section 186 of the Indian Penal Code the petitioners would appear to be justified in resisting the attachment as the daroga was not acting in the discharge of his public functions. The actual resistance complained of cannot, I think, under such circumstances, be regarded as an excess of the petitioner's right of private defence. I recommend that the Magistrate's order be set aside, and the fines, if paid, be refunded.

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Bah'u Dwarka Nath Mitra in support of the reference. The complaint determines the procedure to be adopted, viz., whether it is to be regular or summary. See *Bishu Shaik v. Saber Mollah* (1) and *Ram Chunder Chatterjee v. Kanye Laha* (2). I generally adopt the reasoning of the learned Sessions Judge in his Letter of Reference.

Mr. Orr (Deputy Legal Remembrancer) for the Crown. The whole of the evidence in this case shows that the offence committed was one under s. 186 of the Penal Code, and the

(1) (1902) I. L. R. 29 Calc. 409.

(2) (1876) 25 W. R. Cr. 19.

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Magistrate had, therefore, jurisdiction to try the case summarily. The ruling in *Bishu Shaik v. Saber Mollah* (1) is distinguishable. The facts of that case were quite different. The distress warrant justified the tax-daroga in seizing any moveable property of the defaulters within the limits of the Municipality, and the Magistrate found that the property attached belonged to the defaulters and were within such limits.

BRETT AND RYVES JJ. This is a reference by the learned Sessions Judge of Durbhunga forwarding the case of Fanindra Nath Chatterjee and Chandoo Khan, who were convicted by a Deputy Magistrate under section 186 of the Indian Penal Code and sentenced to pay a fine of Rs. 50 and Rs. 20 respectively, with a recommendation that the convictions and sentences should be set aside.

Two grounds have been suggested for the interference of this Court. First, that the Magistrate had no jurisdiction to try the case summarily, inasmuch as the complaint filed by the complainant discloses an offence punishable under section 189 of the Indian Penal Code, which is not triable summarily, and secondly, that the warrant of distraint made over to the complainant authorised him to distrain the properties of the defaulters named therein found in certain premises described in the warrant. It has been found that the goods, which had been placed in the premises named in the warrant, had a short time previously been removed to another shop, which was fictitiously opened under the style of *Minto Brothers*, but which was really in the same ownership as the old shop.

It is contended that the tax-daroga under this warrant had no right to seize the properties in the shop owned by the *Minto Brothers*.

On the first point the learned Sessions Judge relies on the case of *Bishu Shaik v. Saber Mollah* (1) as an authority for showing that the jurisdiction of a Magistrate to try a case summarily depends on the wording of the complaint. That case, however, does not lay down any such proposition. It

was there held that "on the facts before the Magistrate the offences complained of were not triable summarily. The petition of complaint discloses the commission of a much more serious offence than the offence for which the Magistrate has held a summary trial. The examination of the complainant, which has not been properly recorded, does not show that the offence so complained of was not committed." It is clear in this case both from the complaint and from the sworn statement of the complainant that the facts stated do not amount to anything more than an offence, which is covered by section 186 of the Indian Penal Code. We, therefore, think that the Deputy Magistrate had jurisdiction to try the case summarily.

On the second point also we are unable to agree with the learned Sessions Judge. The form of the warrant authorised the tax-daroga "to distrain the moveable properties of the said defaulters, wherever they may be found within the Municipality, or any other moveable properties, which may be found within the holding specified in the margin to the amount of the said sum." Once it is established by evidence that the goods, which were sought to be distrained, belonged in fact to the defaulters and were within the limits of the Municipality, the tax-daroga had complete jurisdiction to distrain them under this warrant for the amount specified therein.

For these reasons we decline to interfere, and direct the records to be sent down.

E. H. M.

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