CIVIL RULE.

Before the Hon'ble Mr. R. F. Rampini, Acting Chief Justice, and Mr. Justice Sharfuddin.

KANTO RAM DAS

v.

GOBARDHAN DAS.*

1907
Aug. 23.

Prosecution, order for—Criminal Procedure Code (Act V of 1898) s. 476—Indian Penal Code, (Act XLV of 1860) ss. 210, 193, 119 and 114—Cognizance in the course of a judicial proceeding—Jurisdiction—Judicial proceedings—Execution proceedings.

The powers conferred by section 476 of the Criminal Procedure Code can only be exercised if the offences in respect of which a prosecution is ordered have come to the cognizance of the Court in a judicial proceeding.

Execution proceedings subsequent to the trial of a suit are not judicial proceedings.

Hara Charan Mookerjee v. *Emperor*(1), followed. *Begu Singh* v. *Emperor*(2), *Dharamdas Kamar* v. *Sagore Santra*(3), and *Emperor* v. *Molla Fuzla Karim*(4), referred to.

KANTO RAM DAS and Sarada Charan Das obtained a decree for rent on the 1st February 1906 against one Gobardhan Das. The decretal amount was paid by Gobardhan through his pleader and a petition certifying full satisfaction was filed in Court. Notwithstanding this, the decree holders applied for execution of their abovementioned rent decree and attached the judgment-debtor's lands—all these proceedings taking place before Babu Amrita Nath Mitter, the Munsif of Maulvi Bazar. The land was sold and the sale confirmed by his successor in office. The Sheristadar of the Court bringing these facts to the notice of the Munsif, he held an enquiry and issued notices to the parties. Babu Amrita Nath Mitter then came back to the station and on the 17th June 1907 passed an order under s. 476 Criminal Procedure Code directing that Kanta Ram Das and Krishna Charan Das should be tried

* Civil Rule No. 2348 of 1907.

(1) (1905) I. L. R. 32 Cal. 367.
(2) (1907) I. L. R. 34 Cal. 551.
(3) (1906) 11 C. W. N. 119.
(4) (1905) I. L. R. 33 Cal. 198.

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by the Subdivisional Magistrate, the former for offences under sections 193 and 210 of the Indian Penal Code and the latter for offences under sections $\frac{210}{109}$, $\frac{210}{114}$ and $\frac{193}{114}$ or "under any other section of the Indian Penal Code that might be found applicable."

Against the aforesaid order of the Munsif, dated the 17th June 1907, the present petitioner moved the High Court and obtained this Rule.

Babu Atulya Charan Bose, for the petitioner.

The Senior Government Pleader (*Babu Ram Charan Mitter*), for the opposite party.

RAMPINI, A.C.J., AND SHARFUDDIN, J. This is a Rule, calling upon the Munsif of Maulvi Bazar, Sylhet, and the opposite party Gobardhan Das, to show cause why the order of the Munsif dated the 17th June 1907, should not be set aside as being illegal.

The order of the Munsif dated the 17th June 1907, is one passed under section 476 Criminal Procedure Code directing that the petitioners, Kanto Ram Das and Krishna Charan Das, should be tried by the Sub-Divisional Magistrate, the former for offences under sections 193 and 210 Penal Code, and the latter for offences under section $\frac{210}{109}$, $\frac{210}{114}$ and $\frac{193}{114}$ "or under any other section of the Indian Penal Code that might be found applicable." The Munsif, Babu Amrita Nath Mitter, who passed this order, before making it, enquired most carefully into the facts of the case. They are as follows.

The petitioner Kanto Ram Das and his nephew Sarada Charan Das, obtained a decree for rent on the 1st February 1906 against the opposite party Gobardhan Das. The decretal amount was paid by the pleader of the judgment-debtor on the 14th February 1906, and a petition certifying full satisfaction was filed in Court. Notwithstanding this, the decree holders, that is the petitioners Kanto Ram Das and Sarada Charan Das, applied for execution of their abovementioned decree on the 29th November 1906 and attached the judgment-debtor's land. The land was sold in execution of the decree, and purchased by the decree holders for Rs. 20. The sale was confirmed on the 9th April 1907. It may here be mentioned that all the proceedings

above referred to except the sale and confirmation of sale took place before Babu Amrita Nath Mitter. But Babu Amrita Nath Mitter was transferred in December 1906, and the sale was held and the order confirming the sale, was passed by his successor, Babu P. N. Roy Chowdhry. Then the acting sheristadar noticed that the decree in execution of which the sale had taken place, had already been satisfied. He brought this to the notice of Babu P. N. Roy Chowdhry on the 1st May 1907. Babu P. N. Roy Chowdhry held an informal enquiry and issued notices to the parties. He called on Kanto Ram, Sarada Charan, and the 2nd petitioner before us, Krishna Charan Das, the son of Kanto Ram, to show cause why they should not be prosecuted, the first two for offences under section 210 and the third for aiding and abetting them. Babu Amrita Nath Mitter then returned to Maulvi Bazar and Babu P. N. Roy Chowdhry was transferred.

No cause was shown by any party. Babu Amrita Nath Mitter then on the 17th June last passed the order complained of.

As has been said, Babu Amrita Nath Mitter made a full enquiry into the facts. He discharged Sarada Charan Das who is a minor. He came to the conclusion that the principal offender was Krishna Charan Das who had intentionally caused the decree to be executed for the second time, well knowing that it had already been satisfied. He points out that Krishna Charan Das purposely avoided going to the pleader formerly employed by him, who had received the money, and that he engaged a new pleader to execute the decree for the second time. The defence is that the execution of the decree was applied for by mistake and that it was another decree against the same judgment-debtor of which execution should have been applied for, but the Munsif has disbelieved this defence.

The grounds on which the Rule is supported are (i) that according to the ruling of this Court in *Hara Charan Mookerjee* v. *Emperor*(1), Babu Amrita Nath Mitter had no jurisdiction to order the prosecution of the petitioners, as the offences alleged to have been committed by them did not come to his cognizance in the course of a judicial proceeding; (ii) that under the ruling of this Court in *Begu Singh* v. *Emperor*(2), it is only the officer

(1) (1905) I. L. R. 32 Calc. 367. (2) (1907) I. L. R. 34 Calc. 551.

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before whom the offences are committed that can order a prosecution under section 476, and such power is exercisable only at or immediately after the conclusion of the trial in which the offences are alleged to have been committed; (iii) that the Munsif observes that the petitioner Kanto Ram Das is an old man and that it is his son, Krishna Charan, who looks after cases in which he is concerned. Hence, against Kanto Ram it is said the order of the Munsif is wrong on the merits.

As regards this third plea, we would only remark that the terms of the Rule preclude our entering into the merits of the case. The Rule is to show cause why the Munsif's order should not be set aside as being illegal.

Babu Ram Charan Mitter, who appears to oppose the rule, contends that the case is distinguishable from that of *Begu Singh* v. *Emperor*(1), that the accused are charged, *inter alia*, with an offence under sections 193 and 119 read with section 114 Penal Code, *i.e.*, for making and abetting the making of a false verification to the application for execution, and that for a prosecution for such offences the sanction of the Court, not of the officer, before whom the offences were committed is required: *Dharamdas Kamar* v. *Sagore Santra*(2), *Emperor* v. *Molla Fuzla Karim*(3). This may be, but according to the views of the majority of the Judges who decided *Begu Singh* v. *Emperor*(1) the summary power conferred by section 476 is exercisable only at or immediately after the conclusion of the trial in which the offence was committed.

The Munsif, Babu Amrita Nath Mitter, supports his order by referring us to the views of Mr. Justice Geidt in *Begu Singh* v. *Emperor*(1). But Mr. Justice Geidt's opinion was not that of the majority of the Judges who formed the Full Bench. However that may be, Babu Ram Charan Mitter admits that the decision of this Court in *Hara Charan Mookerjee* v. *Emperor*(4), is a difficulty in his way. That case decides that the powers conferred by section 476 can only be exercised if the offences, in respect of which a prosecution is ordered, have come to the cognizance of the Court in a judicial proceeding. That case further

(1) (1907) I. L. R. 34 Calc. 551.
(2) (1906) 11 C. W. N. 119.
(3) (1905) I. L. R. 33 Calc. 198.
(4) (1905) I. L. R. 32 Calc. 367.

lays down that execution proceedings subsequent to the trial of a suit are not judicial proceedings. On this ruling, it must be held that the Munsif, Babu A. N. Mitter, had no jurisdiction to order the prosecution of the accused under section 476, and on this ground the Rule must be made absolute.

This result is to be regretted; for there appears every reason to believe that the processes of the Civil Court have in this instance been abused, and that offences against justice have been committed. No doubt the judgment-debtor, Gobardhan Das, can institute a prosecution, but he is not likely to do so, for the Munsif says that he now appears to have been gained over by the other side.

We make the Rule absolute and set aside the order of the Munsif referred to, dated 17th June 1907.

Rule absolute.

S. M.