CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Brett.

1904
Jan. 8.

SURJYA KANTA ROY CHOWDHRY
v.
EMPEROR.*

Transfer—Security to keep the peace—Jurisdiction of Magistrates—Criminal Procedure Code (Act V of 1898) ss. 107, 192—Proceedings, initiation of.

A District Magistrate instituting proceedings under s. 107 (2) of the Criminal Procedure Code has power to transfer the inquiry to any subordinate Magistrate competent to inquire into the same.

The object of s. 107 of the Criminal Procedure Code is to restrict the initiation only of proceedings against persons residing beyond the local limits of the jurisdiction of District Magistrates, and not to restrict their power to transfer such proceedings, after initiation, to a subordinate Magistrate.

Shama v. *Lechhu Shekh*(1), *Raghu Singh* v. *Abdul Wahab*(2) distinguished.

Dinendro Nuth Shanial, In re(3), *Satish Chandra Panday* v. *Rajendra Narain Bagchi*(4) referred to.

King Emperor v. *Munna*(5) followed.

The proceedings under s. 107 of the Code are intended to be precautionary and not punitive.

RULE granted to the petitioners, Surjya Kanta Roy Chowdhry and others.

The petitioners obtained this Rule on the District Magistrate of 24-Perganas to show cause, why the order of the Sub-divisional Officer of Basirhat binding them to keep the peace and furnish security for the same, should not be set aside mainly on the ground that the Sub-divisional Magistrate had no jurisdiction to make it.

Rai Jatindra Nath Chowdhry, a wealthy zemindar, owned a bazar at Taki which was destroyed by fire on the 17th April

* Criminal Revision No 711 of 1903, against the order of Mohim Chandra Ghose, Subdivisional Magistrate of Basirhat, dated July 31, 1903.

(1) (1895) I. L. R. 23 Calc. 300.
(2) (1896) I. L. R. 23 Calc. 442.
(3) (1882) I. L. R. 8 Calc. 851.
(4) (1895) I. L. R. 22 Calc. 898.
(5) (1901) I. L. R. 24 All. 151.

1903. Thereupon Babu Surjya Kanta Roy Chowdhry, another zemindar of the same place, attempted through his servants to set up a rival bazar close to the one destroyed by fire, and for that purpose was trying to gain over the vendors frequenting the old bazar by threats and promises. The police apprehended a breach of the peace. The District Magistrate himself visited the spot and passed a temporary order under s. 144, Criminal Procedure Code; and subsequently, on a report from the Sub-Inspector of Police, instituted proceedings under s. 107 of the Code against the rival landlords.

The inquiry was made over to the Sub-divisional Magistrate of Basirhat, though the present petitioners did not admittedly reside within the local limits of his jurisdiction. As a result of that inquiry, Surjya Kanta Roy Chowdhry and some of his servants were ordered to be bound down to keep the peace by executing a bond in the sum of Rs. 20,000, and furnishing two sureties in a similar sum. Against that order the petitioners moved the High Court and obtained this Rule.

Mr. Jackson and *Babu Sarat Chandra Ghose* for the petitioners.

Mr. Pugh and *Babu Dasarathi Sanyal* for the Crown.

HARINGTON and BRETT JJ. In this case a Rule has been issued calling upon the Magistrate of the district of the 24-Perganas to show cause why the order complained of requiring the petitioners to give security for keeping the peace should not be set aside on the ground that the Sub-divisional Magistrate, who made the order, had no jurisdiction to make it, regard being had to the provisions of sub-section 2 of section 107 of the Code of Criminal Procedure, and on the further ground that no overt acts have been proved against the petitioners such as would justify the order against them for binding them down to keep the peace, and as regards the petitioner Babu Surjya Kanta Roy Chowdhry on the further ground that the amount of the security is excessive.

The facts of the case as appearing from the records are as follows:—On the 17th April last the bazar at Taki, which belonged to Babu Jatindra Nath Chowdhry, and which had been held

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on that site for 30 years and more, was destroyed by fire. Babu Jatindra Nath Chowdhry has a rival and old enemy Babu Surjya Kanta Roy Chowdhry, who has a house in Taki adjoining the site of the bazar, and separated from it only by a narrow road. The servants of Babu Surjya Kanta under, it is suggested, his order took advantage of the opportunity to attempt to start a rival bazar in the out-houses and compound of their master adjoining the old bazar, and, as is usual in such cases, commenced to try to bring the vendors of the old bazar to the new one by promises and threats. Babu Jatindra Nath and Babu Surjya Kanta are both influential zemindars and both are said to have retained a large force of *barkandazes* or *latials* at Taki. The result of the action of Babu Surjya Kanta and his servants was to bring the animosity between the two rival landlords to a head, and steps had promptly to be taken by the police authorities to prevent a breach of the peace. A strong force of police appears to have been deputed to the village, the District Magistrate himself visited the spot, and a temporary order was passed under section 144, Criminal Procedure Code, restraining Babu Surjya Kanta and his servants from proceeding to set up the rival bazar. A formal report of all the facts seems then to have been made by the police to the District Magistrate and on that report the District Magistrate instituted proceedings under section 107, Criminal Procedure Code, against the two rival landlords and their servants.

The case was made over by the District Magistrate for hearing to the Subdivisional Magistrate of Basirhat and the result was that Babu Jatindra Nath and his adherents were discharged, while Babu Surjya Kanta Roy Chowdhry and some of his adherents were ordered to be bound over for one year on their own bonds and to furnish securities to keep the peace in the sums mentioned in the proceedings drawn up by the District Magistrate. Against this order the Rule in the terms already stated has been obtained.

The first point taken in support of the Rule is that the Subdivisional Magistrate had no jurisdiction to hear the case or to pass the order against the zemindar, Babu Surjya Kanta Roy Chowdhry. Admittedly that person does not live within the jurisdiction of that Magistrate, and it is contended that the District Magistrate could alone initiate the proceedings, hear the evidence, and pass

an order against that person under section 110, Criminal Procedure Code. It is further argued that, even if the District Magistrate had power to transfer the case to another Magistrate, no order was in fact passed by the District Magistrate transferring the case to the Sub divisional Magistrate of Basirhat. On the question of jurisdiction the rulings of this Court in the cases of *Shama* v. *Lechhu Shekh*(1), and of *Raghu Singh* v. *Abdul Wahab*(2) are relied on. It is contended that under the second clause of section 107, Criminal Procedure Code, proceedings could not be taken before any Magistrate other than the District Magistrate, and that the District Magistrate by transferring the case to the Sub divisional Magistrate could not confer on that Magistrate jurisdiction.

The two cases relied on were cases under the Cattle-trespass Act (I of 1871) in which no Magistrate other than the District Magistrates could exercise jurisdiction, unless specially authorized under sections 20 to 23 of that Act. The Sub-divisional Magistrate in the present case had, however, jurisdiction ordinarily to hear proceedings under section 107, Criminal Procedure Code, and it was not necessary that he should be specially authorized in order to give him jurisdiction in such cases. The real question for determination is therefore whether section 107, Criminal Procedure Code, restricts the jurisdiction in proceedings against a person residing outside the local limits of the jurisdiction of a Magistrate to the District Magistrate, whether such proceedings can be conducted only before the District Magistrate, and whether the District Magistrate is restrained from transferring them for hearing to another Magistrate. *In re Dinendro Nath Sannial* (3) it was held by this Court, on a reference made by the Sessions Judge of Pubna, that after proceedings had been initiated before a Magistrate under section 491 of Act X of 1872 as amended by section 6 of Act XI of 1874 (corresponding to section 107 of the present Code of Criminal Procedure), section 47 of Act X of 1872 (corresponding to section 528 of the present Code) was wide enough to empower a District Magistrate to withdraw the case to his own file. Also in the case of *Satish Chandra Panday* v. *Rajendra Narain Bagchi* (4)

(1) (1895) I. L. R. 23 Calc. 300.
(2) (1896) I. L. R. 23 Calc. 442.
(3) (1882) I. L. R. 8 Calc. 851.
(4) (1895) I. L. R. 22 Calc. 898.

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it was held by this Court that the general power conferred by sections 192 and 528 of the Code of Criminal Procedure upon a District or Sub-divisional Magistrate to transfer or withdraw any case for enquiry or trial by any Magistrate subordinate to him is not cut down or taken away by anything in section 145. These cases are relied on by the opposite party as indicating by analogy that the general power of transfer conferred on the District Magistrate by section 192, Criminal Procedure Code, is not restricted by the provisions of section 107, Criminal Procedure Code.

The point for determination has moreover been considered by the High Court at Allahabad on a reference made to it in the case of *King-Emperor* v. *Munna*(1). Mr. Justice Aikman in that case held "that the intention of the Legislature was to limit the jurisdiction in regard to the institution of proceedings to a Chief Presidency or District Magistrate; but that when such Magistrate, has, in the exercise of his discretion, directed institution of proceedings, there is nothing in the law to prevent him from transferring the case to a Magistrate otherwise qualified to complete the proceedings." In that opinion we agree, and we hold that the object of section 107 was to restrict the initiation only of proceedings against persons residing out of the jurisdiction of the District Magistrate, and was not to restrict his power to transfer such proceedings, after initiation, to a Subordinate Magistrate.

We may further observe that we are of opinion that the opposite view would be productive not only of inconvenience to the administration, but possibly of prejudice to the persons complained against. In a case like the present, when the District Magistrate, who is primarily responsible for the peace of the district, appears himself to have visited the place, where the rival market was being started, after the dispute had arisen, possibly to have enquired into the facts and to have taken other steps to preserve the peace, it might well be argued that it would not be fair to the persons proceeded against that he should himself hear the case. We think that those circumstances might afford a good reason for his transferring the case for hearing to another Magistrate, and we are

(1) (1901) I. L. R. 24 All. 151.

unable to hold that it was in the contemplation of the Legislature that under such circumstances it should be necessary to transfer the case for trial to another district. Such a course would defeat the object for which the section was framed, viz., to preserve the peace in the district.

We hold therefore that the District Magistrate had power to transfer the case for hearing to the Subdivisional Magistrate of Basirhat.

We are further unable to accept the contention that there was no valid transfer in this instance, because the District Magistrate in his proceedings directed the parties to appear at once before the Sub-divisional Magistrate of Basirhat instead of directing them to appear before him and then passing a formal order of transfer. We must look to the intention of the order and not merely to the words, and its intention clearly was after instituting the proceedings to direct their transfer for hearing to the Sub-divisional Magistrate.

The next point urged in support of the Rule is that the evidence failed to prove that the zemindar, Babu Surjya Kanta Roy, had himself or his adherents committed any overt act, which would indicate that they were likely to create a breach of the peace. We have read through the evidence and we find that what it proves is this: there was a long standing feud between Babu Surjya Kanta Roy Chowdhry and Babu Jatindra Nath Chowdhry. The market had been held on the land of the latter for more than 30 years before the huts were burnt down. The former had been all along anxious to start a market in the village. Immediately the old market was burnt down, the servants of Surjya Kanta commenced to try and open a rival market and selected the grounds of the house of Babu Surjya Kanta adjoining the old market as a site. This they could hardly have done without their master's cognizance and orders. A number of *barkandazes* or *latials* were collected at Babu Surjya Kanta's house and Babu Surjya Kanta's agent himself and some of these *barkandazes* under his orders at once commenced by bribery and threats to try and induce the shopkeepers of the old market to open shops on the site of the new market, which they had selected. The learned Counsel has contended that to send two *barkandazes* to call a shop-keeper to

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the landlord's agent and to threaten the shop-keeper with forcible eviction from his homestead, unless he consented to open a shop in the new market, was not such an act as would indicate that the zemindar or his agents were likely to create a breach of the peace. Such pressure, it is suggested, was well within their rights. We are unable to accept that view. Threats of violence have always been accepted as sufficient to indicate an intention to commit a breach of the peace, and in a case like the present we consider they are only capable of that interpretation. The prompt arrival of the police in the village and the steps taken to prevent a collision between the partizans of the two rival zemindars seems to have prevented a serious disturbance. But we are unable to hold that because a breach of the peace was averted by those precautionary measures taken by the authorities the present petitioners can claim to be discharged from liability to be bound over to keep the peace.

It is very difficult, if not actually impossible, in a case like the present to prove the actual orders given to their servants by absentee landlords, but in this case when it is proved that the land and out-houses of the landlord have been used for the purposes of opening the rival market and the acts have been done to compel the shop-keepers against their will to resort to the new market, it seems to us impossible to conclude that these acts were done otherwise than under the authority and orders of the landlord himself and that he equally with his local agents on the spot is responsible for them. The acts complained of, amounting to threats of oppression and violence, are sufficient to show that all the persons, who have been bound over to keep the peace, were likely to commit a breach of the peace. We think therefore that the order passed under section 107, Criminal Procedure Code, is not open to objection on this ground.

The last point taken is that the amount of security required from Babu Surjya Kanta Roy Chowdhry is excessive. He has been called on to execute a bond in the sum of Rs. 20,000 and to furnish two securities in a similar sum. No doubt he appears to be a rich and powerful zemindar, but the proceedings under the section are intended to be precautionary and not punitive. It is not in our opinion necessary that such a large sum as security should be demanded. We think that a bond of Rs. 10,000 and

two sureties in the sum of Rs. 5,000 each is sufficient to require from Babu Surjya Kanta Roy Chowdhry, and we direct that the order be amended accordingly.

Subject to this modification the order will otherwise stand and the Rule be discharged.

Rule discharged.

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G. M. F.

APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Mitra.

MONMOHINI GUHA

v.

BANGA CHANDRA DAS.*

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June 29.

Probate—Will, proof of—Compromise—Agent—Caveat—Probate and Administration Act (V of 1881), ss. 50, 76, 83—Evidence Act (I of 1872) s. 41—Civil Procedure Code (Act XIV of 1882), ss. 177, 375.

Unless a will is proved in some form, no grant of probate can be made merely on the consent of parties. Hence an agreement or compromise as regards the genuineness and due execution of a will, if its effect is to exclude evidence in proof of the will, is not lawful within the meaning of section 375 of the Code of Civil Procedure.

Evans v. *Saunders*(1) distinguished.

Norman v. *Strains*(2), *Ravji Ranchod Naik* v. *Vishnu Ranchod Naik*(3) and *Ghellabhai* v. *Nandubai*(4) followed. *Roadnight* v. *Carter*(5) referred to.

Any party to a suit has the right to repudiate the action of an agent compromising it without his knowledge and consent, before an order is passed accepting the compromise as the final determination of the suit.

Brojodurlabh Sinha v. *Ramanath Ghose*(6) referred to.

APPEAL by the defendant, Monmohini Guha.

*Appeal from Original Decree, No. 22 of 1902, against the decree of E. H. Ransom, District Judge of Chittagong, dated Dec. 7, 1901.

(1) (1861) 30 L. J. P. D. A. 184.
(2) (1880) L. R. 6 P. D. 219.
(3) (1884) I. L. R. 9 Bom. 241.
(4) (1896) I. L. R. 21 Bom. 335.
(5) (1863) 3 Sw. & Tr. 421.
(6) (1897) I. L. R. 24 Calc. 903.