

CRIMINAL REFERENCE.

Before Mr. Justice Harington and Mr. Justice Holmwood.

1910
April 21.

KOKAI SARDAR

v.

MEHER KHAN.*

Acquittal—Previous acquittal, plea of—Acquittal of some accused charged with rioting, grievous hurt and murder—Liability of others to be tried for the same offences—Prosecution story found to be false as to the grievous hurt and murder—Criminal Procedure Code (Act V of 1898) s. 403.

An acquittal of some of the accused on charges of rioting armed with deadly weapons, grievous hurt and murder, is no bar, under s. 403 of the Criminal Procedure Code, to the trial of others concerned in the same offences.

Where the Sessions Judge was of opinion, at the original trial, that the prosecution story as to the manner in which the deceased met his death, did not represent the truth and acquitted the accused, though he did not disbelieve the fact of a rioting having occurred, while one of the Assessors believed the whole story:—

Held, that the High Court would not interfere with a pending prosecution against others for the same offences.

Bishun Das Ghosh v. King-Emperor (1) distinguished.

ONE Meher Khan lodged a complaint before the police, on the 28th April 1909, charging the five petitioners and several others, under sections 148, 326 and 302 of the Penal Code, with rioting armed with deadly weapons, grievous hurt and murder of one Chatri Lal. Three accused persons, Isop Sheik, Amir Sardar and Tasiruddi Khondkar, were arrested and sent up for trial, but were ultimately acquitted by the Sessions Judge of Faridpur and one of the two assessors. The finding of the Judge was that, though the circumstances pointed to the conclusion that the deceased had met his death at or near the place alleged by the prosecution, his death was caused under quite different circumstances, and that the prosecution story in this respect did not represent the

* Criminal Reference No. 52 of 1910, by J. F. Graham, Sessions Judge of Faridpur, dated March 3, 1910.

(1) (1902) 7 C. W. N. 402.

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truth. Subsequently an order was passed, on the 8th October, by the District Magistrate, directing the prosecution of the petitioners who were named in the First information as concerned in the occurrence, but had absconded, and they were arrested and sent for trial before a Deputy Magistrate, in whose Court the case was pending. The petitioners then moved the Sessions Judge of Faridpur to refer the case to the High Court with a recommendation that the order for prosecution should be quashed, on the ground that the case had already ended in an acquittal before a competent Court which had found the case to be false. It appeared that the question of an appeal by the Local Government from the original order of acquittal was considered and abandoned, the District Magistrate deciding to proceed against the present petitioners instead.

The learned Judge made the reference on the 3rd March 1910, being of opinion that the order of the District Magistrate was bad, as it was not competent for him to direct the prosecution of the petitioners until the judgment of the Sessions Court, acquitting the co-accused and declaring the case to be untrue, was not set aside.

Mr. Chaudhuri and Babu Hara Kumar Mitter, for the complainant.

Mr. Morrison and Moulvi Nurudin Ahmed, for the petitioners.

HARINGTON AND HOLMWOOD JJ. This is a reference by the learned Sessions Judge of Faridpore. He has referred to us an order of the District Magistrate, dated the 8th October last, directing the prosecution of the petitioners in order that that order may be reversed. The grounds on which this Court is applied to are as follows. It appears that one Golam Imam and 19 others were charged with offences under sections 148, 326 and 302. Three of these persons were placed on their trial and acquitted. Six of the persons alleged to be implicated in the transaction ran away, and out of these six, five appear now to have been captured and are the petitioners in the present reference, and the ground on which we are asked to

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interfere with the order of the District Magistrate is this: that the Sessions Judge having disbelieved the evidence in the case brought against the three persons who have been acquitted, and having expressed an opinion that the facts and circumstances suggested to him a very strong doubt as to the truth of the story, and he having come to the conclusion that the deceased met with his death under different circumstances, and that the story told by the prosecution before the Court did not represent the truth, this Court should say that these remaining five persons must not be prosecuted.

Now, it is conceded by the learned counsel who supports the reference that there is no provision of law which renders the prosecution of these persons illegal; but it is said that we have a power, which we can exercise, to set aside the order of the District Magistrate, notwithstanding that no provision of law makes that order an illegal order, and reliance to support this proposition is placed on the case of *Bishun Das Ghosh v. King-Emperor* (1). Now, that case was a peculiar one. Five persons were indicted for various offences, which included the offence of unlawful assembly, as to which it was necessary that there should be five persons. Three out of the five were placed on their trial and were acquitted. The District Magistrate, though he came to the conclusion that the acquittal was a wrong one, did not move the Local Government to appeal against the acquittal to get it set aside, but he directed two other persons who were alleged to be the other two, making up the five, to be prosecuted under section 114, that is to say, for having abetted the offence of which the other three persons had been already acquitted; and the view that this Court took was that such prosecution, namely, that for abetment of the offence of which the others had been acquitted, ought not to proceed. That is all that was decided in that case, and in our opinion that case in no way governs the decision in the present case. In the present case, although the Judge acquitted the three persons, one of the assessors at least thought that the case was satisfactorily proved. That by no means shows that

(1) (1902) 7 C. W. N. 493.

it was a clear case as the learned counsel would have us hold. In any case, it is impossible to say that the prosecution of the five petitioners for taking part in this transaction would be unreasonable in view of what happened, though the three persons were acquitted. The five petitioners were not charged of abetting an offence, which it has been found had not been committed. There is no reason for supposing that in the learned Judge's judgment the riot did not take place which resulted in the death of one man. The result, therefore, is that this reference must be discharged, and the order of the District Magistrate must stand.

E. H. M.

Reference discharged.

APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Sharfuddin.

R. D. MEHTA

v.

GADADHAR RAI*.

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April. 8.

Lessor and lessee—Transfer by lessee—Liability of lessee to pay rent after transfer—Privity of estate—Transfer of Property Act (IV of 1882) s. 108.

The duration of liability of a lessee to pay rent to the lessor lasts as long as his estate remains in his possession and no longer; and after an assignment of the lease, the privity of estate between him and the lessor ceases, and the assignee becomes liable for the rent.

SECOND APPEAL by the defendant No. 1, Mr. R. D. Mehta.

This appeal arose out of an action brought by the plaintiffs to recover rent and royalties due for certain coal lands. The plaintiffs alleged that these lands were originally leased out to a certain Banamali Banerjee by a *potta*, dated 23rd November 1895. The defendant No. 1, on the 19th September 1899, purchased the twelve annas share in the property in execution

* Appeal from Appellate Decree, No. 2262 of 1907, against the decree of W. H. Vincent, Judicial Commissioner of Chota Nagpur, dated July 22, 1907, affirming the decree of Mahim Chandra Ghose, Subordinate Judge of Purulia, dated Oct. 25, 1906.