CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

RAJANI KHEMTAWALI

v.

PRAMATHA NATH CHOWDHRY.*

1910
Jan. 11

High Court, Criminal Revisional Jurisdiction of—Order by a first-class Magistrate for discontinuance of a house as a brothel—Criminal Procedure Code (Act V of 1898), ss. 6, 435 and 439—Eastern Bengal and Assam Disorderly Houses Act (II of 1907), ss. 2 to 6—Procedure in cases under ss. 3 and 6 of the Act—Offence.

A Magistrate of the first class, acting under s. 3 of the Eastern Bengal and Assam Disorderly Houses Act, 1907, is a "Criminal Court" within s. 6 of the Criminal Procedure Code, and the High Court has jurisdiction to revise his proceedings under ss. 435 and 439.

But where such proceedings were in themselves perfectly fair and reasonable, the only error being possibly the administration of oaths to the witnesses, the High Court refused to interfere.

Sections 2 and 3 of the Act do not create any offence, the only offence created by the Act being, as provided in s. 6, disobedience to the order of the Magistrate passed under s. 3.

The procedure to be followed under the Act is that, upon a sanction, report or order under s. 5, the Magistrate must, if he intends to go further, summon the owner or other person mentioned in s. 3 to show cause, and in the event of his failure to appear, he may proceed in his absence. He must next satisfy himself that the house is used as described in s. 2 (*a*), (*b*) or (*c*), doing so in any way that does not violate the ordinary rules of fairness and propriety; but he is not bound to act only on legal evidence, and he need not, and possibly may not, administer oaths to persons of whom he may make enquiry. If he makes an order under s. 3, proceedings for disobedience must be taken independently under s. 6, and conducted according to the ordinary procedure prescribed for the trial of offences.

Criminal Revision No. 1309. On 31st March 1909 one Pramatha Nath Chowdhry and three others made a joint application before the District Magistrate of Rungpur against the petitioners and others, thirty in number, under section 2 (*b*) of the Eastern Bengal and Assam Disorderly Houses Act

* Criminal Revision Nos. 1309 and 1311 of 1909, against the orders of B. V. Nicholl, Sessions Judge of Rungpur, dated Oct. 14, 1909.

1910

RAJANI KHEMTAWALI v. PRAMATHA NATH CHOWDHRY.

(II of 1907), alleging that they carried on prostitution in houses in the vicinity to the annoyance of the neighbours and the detriment of the morals of the youths of the educational institutions situated in close proximity. This application related to the northern block of the prostitutes' quarters in the town.

Criminal Revision No. 1311. On the same day another application of a similar character, under section 2 (*b*), and containing similar allegations, was filed by Ram Nath Mitra and four others against 108 persons occupying the southern block separated by a road from the northern.

The District Magistrate made over both cases for disposal to Babu R. C. Dass, a first-class Deputy Magistrate, who, after holding a local inquiry, issued notices, on the 14th April, under section 2 (*b*) of Act II of 1907, to the two sets of parties in the two cases, who were owners and tenants living with them, to show cause within seven days why the use of the houses mentioned therein for habitual prostitution to the annoyance of the neighbours should not be discontinued. The cases were afterwards transferred by the District Magistrate, on the 4th June, to Babu G. C. Das, another first-class Deputy Magistrate, for hearing. The latter examined a number of witnesses on oath on both sides, and then held a local inquiry and made a house-to-house visit of inspection, in the presence of both parties, on the 22nd August, putting on the record a memorandum of his inspection. He, however, recorded the evidence only once.

The defence in both cases was that some of the petitioners were dancing girls and some betel sellers, while the others were kept mistresses, or too old to carry on their trade to the annoyance of their neighbours. They also filed a map of the locality.

On the 29th September the Magistrate, by a separate order in each case, found as a result of his local inspection and from the evidence that the sites of the educational institutions in the vicinity were not correctly shown in the petitioners' map, that there were no kept mistresses at all, nor dancing girls who were not at the same time carrying on prostitution, though there were in each set of defendants some who were too old

for prostitution or were engaged in other occupations. His order in the case, which was the subject of *Criminal Revision No. 1309*, concluded as follows :—

I am satisfied from the evidence adduced before me, and from what I have seen myself that, with the exception of the eight defendants named above, the houses of the remaining defendants situated in the vicinity of educational institutions are used as brothels and for the purposes of habitual prostitution, and they are also used as such to the annoyance of the petitioners and other residents of the vicinity. The case, therefore, falls within the purview of s. 2 cls. (*a*) and (*b*). I, therefore, direct all the defendants, except the eight, under s. 3, to discontinue the use of their houses as brothels or for habitual prostitution or as disorderly houses, within three weeks from the date of service of this order.

A similar order in substantially the same terms was passed in the case which was the subject of *Criminal Revision No. 1311*. The District Magistrate and the Sessions Judge declined to interfere with the orders on the 13th and 14th October respectively. The petitioners then presented separate applications to the High Court and obtained the two Rules mentioned on the same grounds, *viz.*, (*i*) that there was a misjoinder of parties, (*ii*) that on the facts found it was not shown that any house was used to the annoyance of the inhabitants of the vicinity, (*iii*) that the procedure of the Magistrate was irregular in that he did not limit his inquiry to clause (*b*) of section 2 of the Act, and (*iv*) that he acted without jurisdiction in conducting the local inquiry.

Babu Dasharathi Sanyal and *Babu Sarat Chandra Lahiri*, for the petitioners.

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown.

STEPHEN AND CARNDUFF JJ. This case arises under the Eastern Bengal and Assam Disorderly Houses Act, 1907, and raises a question of some importance as to its proper construction. The facts relevant to the point before us are as follows. A complaint was made to the District Magistrate of Rungpur by four householders, under section 5 (*c*) of the Act, that certain houses were used by the petitioners before us for the purpose of habitual prostitution and to the annoyance of the inhabitants of the vicinity, as mentioned in section 2 (*b*). The case

1910

RAJANI KHEMTAWALI v. PRAMATHA NATH CHOWDHRY.

was thereupon made over to a Deputy Magistrate, and notices were issued to all the petitioners under section 2, and, it is said, under clause (*b*) of that section. On the petitioners appearing before him, the Deputy Magistrate proceeded to hear witnesses on oath on both sides, proceeding as though he were trying persons accused of an offence, and then himself visited the houses of the petitioners and other persons concerned. Acting on the information he received from these two sources, he came to the conclusion that the case fell under section 2, clauses (*a*) and (*b*), and he, therefore, made an order on all the petitioners to discontinue the use of their houses as brothels, or for habitual prostitution, or as disorderly houses, within three weeks of the date of the service of the order. A rule has been granted to show cause why this order should not be set aside on four grounds, which we need not discuss until we have settled a preliminary point, namely, whether we have jurisdiction to deal with the matter under section 435 of the Criminal Procedure Code. This depends on whether the Court making an order under section 3 is a Criminal Court. The point has already been raised before the District Magistrate and the Sessions Judge. The order of the former is not before us; but he refused to interfere. The latter expressed an opinion, which seems to have been held by the District Magistrate also, that the Court was a Criminal Court, but, without actually deciding the point, he refused to interfere on the merits.

The grounds for holding that the Deputy Magistrate in this case was a Criminal Court are that by section 2 of the Act the information, which lies at the root of the proceedings, is to be received by a first-class Magistrate, that is, an official whose character is determined by the Criminal Procedure Code, and that section 5 of the Act mentions "prosecutions" under section 2. On the other hand, it is argued by the Deputy Legal Remembrancer that the only offence created by the Act is disobedience to an order made under section 3, which is made punishable by section 6, and it is contended that no Court can be a Criminal Court unless it is dealing with the commission of an offence, which the Court in this case was not. The scheme

of the Act is that a warning may be given under section 3, and continued disobedience to that warning is an offence. It is to be observed that the Court that convicts under section 6 need not be the same as that which makes the order under section 3. Proceedings under section 2, which are the basis of an order under section 3, are, no doubt, described as a "prosecution" in section 5; but, as fresh proceedings have to be taken in the case of a prosecution under section 6, the word seems inapt for its purpose, and cannot be taken by itself to show that a Court acting under section 3 is a Criminal Court within the meaning of section 435 of the Code.

Comparing the weight due to these two sets of arguments, we consider that the first must prevail on the ground that a first-class Magistrate is a Criminal Court. The meaning of the phrase depends entirely on section 6 of the Criminal Procedure Code, under which a first-class Magistrate constitutes one of "five classes of Criminal Courts" created by law, and there is nothing in the Eastern Bengal Act to deprive the term of its usual meaning: nor can we regard the obvious scope of the Act, which we will consider in a moment, as having that effect. We do not attach much weight to the word "prosecution" in section 5, which is plainly a mistake, as the only prosecution possible under the Act is one under section 6. We consider, therefore, that we have jurisdiction to act under sections 435 and 439 of the Code.

But here we are met with another difficulty. We agree with the contention of the Crown that sections 2 and 3 do not create any offence, and that the only offence created by the Act is that created by section 6. The power conferred by sections 2 and 3 is not a power to hold a criminal trial or to take any preliminary proceedings under the Criminal Procedure Code. It is a power similar to the powers conferred on Criminal Courts by Chapters VIII, X, XI and XII of the Code. But whereas those Chapters prescribe the procedure that Criminal Courts are to follow in various cases where they are not dealing with the trial of offences and, therefore, give this Court ground for interfering where the proper procedure is not followed, no

1910

RAJANI KHEMTAWALI v. PRAMATHA NATH CHOWDHRY.

procedure is prescribed by the present Act, except such as is indicated by the last part of section 2 and sections 4 and 5. Apart from these enactments, the Court in making an order under section 3 has no duty except to satisfy itself that the house in question is used as described in clauses (*a*), (*b*) and (*c*) of section 2. This it may do in any way that is not manifestly improper; but it does not seem that the Court has any power to administer an oath. The effect of sections 3 and 4 is as follows. By section 3 the Magistrate may summon the owner, etc., of the house to show cause why a certain use of the house should not be discontinued; by section 4, if the owner does not obey the summons, the Magistrate may make an order *ex parte*, which must be taken to imply that he may not do so otherwise: and consequently the owner or other person, against whom it is proposed to proceed, must be summoned under section 3. The course of proceeding to be pursued under the Act is, therefore, as follows. On sanction being given, or a report or complaint made, under section 5, the Magistrate must, if he means to proceed further, summon the owner or other person mentioned in section 3 to show cause as described in that section. If he does not appear, the Magistrate may proceed in his absence. He must then satisfy himself that the house is used as described in section 2, clause (*a*), (*b*) or (*c*), and he may do this in any way that does not violate the ordinary rules of fairness and propriety; but he is not bound to act only on legal evidence, and he need not, possibly he may not, administer oaths. He is not acting under the Criminal Procedure Code, but he is in fact performing an administrative, and not a judicial, duty. If he makes an order under section 3, disobedience to it will be an offence; but proceedings to punish that offence must be taken independently of proceedings under sections 2 and 3, and must, of course, be conducted according to the ordinary law. All that is effected by the proceedings under sections 2 and 3 is, therefore, to lay a foundation for a prosecution under section 6, and such proceedings need not, and probably cannot, be carried on in the manner appropriate to proceedings for the actual prosecution of an offence. The grounds stated in the rule are all framed

1910

RAJANI KHEMTAWALI v. PRAMATHA NATH CHOWDHRY.

on the contrary assumption, and refer to matters which would be of importance in proceedings in the prosecution of an offence, but have no importance in relation to the proceedings in this case. The proceedings in this case have been perfectly fair and reasonable in themselves, the only error committed being that the Magistrate had oaths administered to witnesses, which he need not, and possibly ought not, to have done. The result is that no case has been made out for our interference, and the rule is discharged.

This order will apply to Revision Case No. 1311 of 1909.

Rule discharged.

E. H. M.

APPELLATE CIVIL.

Before Mr. Justice Doss and Mr. Justice Richardson

DURGA PRASAD SINGH

v.

RAJENDRA NARAIN BAGCHI.*

1909

Aug. 26.

Lease—Evidence—Letter containing all the elements of a lease, whether admissible in evidence without registration—Payment of rent at a reduced rate on the basis of that letter, effect of—Conflicting descriptions of the subject-matter of a grant—Lessee not put in possession of specific area mentioned in the lease, effect of—Mistake of fact.

In a suit for rent at a certain rate, the lessee pleaded that by virtue of a letter addressed to him by the lessor, the latter was entitled to get rent only at a reduced rate. The letter contained a definition of the reduced rental, recited the area of the land demised under the lease, the nature of the interest granted by the lease, and the instalments in which rents were payable :—

Held, that the letter being a non-testamentary instrument, which purported to limit in future a vested interest of the value of Rupees one hundred and upwards in immoveable property, was not admissible in evidence without being registered.

Biraj Mohinee Dasee v. *Kedar Nath Karmakar* (1) referred to.

Held, also, that the mere fact that rent for some years had been received at the reduced rate did not bind the lessor to accept rent at that rate in future,

*Appeals from Original Decrees, Nos. 291 and 318 of 1907, against the decrees of Bepin Behari Chatterjee, Subordinate Judge of Manbhum, dated April 27, 1907.

(1) (1908) I. L. R. 35 Calc. 1010.