

1909  
 RAM KUMAR  
 SHAHA  
 v.  
 RAM GOUR  
 SHAHA.

The case will accordingly be remanded to the Subordinate Judge for the decision of the point which we have set out above. The Subordinate Judge will return his finding to this Court, and on receipt of this finding the appeal will be finally disposed of by this Court.

S. A. A. A.

*Case remanded.*

## CRIMINAL REVISION.

*Before Mr. Justice Caspersz and Mr. Justice Byres.*

DAYANATH THAKUR

v.

EMPEROR.\*

1909  
 June 17.

*Magistrate, powers of—District Magistrate, power of, to cancel bond for keeping the peace or for good behaviour—Order directing prosecution for using forged rent-receipts in a proceeding before a subordinate Magistrate, for keeping the peace, and for abetment thereof—“Judicial proceeding”—Criminal Procedure Code (Act V of 1898) ss. 4 (m), 125, 476.*

Section 125 of the Criminal Procedure Code gives the District Magistrate the power to cancel a bond for keeping the peace for reasons which appear to him sufficient, but not the right to hear an appeal from an order in a proceeding under s. 107 passed by a subordinate Magistrate.

A District Magistrate has no jurisdiction under s. 476 of the Code to direct a prosecution for dishonestly using a forged document and for abetment in respect of rent-receipts filed before a subordinate Magistrate in a case under s. 107 of the Code, which has been disposed of by him under s. 125, the proceeding under which is not a “judicial proceeding.”

ON the petition of Dayanath Thakur that he was obstructed in the cultivation of certain lands, which he had recently purchased from Harihar Misser, by Mohari Lal Marwari and three others, and that there was a likelihood of a breach of the peace in consequence, the Subdivisional Magistrate of Madhepura drew up a proceeding under section 107 of the Criminal Procedure Code against Mohari Lal and the others. During the hearing of the case the petitioner, Dayanath, filed four

\* Criminal Revision No. 505 of 1909, against the order of F. F. Lyall, District Magistrate of Bhagalpore, dated April 21, 1909.

rent-receipts before the Magistrate which he had obtained from Harihar. The accused were bound down, on the 19th November 1908, to keep the peace for one year. They then moved the District Magistrate of Bhagalpore. The application purported to be a "*criminal motion*," and the District Magistrate, after dealing with the facts of the case, found the rent-receipts to be forged, and "*allowed the appeal*," on the 23rd December 1908, stating at the same time that, if the "*appellants*" could adduce sufficient evidence to warrant him in holding a further inquiry, he was prepared to do so, and calling upon them to file their collection books within two days. An application was then filed on their behalf, on the 25th January 1909, explaining their inability to produce the collection papers and asking for sanction to prosecute the petitioners. The District Magistrate thereupon proceeded, as he submitted in his explanation, under section 476 of the Code, issued notices to the petitioners, and, after holding an inquiry, passed an order on the 21st April, directing the prosecution of the petitioner, Dayanath, under section 471 of the Penal Code, and of Harihar for abetment.

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The petitioners then moved the High Court and obtained the present Rule on various grounds.

*Mr. P. L. Roy* (with him *Babu Atulya Charan Bose* and *Babu Naresh Chandra Sinha*), for the petitioners, after dealing with the other grounds in the application for revision, contended that the alleged offences did not come to the notice of the District Magistrate in the course of a judicial proceeding, and that, in consequence, the provisions of section 476 did not apply.

CASPERSZ AND RYVES JJ. This is a Rule calling upon the District Magistrate to show cause why the prosecution of the petitioners should not be cancelled for the reasons stated in the petition.

It appears that proceedings were instituted under section 107 of the Code of Criminal Procedure against one Mohari Lal Marwari at the instance of the petitioner, Dayanath Thakur. In the course of these proceedings the petitioner filed certain

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rent-receipts. The Magistrate trying the case passed orders binding down Mohari Lal under section 107 of the Criminal Procedure Code. Thereupon, Mohari Lal applied to the District Magistrate to have the order set aside. The learned District Magistrate treats the matter as one coming under section 125 of the Criminal Procedure Code, and calls it a "Criminal Motion." After going into the merits of the application he came to the conclusion, apparently without hearing Dayanath Thakur, that the rent-receipts which he had filed were forged, and he concluded these proceedings with the remark that "the appeal was allowed," and directed notice to be issued to Dayanath Thakur to show cause why he should not be prosecuted under section 471 of the Indian Penal Code. It appears to us, as has been laid down in the case of *Nabu Sardar v. Emperor* (1), decided by a Full Bench, that under section 125, Criminal Procedure Code, the Magistrate has full power to cancel the bond for reasons which appear to him to be sufficient; but that section does not give him a right to hear an appeal. It is difficult to see, in this case, how it can be held that these rent-receipts came before the Magistrate in a "judicial proceeding." On this ground alone, we make this Rule absolute and direct that the proceedings be set aside.

*Rule absolute.*

E. R. M.

(1) (1906) I. L. R. 34 Cal. 1.