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considerable detail indicating precisely what he did, and the precautions that he took. If this version be accepted as true, it is difficult to see how any case can succeed against him. Not only has the applicant set out his case in the way I have described, but no cause has been shown against the present application, nor have his allegations been questioned in any manner. Now, as a matter of fact, the police report which has been shown to us in this case does not set forth the nature of the information, it is absolutely silent on that point; and it would seem that the form ordinarily adopted in these cases is equally defective. In the circumstances, we set aside the proceedings. If it is intended to proceed against the present applicant, then the procedure of the Code as indicated in section 190 and also in section 173, if it be requisite to rely on that section, must be followed.

Rule absolute.

E. K. M.

CRIMINAL REVISION.

Before Mr. Justice Chatterjee and Mr. Justice Ryves.

1909
 Sept. 30.

ABDULLAH KHAN

v.

EMPEROR.*

"Judicial proceeding"—Preliminary inquiry by an Assistant Settlement Officer to determine whether a prosecution should be directed—Power to take evidence on oath in such inquiry—False evidence in the course of the inquiry—Criminal Procedure Code (Act V of 1898) ss. 4 (m) and 476—Indian Penal Code (Act XLV of 1860) s. 193 and Explanation (2)—Oaths' Act (X of 1873) s. 4—Government Rules under the Bengal Tenancy Act (VIII of 1885), Rule 40.

A Court holding a preliminary inquiry under s. 476 of the Criminal Procedure Code may legally take evidence on oath therein, and the inquiry is, therefore, a "judicial proceeding" within the terms of s. 4 (m) of the Code.

Raghoobans Sahoy v. Kokil Singh (1) and *Emperor v. Gopal Barik* (2) referred to.

* Criminal Revision No. 1004 of 1909, against the order of C. W. E. Pittar, Sessions Judge of Patna, dated Aug. 9, 1909.

(1) (1890) I. L. R. 17 Calc. 872, 875. (2) (1906) I. L. R. 34 Calc. 42, 46.

Such an inquiry is also a stage of a judicial proceeding under Explanation 2 to s. 193 of the Penal Code, and a person giving false evidence in the course of it commits an offence under the section.

Under s. 4 of the Oaths' Act and Rule 40 (a) of the Government Rules framed under the Bengal Tenancy Act, a Settlement Officer has the power to receive evidence on oath, and is competent to hold a preliminary inquiry under s. 476 of the Criminal Procedure Code.

IN the course of certain attestation proceedings under the Bengal Tenancy Act in Mouza Muzahidpore, of which Kazi Syed Afzal was a proprietor, one Sauki Roy, one of the tenants, filed some rent receipts purporting to be signed by the petitioner, Abdullah Khan, as *patwari* of the said Kazi Syed. The Assistant Settlement Officer, before whom the proceedings were pending, suspected the documents to be forged and held a preliminary inquiry under section 476 of the Criminal Procedure Code, on the 13th April 1909, against Sauki, and in the course of it the petitioner was examined on oath as a witness, and deposed that he had ceased to be *patwari* of Muzahidpore for the last six years. This statement being inconsistent with a previous one made by him in a rent suit on the 28th November 1905, the Assistant Settlement Officer thereupon drew up a proceeding against him, on the same day, under section 476 of the Criminal Procedure Code, and directed his prosecution for giving false evidence. The petitioner was tried and convicted by Babu J. C. Sen, Sub-divisional Officer of Barh, on the 5th July, under section 193 of the Penal Code, and sentenced to rigorous imprisonment for one month and a fine of Rs. 25 in default. An appeal against the said order was dismissed by the Sessions Judge of Patna on the 9th August, and the petitioner then moved the High Court and obtained a Rule to set aside the conviction and sentence on the ground that a proceeding under section 476 of the Criminal Procedure Code is not a "judicial proceeding."

Mr. Huq (with him *S. A. Kareem*), for the petitioner. A proceeding under section 476 is not a "judicial proceeding" and the conviction is bad. A Court is not bound to hold any preliminary inquiry at all before directing a prosecution.

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Refers to *Baperam Surma v. Gouri Nath Dutt* (1) and to the wording of section 471 of the Code of 1872.

Mr. Orr (Deputy Legal Remembrancer), for the Crown. Under Rule 40 (a) of the Government Rules, the Assistant Settlement Officer is vested with all the powers exercisable by a Civil Court in the trial of suits. He can, therefore, take evidence, and under section 4 (a) of the Oaths' Act he can do so on oath. He is a "Court" within section 476 of the Criminal Procedure Code. The next question is whether the "preliminary inquiry" therein referred to is a "judicial proceeding": see the definition of the term in section 4 (m) of the Code. A Court is empowered under section 476 (1) to make "any inquiry that may be necessary." One mode of making it is certainly to take evidence: *Raghoobuns Sahoy v. Kokil Singh* (2) approved of in *Queen-Empress v. Munda Shetti* (3). Before a Court can direct a prosecution under section 476 there must be direct evidence of an offence taken in the preliminary enquiry if there is no such evidence in the original case: *Khepu Nath Sikdar v. Grish Chunder Mukerji* (4). See also *Shashi Kumar Dey v. Shashi Kumar Dey* (5). It has been held in *Emperor v. Gopal Barik* (6) that a proceeding under section 476 is a "judicial proceeding." A Court has power under section 195 to hold an inquiry and take evidence: *Queen-Empress v. Motha* (7); *Shashi Kumar Dey v. Shashi Kumar Dey* (5). It must have the same power under section 476 (1) to enable it to determine whether there are "sufficient grounds" for proceeding thereunder.

CHATTERJEE J. In this case the petitioner has been convicted under section 193 of the Indian Penal Code for giving false evidence in the course of a judicial proceeding. The nature of that judicial proceeding was as follows. The Assistant Settlement Officer made an inquiry under section 476 of

(1) (1892) I. L. R. 20 Calc. 474.

(2) 1890) I. L. R. 17 Calc. 872, 875.

(3) (1900) I. L. R. 24 Mad. 121.

(4) (1889) I. L. R. 16 Calc. 730.

(5) (1892) I. L. R. 19 Calc. 345.

(6) (1900) I. L. R. 34 Calc. 42, 46.

(7) (1897) I. L. R. 20 Mad. 339.

the Criminal Procedure Code as to whether he should or should not order the prosecution of certain persons for filing false receipts in the course of a settlement proceeding before him. The petitioner is said to have given false evidence in that inquiry. The petitioner obtained a Rule on the District Magistrate to show cause why the sentence passed upon him should not be set aside on the ground that the proceeding under section 476 of the Criminal Procedure Code was not a judicial proceeding. "Judicial proceeding" has been defined in section 4 of the Criminal Procedure Code, and it includes any proceeding in the course of which evidence is or may legally be taken on oath. Now, in order to see in what proceeding evidence can be taken on oath, we must refer to the Oaths' Act. Section 4 of Act X of 1873 lays down that all Courts and persons having by law or consent of parties authority to receive evidence are entitled to administer oaths. The next thing to consider is whether the Assistant Settlement Officer was such a person. Under Rule 40 of the Government Rules published under the Bengal Tenancy Act the Assistant Settlement Officer has all the powers exercisable by a Civil Court in the trial of suits. Receiving evidence is certainly within such power and, therefore, the Assistant Settlement Officer was authorised to receive evidence; and if he was authorised to receive evidence then comes the question whether, although authorised to receive evidence on oath, he could receive evidence on oath in a proceeding under section 476 of the Criminal Procedure Code. Now, section 476 says that when any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence brought under its notice in the course of a judicial proceeding, such Court after making any preliminary inquiry that may be necessary may send the case for inquiry or trial. The Assistant Settlement Officer, therefore, was entitled to make the preliminary inquiry that he made in this case.

The next question that arises is whether he had authority to administer oath in such a proceeding or to receive evidence in such a proceeding. Inquiry must be upon evidence. It

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has been held in the case of *Raghoobuns Sahoy v. Kokil Singh* (1), that one mode of making an inquiry is certainly to take evidence, and, therefore, if the Settlement Officer was authorised to make an inquiry he was authorised to take evidence. If he was authorised to take evidence, then the whole question is answered, because then it is a judicial proceeding and the petitioner has been rightly convicted.

The question, however, can be looked at in another way also. Under section 193 of the Indian Penal Code, Explanation (2), an investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. This preliminary investigation, there can be no doubt upon the wording of section 476, is an investigation or inquiry directed by law, although the Magistrate is given a certain amount of discretion with regard to the same; and, therefore, reading by the light of this Explanation also it would seem that the preliminary inquiry before the Assistant Settlement Officer was a stage of a judicial proceeding. In that view also the conviction would be right. It has been held in the case of *Emperor v. Gopal Barik* (2) that a proceeding under section 476 is a judicial proceeding. Although that case was dealing with the question of such a proceeding being a judicial proceeding within the meaning of section 439 of the Criminal Procedure Code, still we think that the proceeding, if it is a judicial proceeding for one purpose, is also a judicial proceeding for another purpose, and such being the case we think that the conviction in this case is correct. The sentence, however, is reduced to the eleven days already served by the petitioner, and he will be discharged.

RYVES J. I agree generally.

Sentence modified.

E. H. M.

(1) (1890) I. L. R. 17 Calc. 872. (2) (1906) I. L. R. 34 Calc. 42, 46.