

INDIAN LAW REPORTS [VOL. XXXVIII
CRIMINAL REVISION.

Before Mr. Justice D. Chatterjee and Mr. Justice Teunon.

1910

Aug. 9.

HARI CHARAN GORAIT

v.

GIRISH CHANDRA SADHUKHAN.*

Magistrate, power of—Order to police to take possession of account books the subject of an offence without summons to produce or search warrant issued—Legality of order—Reference of case after local investigation to a Magistrate for inquiry and report—Irregularity—Quashing pending proceedings—Criminal Procedure Code (Act V of 1898), ss. 94, 96, 192, 202,—Valuable security—Title page of account book containing names and shares of the partners signed by them—Penal Code (Act XLV of 1860), s. 30.

A Magistrate may, on taking cognizance of a complaint, issue either a summons under s. 94 or a search warrant under s. 96 of the Criminal Procedure Code, but is not competent to pass an order directing the police to take possession of account books forming the subject of the charge.

If the Magistrate, after first having examined the complainant under s. 200, is not satisfied that process should issue, he can, under s. 202, either hold an inquiry and take evidence himself, or direct a "local investigation" by a subordinate officer. After ordering a police investigation, he may, if dissatisfied with the materials, personally make a further inquiry and take evidence, or direct a further "local investigation," but not an inquiry and report by another Magistrate. If he thinks it proper to send the case to a Magistrate for inquiry, other than a "local investigation," he should transfer it under s. 192 to the latter for disposal, and not for a report.

Where the complainant made no specific allegations of facts in the complaint, but stated in his examination on investigation under s. 202 that when the *jabda* books were first opened, the title pages contained the name of his son as a partner, and that he later discovered that a substitution of pages had been made showing the name of his father-in-law as a partner, and the statements in the complaint and such examination were not consistent as to the names originally entered, and he was contradicted by his only witness in several particulars, and his story was not supported by the original deed of partnership or the payment of the contributions, it was held that the proceedings must be quashed as the materials before the Magistrate disclosed no offence.

*Criminal Revision, No. 835 of 1910, against the order of D. Swinhoe, Officiating Chief Presidency Magistrate of Calcutta, dated June 7, 1910.

Jagat Chandra Muzumdar v. Queen-Empress (1), *Chou Lal Dass v. Anant Pershad Misser* (2) and *Chandi Pershad v. Abdur Rahaman* (3), referred to.

Semble: A title page in an account book containing the names of the partners and the amount of the capital contributed by each is, if signed by them, a "valuable security" within s. 30 of the Penal Code.

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ON the 3rd February 1910, Girish Chandra Sadhukhan filed a complaint on behalf of his minor son, Nagendra Nath Sadhukhan, and two daughters before the Chief Presidency Magistrate alleging that his wife, Panna Moyee Dasse, the daughter of Hari Dass Sadhukhan, entered into a partnership with the accused, Hari Charan Gorait, and Basant Kumar Sadhukhan, and with Uma Churn Sadhukhan, the deceased father of the accused Khetter Mohun Sadhukhan, in a mustard oil business, and invested Rs. 14,000 therein becoming a $4\frac{1}{2}$ as. co-sharer; that after her death her son and two daughters became partners as her heirs, and their names were entered as such in the title pages of all the partnership books of account; that during the lifetime of Hari Dass, *viz.*, up to November or December 1909, the accused did not tamper with the *khata* books of the business or deny him inspection of them, but that they had now in collusion with the maternal uncles of Johur Lal, the son of Hari Dass, combined and conspired fraudulently to cause injury to his own minor children by tampering with the books, and had already tampered with some of them and were busy tampering with the rest of them. The Chief Presidency Magistrate, after examining the complainant, endorsed the following order on the complaint:—"O Town to inquire and report and take possession of the *khata* books." The local police thereupon seized all the books of account and the Sub-Inspector submitted a report, on the 7th instant, to the effect that the papers and the books of the firm showed that Nagendra had a share in the business, and that the *jabda* for 1314 B.S. had the appearance of being tampered with.

(1) (1899) I. L. R. 26 Calc. 786. (2) (1897) I. L. R. 25 Calc. 233.

(3) (1894) I. L. R. 22 Calc. 131.

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The Chief Presidency Magistrate then ordered Babu Moni Lal Bannerjee, an Honorary Presidency Magistrate, on the 18th March, to hold an inquiry and submit a report. The latter, after examining the complainant, one Panch Kouri Sadhukhan and two police officers, sent up a report, under s. 202 of the Criminal Procedure Code, on the 6th June, stating that the charge was not entirely devoid of foundation and that, at any rate, the prosecution had made out a *prima facie* case under s. 477 of the Penal Code. The Chief Presidency Magistrate then issued summonses on the accused, the next day, under s. 477, I. P. C., whereupon the accused moved the High Court and obtained the present rule.

The complainant's case, as disclosed in the counter affidavit to the High Court, was that his wife Panna Moyee received a gift of Rs. 14,000 from her father on behalf of her son Nagendra, and invested the amount in the latter's name as a partner; that the agreement of the 11th April, 1907, referred to below, was not genuine; that on the 5th Baisak 1314, when the account books were opened, the first page of the *jabda* contained the name of Nagendra as a partner, which was fraudulently altered to that of Hari Dass, and that this was the matter he had complained of in the Police Court. The accused in their application to the High Court alleged that, on the 11th April 1907, a deed of partnership was entered into between Hari Dass, Uma Charan, Hari Charan Gorait and Basant Kumar, the first three of whom subscribed Rs. 14,000 each, and the fourth Rs. 8,000; that the title page of the *jabda* for 1314, opened on the 5th Baisak 1314, contained their names and specification of their shares in the business; that in Chaitra 1314, the name of Nagendra was substituted *benami* for Hari Dass; that Hari Dass died on the 31st October 1909, and that his heir Johur Lall was thereupon entered as a partner. They also alleged that neither Panna, who died in Bhadra 1314, nor her son or daughters ever had a share in the business.

Mr. A. Chaudhuri (with him *Babu Manindra Nath Bhattacharji*), for the petitioner.

Mr. Asghur (with him *Babu Jnanendra Nath Sarkar*),
for the opposite party.

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Cur. adv. vult.

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CHATTERJEE AND TEUNON JJ. In this case a rule issued calling upon the Chief Presidency Magistrate to show cause why certain proceedings should not be quashed on the ground that the materials before him did not disclose any offence within section 477 of the Indian Penal Code; that the sending of the case to the Honorary Magistrate was without jurisdiction, and that under the circumstances the order for seizure of the books ought not to have been made.

The facts are that, on the 3rd of February, one Girish Chandra Sadhukhan acting professedly on behalf of his minor son, Nagendra Nath Sadhukhan, and two infant daughters, made to the Chief Presidency Magistrate a complaint to the effect that in Baisak 1314, corresponding with April 1907, his wife Panna Moyee Dassee had entered into partnership with the three accused, that on her death her interest had devolved upon her children, and that on the death of her father, one Hari Dass Sadhukhan, in Aghran, that is November-December 1909, the three accused acting in the interests of Hari Dass' son Johur Lal had fraudulently tampered with the account books of the partnership business.

In accordance with the prayer of the petition the Chief Presidency Magistrate on this complaint directed the Town Police "to inquire and report and to take possession of the *khata* books" meaning thereby the *jabda* (or day books) and the *khatians* (or ledgers) for the years 1314 and 1315. The investigating police officer submitted his report on the 7th of February.

Thereafter, on the 18th of March, being apparently not satisfied with this report, the Magistrate next referred the case to an Honorary Magistrate for further enquiry and report. The Honorary Magistrate examined the complainant and his three witnesses, *viz.*, one Panch Kouri Sadhukhan and two police officers, and, on the 6th June, reported that the charge was not "utterly devoid of foundation."

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On this report, on the 7th of June, the Chief Presidency Magistrate directed the issue of process for the attendance of the accused to answer a charge under section 477 of the Indian Penal Code. It is against this order that the present rule is directed.

On behalf of the petitioners two objections, which may be described as preliminary objections, are taken to the procedure adopted by the Chief Presidency Magistrate. It is contended in the first place that the order upon the police to take possession of the account books of the firm is illegal. It is not disputed that this contention is well founded, and it is clear that, if the Chief Presidency Magistrate considered that the production of the account books was necessary, he should have issued either a summons to produce under the provisions of section 94 of the Criminal Procedure Code, or a search warrant under the provisions of section 96. Beyond observing that, if the regular procedure had been followed, it is probable that the parties would have been spared the inconvenience caused by the seizure of the account books for the current year, 1316, we need not refer to this matter further.

In the next place it is contended that the order of the 18th of March directing a Subordinate Magistrate to enquire and report is one not authorised by law. This also is a proposition that cannot be disputed. If, having first examined the complainant under the provisions of section 200 of the Code of Criminal Procedure, the Magistrate was not satisfied that the case was one in which process should issue, he was competent, under section 202, either to hold an inquiry and decide the matter upon evidence taken by himself, or to direct the making of a "local investigation" by some Subordinate officer. Having directed such an investigation by a police officer, and having considered the result thereof, it was still open to him, in our opinion, if dissatisfied with the materials obtained, to direct a further local investigation or personally to make further inquiry and take evidence in the case. But if he thought proper to refer the case to some

other Magistrate for an inquiry, other than a local investigation, he should, in our opinion, have transferred the case under section 192 of the Criminal Procedure Code to such Magistrate not for report but for disposal.

But no application having been made to this Court against the order of the 18th March, though we are sensible that, as the result of the delays flowing from this order, the parties in this case have been seriously harassed, we are not of opinion that by reason of this intermediate irregularity we should set aside the regular proceedings initiated by the order of the 7th of June.

This brings us to the substantial question involved in the rule, namely, whether on the materials before the Magistrate this prosecution should be permitted to continue.

In the first place, it may be observed that in his petition the complainant made no specific allegation, but that under examination by the Honorary Magistrate his complaint resolved itself into this, that when the *jabda* or day books of 1314 and 1315 were opened the title pages prefixed to those books showed the name of Nagendra Nath Sadhukhan as one of the four partners, and that after a short absence from the place of business he, on the 20th Magh, *i.e.*, the 2nd of February 1910, discovered that for the original title-pages had been substituted title pages containing not the name of Nagendra but in place thereof the name of Hari Dass.

As at present advised we are not prepared to say that a title page containing the names of the several partners and showing the amount of capital contributed by each, if signed by the partners, would not be a "valuable security" within the meaning of section 30 of the Indian Penal Code, but neither the complainant nor his witness Panch Kouri say that the title pages in question were so signed.

But on behalf of the complainant it is urged that it is open to a Magistrate, at any stage of the proceedings, to alter or modify the charge, and it has been suggested that the substitution of the title pages, if established, may constitute, if not the offence punishable under section 477, yet some other

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offence punishable under some other section of the Code, for instance, the offence of fabricating false evidence.

We have, therefore, thought it necessary to examine more closely the materials on which the Magistrate's order is based.

As we have already stated the complaint contains no specific allegation, yet if the complainant made the discovery he speaks of on the 2nd of February there is no apparent reason why in his petition of the 3rd of February he should not have made a clear statement on the point.

Further, while the petition states or implies that the name originally entered in the books was Panna Moyee's, and that on her death (in 1314) the names of her three children were substituted, in their statement to the Honorary Magistrate both the complainant and his one witness Panch Kouri ignore the two daughters. The witness Panch Kouri again, the only witness whom the complainant was able to produce, contradicts him in several particulars.

The deed of partnership shows that Hari Dass was one of the four original partners, and the accused explain that the subsequent substitution in the books of the name of Nagendra, who is a boy of four, was a mere *benami* transaction. Thus the real question in dispute between the parties is whether Hari Dass' share has devolved upon his son Johur Lal or was transferred to his daughter Panna Moyee or to her son Nagendra.

The complainant admits that the sum in question, Rs. 14,000, was contributed by Hari Dass, and says Hari Dass made a gift of this sum to Panna Moyee or to her son Nagendra. But in support of this he can point to nothing but the substitution of names. In this state of facts, though we are fully alive to the danger of interfering with cases while they are still pending in the Subordinate Courts, we think that this case falls substantially within the rule laid down in the cases of *Jagat Chandra Mozumdār v. Queen Empress* (1), *Choa Lal Dass v. Anant Pershad Misser* (2), and *Chandi Pershad v. Abdur Rahman* (1), and that no

(1) (1899) I. L. R. 26 Calc. 786. (2) (1897) I. L. R. 25 Calc. 233.

useful purpose would be served by the continuance of these proceedings. We, therefore, set aside the order of the 7th of June, and direct that this prosecution be quashed.

E. H. M.

Rule absolute.

(1) (1894) I. L. R. 22 Calc. 131.

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APPELLATE CRIMINAL.

*Before Mr. Justice Harington, Mr. Justice Mookerjee and
 Mr. Justice Teunon.*

SURENDRA NATH GHOSE

v.

EMPEROR.*

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 Aug. 12.

*Forgery—Making a false document—“Dishonestly or fraudulently,” meaning of—
 Alteration of document in a material part thereof—Affixing one’s signature to
 document not required by law to be attested after execution and registration—
 Using a forged document—Penal Code (Act XLV of 1860), ss. 24, 25, 463, 464,
 and 471.*

Where the accused affixed his signature to a kabuliat, which was not required by law to be attested by witnesses, after its execution and registration, below the names of the attesting witnesses but without putting a date or alleging actual presence at the time of its execution:

Held, that such act did not fall within the first clause of s. 464 of the Penal Code inasmuch as, although it may have increased the apparent evidence of its genuineness, it was not done “dishonestly” or “fraudulently” within ss. 24 and 25; and further that it did not justify the inference that he intended it to be believed that the document was made or signed at a time when he knew it was not made or signed, but was consistent with the hypothesis that he intended it to be believed that he would be able, if called as a witness, to prove its genuineness.

The expression “*intent to defraud*” implies conduct coupled with an intention to deceive and thereby to injure. The word “*defraud*” involves two conceptions, *viz.*, deceit and injury to the person deceived, that is, an infringement of some legal right possessed by him, but not necessarily deprivation of property.

* Criminal Appeal, No. 345 of 1910, against the order of L. Palit, Sessions Judge, Jessore, dated March 25, 1910.