

The appellants are entitled to the costs of this Court, including the costs of this reference and the costs in the lower Appellate Court.

S. M.

Appeal allowed.

1913
 SHAMBHU
 NATH
 SINGH
 v.
 SHEO
 PERSHAD
 SINGH.

CRIMINAL REVISION.

Before Sharfuddin and Core J.

PHANINDAR SINGH

v.

EMPEROR.*

1913
 Jan. 10.

Collector—Jurisdiction—Complaint to Collector of the District under s. 58(3) of the Bengal Tenancy Act (VIII of 1885)—Transfer of inquiry to Subdivisional Officer for disposal—Deputy Collector—Jurisdiction of Subdivisional Officer to hold such inquiry and to direct a prosecution for fabrication of false evidence—Bengal Tenancy Act, ss. 3(16), 58(3)—Government Notification of 19th September, 1910—Reg. IX of 1833 ss. 20 and 21—Criminal Procedure Code (Act V of 1898) s. 476.

Under s. 3(16) of the Bengal Tenancy Act, and Government Notification of the 19th September, 1910, a Subdivisional Officer is a "Collector" and is authorized to hold an inquiry under s. 58 (3) of the Bengal Tenancy Act.

A Collector of the district has power, on complaint made to him, to transfer such inquiry for disposal to a Subdivisional Officer who is, under ss. 20 and 21 of Reg. IX of 1833, subordinate to the Collector, and is required to perform all the duties assigned to him by that functionary.

Where, therefore, a complaint under s. 58 (3) of the Bengal Tenancy Act was made to the Collector of the district, and transferred by him for disposal to the Subdivisional Officer, who found that certain rent receipt books, filed in the course of the inquiry, had been fabricated :—

Held, that the latter had jurisdiction, under s. 476 of the Criminal Procedure Code, to direct a prosecution of the offenders for offences under ss. 193 and 196 of the Penal Code.

* Criminal Revision No. 1609 of 1912, against the order of A. R. Toplis, Subdivisional Officer of Barh, dated Oct. 14, 1912.

1913
PHANINDAR
SINGH
v.
EMPEROR.

THE facts of the case were as follows. On 3rd July 1912 one, Rucktoo Singh, instituted a complaint under s. 58(3) of the Bengal Tenancy Act before the Collector of Patna, stating that he was a tenant of mauza Mahomed Sayadpore, belonging to Sheo Prokash Singh, Chander Prosad Singh and others, that he had sent the zemindars his rent by a money order which they had refused to receive, whereupon he had deposited the amount in the Treasury, and that they had not granted him a receipt but had, nevertheless, brought rent suits against him. Rucktoo Singh also alleged that the zemindars had granted *kutchra* receipts to tenants. On 25th July, the Collector issued notices on the petitioner, Phanindar Singh, and 12 other zemindars, calling upon them to show cause why they should not be fined Rs. 50 under s. 58(3) of the Bengal Tenancy Act. The petitioner and the others showed cause, and denied the transmission of the rent by money order and its deposit in the Treasury. On the 16th August, the Collector transferred the case to the Subdivisional Officer of Barh for disposal. The latter held an inquiry and took evidence on both sides. It appeared that, on the 2nd October, 1912, in the course of such inquiry, eight counterfoil receipt books were put in, on behalf of Bhagwan Sahai, the agent of the zemindars, to prove the issue of regular rent receipts. On the 14th October, the Magistrate concluded the inquiry, and convicted the petitioner Phanindar and the other zemindars, under s. 58(3) of the Bengal Tenancy Act, and fined them Rs. 10 each, holding that they had failed to deliver proper rent receipts to the complainant and other tenants without reasonable cause, and that, after the institution of the present proceedings, Bhagwan Sahai and Phanindar had the receipt books manufactured, and receipts for the past four years distributed to such tenants as agreed to take them. On the same day

1913

PHANINDAR
SINGH
v.
EMPEROR.

the Magistrate issued notices on Bhagwan and Phanindar, under s. 476 of the Criminal Procedure Code, to show cause why they should not be prosecuted, under ss. 193 and 196 of the Penal Code, for intentionally fabricating false evidence. They showed cause on the 29th, but proceedings under s. 476 of the Criminal Procedure Code were drawn up against them. The petitioners thereupon moved the High Court, and obtained the present Rule to set aside the order directing their prosecution as *ultra vires*. The District Magistrate, in his explanation, referred to Government Notification No. 1579T.R., dated 19th September, 1910, published in the *Calcutta Gazette*, Part I, p. 1323, which was as follows :—

“ In exercise of the powers conferred by clause 16 of s. 3 of the Bengal Tenancy Act, the Lieutenant Governor is pleased to appoint all officers in charge of subdivisions in which s. 58 of that Act is in force to discharge, in their respective subdivisions, the functions of a Collector under the said section 58.”

Mr. S. P. Sinha and *Babu Dwarka Nath Mitter*,
for the petitioners.

Mr. P. L. Roy and *Babu Ambicapada Chowdhry*,
for the opposite party.

SHARFUDDIN AND COXE JJ. This is a Rule calling on the Collector of Patna and also on the opposite party to show cause why the order passed by the Subdivisional Officer of Barh, on the 29th October, 1912, directing proceedings to be drawn up against the petitioner, under section 476 of the Criminal Procedure Code, should not be set aside, on the ground that it was passed without jurisdiction.

It appears that, on a complaint by one Rucktoo Singh, a proceeding was instituted against the petitioner under clause (3) of section 58 of the Bengal Tenancy Act. The Collector of Patna transferred the case to the Subdivisional Officer of Barh. This officer

1913
 PHANINDAR
 SINGH
 v.
 EMPEROR.

passed an order on the 14th October, 1912. During the pendency of the proceedings before the Subdivisional Officer two other applications were made by two other tenants, similar to the one made by Rucktoo Singh; and Rucktoo Singh also put in another before this officer: whereupon an order was passed to this effect:—"Notice has already been served. File." During the proceedings under section 58 the petitioner put in a number of counterfoils, in order to show that he had, as a matter of fact, on receipt of rent from the tenants, made over to them printed receipts. The Subdivisional Officer came to the conclusion that these counterfoils were forged documents; and he thereupon recorded a proceeding, on the 14th October, 1912, under section 476 of the Criminal Procedure Code, for the prosecution of the petitioner under section 193 of the Indian Penal Code.

An application was made to this Court, on the ground that this order for prosecution was *ultra vires*, inasmuch as the Subdivisional Officer had no jurisdiction in the matter, and it was also pointed out that the Collector of Patna had no jurisdiction to transfer the enquiry into the complaint of Rucktoo Singh to the Subdivisional Officer of Barh; thereupon this Rule was issued.

The contention on behalf of the petitioner is that section 58 of the Bengal Tenancy Act refers to the powers given to the Collector for the purpose of an enquiry under that section, and that the Subdivisional Officer was not a Collector. Then it is also contended that, even supposing that all Subdivisional Officers are Collectors, the Collector of the district had no power to transfer an enquiry, under section 58 of the Bengal Tenancy Act, to another officer who had the powers of a Collector; our attention has been drawn to clause (16) of section 3 of the Bengal Tenancy Act,

which defines the word "Collector." According to that clause a "Collector" means a Collector of a district, or any other person appointed by the Local Government to discharge any of the functions of a Collector under this Act. And it is contended that the Collector of a district is, no doubt, a Collector under this definition, and that any other officer would become a Collector if appointed by the Local Government to discharge any of the functions of a Collector.

The learned District Magistrate has submitted to this Court an explanation. In it he refers to Government Notification No. 1579T. R., dated the 19th September, 1910 and published at Part I, page 1323, of the *Calcutta Gazette* of the 28th *idem*; and he points out that under this notification all Subdivisional Officers are authorised to discharge, in their respective subdivisions, the functions of a Collector under section 58 of the Bengal Tenancy Act. So there can be no doubt that Subdivisional Officers under this notification are also Collectors.

We now proceed to deal with the question whether the Collector of Patna had any jurisdiction to transfer the inquiry under section 58 of the Bengal Tenancy Act to the Subdivisional Officer of Barh, who was also, under the above notification, a Collector. Under section 20 of Regulation IX of 1833 it is provided that a Deputy Collector appointed under this Regulation should be, in all respects, subordinate to the Collector under whom he may be placed, and is required to perform all duties assigned to him by that functionary. Under section 21 it is in the discretion of the Collector to employ them generally in the transaction of any part of the duties of a Collector.

A Subdivisional Officer is none the less a Deputy Collector because he is specially authorised to perform certain functions of a Collector, and a Collector, in our

1913
PHANINDAR
SINGH
v.
EMPEROR

1913
 PHANINDAR
 SINGH
 v.
 EMPEROR.

opinion, is authorised to transfer to him Collectorate work which he has power to perform, though having regard to the wording of the Tenancy Act, it may well be that an enquiry under section 58 would not be transferred to him, if he were not specially authorised to perform the functions of a Collector. We think, therefore, that the action of the Subdivisional Officer was within his powers. For these reasons the present Rule is discharged.

E. H. M.

Rule discharged.

CRIMINAL REVISION,

Before Shurfuiddin and Richardson JJ.

LEAKAT HOSSEIN

v.

EMPEROR.*

1913
 Jan. 29.

Procession—Commissioner of Police—Orders prohibiting a public procession and a particular individual from joining it—Legality of such orders—Public notice of order, necessity of—Power of Indian Legislature to make police regulations regarding public processions—Calcutta Police Act (Beng. IV of 1866) ss. 62A (4), 102A—Calcutta Suburban Police Act (Beng. II of 1866) ss. 39A (4), 49A—Calcutta and Suburban Police (Amendment) Act (Beng. III of 1910) ss. 16 and 31.

Sub-section (4) of s. 62A of the Calcutta Police Act, and of s. 39A of the Suburban Police Act, must be strictly construed. It empowers the Commissioner of Police, when he considers it necessary to do so for the preservation of the public peace or public safety, to prohibit a procession or public assembly, but not a particular individual from taking part in the same.

* Criminal Revision No. 1613 of 1912 against the order of D. Swinhoe, Chief Presidency Magistrate, Calcutta, dated Sept. 24, 1912.