

(1880) 09 CAL CK 0010

Calcutta High Court

Case No: None

Juggut Chunder
Mozumdar

APPELLANT

Vs

Kasi Chunder
Mozumdar

RESPONDENT

Date of Decision: Sept. 29, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 468

Citation: (1881) ILR (Cal) 440

Hon'ble Judges: Richard Garth, C.J; Maclean, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The first ground upon which it is contended that the order is bad is, that the Judge of the Pubna Court had no jurisdiction to make it.

2. Upon this ground alone it appears to me that the order is clearly illegal. The offence of which Kasi is said to have been guilty is that of giving false evidence in a judicial proceeding u/s 193 of the Penal Code, and he is said to have given this false evidence in the 4th paragraph of the petition which he filed in the District Court of Rajshahye in 1878. If this was an offence at all, it seems clear to me that the Court before which it was committed was the District Court of Rajshahye, and that, consequently, the only Court which could give sanction to any criminal proceeding u/s 468 of the Criminal Procedure Code was either the Judge of the District Court of Rajshahye, or some Court to which the Rajshahye Court was subordinate. The offence was certainly not committed before or against the District Court of Pubna, which was not in existence at the time when the alleged offence was committed.

3. The District Judge of Pubna appears to be under the impression that, because the land, which was the subject of the mortgage, has since been transferred to the

jurisdiction of Pubna, the offence with which Kasi is charged must also be considered as having been committed before the District Court of Pubna. But this is clearly a mistake. The question is not within what jurisdiction the mortgaged property is now situate, but before what Court the offence was committed; and there is no doubt that the offence (if any) was committed before the District Court of Rajshahye. I think, therefore, that, upon this ground alone, the sanction given by the Judge of Pubna is illegal.

4. But it was further contended by Mr. Ghose that, even assuming the Judge to have had jurisdiction, he had no evidence or materials before him which would legally justify his making the order. It is not necessary for our present purpose to decide this further question; but as it is possible that another application of a similar nature may be made to the Rajshahye Court, I think it right, as the question has been raised, to express my views upon it.

5. In the case of *Barkatullah Khan v. Rennie* (I. L. R. 1 All. 17) it was held by a Full Bench at Allahabad, that when the Court in which the evidence in a case has been given has, u/s 468 of the Criminal Procedure Code, sanctioned criminal proceedings, no superior Court has any right to question the propriety of that sanction. And in the case of *In the matter of the Petition of Ram Prasad Hazara* B. L. R. Sup. 426 : S. C. 5 W. R. Mis. Rul. 24 it was held by a Full Bench of this Court that where, in the course of a suit, a Civil Court commits a party for trial or sanctions criminal proceedings against him on a charge of perjury or forgery, the High Court cannot, as a Court of revision, reverse such sanction or order upon the ground that it was not warranted by the facts.

6. There are also other cases to the same effect. But I do not understand any of these cases to go so far as to decide, that when a Court before which a case is pending sanctions criminal proceedings against one of the parties to that suit, before any evidence in the case has been given, and without any materials before it upon which it could properly exercise a discretion, the sanction cannot be set aside.

7. It seems to me that the reason of the rule laid down in Section 468 consists in this, that suitors in a Court of Justice ought to be allowed the fullest liberty of speech and action in support of their respective contentions, and so long as they use that liberty in good faith and honestly, they ought not to be subjected to malicious prosecutions.

8. The Court which has the best means of forming an opinion upon the bona fides of the parties and the truthfulness of the witnesses, is the Judge who hears the evidence, and therefore, upon that Court or upon some superior Court which has the power of looking into the proceedings, the law imposes the duty of sanctioning or refusing to sanction criminal proceedings against the parties or their witnesses.

9. But if a case is settled without any evidence being gone into, it seems to me that the Court in which the suit was brought has no opportunity of judging of the bona

fides of the claim or defence, and if it has any power at all under such circumstances, which I very much doubt, to give its sanction to criminal proceedings against either party, I think it would be guilty of a great impropriety and indiscretion in so doing. In this particular case no evidence was gone into. The proceedings taken by the mortgagee in 1878 were instituted under Beg. XVII of 1806, which does not make it necessary that his petition should even be verified in the ordinary way. The suit was subsequently compromised by consent, each party paying his own costs; and it seems to me that as no evidence was given on either side, it was quite impossible for them to form anything like a correct judgment as to whether the mortgage-money had or had not been paid when the proceedings were instituted in 1878.

10. Then there was another point taken by Mr. Ghose, which I think, upon consideration, is entitled to some weight.

11. The petition presented by the mortgagee in 1878 did not require (as we have already seen) to be verified upon oath or affirmation. The petitioner was, therefore, not bound so to verify it, although in point of fact he did so; and Mr. Ghose's contention is, that unless the petitioner was legally bound to verify the petition, his verifying it gratuitously would not render him liable to conviction for giving false evidence or making a false claim; see Sections 191 and 193 of the Indian Penal Code.

12. An oath voluntarily taken in a proceeding where an oath is not necessary, would not, by the English law, support an indictment for perjury, and I should doubt whether, under the Penal Code, a statement upon oath, when the oath is not necessary, would come within the provisions of Section 191. But it is not necessary for our present purpose to decide that question.

13. The order of the District Judge, which sanctions the criminal proceedings, will be set aside on the first ground.

Macleay, J.

14. I concur in setting aside the proceedings on the ground that the Court of the Judge of Pubna and Bogra was not the Court before which the alleged offence was committed.