

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Shah.

1917.

IN RE FAREDOON CAWASJI PARBHU.*

February
14.

*Criminal Procedure Code (Act V of 1898), section 439—High Court—
Revisional jurisdiction—Order of acquittal.*

The High Court of Bombay has power, under section 439 of the Criminal Procedure Code, 1898, to interfere in revision with an order of acquittal; but by a long established practice of the Court, revisional applications against orders of acquittal are not entertained from private petitioners except it be on some very broad ground of the exceptional requirements of public justice.

THIS was an application in revision against an order of acquittal passed by C. H. Setalwad, acting Chief Presidency Magistrate of Bombay.

The applicants charged the accused with infringement of copyright in their calendars under section 7 of the Indian Copyright Act (III of 1914). The accused were acquitted on the ground that the applicants were not entitled to complain of the infringement as they had not registered their copyright in the calendars under Act XX of 1847.

The applicants applied to the High Court against the order of acquittal.

Setalwad, with *Merwanji, Kola & Co.*, for the applicants.

Jinnah, with *Mehta, Dalpatram and Lalji*, for the opponents.

BATCHELOR, J.:—The present petitioners have applied to this Court in revision against an order made by the learned Chief Presidency Magistrate acquitting the opponents, who in the Magistrate's Court had been

* Criminal Application for Revision No. 356 of 1916.

1917.

FAREDOON
CAWASJI,
In re.

charged by the petitioners with infringement of the petitioners' copyright in certain calendars under section 7 of the Copyright Act III of 1914. The sole ground upon which the learned Magistrate has acquitted the opponents is that there was no copyright in the calendars in question, because these calendars had not been registered under Act XX of 1847. It is contended by Mr. Setalvad that that view of the learned Magistrate was erroneous in law. For the purpose of the present argument I will assume that the learned counsel's position upon this point is indisputable. Upon that assumption we have still to consider whether this Court in the proper exercise of its discretion ought to interfere with this order of acquittal.

Under the law the sole power of appealing against acquittals is vested in the Government. Substantially this petition does not materially differ from a petition of appeal against an acquittal. By the long established practice of this Court revisional applications against orders of acquittal are not entertained from private petitioners except it be on some very broad ground of the exceptional requirements of public justice. This rule of practice rests on public grounds of great importance, and, so far as can be discovered, has never been departed from by this Court except in two isolated cases; both those cases were cases where the applicant in revision was not a private individual but a municipality, i.e., a public body, so that the Court cannot be said to have broken in upon the principle of discouraging attempts by private persons to obtain the reversal of orders of acquittal. The whole question of the High Court's interference in revision with orders of acquittal was recently considered by the Calcutta High Court in *Farujdar Thakur v. Kasi Chowdhury*⁽¹⁾

(1) (1914) 42 Cal. 612.

1917.

FAREDOON
CAWASJI,
In re.

where the practice of all the High Courts was passed in review by Sir Lawrence Jenkins C. J. There was a difference of opinion between the two Judges who at first heard the application, but ultimately Sir Lawrence Jenkins's view prevailed. The learned Chief Justice, after considering the history of the decisions upon this point, concluded by saying :

"As I have already indicated, I am not prepared to say the Court has no jurisdiction to interfere on revision with an acquittal, but I hold it should ordinarily exercise this jurisdiction sparingly, and only where it is urgently demanded in the interests of public justice. This view does not leave an aggrieved complainant without remedy ; it would always be open to him to move the Government to appeal under section 417, and this appears to me the course that should be followed."

I am of opinion that this pronouncement of the Chief Justice should be followed as correctly interpreting both the provisions of the law and the established practice of this Court. In the case before us if this principle is to be applied, it is clear that the petition must be rejected, for there is no matter of general public importance involved, nor are the interests of public justice closely concerned. Moreover, the petitioners, if they have suffered any wrong by the acts of the opponents, have their opportunity of obtaining full redress in the Civil Courts.

The rule must be discharged.

SHAH, J. :—I agree.

Rule discharged.

R. R.