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MONIE v. SCOTT.

Solicitors for the plaintiffs : Messrs. *Crawford, Bayley & Co.*

Solicitors for the defendant : Messrs. *Mirza, Mirza & Mangaldas.*

G. G. N.

CRIMINAL APPELLATE.

Before Mr. Justice Heaton and Mr. Justice Hayward.

EMPEROR *v.* WAMAN DINKAR KELKAR AND ANOTHER.*

1918. July 3.

Criminal Procedure Code (Act V of 1898), section 476—Revenue appeal heard by Assistant Collector—Direction to prosecute a party to the appeal as well as a third person implicated in the offence though not a party to the appeal—Preliminary inquiry conducted in part by the Assistant Collector and completed by the Criminal Investigation Department—Direction to prosecute need not be a part of the revenue appeal or its continuation.

Accused No. 1, a Mamlatdar, having decided a revenue case brought by accused No. 2, an Inamdar, against his tenants to recover rent, appeals were preferred from the decision to the Assistant Collector. The appeals were decided on the 18th July 1916 by the Assistant Collector, who having suspected the genuineness of a Kabulayat produced in the case proceeded, on the 28th July 1916, to call for an explanation of the Inamdar and on the 10th October 1916 obtained a report from the Mamlatdar. The Assistant Collector perused the explanation and the report, but as he considered the matter serious and demanding further inquiry, he applied on the 7th March 1917, for assistance of the Criminal Investigation Department from the District Magistrate. The assistance was given and inquiry made by the Police. On receipt of the report from the Police, the Assistant Collector passed, on the 2nd July 1917, an order referring the matter for inquiry to the nearest First Class Magistrate under section 476 of the Criminal Procedure Code. The Magistrate committed the accused to the Sessions Court, where on trial held they were convicted and sentenced. On appeal to the High Court, it was contended, (1) that even if the offence was brought under the notice in the judicial proceedings of the Assistant Collector as regards the Inamdar, it was not brought to his notice as regards the Mamlatdar ; (2) that the whole of the preliminary inquiry ought to have been made by the Assistant Collector and that he was *functus officio* as

* Criminal Appeals Nos. 36 and 37 of 1918.

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soon as he made his reference to the District Magistrate; and (3) that the delay in proceeding under section 476 of the Criminal Procedure Code was fatal to the jurisdiction of the Assistant Collector to act under the section:—

Held, (1) that what was provided for in section 476 of the Criminal Procedure Code was that after making preliminary inquiry into any offence brought to notice the case might be sent for inquiry to the nearest Magistrate of the First Class, that is to say, it was the case which was to be sent and not necessarily all the offenders who might be concerned in the commission of the offence;

(2) that some inquiry at least having been made by the Assistant Collector, he was not deprived of jurisdiction to act under the section by the mere fact that he took the precaution of making a more careful and deliberate inquiry with the assistance of the Criminal Investigation Department, or by the fact that he applied to the District Magistrate for assistance;

(3) that there was nothing in the wording of the section to require that officers acting under it were bound to make their inquiry either in the actual course of the judicial proceedings or so shortly thereafter as to make it really a continuation of those proceedings.

In re Lakshmidas Lalji[1], followed.

Rahimadulla Sahib v. *Emperor*[2]; *Aiyakannu Pillai* v. *Emperor*[3]; *Begu Singh* v. *Emperor*[4] and *Bahadur* v. *Eradatullah Mallick*[5], dissented from.

APPEALS from convictions and sentences passed by F. X. DeSouza, Sessions Judge of Satara.

On the 31st July 1915, Patankar who was an Inamdar of several villages in the Patan Taluka, filed an assistance suit in the Court of the Mamlatdar of Patan (accused No. 1), to recover arrears of rent from his tenants.

The Mamlatdar (accused No. 1) passed orders in the case in the matter of Savla Naikwadi on the 6th January 1916, in the matter of the Chambhars on the 12th January 1916, and in the matter of Dnyanu on the 25th January 1916. These tenants appealed to the Assistant

(1) (1907) 32 Bom. 184.
(2) (1908) 31 Mad. 140.
(3) (1908) 32 Mad. 49.
(4) (1907) 34 Cal. 551.
(5) (1910) 37 Cal. 642 at p. 649.

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Collector, who allowed, on the 18th July 1916, all the appeals with the exception of the appeal preferred by Savla Naikwadi.

The Assistant Collector, Mr. Master, having in the course of hearing of the appeals suspected the genuineness of a Kabulayat (Exhibit 11) produced in the case by the Inamdar (accused No. 2), called upon the Inamdar to show cause why criminal proceedings should not be instituted against him and recorded his statement on the 19th July 1916. Ten days later, he sent the papers down for further inquiry and report to the Mamlatdar, who made his report on the 10th October 1916. On the 7th March 1917, Mr. Master reported the case to the District Magistrate with a request that the matter should be entrusted to the Criminal Investigation Department for investigation. A Deputy Superintendent of Police was deputed to make the investigation; and he made a report after local inquiry to the effect that there was a *prima facie* case of forgery as regards the Kabulayat not only against the Inamdar but against the Mamlatdar also.

Mr. Master next called upon the Mamlatdar to give his explanation as to the forgery of Exhibit 11 and also of Exhibits 16 and 20; and recorded his statement on the 27th June 1917.

Eventually, on the 2nd July 1917, Mr. Master passed an order under section 476 of the Criminal Procedure Code and sent the Mamlatdar in custody to the nearest First Class Magistrate. The Inamdar accused was arrested later and placed before the Magistrate. A joint inquiry was held against both accused, who were committed to take their trial before the Sessions Court at Satara.

At the trial, certain preliminary objections were raised by the defence. It was contended, first, that the Assistant Collector had no jurisdiction under

section 476 of the Criminal Procedure Code against the Mamlatdar as he was neither a party nor a witness in the assistance suit but the judicial officer who decided it. Secondly, it was urged that the long delay intervening between the decision of the appeals by the Assistant Collector on the 18th July 1916 and the order under section 476 passed by him on the 2nd July 1917, vitiated the latter order. Lastly, it was submitted that the Assistant Collector having referred the matter to the District Magistrate, he was *functus officio* and had no further jurisdiction to take action under section 476.

The learned Sesssions Judge overruled these contentions and went on with the trial. He found both the accused guilty. The Mamlatdar was convicted of an offence under section 466 of the Indian Penal Code, and also of an offence under section 219 of the Code. The sentence passed for the first offence was rigorous imprisonment for five years, while that for the second offence was rigorous imprisonment for two years. The Inamdar, accused No. 2, was convicted of (1) offence under section 209; (2) offence under sections 219 and 109; and (3) offence under section 471 of the Indian Penal Code. He was sentenced to rigorous imprisonment for one year each for each of the first two offences; and for the third, he was ordered to suffer rigorous imprisonment for five years. All the sentences were ordered to run concurrently.

The accused preferred separate appeals to the High Court.

Binning, with *N. V. Gokhale*, for the Mamlatdar.

G. S. Rao, for the Inamdar.

Velinkar, with *S. S. Patkar*, for the Crown.

HAYWARD, J.:—These are two appeals against convictions recorded at a trial with assessors by the Sessions Judge of Satara. One appellant is the Inamdar of

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Patan. The other appellant was the Mamlatdar of Patan. The Inamdar has been convicted of having brought a false claim for rent against his tenants, certain Chambhars, in the Revenue Court of the Mamlatdar. He has also been convicted of having used as genuine a Kabulayat which had been altered by forgery for the purpose of establishing his claim against those Chambhars in the proceedings in the Revenue Court. He has also been convicted of having abetted a corrupt judgment which had been passed against those Chambhars by the appellant Mamlatdar in that Court. The convictions were concurred in by both the assessors and he was sentenced to concurrent sentences which had the practical effect of sending him to prison for five years' rigorous imprisonment under sections 209, 471, 219 and 109 of the Indian Penal Code. The appellant Mamlatdar has been convicted of forgery in that he altered the statement as made by the appellant Inamdar on the first hearing of the Revenue case for the purpose of supporting the claim based on the forged Kabulayat. He has also been convicted of having delivered a corrupt judgment against the Chambhars in those proceedings in his Revenue Court. These convictions were concurred in by both the assessors and he was sentenced to concurrent sentences which had the practical effect of sending him to rigorous imprisonment for five years under sections 466 and 219 of the Indian Penal Code.

The appellants raised a preliminary objection to the trial which was, however, overruled by the Sessions Judge. They have repeated that objection here. Their objection is based on these facts. The offences which have been the subject of trial arose, as has already been indicated, out of judicial proceedings in the Revenue Court of the Mamlatdar. There was an appeal from that decision on the 8th of March 1916 to the

Assistant Collector and the decision was, owing to suspicions raised in his mind by the condition of the forged Kabulayat, reversed by him on the 18th of July 1916 as the appellate Revenue Court. The Assistant Collector in consequence of the suspicions so raised proceeded, on the 28th of July 1916, to call for the explanation of the appellant Inamdar, and, accordingly, on the 10th of October 1916, a report on the matter was submitted to him by the appellant Mamlatdar. The Assistant Collector appears, after consideration of the explanation and the report, to have considered the matter serious and demanding further and closer inquiry. He, accordingly, on the 7th of March 1917, applied for the assistance of the Criminal Investigation Department from the District Magistrate. This assistance was granted and on the 2nd of July 1917 a full report was submitted to him by the Deputy Superintendent of Police. After considering all the matters before him he then passed an order referring the matter for inquiry to the nearest First Class Magistrate under section 476 of the Criminal Procedure Code. The result was that the appellants were committed to take their trial before the Sessions Court of Satara.

The appellants upon these facts urge in support of their objection that even if the offence was brought under notice in the judicial proceeding of the Assistant Collector as regards the appellant Inamdar, it was not brought to notice as regards the appellant Mamlatdar. It has further been urged that the whole of the preliminary inquiry ought to have been made by the Assistant Collector and that he was *functus officio* after having made his reference to the District Magistrate and had no longer any jurisdiction to pass an order under section 476 of the Criminal Procedure Code. It has also been urged that there was delay in proceeding under that section and that that delay was fatal to his

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jurisdiction in accordance with certain rulings which have been quoted before us of the Madras and Calcutta High Courts.

It seems to me, however, that there is no substance in any of these arguments. It is to be noticed with regard to the first argument that what is provided for is that after making preliminary inquiry into any offence brought to notice the case may be sent for inquiry to the nearest Magistrate of the First Class, that is to say, it is the case which is to be sent and not necessarily all the offenders who may be concerned in the commission of the offence. The subsequent clause providing the sending of the offender in custody is permissive and would appear to me to refer only to such offender or offenders as might at that time be known and be within the grasp of the enquiring officer. It seems to me, therefore, that no solid objection can be taken to the jurisdiction on the ground that the criminality of the appellant Mamlatdar was only discovered afterwards in the course not of the judicial proceedings in the revenue matter, but in the course of the preliminary inquiry into the suspected criminal offence.

Nor does there seem to me to be any more substance in the second argument that the whole inquiry should have been made by the Assistant Collector. It is to be observed that the preliminary inquiry to be made is only such inquiry as may be necessary and it cannot be denied in this case that some inquiry at least was made by the Assistant Collector himself. It does not, therefore, appear to me to be a defect which could deprive him of the jurisdiction that he took the precaution of making a more careful and deliberate inquiry with the assistance of the Criminal Investigation Department. It seems to me that that was all he did and that his reference to the District Magistrate was

merely to that officer as the Executive Controller of the Police and not to him in his judicial capacity as the District Magistrate. It is difficult in any case to see how the reference to the District Magistrate could have deprived the Assistant Collector of jurisdiction under section 476 of the Criminal Procedure Code.

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With regard to the third argument as to delay it has first to be observed that there was as a matter of fact no undue or unreasonable delay. The Assistant Collector's decision in the revenue proceedings was passed on the 18th of July 1916 and he took action within ten days on the 28th of July 1916. The rest of the time was occupied in the preliminary inquiry and it cannot, in my opinion, be said to be unreasonable looking to the complicated nature of the case which he had before him. But this third argument is supported by authority, and that authority requires respectful consideration. It has been held in the case of *Rahimadulla Sahib* v. *Emperor*[1] that it is essential to the jurisdiction conferred by the section that the order should be made either at the end of the judicial proceedings or so shortly thereafter that it may reasonably be said that the order is part of those proceedings. It was apparently felt that the last sentence required some modification to make it clear and it was accordingly held in the later case of *Aiyakannu Pillai* v. *Emperor*[2] that the power conferred by the section ought to be exercised either in the course of the judicial proceedings or at its conclusion or so shortly thereafter as to make it really the continuation of those judicial proceedings. These two decisions were not unanimous. They were decisions by the Full Bench of the Madras High Court. They were, however, followed in the case of *Begu Singh* v. *Emperor*[3] in which it was held that the power

(1) (1908) 31 Mad. 140. (2) (1908) 32 Mad. 49.
(3) (1907) 34 Cal. 551.

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conferred by the section ought to be exercised immediately after conclusion of the trial and again in the case of *Bahadur* v. *Eradatullah Mallick*[1] in which it was laid down that action must be prompt and expeditious in order to be within the jurisdiction conferred by the section. These were decisions by the Calcutta High Court. On the other hand there are some *obiter dicta* to the contrary in the case of *In re Lakshmidas Lalji*[2] and those *dicta* were followed by the Sessions Judge. It seems to me, with every respect to the contrary decisions of the majority of the learned Judges of the Madras and Calcutta High Courts, that those *dicta* are correct. They were *dicta* of Chandavarkar J. of this Court. To hold otherwise would be to read into the section words of limitation which have not been placed there by the Legislature. It is no doubt expedient that action under that section should be taken with as much promptitude as possible. But there does not appear to me to be anything in the wording of the section or in the reasons for its enactment to hold that officers acting under it are bound to make their inquiry either in the actual course of the judicial proceedings or so shortly thereafter as to make it really a continuation of those proceedings. The section appears to have been enacted not with the intention of protecting offenders against public justice from prosecutions by the Courts, but on the contrary to facilitate, wherever and whenever those offences might come to notice, such prosecutions by the Courts.

[His Lordship next dealt with the case on its merits and concluded as follows :—]

It seems to me for these reasons that the appeals of both the Inamdar and the Mamlatdar ought, on the charges so far discussed, to be dismissed and the convictions and sentences, confirmed. But there were

(1) (1910) 37 Cal. 642 at p. 649. (2) (1907) 32 Bom. 184.

other charges against them in respect of another tenant named Dnyanu Gopal. The appellant Inamdar was acquitted of having made a false claim against this tenant Dnyanu Gopal but convicted of having abetted a corrupt judgment against him by the appellant Mamlatdar. The appellant Mamlatdar was convicted of forgery in altering the statement of this tenant Dnyanu Gopal and of having delivered a corrupt judgment against him in the Mamlatdar's Revenue Court. The assessors concurred in the acquittal and in the convictions but were divided in opinion as to the forgery of the statement of Dnyanu Gopal. The acquittal was accepted and sentences concurrent with the rest of the sentences were recorded in respect of the convictions by the Sessions Judge. But it is difficult in view of the acquittal of the appellant Inamdar of having made a false claim against this tenant Dnyanu Gopal to support his conviction for abetting a corrupt judgment against this tenant by the appellant Mamlatdar. It is similarly difficult to support the convictions of forgery in respect of the statement of this tenant Dnyanu Gopal and of having delivered a corrupt judgment against him recorded against the appellant Mamlatdar. It seems to me, therefore, that the convictions on these charges ought to be reversed in the case both of the appellant Indamdar and the appellant Mamlatdar.

HEATON, J.:—[His Lordship, after dwelling on the merits of the case, proceeded as follows:—]

I should like to add one word about the legal point which was argued. I make it very brief, because I am glad to think that Legislation will shortly wipe out the present sections 195 and 476 of the Criminal Procedure Code and in so doing will abrogate the medley of conflicting decisions which we have on those sections. I cannot, after giving the matter my best consideration,

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hold that section 476 limits the jurisdiction of a Court in the manner suggested in the Madras and Calcutta cases. There is no limitation of jurisdiction in the words of the section. The limitation is to be found, if it is found at all, by implication. Arguments as to implication in a case of this kind are always such that some will appeal to one mind, some to another. I confess that I myself see more force in the view taken by the two Judges of this Court who have expressed themselves than by the Judges of the Calcutta and Madras High Courts.

Then as to the word "offence" in section 476: Of course where you have an offence, you must have an offender though you may not know who the offender is. But it seems to me that the section not only intends to, but is expressly worded so that it may confer on a Court a power to inquire into a case and to take action, whoever may prove to be the offender, although months or even years may elapse before it becomes known with any degree of certainty who the offenders are.

I agree to the order proposed by my learned brother.

Convictions and sentences confirmed.

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Heaton and Mr. Justice Hayward.

IN RE MURLIDHAR BHAGWANDAS.*

Indian Extradition Act (XV of 1903), sections 18, 7, 8 and 8 A—Extradition treaty with the Hyderabad State†*—"Cheating" not mentioned in the treaty*

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July 10.

* Criminal Reference No. 95 of 1917.

† The material portions of the treaty run as follows :—

The two Governments hereby agree to act upon a system of strict reciprocity, as hereinafter mentioned.