nobody to whom the landlord can go in order to obtain the eviction of the tenant. But the obvious reply to that is that the Mamlatdar when dealing with an application under s. 29 has got no power to say that he would not decide the question. It is his duty to decide it under the provisions of s. 70 and he cannot say that he would not decide it because the reference to powers has got reference not to the subject-matter of the proceedings before the Mamlatdar under the Mamlatdars' Courts Act nor to the powers of the Mamlatdar to award possession or to refuse to award possession or refer the parties to the civil Court. Reference to the powers in s. 72 has a reference to the powers required for conducting the proceedings.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

THE STATE OF BOMBAY *v.* RAMGOPAL GANPATRAI RUIA AND ANOTHER (ORIGINAL ACCUSED NOS. 1 AND 2).*

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Criminal Procedure Code (Act V of 1898), ss. 209, 210—Committal proceedings—Powers of Magistrate—Test for determining whether accused be committed or discharged—Presence or absence of credible evidence, the deciding factor.

A Magistrate in a committal proceeding is entitled to examine and weigh the evidence, not for the purpose of deciding whether it would definitely result in conviction, but with a view to see whether the evidence is such as would lead to an expectation of a probable conviction. He is to consider the evidence in order to see whether there is a prima facie case which would justify committal to the Court of Session, a prima facie case which should go to the jury for ultimate decision. In other words, he should approach the evidence and go into it to decide whether he should commit or not. The correct position is not that he should commit the case to the Sessions Court only if a conviction, in his opinion, is bound to follow. If there are circumstances for and against, if there are probabilities for and against, if there is evidence for and against with which there is nothing wrong prima facie, which on an appraisement by the jury may lead to a conviction or may not, his

* Criminal Revision Application No. 1425 of 1950.

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duty is to commit the case and not discharge the accused. The test is that if there is credible evidence which, if accepted, may lead to conviction, he ought to commit. If the Magistrate comes to the conclusion that the evidence is such that no Court would ever convict, he should not commit the case. In other words, if the state of evidence is such that in a Sessions Court the Judge, at the very outset, is likely to withdraw the case from the jury on the ground of there being no evidence. or if he is likely, at the end, to direct the jury that they must acquit the accused for absence of credible evidence, he ought not to commit.

Emperor v. *Ramchandra Gore*,[1] *Queen Empress* v. *Namdev Satvaji*,[2] *Emperor* v. *Varjivandas*,[3] In re *Bai Parvati*,[4] *Emperor* v. *Bai Mahalaxmi*,[5] and *Manikka Padayachi* v. *King Emperor*,[6] referred to.

Application for Revision against the order of discharge passed by C. B. Velkar, Presidency Magistrate 5th Court, Bombay.

One Dhanraj Girji (Complainant) was the sole proprietor of a mill called Dhanraj Mills till 1935, in which year he converted the mills into a limited company. He was the managing agent and Chairman of the board of directors till 1937. In that year he transferred the managing agency of the limited company to Ramgopal Ganpatrai Ruia (accused No. 1) who remained in charge of the managing agency till 1943. In 1943 accused No. 1 formed two private limited companies, viz. Ramgopal Ganpatrai & Sons, Ltd. and Ramrikhdas Balkisan & Sons, Ltd.—the former being given the managing agency of the mills and the latter, the selling agency of the mills. The Complainant was given a 6 annas share in these two companies, and the rest of the shares were mainly held by accused No. 1 and the members of his family. Till 1946 the complainant remained as chairman of the board of directors of the Dhanraj Mills, Ltd. In that year, however, he was removed from the chairmanship by the other members of the board but after litigation he regained his position as chairman.

In the year 1947 the complainant asked accused No. 1 for inspection of the accounts of the mills. Accused No. 1 refused inspection. In April or May of that year the complainant got information that accused Nos. 1 and 2 had committed defalcations of the funds of the mills by the device of bogus purchases and sales of cotton and bogus purchases of mill stores and had misappropriated the moneys of bearer cheques which were issued in the names of fictitious persons. After making some

(1) (1934) 37 Bom. L. R. 16, F. B. (2) (1887) 11 Bom. 372.
(3) ((1902) 27 Bom. 84. (4) (1910) 35 Bom. 163.
(5) (1915) 17 Bom. L. R. 910. (6) (1925) 48 Mad. 874.

enquiries the complainant filed a complaint on July 8, 1947 with the Crime Investigation Department, Bombay. On the same date the office of the mills was raided by the police and several books, registers, vouchers, documents etc., were seized. Accused Nos. 1 and 2 were arrested on July 18, 1947. On January 19, 1948, a charge-sheet was sent up against the accused at the conclusion of investigation. On March 31, 1948 the case was opened for the State. The matter was adjourned to the next date, namely May 1, 1948, on which date on behalf of the accused a point of procedure was raised whether the Magistrate should record evidence as in a warrant case or as in a committal inquiry. On May 6, 1948, the Magistrate passed an order, saying that having regard to the enormity of the amount involved in the case he would record evidence as in committal proceedings. Recording of evidence went on from June 1948 to December 17, 1949, on which date the Magistrate framed seven charges against the accused and decided to dispose of the case himself, although the case was enquired into as a committal proceedings up to that stage.

Against the aforesaid order of the Magistrate dated December 17, 1949, the State of Bombay applied in revision to the High Court. Bavdekar and Chainani JJ. who heard the application observed that in their view the case was important because of the large amount alleged to have been defalcated. Mr. Justice Bavdekar who delivered the judgment went on to say that if the charges in regard to all the defalcations were proved, it was obvious that the defalcations being extensive, a substantive sentence of imprisonment and fine would have to be imposed, and that from that point of view the case ought to be committed to the Court of Session. Ultimately, in that revision application, the High Court itself set out the charges and sent down the case to the Magistrate for proceeding further in accordance with law. The charge against accused No. 1 was as follows :—

"You, accused No. 1, Ramgopal Ganpatrai Ruia, being an agent of the Dhanraj Mills Ltd. and in such capacity entrusted with property, namely the amount of Rs. 6,06,661-3-6 being the proceeds of the cheques Exs. J-22, J-23, J-25, H-3, H-4, J-1, J-2, J-4, J-5, J-30, to J-32, J-33, J-34, J-10 to J-13, belonging to the said Mills, committed at Bombay, between the dates the August 21, 1945, and December 31, 1945, criminal breach of trust with respect to the property, and thereby committed an offence punishable under s. 409 of the Indian Penal Code and within the cognizance of the Court of Session of the City of Greater Bombay".

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The charge against accused No. 2 was as follows :—

"You, accused No. 2, Hariprasad Ghasiram Gupta and Ramgopal Ganpatrai Ruia, accused No. 1, between the dates of August 21, 1945, and December 31, 1945, at Bombay committed the offence of criminal breach of trust as an agent in respect of the amount of Rs. 6,06,661-3-6 being the proceeds of the cheques Exs. J-22, J-23, J-25, H-3, H-4, J-1, J-2, J-4, J-5, J-30 to J-32, J-33, J-34, J-10 to J-13, belonging to the said Mills and that you between the said dates and at the same place abetted the said accused No. 1 Ramgopal Ganpatrai Ruia in the commission of the said offence of criminal breach of trust as an agent, which was committed in consequence of your abetment and you have thereby committed an offence punishable under s. 109 read with s. 409 of the Indian Penal Code and within the cognizance of the court of Session, Greater Bombay."

The Magistrate under s. 213 (2) of the Criminal Procedure Code, 1898, cancelled the charges framed against the accused and directed the accused to be discharged, observing in his judgment as follows :—

"This case is pending with me for about two years and had gone on practically on the basis of audit of the mill accounts in respect of these transactions in a criminal Court. I do not think that I will be justified in permitting the time of another Court being occupied for this case unless a conviction in this case is reasonably probable. For several reasons given above and looking to the evidence of the prosecution as regards the question of delivery being taken or not, I am of the opinion that on the evidence before me no criminal Court would convict the accused and I, therefore, hold that there are no sufficient grounds for committing the accused for trial and this is not a fit case to go to the Sessions. On the contrary, I am of the opinion that sending this case to the Sessions and permitting this matter to be further spun out in the Court of Sessions would mean unnecessary waste of public time. I, therefore, under the discretion left to me under s. 213 of the Criminal Procedure Code, cancel the charges framed against the accused Nos. 1 and 2 and order them to be discharged".

The State of Bombay applied in revision to the High Court against the order of discharge passed by the Magistrate.

The application was heard.

B. D. Boovariwala, with *B. G. Thakor, C. N. Kanuga, Upadhyaya* and *N. K. Petigara,* Public Prosecutor, for the State.

M. P. Amin, with *S. A. Desai,* and *P. P. Khambatta,* instructed by *Pathare & Liladhar,* for the accused.

VYAS J. [His Lordship after dealing with the facts and the evidence in the case proceeded with his judgment as follows:] This takes us immediately to the point about the powers of a

Magistrate in a commital enquiry. Is he entitled to consider and weigh the evidence, and if so, to what extent and with what objective? In this context our attention was invited by Mr. Amin to the decision of *Emperor* v. *Ramchandra Gore*.[1] It was a case in which the accused was charged with the murder of his second wife Tulsa and the only material evidence was that of a witness who said that he had seen the dead body of the woman alleged to have been murdered being brought out of the hut of the accused and thrown into a well. The Magistrate considered that evidence and weighed it and came to the conclusion that it did not afford sufficient ground for committing the accused to the Court of Session. He accordingly discharged the accused. On revision to the Court of Session, the Sessions Judge set aside that order, and in further revision application to the High Court, the order of the Sessions Judge was set aside. It was held in that case that the committing Magistrate was entitled to weigh and appreciate the evidence led on behalf of the prosecution and on behalf of the defence, and, if, on a consideration of this evidence, at any stage of the preliminary enquiry, the Magistrate was of opinion that there were no sufficient grounds for committing the accused for trial, in other words there was no case which would fairly justify or sustain a conviction at the trial, or no evidence on which any reasonable person could hold the accused to be guilty, then it was his duty to discharge the accused. It was also held that the expression "sufficient grounds" meant when there was credible evidence which, if believed, would lead to a conviction of the accused. In the course of his judgment the learned Chief Justice observed that if the Magistrate came to the conclusion that there was evidence to be weighed, he ought to commit the accused for trial and he ought not to discharge the accused merely because he thought that if he were to try the case himself he would not be prepared to convict the accused on the evidence before him. But, said his Lordship, if he came to the conclusion that the evidence for the prosecution was such that no tribunal, whether a Judge or jury, could be expected to convict the accused, then he ought to discharge him. Mr. Justice Rangnekar, who also delivered a judgment in that case, pointed out that it seemed to him impossible to hold upon the plain construction of ss. 209, 210, 211, 212 and 213 of the Code of Criminal Procedure that the Magistrate was a mere recording machine,—a view often pressed before the Courts.

[1] (1934) 37 Bom. L. R. 16, F. B.

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In his Lordship's opinion these sections showed that a Magistrate holding an inquiry had wide powers, and for the proper and effective exercise of the same, he must weigh and appreciate the evidence before him. The question that arose in that case was whether it could be said that there were "sufficient grounds" for committing the accused for trial. The words "sufficient grounds" were considered in *Queen Empress* v. *Namdev Satvaji*[1], and the test which was laid down there was that when credible witnesses made statements which, if believed, would fairly sustain or justify a conviction at the trial, the Magistrate must commit the accused for trial. Ultimately Mr. Justice Rangnekar summed up his view in the following terms (p. 27) :—

> ".....In my opinion the test laid down in this case is correct. To put it in simple language, all that the Magistrate has to see is whether there is a prima facie case on which the accused can be put on his trial. In most cases no difficulty arises, but cases do occur which are on the border line as to which no hard and fast rule can be laid down. But I do not see why a Magistrate cannot discharge the accused when on a consideration of the whole of the evidence before him he is of opinion that there is no credible evidence against the accused. I do not see why he cannot say so. There is no harm in taking this view as the Magistrate has to give his reasons, and if they do not appeal to the Sessions Judge, it is, as I shall presently show, open to him to set aside the order."

Mr. Amin for the accused has strongly relied on these observations and has sought to justify the order of discharge passed by the Magistrate, which order, according to Mr. Amin, was passed after a due consideration and weighing of the evidence before him.

The next case to which our attention was invited was *Emperor* v. *Varjivandas*.[2] It was observed by Crowe, J. who delivered the judgment of the Court in that case, that the words in s. 209 of the Code of Criminal Procedure, 1898, "sufficient grounds for committing" had been explained to mean, not grounds for convicting, but where the evidence was sufficient to put the accused on his trial, and such a case arose when credible witnesses made statements which, if believed, would sustain conviction. His Lordship said that the weighing of their testimonies with regard to improbabilities and apparent discrepancies was more properly a function of the Court having jurisdiction to try the case. It was not necessary, said his Lordship, that the Magistrate should satisfy himself fully of

(1) (1887) 11 Bom. 372. (2) (1902) 27 Bom. 84.

the guilt of the accused before making a committal. It was his duty to commit when the evidence for the prosecution was sufficient to make out a prima facie case against the accused, and he exercised a wrong discretion if he took upon himself to discharge an accused in the face of evidence which might justify a conviction. On this case Mr. Amin has relied for contending that the Magistrate was justified in weighing the evidence, and on this very case Mr. Boovariwala has relied for his submission that the Magistrate exercised his discretion wrongly in coming to the conclusion that even after considering the mass of material in the case no Court would possibly come to a conclusion that the accused were guilty.

Another case to which our attention was invited was in re: *Bai Parvati.*[1] It was a case in which one Bai Parvati was accused of having attempted to commit murder by pushing another woman Jadav into a well. Parvati, the accused, was the mistress of Jadav's husband, and a good deal of evidence was led for the prosecution. The Magistrate having heard all the evidence tendered came to the conclusion which he expressed in the following words (p. 165) :

> "After having closely gone through the evidence as a whole I find that it will be a mere waste of the Sessions Court's very valuable time if I commit the accused to it to take her trial there when I myself see that there are not sufficient grounds for committing her."

So saying, he discharged Bai Parvati under s. 209 of the Code of Criminal Procedure. The said order of discharge was set aside by the Sessions Judge, and from that order of the Sessions Judge an application was made to the High Court in revision. The High Court set aside the order of the Sessions Judge. In setting it aside it was observed by Mr. Justice Batchelor, who delivered the judgment of the Court, that the Sessions Judge himself did not materially dissent from the Magistrate in his view of the effect of the evidence which was tendered in the case and that upon the Sessions Judge's own estimate of the value of the evidence the Magistrate was, in his Lordship's view, within his rights in ordering the discharge of Bai Parvati and in considering that she should not be exposed to the expense and harassment of a Sessions trial which was practically foredoomed to failure. On this case also Mr. Amin has relied for his submission that, as observed by the learned Magistrate, a committal of this case to the Court of Session would entail

[1] (1910) 35 Bom. 163, s. c. 12 Bom. L. R. 923.

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a waste of public time and harassment of the accused. On the other hand, it is contended by Mr. Boovariwala that it would not be a waste of time, but that the time would be profitably spent in the interests of the commercial morality.

The next case to which we are referred is *Emperor* v. *Bai Mahalaxmi*,[1] in which the Sessions Judge had come to a conclusion that the Magistrate who had discharged the accused had strained his powers and had himself cross-examined the prosecution witnesses. The Sessions Judge had further held that it was no part of the duty of the committing Magistrate to decide about the truthfulnesss of witnesses. With that view of the learned Sessions Judge, Mr. Justice Shah who delivered the judgment of the Court was unable to agree. His Lordship said (p. 915) :

> ".....It has been pointed out in a number of cases of this Court, of which I need refer to only one—In re: *Bai Parvati*[2]—that if the evidence tendered for the prosecution is totally unworthy of credit, it is not only within the power of the Magistrate but it is his duty to discharge the accused under s. 209 of the Criminal Procedure Code. It seems to me that in this case the Magistrate was well within his powers in cross-examining the prosecution witnesses and in considering whether the witnesses examined on behalf of the prosecution were credible."

Mr. Amin has relied on this case for submitting that not only was the Magistrate justified in weighing the evidence, but even justified in cross-examining the prosecution witnesses in order to find out whether there were sufficient grounds for committing the accused person to a Court of Session.

The last case which is brought to our notice (by Mr. Boovariwala) is the case of *Manikka Padayachi* v. *King Emperor*.[3] In that case the First Class Magistrate of Udaiyarpalaiyam had discharged all the accused, and the District Magistrate at Trichinopoly, setting aside the said order of discharge, had committed the accused for trial to the Court of Session at Trichinopoly. On a criminal revision application being made to the High Court, it was observed by Mr. Justice Shrinivasa Ayyangar that it was clear from the Code of Criminal Procedure that only one trial was contemplated and that the inquiry before the Magistrate in cases triable by a Court of Session was only in the nature of a preliminary inquiry. Mr. Justice Ayyangar went on to say that ss. 209 and 210 of the Criminal Procedure Code spoke only of there being or not being sufficient grounds

[1] (1915) 17 Bom. L. R. 910.

[2] (1910) 35 Bom. 163, s. c. 12 Bom. L. R. 923.

[3] (1925) 48 Mad. 874.

for committing the accused for trial. When the Legislature speaks of sufficient grounds for committing for trial, it should not be supposed to have spoken of sufficient grounds for conviction, and similarly when the Legislature speaks of there not being sufficient grounds for committing for trial, it should not be supposed to have spoken of there not being sufficient grounds for conviction. His Lordship went on to say (p. 878):

"It follows from this that the intention of the Legislature clearly is to make a distinction between grounds for conviction and grounds for committing for trial. Satisfactory proof of the guilt of the accused is the ground for conviction. What then is the ground for committing for trial? Satisfactory evidence to go to trial must be regarded as the ground for committing for trial."

Consistently with these observations, it was held in that case that whenever the evidence was of such a nature that the guilt of the accused could be held to be proved or disproved only as the result of the valuing and weighing it by him, the Magistrate must commit the accused to the Court of Session; but if the evidence was of such a nature that no reasonable person would ever on that evidence hold the accused guilty, he must be discharged under s. 209 (*1*) of the Code of Criminal Procedure.

The legal position which emerges from the examination of these cases is that the Magistrate in a committal proceedings is entitled to examine and weigh the evidence, not for the purpose of deciding whether it would definitely result in conviction, but with a view to see whether the evidence is such as would lead to an expectation of a probable conviction. He is to consider the evidence in order to see whether there is a prima facie case which would justify committal to the Court of Session, a prima facie case which should go to the jury for ultimate decision. In other words, he should approach the evidence and go into it to decide whether he should commit or not. The correct position is not that he should commit the case to the Sessions Court only if a conviction, in his opinion, is bound to follow. If there are circumstances for and against, if there are probabilities for and against, if there is evidence for and against with which there is nothing wrong prima facie, which on an appraisement by the jury may lead to a conviction or may not, his duty is to commit the case and not discharge the accused. The test is that if there is credible evidence which, if accepted, may lead to conviction, he ought to commit. If the Magistrate comes to the conclusion that the evidence is

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such that no Court would ever convict, he should not commit the case. In other words, if the state of the evidence is such that in a Sessions Court the Judge, at the very outset, is likely to withdraw the case from the jury on the ground of there being no evidence, or if he is likely, at the end, to direct the jury that they must acquit the accused for absence of credible evidence, he ought not to commit. Now, therefore, the point in this case is, can we say that the evidence is such that the Judge is in all probability likely to withdraw the case from the jury on the ground of there being no evidence. We have already been pointed out by Mr. Boovariwala in this case that the purchase memos are in the name of fictitious suppliers. It has also been brought to our attention that the various cheques were cashed not by the sellers or their representatives, but by the employees of the mills. We have also been referred to several receipts which were signed by Ganeshram Girdharlal and accused No. 2 for the fictitious agents of the fictitious persons. We have also been pointed out that in almost all the cases except two, the sales took place after the purchases. We have also been shown that the same number of bales of the identical classifications were purported to have been purchased and sold. If we turn to the Cotton Movements Information Form, we find that none of the alleged purchases was entered in column No. 3. We have also been told that there were notifications of Government to the effect that the mills could not sell cotton to private individuals without the permission of the Textile Controller. The question, therefore, is, whether in face of this mass of material the Magistrate exercised his discretion properly in coming to the conclusion that no Court would ever convict the accused of a charge of criminal breach of trust. In our opinion, in coming to that conclusion, he exercised the discretion vested in him by s. 213 of the Code of Criminal Procedure improperly. In our view, he was further in manifest error in failing to appreciate that between September and December 1945 there were extensive transactions of purchases of cotton bales by accused No. 1 as the managing agent of the mills, and that entries in regard to those dealings had to be made and were made in the books of the mills, and that if a person wanted to dovetail a few bogus transactions in between, he would naturally dovetail the entries about them also in all the books, registers and documents of the mills. These entries are inter-connected and one entry cannot be made without making all the rest having any bearing on it. In our view,

the Magistrate does not seem to have appreciated these circumstances of the case also.

There is another important question to which also we would like to refer. Mr. Amin's strenuous contention has been that in this case, according to the books, the delivery of goods had taken place, and it is argued by him that if we are satisfied that the delivery of the goods was there, the charge of criminal breach of trust must fail. Therefore, a point arises as to what bearing the question of the delivery of goods has got on the question of the establishment of the charge of criminal breach of trust. In this context it is necessary to remember that the charges as framed against accused Nos. 1 and 2 do not contain any reference to the delivery of goods. If we turn to s. 405 of the Indian Penal Code we find that it says thus :

> "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

It would, therefore, have to be seen whether accused No. 1 in this case was entrusted with the domain over the funds of the mills. It is to be remembered, and it is not disputed, that accused No. 1 was in routine course drawing on the funds of the mills, by means of cheques, for the purposes legitimately connected with the mills. It is to be significantly remembered in this context that accused No. 1 was also a managing director of the managing agency firm of R. G. & Sons, Ltd. It is, therefore, clear that he was the managing agent of the mills, and a question would have to be considered whether a managing agent of the mills, who, in his day to day duties in regard to the conduct of the affairs of the mills, was drawing cheques and drawing on the funds of the mills, was or was not entrusted with the domain over the moneys and funds of the mills. Supposing the jury were to come to the conclusion (and we are expressing no opinion about it) that accused No. 1 was entrusted with the domain over the funds of the mills, supposing further and here again we are expressing no opinion) that they were to come to the conclusion that the persons referred to in the purchase memos. and sale memos. were fictitious persons and supposing still further

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that they were to come to the conclusion that the moneys which were realised by the cashing of the cheques went into the account of accused No. 1 in the Netherland Trading Society and into the account of the Dhanraj Mills, of which accused No. 1 was the managing agent, in the Bank of India, Ltd., the question for them to consider would be whether the prosecution must fail simply because the delivery of the goods was taken by the mills. Normally, if a seller sells his goods, the moneys due under the cheque would go to him. But here we find that as many as 278 notes of the denominational value of thousand rupees each went into the account of accused No. 1 in the Netherland Trading Society. In these circumstances, the question with which the jury will have to be concerned would be whether there was a dishonest appropriation of the funds of the mills by accused No. 1 for his own purposes. We need not speculate whether the bales were supplied by accused No. 1 himself, for that is not the case of accused No. 1. But supposing the jury were to spell out for themselves that accused No. 1 was himself the supplier, they would still have to consider whether these transactions would amount to an offence of criminal breach of trust by him having regard to his position as managing director of the managing agency firm of the mills and also a managing agent of the mills. It is clear to us from a careful perusal of the judgment of the Magistrate that he has not paid adequate attention to these numerous questions which arise in this case while directing the discharge of the accused on a charge of criminal breach of trust. In our view if this case is committed to the Court of Session, it would not amount to a waste of public time, but the time would be well spent in the interests of the commercial morality, looking to the charges which have been made against accused Nos. 1 and 2 and looking to the enormity of the amount involved.

That being so, we allow the application, set aside the order of the learned Magistrate and direct that accused Nos. 1 and 2 shall stand committed to the Court of Session, accused No. 1 for a charge under s. 409 of the Indian Penal Code and accused No. 2 for a charge under s. 409 read with s. 109 of the Indian Penal Code. We are committing the accused on the charges as they were framed and directed to be framed by Bavdekar and Chainani JJ., on March 1, 1950, and as adopted by the learned Magistrate himself on March 20, 1950.

The accused to be taken in custody.

Both the accused shall be released on the same bail on which they were released in the Court of the Magistrate. A fresh bail bond to be executed by both the accused before the Registrar, High Court. One surety for Rs. 10,000 to be given by each accused and a personal recognizance to the same extent also to be given by each.

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Order set aside.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

RANGARAO DNYANU NIKAM (ORIGINAL ACCUSED), APPELLANT *v.* STATE.*

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June 28

Indian Evidence Act (I of 1872), s. 27—Statement by accused in police custody—"As relates distinctly to the fact thereby discovered"—Meaning of—How much of such statement admissible in evidence.

Under s. 27 of the Indian Evidence Act, 1872, only that portion of the statement made by an accused in custody of the police can be proved against him which led to the discovery of the fact deposed to and which relates distinctly to the fact discovered, that is to say, only that portion of the accused's statement can be admitted which was the direct or immediate cause of the discovery of the fact deposed to.

The accused, while in custody of the police made a statement to the police that one month previously he had kept a hand-grenade, that it was kept in the cattle-shed of a friend of his, that he would take it out and give it to the police. Subsequently, he took the police and the Panchas to the place and took out a hand-grenade from behind a stone and produced it before the police. On the question whether the statement of the accused was admissible in evidence against him.

Held, that the portion of the accused's statement that he had kept the hand-grenade one month previously was not admissible in evidence as it could not be said to have led directly to the discovery of the fact that the hand-grenade had been kept in the cattle-shed of his friend.

Kottayya v. *Emperor*,[1] explained and followed, *Queen-Empress* v. *Nana*,[2] *Sukhan* v. *The Crown*[3] and *Emperor* v. *Ganu Chandra*,[4] referred to.

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* Criminal Appeal No. 356 of 1951.

[1] (1946) 49 Bom. L. R. 508, s. c. L. R. 74 I. A. 65.
[2] ((1889) 14 Bom. 260.
[3] (1929) 10 Lah. 283, F. B.
[4] (1931) 34 Bom. L. R. 303.