

1917.

Present : Wood Renton C.J. and De Sampayo J.

In re APPLICATION OF ABDUL LATIFF.

P. C. Colombo, 6,143.

Writ of prohibition—Revision—Power of Supreme Court in non-summary cases—Cross-examination—Power of Judge to control—Search warrant.

No mandate of prohibition can be issued to a Police Magistrate unless he has acted in excess of his jurisdiction.

The Supreme Court ought not to interfere lightly in the exercise of its powers of revision in non-summary cases.

A Judge has the right to control cross-examination in regard both to its direction and to its volume. That right must, however, be exercised with the utmost discretion.

Where one partner charged another (in a non-summary case) with criminal breach of trust, the Magistrate issued a search warrant to secure the production and inspection of all the partnership books.

Held, that the Magistrate had power to do so under section 68 of the Criminal Procedure Code.

THIS was an application in the alternative for a writ of prohibition or for the exercise of the powers of the Supreme Court in revision in regard to certain proceedings in *P. C. Colombo, 6,143*. The facts are set out in the judgment. This application was referred to a Bench of two Judges by De Sampayo J. Notice of this application was ordered to be served on the Attorney-General.

H. J. C. Pereira, Hayley, and Tisseverasinghe, for the applicant.

Bawa, K.C., and Elliott, for the complainant, respondent.

Garvin, S.-G., representing the Crown.

Cur. adv. vult.

January 27, 1917. WOOD RENTON C.J.—

1917.

This is an application in the alternative for a writ of prohibition or for the exercise of the powers of the Supreme Court in revision in regard to certain proceedings in the Police Court of Colombo in the present case. The applicant stands charged with having cheated the complainant-respondent, with whom he had been in partnership, and also with the offence of criminal breach of trust in respect of a sum of Rs. 100,000. The grounds on which this application are based are (i.) that there is no evidence to support a charge of cheating, (ii.) that no charge of criminal breach of trust has been framed, (iii.) that the learned Police Magistrate declined to record certain portions of the cross-examination of the respondent by the applicant's counsel, and (iv.) that he issued without jurisdiction a search warrant to secure the production and inspection of all the partnership books.

*In re Appli-
cation of
Abdu Latiff.*

It is clear that no mandate of prohibition can issue unless the Police Magistrate has in one or other of these matters acted in excess of his jurisdiction, and, while I have no doubt as to, and have certainly no intention of restricting, the width and generality of the powers of the Supreme Court under section 21 of the Courts Ordinance, it is equally clear that we ought not to interfere lightly in non-summary cases.

I agree with counsel for the applicant that there is on the record, as it stands, no evidence on which a charge of cheating could be framed. There is no allegation that the applicant fraudulently or dishonestly induced the respondent to part with the property in question by any deception as to the purpose for which it was to be used. It does not, however, appear to me that the charge of cheating is being seriously pressed. The search warrant is founded on the charge of criminal breach of trust alone. The case is a non-summary one, and, if the Police Magistrate should proceed further with the charge of cheating, the Attorney-General will no doubt deal with the matter at the proper time. There is nothing in the circumstances as they stand at present to justify the interference of this Court by way either of prohibition or of revision.

There is evidence, although it might well have been made more precise, in the record to support a charge of criminal breach of trust. When the statements of the respondent in examination-in-chief and in cross-examination and the mortgages signed on the 3th and attested on February 12, 1916, are closely examined, it is possible to arrive at the conclusion that the respondent's case against the applicant is that the latter converted to his own use a sum of Rs. 100,000 entrusted to him for partnership purposes, and that his independent dealings with portions of that property in the mortgages just mentioned are overt acts disclosing his fraudulent intention. The applicant clearly understood the charge in that sense, for he not only pleaded not guilty to it, without any exception

1917.
 WOOD
 RENTON C.J.
 In re Appli-
 cation of
 Abdul Latiff.

being taken to the charge by his counsel, but gave the names of certain witnesses to prove that the property had, in fact, been transferred to him in ownership. In this state of the facts, although the charge is vague and was explained to the applicant only from the warrant for his arrest, I see no reason to interfere.

The Solicitor-General informed us that he was not in a position to make any observations in regard to the alleged refusal by the Police Magistrate to record part of the respondent's cross-examination, and the matter is not one with which we are in a position to deal. Every Judge who is trying a case has the right to control cross-examination in regard both to its direction and to its volume. That right must, however, be exercised with the utmost discretion. The chief complaint of the applicant's counsel in this matter was that an admission by the respondent that on the eve of the institution of the present proceedings he had agreed to submit the points in dispute between himself and the applicant to arbitration had not been recorded. There will, however, be early opportunities for the rectification of any omission of this kind.

I do not myself doubt that under the third paragraph of section 68 of the Criminal Procedure Code the Police Magistrate had full power to order a general search for, and inspection of, all the books of the partnership, if he considered, as the search warrant itself shows that he did consider, the adoption of that course necessary for the purposes of these proceedings. The analogous provisions of the Indian Criminal Procedure Code, 1882, were construed in the same sense by the High Court of Calcutta in the case of *Mahomed Jackariah & Co. v. Ahmed Mahomed*.¹ But, apart altogether from judicial decisions, it is essential, for the adequate administration of justice in this country that that power should exist. We are not at present called upon to decide the question whether, under the provisions of section 130 of the Evidence Ordinance, exception could be successfully taken on behalf of the applicant at the trial to the admissibility in evidence against him of any of the books covered by the search warrant, and I do not propose to express any opinion upon that point now. If the manner in which the inspection of the applicant's books is being carried out is causing unnecessary inconvenience to him, the Police Magistrate will no doubt be prepared to modify its terms.

The rule *nisi* for prohibition must be discharged, and the application for revision dismissed.

DE SAMPAYO J.—I agree.

Application refused.

¹ (1887) I. L. R. 15 Cal. 109.