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against the firm was by virtue of sub-rule (1) cl. (b) of rule 50 O. 21, liable to be executed against Singh.

The High Court was thorefore, in our judgment right in directing execution of the decrce of the City Civil Court, Bombay, against Singh. The appeal fails and is dismissed with costs.

Appeal dismissed.

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November, 13.

MAULUD AHMAD

v.

STATE OF UTTAR PRADESH

(S. J. IMAM, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Framing incorrect record—Head Constable making false entry to save another person—Acquittal of the other person—Conviction of Head Constable, if sustainable—Limitation—Prosecution after 3 months of offence—If barred—Indian Penal Code, 1860 (Act XLV of 1860), s 218—Police Act, 1861 (V of 1861), ss. 36, 42.

C and some other persons went on a shoot with guns where two persons were shot dead. In order to create evidence in his favour C got a false report entered by the appellant, a Head constable, in the General Diary purporting to have been made on the previous day to the effect that C had deposited his gun. C and the appellant and the others were tried for various offences including offences under ss. 304-A and 218/109 Indian Penal Code. All the accussed were acquitted but the appellant was convicted under s. 218. The appellant contended (i) that after the acquittal of C, his conviction under s. 218 could not be sustained and (ii) that the prosecution having been launched more than three months after the entry was made was barred by limitation under s. 42 Police Act.

Held, that the appellant was rightly convicted. Whether C was guilty or not, at the time the entry was made there was every likelihood of C being prosecuted, for causing the death of two persons. The acuittal of C did not affect the finding that the false entry was made with the intention to save or knowing it to be likely to save C from legal punishment. The acquittal of C under s. 218/109 did not exonerate the appellant as it had been found that he had made the false entry with a view to save C.

Held, further, that the prosecution was not barred by s. 42 of the Police Act. Sections 36 and 42 read together showed that s. 42 was applicable only to prosecutions for offences under the Police Act and not to prosecutions under the Penal Code or other Acts.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 97 of 1961.

Appeal by special leave from the judgment and order dated February 1, 1961, of the Allahabad High Court (Lucknow Bench) Lucknow in Criminal Appeal No. 403 of 1960.

S. P. Sinha and *Saukat Hussain*, for the appellant.

G. C. Mathur and *C. P. Lal*, for the respondent.

1962, November 13. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—This is an appeal by Special leave against the judgment and order of the Allahabad High Court, Lucknow Bench, confirming that of the Additional Sessions Judge, Kheri, convicting the appellant under s. 218 of the Indian Penal Code and sentencing him to two years' rigorous imprisonment. The prosecution case may be briefly stated :—

Some Railway officers and others, including one Chauhan, Railway Guard, went on two trollies towards Bhitra for a shoot. Chauhan had with him a

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double barrelled gun of twelve bore bearing No. 23727. On either side of the Railway line there were reserve forests of the State. Some of the group got down from the trollies, flashed a search-light and fired their guns. Two persons were shot dead. Chauhan in order to create evidence in his favour got a report entered by the appellant, a Police Head-constable, in the General diary of the Police Station purporting to have been taken on December 13, 1956, at 6.45 P.M. to the effect that Chauhan had deposited the said gun in the Police Station. Many other manipulations were made by the appellant in the Police record to bring it in conformity with the said false entry. Several persons, including Chauhan and the appellant were prosecuted under ss. 304-A, 201/109, 120-B and 218/109 of the Indian Penal Code, as well under s. 26 of the Indian Forest Act, and they were tried by the Additional Sessions Judge, Kheri. The appellant was also charged under s. 218 of the Indian Penal Code. All the accused were acquitted except the appellant who was convicted under s. 218 of the Indian Penal Code and sentenced to two years' rigorous imprisonment. The appeal filed by him to the High Court was dismissed. Hence this present appeal.

The learned counsel for the appellant raised two questions before us. The first was that as Chauhan was acquitted of all the offences with which he was charged, the charge against the appellant under s. 218, Indian Penal Code, should fall with it and the second that the prosecution against the appellant having been launched three months after the entry is alleged to have deen made by him in the Police diary was barred by limitation under s. 42 of the Police Act.

Section 218 of the Indian Penal Code reads :—

> "Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing frames

that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, x x x x with intent thereby to save, or knowing it to be likely that he will thereby save any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save x x x x x shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both."

The crux of the section so far as it is relevant to the present inquiry is that the public servant should have acted in the manner contemplated by this section with an intent thereby to save or knowing it to be likely that he will thereby save any person from legal punishment.

The argument of the learned counsel under the first head hinges upon the alleged inconsistency and conflict between the acquittal of Chauhan and the conviction of the appellant. Chauhan had been charged along with the appellant for offences under ss. 304-A, 120-B, 201/109 and 218/109 of the Indian Penal Code and s. 26 of the Indian Forest Act. He was acquitted. Omitting for the time being s. 218/109 Indian Penal Code, let us see on what grounds he was so acquitted. The learned Additional Sessions Judge found that the following facts had been established :—

(1) That there were three guns with the party, including Chauhan's gun;

(2) That between miles 8 and 9 after the trollies were stopped and were placed by the side of the track, Ramdeo trolly man and Lala went away and shortly after that four gun-shots were heard and shortly after that Lala returned alone and then all the members of the party excepting Ramdeo returned to Mailani by the Cane Special.

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(3) That at the time when the four gun-shots were heard, Chauhan and Gupta were standing just near the track with their guns in their hands and, Dilawar, Amin and Hira also remained standing by the side of the track.

(4) The medical evidence does not say about the duration of the gun shot injuries of Ramdeo and Chhotey but from the above noted discussion of the evidence it would appear that Ramdeo and Chhotey were likely to have received gun-shot injuries between 7-20 to 7-40 P.M. in the night between December, 14 and 15, 1956.

From the foregoing facts found the learned Judge came to the conclusion that there was no direct or substantial evidence of any kind connecting any of the five accused, including Chauhan, with the death of Ramdeo and Chhotey. It would be seen from the said findings that the learned Judge accepted the evidence that Chauhan was in the shooting party that day, that he carried a gun with him, that two persons were killed with gun shots but for some reason with the correctness of which we are not concerned here he acquitted Chauhan. It is, therefore, manifest that whether Chauhan was guilty or not, at the time the false entries were made in the case diary there was every likelihood of Chauhan being prosecuted along with others for causing the death of Ramdeo and Chotey. Indeed as expected Chauhan and others were prosecuted though they were acquitted. On the said facts the mere acquittal of Chauhan cannot displace the finding of the learned Judge that the appellant manipulated the record with an intent thereby to save or knowing it to be likely that he would thereby save Chauhan from legal punishment. If the appellant had made the false entry in the diary and manipulated other records with a view to save Chauhan from the legal punishment that might be inflicted upon him, the mere fact that he

was subsequently acquitted of the offence could not make it anytheless an offence under s. 218 of the Indian Penal Code. Nor can we accept the contention that the acquittal of Chauhan for the abetment of the offence under s. 218 of the Indian Penal Code committed by the appellant affects the conviction of the appellant under s. 218 of the Indian Penal Code. The gravamen of that charge against Chauhan is that he abetted the appellant in making a false entry in the diary and manipulating the record to fit in with that false entry. The Additional Sessions Judge considered the following three points in connection with the said offence :—

(1) Whether Chauhan abetted Maulud Ahmad in making false entries in the General Diary of Police Station Mailani ?

(2) Whether Chauhan deposited his gun at Police Station Mailani in the night between December 14 and 15, 1956, and got the entry of the deposit in the General Diary antedated, i. e. according to the entry the gun was shown to be deposited on December 13, 1956, at 18-45 hours and whether Chauhan did it after consultation with Dilawar ?

(3) Whether Maulud Ahmad (accused) made false entries in the General Diary of Police Station Mailani with the intention to save or knowing it likely that he would thereby save the offenders from legal punishment and by that false entry he was trying to get the evidence of the offences under ss. 304-A of the Indian Penal Code and 26 of the Indian Forest Act to disappear ?

The learned Judge found on the third point that the appellant intentionally falsified the official record with a view to save Chauhan but he acquitted Chauhan by giving him the benefit of doubt on the ground that his signature was not found against the

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entry of deposit of the gun on December 13, 1956, and also against the entry of the return of the gun on December 18, 1956. In the view of the learned Judge it was not established conclusively that Chauhan abetted the appellant in manipulating the record but that could not exonerate the appellant for it had been held on the evidence that the false entries had been made in the record by the appellant with a view to save Chauhan. Whether the acquittal of Chauhan was correct or not, the conviction of the appellant is not inconsistent with that of the acquittal of Chauhan. That apart it appears to us from the record that the acquittal of Chauhan is not justified in the circumstances of the case. Though we cannot convict him as the State has not preferred an appeal to the High Court against his acquittal, we cannot rely upon that acquittal to acquit the appellant against whom the case has been proved to the hilt. We, therefore, hold that the conviction of the appellant is not inconsistent with the acquittal of Chauhan.

The second question that is the question of limitation depends upon the provisions of s. 42 of the Police Act. Section 42 reads :—

> "All x x x x prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not, otherwise, x x x x x x."

The period of three months prescribed for commencing a prosecution under this section is only with respect to prosecution of a person for something done or intended to be done by him under the provisions of the Police Act or under general Police powers given by the Act. Section 42 does not apply to prosecution

against any person for anything done under the provisions of any other Act or under Police powers conferred under any other Act. Under s. 36 nothing contained in the Police Act shall be construed to prevent any person from being prosecuted under any Regulation or Act for any offence made punishable by this Act or for being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act. This section makes it clear that the provisions of the Act including s. 42 do not preclude a person from being prosecuted for an offence under any other Act. A combined reading of these provisions leads to the conclusion that s. 42 only applies to a prosecution against a person for an offence committed under the Police Act.

Under s. 29 of the Police Act a Police officer, who is guilty of any violation of a duty, shall be liable on conviction before a Magistrate to a penalty prescribed thereunder. Section 44 thereof imposes a duty on every officer in-charge of a Police Station to keep a General Diary in such form as prescribed. If the appellant did not discharge his duty in the matter of keeping a regular diary, he had committed an offence under s. 29 of the Act. If he was prosecuted for such an offence under s. 42, it should be done within the time laid down thereunder, but the prosecution in the present case was for an offence under s. 218 of the Indian Penal Code which is an offence under a different act and for which a much higher punishment is prescribed. By reason of s. 36 of the Police Act, section 42 thereof cannot apply to such a prosecution.

An appeal is made for the reduction of the sentence on the ground that the Head Conatable was only a tool in the hands af a superior officer who might have been approached by Chauhan. There is nothing on the record to disclose that Chauhan

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approached any superior officer in the Police Department and that the appellant had manipulated the records on the dictation of such an officer. This is a pure surmise based upon an observation made by the learned Judge of the High Court in the judgment. There is nothing improbable in Chauhan or some other person interested in him directly approaching the appellant and the appellant acting in the manner he did for consideration or otherwise. If a police officer manipulates the record such as police diary etc., it will be the end of honest criminal investigation in our country. Such offences shall receive deterrent punishment. The punishment awarded errs more on the side of leniency than otherwise.

For the aforesaid reasons we hold that the decision of the High Court is correct. The appeal fails and is dismissed.

Appeal dismissed.

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November, 14.

HAJI T. J. ABDUL SHAKOOR AND OTHERS

v.

BIJAY KUMAR KAPUR AND OTHERS

(S. J. IMAM, K. SUBBA RAO, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Compromise Decree—Construction—Compromise providing sale of mortgaged properties—Execution proceedings—Maintainability—Code of Civil Procedure, 1908 (Act 5 of 1908), O. 23, r.3

A suit instituted by the respondents for the recovery of money due under a simple mortgage from the appellants was compromised by the parties under a memo dated September 30, 1955, and the court passed a decree as per the terms of the compromise. By cl. 1 of the memo the defendants agreed to a